

Western Australia

**Water Resources Legislation Amendment
Act 2007**

As at 21 Dec 2007

No. 38 of 2007

Extract from www.slp.wa.gov.au, see that website for further information

Water Resources Legislation Amendment Act 2007

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Regulations — power to amend certain statutory rules	2

Part 2 — Amendments to the *Country Areas Water Supply Act 1947*

4.	The Act amended	3
5.	Section 5 amended	3
6.	Section 7 repealed	3
7.	Section 11 amended	4
8.	Section 12BA amended	4
9.	Section 12BD amended	4
10.	Section 12BE amended	4
11.	Section 12E amended	5
12.	Section 12EB amended	5
13.	Section 12ED amended	5
14.	Section 12EE amended	6
15.	Section 45 amended	6
16.	Section 111 amended	6
17.	Section 112 amended	7
18.	Section 113 amended	7
19.	Section 114 amended	7
20.	Section 115 amended	7

Contents

21.	Section 116 replaced	8
	116. Corporation may be represented by officer	8
22.	Section 121 amended	8
23.	Various references to “Commission” changed to “Minister”	9

**Part 3 — Amendments to the
*Metropolitan Water Authority
Act 1982***

24.	The Act amended	10
25.	Section 4 amended	10
26.	Section 5 amended	10
27.	Section 19 amended	10
28.	Section 98 amended	11
29.	Section 99 amended	11
30.	Section 106 amended	11
31.	Section 107 amended	12

**Part 4 — Amendments to the
*Metropolitan Water Supply,
Sewerage, and Drainage Act 1909***

32.	The Act amended	13
33.	Section 5 amended	13
34.	Section 14 amended	13
35.	Section 16 amended	14
36.	Section 35 repealed	14
37.	Section 57C amended	14
38.	Section 57EA amended	14
39.	Section 57G amended	15
40.	Section 57H amended	15
41.	Section 57I amended	15
42.	Section 146 amended	15
43.	Section 153 amended	15
44.	Section 156 amended	16
45.	Section 157 amended	16
46.	Section 158 amended	16
47.	Section 159 amended	17
48.	Section 160 repealed	17
49.	Section 161 replaced	17
	161. Corporation may be represented by officer	17

50.	Various references to “Commission” changed to “Minister”	18
Part 5 — Amendments to the <i>Rights in Water and Irrigation Act 1914</i>		
51.	The Act amended	19
52.	Section 2 amended	19
53.	Section 5 amended	19
54.	Section 5A amended	20
55.	Section 6 amended	20
56.	Section 16 amended	20
57.	Section 26B amended	20
58.	Section 26GE amended	21
59.	Section 26GH amended	21
60.	Section 26GL amended	21
61.	Section 26GS amended	21
62.	Section 26GU amended	22
63.	Sections 26GX and 26GY amended	22
64.	Heading to Part III Division 3D Subdivision 2 amended	22
65.	Section 26GZC amended	22
66.	Section 26GZE replaced 26GZE. Minister to make plan	23
67.	Section 26GZG amended	23
68.	Section 26GZI amended	24
69.	Section 26GZK amended	24
70.	Section 26GZO amended	24
71.	Section 26GZQ amended	25
72.	Section 26H amended	25
73.	Section 26J amended	25
74.	Section 26N amended	26
75.	Section 26Q amended	26
76.	Section 27 amended	27
77.	Section 27C amended	27
78.	Section 35 amended	27
79.	Section 36 amended	27
80.	Section 39 replaced 39. Allocation of water for irrigation	28
81.	Section 69 amended	28
82.	Section 70 amended	28
83.	Section 71 amended	29

Contents

84.	Section 73 amended	29
85.	Section 75 replaced	29
	75. Corporation may be represented by officer	29
86.	Section 79A amended	29
87.	Schedule 1 clause 3 amended	29
88.	Schedule 1 clause 6 amended	30
89.	Schedule 1 clause 12 amended	30
90.	Schedule 1 clause 15 amended	30
91.	Schedule 1 clause 22 amended	31
92.	Schedule 1 clause 26 amended	31
93.	Schedule 1 clause 29A inserted	32
	29A. Transfers of licence — death of licence holder	32
94.	Schedule 1 clause 30 amended	33
95.	Schedule 1 clause 35 amended	33
96.	Heading to Schedule 1 Division 8 amended	33
97.	Schedule 1 clause 38 amended	34
98.	Heading to Schedule 1 Division 10 amended	34
99.	Schedule 1 clause 40 amended	34
100.	Schedule 1 clause 45 amended	34
101.	Various references to “Commission” changed to “Minister”	34
102.	Various references to “Commission” changed to “CEO”	36

Part 6 — Amendments to the *Water Agencies (Powers) Act 1984*

103.	The Act amended	37
104.	Long title amended	37
105.	Section 3 amended	37
106.	Section 8 amended	39
107.	Parts II, IIA and heading to Part IIB inserted	39

Part II — The Minister and the Water Resources Ministerial Body

Division 1 — General functions and powers of the Minister

9.	General functions and powers of the Minister	39
10.	Functions and powers of the Minister — relationship to other functions and powers and to the Corporation	40

Division 2 — The Water Resources Ministerial Body		
11.	The Water Resources Ministerial Body	41
12.	Purpose and nature of the Ministerial Body	41
13.	Execution of documents by the Ministerial Body	41
Division 3 — Minister to have access to certain information		
14.	Minister to have access to certain information	43
15.	Use or disclosure of information obtained under section 14	45
Part IIA — The Water Resources Council		
16.	Water Resources Council established	46
17.	Membership of the Council	46
18.	Functions of the Council	47
19.	Term of office	48
20.	Casual vacancy	48
21.	Remuneration and allowances	48
22.	Quorum	49
23.	Presiding at meetings	49
24.	Disclosure of interests by Council members	49
25.	Procedure at meetings	50
26.	Minutes	50
27.	Staff and other resources of the Council	50
28.	Application of the <i>Financial Administration and Audit Act 1985</i>	50
Part IIB — Regulations and by-laws		
108.	Section 34 amended	51
109.	Section 36 amended	51
110.	Section 38 amended	52
111.	Section 62 amended	52
112.	Section 63 amended	52
113.	Section 66 amended	53
114.	Section 70 amended	53
115.	Section 71 amended	54
116.	Section 72 amended	54
117.	Section 73 amended	55
118.	Section 78 amended	55
119.	Section 79 amended	56
120.	Section 81 amended	56
121.	Section 82 amended	59
122.	Section 83 amended	59
123.	Section 84 amended	59

Contents

124.	Section 86 amended	60
125.	Section 87 amended	60
126.	Section 88 amended	61
127.	Section 89 amended	62
128.	Section 90 amended	62
129.	Section 91 amended	62
130.	Section 93 amended	63
131.	Section 95 amended	63
132.	Section 97 amended	64
133.	Section 103 amended	64
134.	Part X inserted	64
	Part X — Administrative provisions	
104.	Delegation by the Minister	64
105.	Delegation by the CEO	66
106.	Directions about Government policy	67
107.	Non-public sector staff	68
108.	Provision of staff, services and facilities	68
109.	Advisory committees	69
110.	Laying documents before Parliament	69
111.	Protection from liability for wrongdoing	70
112.	Confidentiality	71
135.	Various references to “Commission” changed to “Minister”	72
	Part 7 — Amendments to the <i>Water Corporation Act 1995</i>	
136.	The Act amended	73
137.	Section 7 amended	73
138.	Section 49 amended	73
139.	Section 58 amended	73
	Part 8 — Amendments to the <i>Waterways Conservation Act 1976</i>	
140.	The Act amended	75
141.	Long title amended	75
142.	Heading to Part 1 inserted	75
	Part 1 — Preliminary	
143.	Section 3 amended	75
144.	Section 5 amended	76
145.	Section 8 amended	76
146.	Heading to Part 2 inserted	76

Part 2 — Application of the Act		
147.	Section 9 amended	76
148.	Section 10 amended	77
149.	Heading to Part 3 inserted	77
Part 3 — Functions of the Minister		
150.	Sections 11 to 30 replaced by sections 11 and 12	78
	11. Functions of the Minister	78
	12. Performance of the functions of the Minister	80
151.	Heading to Part 4 and section 30 inserted	81
Part 4 — Agreements, management programmes and consultation		
	30. Covenants	81
152.	Section 31 amended	81
153.	Section 32 amended	81
154.	Section 33 amended	82
155.	Section 34 repealed	83
156.	Section 35 amended	83
157.	Section 36 amended	85
158.	Section 37 amended	86
159.	Section 38 amended	86
160.	Sections 39 to 45 repealed	87
161.	Heading to Part 5 inserted	87
Part 5 — Protection of waters and land		
162.	Section 46 amended	87
163.	Section 48 amended	87
164.	Section 49 amended	87
165.	Section 50 amended	88
166.	Section 51 amended	88
167.	Section 52 amended	88
168.	Section 53 amended	89
169.	Headings to Part 6 and Division 1 inserted	89
Part 6 — General provisions		
Division 1 — By-laws		
170.	Section 54 replaced	89
	54. By-laws	89
171.	Section 56 amended	90
172.	Section 57 amended	90
173.	Sections 58 and 59 repealed	91

Contents

174.	Heading to Division 2 inserted	91
	Division 2 — Enforcement provisions	
175.	Section 61 amended	91
176.	Section 62 amended	91
177.	Section 63 amended	91
178.	Section 64 amended	92
179.	Sections 66 and 67 repealed	92
180.	Heading to Division 3 inserted	92
	Division 3 — General offence and procedural provisions	
181.	Section 69 amended	92
182.	Section 71 amended	92
183.	Section 75 amended	93
184.	Heading to Division 4 and sections 76 to 81 inserted	94
	Division 4 — Administrative provisions	
	76. Delegation by the Minister	94
	77. Delegation by the CEO	95
	78. Public consultation	97
	79. Information officially obtained to be confidential	98
	80. Annual reports	99
	81. Protection from liability for wrongdoing	100
185.	Section 76 renumbered	100
186.	Section 76 (as renumbered) amended	100
187.	Schedule repealed	101
188.	Various references to “Commission” changed to “Minister”	101
	Part 9 — Repeal of Acts	
189.	The <i>Water and Rivers Commission Act 1995</i> repealed	102
190.	The <i>Water Supply, Sewerage, and Drainage Act 1912</i> repealed and savings provision	102
	Part 10 — Consequential amendments to other Acts	
191.	<i>Conservation and Land Management Act 1984</i> amended	103
192.	<i>Constitution Acts Amendment Act 1899</i> amended	104
193.	<i>Energy Operators (Powers) Act 1979</i> amended	105

194.	<i>Environmental Protection Act 1986</i> amended	105
195.	<i>Financial Management Act 2006</i> amended	106
196.	<i>Land Administration Act 1997</i> amended	106
197.	<i>Public Sector Management Act 1994</i> amended	107
198.	<i>Public Works Act 1902</i> amended	107
199.	<i>Sentencing Act 1995</i> amended	108
200.	<i>Soil and Land Conservation Act 1945</i> amended	108
201.	<i>Water Boards Act 1904</i> amended	108

Part 11 — Transitional provisions

Division 1 — Interpretation

202.	Terms used in this Part	109
203.	<i>Interpretation Act 1984</i> not limited	111

Division 2 — Transfer of assets, liabilities, accounts, proceedings etc.

204.	Minister to make transfer orders	111
205.	Transfer of assets and liabilities	112
206.	Transfer of care, control and management of reserved land	114
207.	The Water and Rivers Commission Account	115
208.	Commission to complete necessary transactions	115
209.	The <i>Water Supply, Sewerage, and Drainage Act 1912</i>	116
210.	Registration of documents	116
211.	Exemption from State taxes	117
212.	Rectifying error in transfer order	118

Division 3 — Staff etc.

213.	Transfer of staff	118
214.	Transfer of arrangements about use of other staff	119
215.	Employees' rights preserved	119
216.	Transfer of contracts for services	119

Division 4 — Committees of the Commission

217.	Transfer of members of committees of the Commission	120
------	---	-----

Division 5 — Former Management Authorities under the *Waterways Conservation Act 1976*

218.	By-laws under the <i>Waterways Conservation Act 1976</i>	120
------	--	-----

Contents

219.	Proceedings in relation to a former Management Authority	121
	Division 6 — Continuing effect of things done	
220.	Continuing effect of licences, directions, determinations, notices etc.	121
221.	Completion of things commenced	121
222.	Continuing effect of things done generally	122
223.	Agreements and instruments generally	122
	Division 7 — General transitional provisions	
224.	Confidentiality obligations to continue	122
225.	Further transitional provision may be made	123
226.	Saving	124
	Defined Terms	



Western Australia

Water Resources Legislation Amendment Act 2007

No. 38 of 2007

An Act to —

- **amend the *Country Areas Water Supply Act 1947*; and**
 - **amend the *Metropolitan Water Authority Act 1982*; and**
 - **amend the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*; and**
 - **amend the *Rights in Water and Irrigation Act 1914*; and**
 - **amend the *Swan River Trust Act 1988*; and**
 - **amend the *Water Agencies (Powers) Act 1984*; and**
 - **repeal the *Water and Rivers Commission Act 1995*; and**
 - **amend the *Water Corporation Act 1995*; and**
 - **repeal the *Water Supply, Sewerage, and Drainage Act 1912*; and**
 - **amend the *Waterways Conservation Act 1976*; and**
 - **make consequential amendments to other Acts,**
- and for related purposes.**

[Assented to 21 December 2007]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act is the *Water Resources Legislation Amendment Act 2007*.

2. Commencement

- (1) This Part and Part 11 come into operation on the day on which this Act receives the Royal Assent.
- (2) Parts 2 to 10 come into operation on a day fixed by proclamation.
- (3) Different days may be fixed under subsection (2) for different provisions.

3. Regulations — power to amend certain statutory rules

- (1) The Governor, on the recommendation of the Minister, may make regulations amending a statutory rule.
- (2) The Minister may make a recommendation under subsection (1) only if he or she considers that each amendment proposed to be made by the regulations is consequential on the enactment of this Act.
- (3) Nothing in this section prevents a statutory rule from being amended in accordance with the Act under which it is made.
- (4) In this section —
“**statutory rule**” means a regulation, rule or by-law.

Part 2 — Amendments to the *Country Areas Water Supply Act 1947*

4. The Act amended

The amendments in this Part are to the *Country Areas Water Supply Act 1947**.

[* Reprint 7 as at 7 April 2006.]

5. Section 5 amended

Section 5(1) is amended as follows:

- (a) by deleting the definitions of “Commission” and “officer”;
- (b) by inserting in the appropriate alphabetical positions —

“

“**CEO**” means the chief executive officer of the Department;

“**Department**” means the department of the Public Service principally assisting in the administration of this Act;

“**former authority**” means the former Authority, the former Commission or a former Minister;

“**former Commission**” means the Water and Rivers Commission established by section 4 of the *Water and Rivers Commission Act 1995* and in existence before the repeal of that Act;

“**officer**”, in relation to the Corporation, means a member of the staff of the Corporation engaged under section 15 of the *Water Corporation Act 1995*;

”.

6. Section 7 repealed

Section 7 is repealed.

s. 7

7. Section 11 amended

Section 11(2) is repealed and the following subsection is inserted instead —

“

- (2) The Corporation shall not exercise the powers conferred by subsection (1) in relation to water to which section 5C of the *Rights in Water and Irrigation Act 1914* applies, except under a licence or right granted or conferred under Part III of that Act.

”.

8. Section 12BA amended

Section 12BA(3) is amended by deleting “the former Authority” and inserting instead —

“ a former authority ”.

9. Section 12BD amended

Section 12BD(1) is amended as follows:

- (a) by deleting “any officer of the Commission” and inserting instead —
“ the Minister ”;
- (b) by deleting “Commission” in the second place where it occurs and inserting instead —
“ Minister ”.

10. Section 12BE amended

Section 12BE(4) is amended by deleting “Minister or of the Commission” and inserting instead —

“ Crown ”.

11. Section 12E amended

Section 12E(7) is amended as follows:

- (a) in paragraph (a) by deleting “the former Minister, the former Authority” and inserting instead —
“ a former authority ”;
- (b) in paragraph (b) by deleting “former Minister, the former Authority” and inserting instead —
“ former authority ”.

12. Section 12EB amended

- (1) Section 12EB(2), (3)(b) and (4) are amended by deleting “former Minister, the former Authority” and inserting instead —
“ former authority ”.
- (2) Section 12EB(3) and (4) are amended by deleting “former Minister or the former Authority” and inserting instead —
“ former authority ”.

13. Section 12ED amended

- (1) Section 12ED(2) is amended by deleting “any officer of the Commission or other person authorised by the Commission or”.
- (2) Section 12ED(4) is amended by deleting “authorise any officer of the Commission or other person authorised by the Commission or the Minister” and inserting instead —
“
authorise any officer of the Department, and other persons authorised by the Minister,
”.

s. 14

(3) Section 12ED(5) is amended as follows:

- (a) by deleting “or the Commission or a person acting with the authority of the Minister or of the Commission” and inserting instead —

“

, an officer of the Department or a person authorised by the Minister for the purposes of this subsection,

”;

- (b) by deleting “the Commission or any such person” and inserting instead —

“ officer or person so authorised ”.

14. Section 12EE amended

Section 12EE(2) is amended as follows:

- (a) by deleting “the Commission” in the first place where it occurs and inserting instead —

“ an officer of the Department ”;

- (b) by deleting “or of the Commission”.

15. Section 45 amended

Section 45(3a) is amended by deleting “Commission” and inserting instead —

“ the Crown ”.

16. Section 111 amended

Section 111 is amended by deleting “Commission” and inserting instead —

“ Crown ”.

17. Section 112 amended

Section 112 is amended as follows:

- (a) by deleting “Commission” in the first, third and fourth places where it occurs and inserting instead —
“ Minister ”;
- (b) by deleting “Commission” in the second place where it occurs and inserting instead —
“ Department ”.

18. Section 113 amended

Section 113(1) is amended by deleting “Commission” and inserting instead —

“ Crown ”.

19. Section 114 amended

Section 114 is amended by deleting “Commission” and inserting instead —

“
Department authorised by the Minister for the purposes of this section
”.

20. Section 115 amended

Section 115(1) is amended as follows:

- (a) in paragraph (a) by deleting “Commission” in the first place where it occurs and inserting instead —
“ Minister ”;
- (b) in paragraph (a) by deleting “Commission” in the second place where it occurs and inserting instead —
“ Department ”;

s. 21

- (c) in the heading to Table 1 by deleting “Commission” and inserting instead —
“ Minister ”;
- (d) in Table 1 by deleting “12C(7a)” and inserting instead —
“ 12C(7)(a) ”;
- (e) in Table 1 by deleting “obstruction of the Commission” and inserting instead —
“ obstruction of the Minister, etc. ”;
- (f) in Table 1 by deleting “used by the Commission” and inserting instead —
“ used by the Crown ”;
- (g) in Table 2 by deleting “obstruction of the Corporation” and inserting instead —
“ obstruction of the Corporation, etc. ”.

21. Section 116 replaced

Section 116 is repealed and the following section is inserted instead —

“

116. Corporation may be represented by officer

In any proceeding before a court, judge or person acting judicially, any authorised officer of the Corporation may represent the Corporation in all respects as if he were the party concerned.

”.

22. Section 121 amended

Section 121 is amended by deleting “chief executive officer of the Commission or” and inserting instead —

“ CEO or the chief executive officer of ”.

23. Various references to “Commission” changed to “Minister”

Each provision of the Act listed in the Table to this section is amended by deleting “Commission” in each place where it occurs and inserting instead —

“ Minister ”.

Table

s. 12	s. 12D(1)
s. 12B(2)	s. 12E(5), (6), (7) and (8)
s. 12BA(3)	s. 12EB(2), (3) and (4)
s. 12BD(2)	s. 45(1)(ca) and (2)
s. 12C(2), (3), (4), (5), (6) and (7)	s. 108

Note: The heading to sections 12 and 112 will be altered by deleting “Commission” and inserting instead “**Minister**”.

The headings to section 121 will be altered by deleting “chief executive officer of the Commission or” and inserting instead “**CEO or the chief executive officer of**”.

Part 3 — Amendments to the *Metropolitan Water Authority Act 1982*

24. The Act amended

The amendments in this Part are to the *Metropolitan Water Authority Act 1982**.

[* *Reprinted as at 21 January 2000.*

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 285.]

25. Section 4 amended

Section 4(1)(a) is amended as follows:

- (a) by deleting the definition of “Commission”;
- (b) by inserting in the appropriate alphabetical position —

“

“**former Commission**” means the Water and Rivers Commission established by section 4 of the *Water and Rivers Commission Act 1995* and in existence before the repeal of that Act;

”.

26. Section 5 amended

Section 5(2) is amended by inserting before “Commission” —

“ former ”.

27. Section 19 amended

Section 19 is amended by inserting after “delegate of” —

“ the former Commission, ”.

28. Section 98 amended

Section 98(1), (2), (4) and (5) are amended by deleting “Commission” in each place where it occurs and inserting instead —

“ Minister ”.

29. Section 99 amended

- (1) Section 99(1), (3) and (5) are amended by deleting “Commission” and inserting instead —

“ Minister ”.

- (2) Section 99(4) is amended as follows:

(a) by deleting “Commission” and inserting instead —

“ Minister ”;

(b) in paragraph (e) by deleting “, and report thereon to the Minister”.

30. Section 106 amended

- (1) Section 106(1), (2) and (5) are amended by deleting “Commission” in each place where it occurs and inserting instead —

“ Minister ”.

- (2) Section 106(2) is amended as follows:

(a) after paragraph (c) by deleting “; and” and inserting a full stop;

(b) by deleting paragraph (d);

(c) by inserting at the end of each of paragraphs (a) and (b) —

“ and ”.

s. 31

- (3) Section 106(3) is amended as follows:
 - (a) by deleting “Subject to the approval of the Minister, the Commission” and inserting instead —
“ The Minister ”;
 - (b) by deleting “unless the Minister otherwise directs”;
 - (c) by inserting at the end of paragraph (a) —
“ and ”.
- (4) Section 106(4) is amended by deleting “Subject to the approval of the Minister the Commission” and inserting instead —
“ The Minister ”.
- (5) Section 106(6) is amended as follows:
 - (a) in paragraph (a) by deleting “Commission” and inserting instead —
“ Minister ”;
 - (b) in paragraph (b) by deleting “the Commission or”.

31. Section 107 amended

Section 107(2) is amended by deleting “Commission” and inserting instead —

“ Minister ”.

Part 4 — Amendments to the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*

32. The Act amended

The amendments in this Part are to the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909**.

[* Reprint 9 as at 17 February 2006.]

33. Section 5 amended

Section 5(1) is amended as follows:

- (a) by deleting the definitions of “Commission” and “officer”;
- (b) by inserting in the appropriate alphabetical positions —

“

“**CEO**” means the chief executive officer of the Department;

“**Department**” means the department of the Public Service principally assisting in the administration of this Act;

“**officer**”, in relation to the Corporation, means a member of the staff of the Corporation engaged under section 15 of the *Water Corporation Act 1995*;

”.

34. Section 14 amended

Section 14(2) is repealed and the following subsection is inserted instead —

“

- (2) The Corporation shall not exercise the powers conferred by subsection (1) in relation to water to which section 5C of the *Rights in Water and Irrigation*

s. 35

Act 1914 applies, except under a licence or right granted or conferred under Part III of that Act.

”.

35. Section 16 amended

Section 16 is amended by deleting “without the authority of the Commission” and inserting instead —

“

other than with the authority of the Minister or under another written law

”.

36. Section 35 repealed

Section 35 is repealed.

37. Section 57C amended

Section 57C(1) is amended by deleting “it” and inserting instead —

“ the Minister ”.

38. Section 57EA amended

Section 57EA(2) is repealed and the following subsection is inserted instead —

“

(2) The Corporation shall not exercise the power conferred by subsection (1) in relation to water to which section 5C of the *Rights in Water and Irrigation Act 1914* applies, except under a licence or right granted or conferred under Part III of that Act.

”.

39. Section 57G amended

Section 57G(2)(a) and (b) are amended by deleting “it” and inserting instead —

“ the Minister ”.

40. Section 57H amended

Section 57H(3) is amended as follows:

(a) by deleting “Commission” in the first place where it occurs and inserting instead —

“ Minister ”;

(b) by deleting “Commission” in the second place where it occurs and inserting instead —

“ Crown ”.

41. Section 57I amended

Section 57I(1) is amended by deleting “it” and inserting instead —

“ the Minister ”.

42. Section 146 amended

Section 146(1)(3a) is amended by deleting “Commission” and inserting instead —

“ CEO ”.

43. Section 153 amended

Section 153 is amended by deleting “Commission” and inserting instead —

“ Crown ”.

s. 44

44. Section 156 amended

Section 156 is amended as follows:

- (a) by deleting “Commission” in the first place where it occurs and inserting instead —
“ Minister ”;
- (b) by deleting “Commission” in the second place where it occurs and inserting instead —
“ Department ”;
- (c) by deleting “, in the performance of any Act or thing which it or he” and inserting instead —

“

or any person authorised by the Minister or the Corporation, in the performance of any act or thing which the Minister or Corporation, or officer or person

”.

45. Section 157 amended

Section 157 is amended by deleting “Commission” and inserting instead —

“ Crown ”.

46. Section 158 amended

Section 158 is amended by deleting “Commission” and inserting instead —

“

Department authorised by the Minister for the purposes of this section

”.

47. Section 159 amended

(1) Section 159(1) is amended as follows:

(a) by deleting “relevant authority” in the first place where it occurs and inserting instead —

“ Minister or the Corporation ”;

(b) by deleting “relevant authority” in the second place where it occurs and inserting instead —

“ Department or the Corporation ”;

(c) by deleting “relevant authority” in the third place where it occurs and inserting instead —

“

Minister or the Corporation (which ever, in each case,
is relevant)

”.

(2) Section 159(4) is repealed.

48. Section 160 repealed

Section 160 is repealed.

49. Section 161 replaced

Section 161 is repealed and the following section is inserted instead —

“

161. Corporation may be represented by officer

In any proceeding before a court, judge or person acting judicially, any authorised officer of the Corporation may represent the Corporation in all respects as if he were the party concerned.

”.

s. 50

50. Various references to “Commission” changed to “Minister”

Each provision of the Act listed in the Table to this section is amended by deleting “Commission” in each place where it occurs and inserting instead —

“ Minister ”.

Table

s. 13(a)	s. 57D(1)
s. 15	s. 57E(1), (2) and (3)
s. 17(1)	s. 57G(1), (2), (5) and (7)
s. 57A(1) and (2)	s. 57H(1) and (2)
s. 57B(4)	s. 57I(1) and (2)
s. 57C(1) and (2)	

Note: The headings to sections 17, 57C and 156 will be altered by deleting “Commission” and inserting instead “**Minister**”.

The heading to section 146 will be altered by deleting “Corporation” and inserting instead “**Minister**”.

Part 5 — Amendments to the *Rights in Water and Irrigation Act 1914*

51. The Act amended

The amendments in this Part are to the *Rights in Water and Irrigation Act 1914**.

[* *Reprinted as at 10 January 2001.*

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 391.]

52. Section 2 amended

Section 2(1) is amended as follows:

- (a) by deleting the definition of “Commission”;
- (b) by inserting in the appropriate alphabetical positions —

“

“**CEO**” means the chief executive officer of the Department;

“**Department**” means the department of the Public Service principally assisting in the administration of this Act;

“**officer**”, in relation to the Corporation, means a member of the staff of the Corporation engaged under section 15 of the *Water Corporation Act 1995*;

“**Water Resources Council**” means the Water Resources Council established by section 16 of the *Water Agencies (Powers) Act 1984*;

”.

53. Section 5 amended

Section 5(2) is amended as follows:

- (a) after paragraph (a) by inserting —
“ and ”;

s. 54

- (b) in paragraph (b) by deleting “Commission” and inserting instead —
“ Minister ”;
- (c) after paragraph (b) by deleting “; and” and inserting a full stop;
- (d) by deleting paragraph (c).

54. Section 5A amended

Section 5A is amended by deleting “appropriated” and inserting instead —

“ allocated ”.

55. Section 6 amended

Section 6(4)(d) is amended by deleting “and given a report on them to the Minister”.

56. Section 16 amended

(1) Section 16(2) is amended as follows:

- (a) by deleting “The Commission may, with the approval of the Minister, in the name and on behalf of the Crown,” and inserting instead —
“ The Minister may ”;
- (b) by deleting “Commission” in the second and third places where it occurs and inserting instead —
“ Minister ”.

(2) Section 16(3) is amended by deleting “, the Commission,” in both places where it occurs.

57. Section 26B amended

Section 26B(5) is amended by inserting after “26C” —

“ and any local by-laws ”.

58. Section 26GE amended

Section 26GE(3) is amended by inserting after “order” —
“ under section 26GD(1) ”.

59. Section 26GH amended

Section 26GH(2) is amended as follows:

- (a) by inserting after “compensation” in the first place where it occurs —
“ under clause 39 of Schedule 1 ”;
- (b) by deleting “6(b)” and inserting instead —
“ (6)(b) ”.

60. Section 26GL amended

Section 26GL(1) is amended as follows:

- (a) by inserting at the end of each of paragraph (b)(i) and (ii) —
“ or ”;
- (b) by deleting paragraph (b)(iv) and inserting the following subparagraph instead —
“
(iv) are officers of the Department.
”.

61. Section 26GS amended

Section 26GS(3) is amended by deleting “neither the Commission nor the State is” and inserting instead —
“ the Crown is not ”.

62. Section 26GU amended

Section 26GU(1) is repealed and the following subsection is inserted instead —

“

- (1) A plan for the purposes of this Act may be prepared by the Minister.

”.

63. Sections 26GX and 26GY amended

Sections 26GX(2)(c)(iii) and (d) and 26GY(2)(b)(iii) are amended by deleting “Commission’s” and inserting instead —

“ Minister’s ”.

64. Heading to Part III Division 3D Subdivision 2 amended

The heading to Part III Division 3D Subdivision 2 is amended by deleting “approval” and inserting instead —

“ **making** ”.

65. Section 26GZC amended

- (1) Section 26GZC(1) and (2) are amended by deleting “submit” and inserting instead —

“ give ”.

- (2) Section 26GZC(3) is amended by deleting “submitted” and inserting instead —

“ given ”.

66. Section 26GZE replaced

Section 26GZE is repealed and the following section is inserted instead —

“

26GZE. Minister to make plan

- (1) The Minister must give the proposed plan, modified as the Minister thinks fit under section 26GZD, to the Water Resources Council and indicate the time within which the Water Resources Council may submit its report under subsection (3).
- (2) The plan 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 Minister indicating the Minister’s opinion of the merits of those submissions and requests.
- (3) The Water Resources Council may submit to the Minister a report indicating its opinion of the plan and making recommendations about modification and approval of the plan.
- (4) The Minister may make the proposed plan with or without modifications.
- (5) The Minister must not make the plan before the time referred to in subsection (1) has elapsed.

”.

67. Section 26GZG amended

After section 26GZG(4) the following subsection is inserted —

“

- (4a) The Minister must advise the Water Resources Council of the Minister’s decision, and reasons, as to whether

action needs to be taken in respect of a plan under subsection (1).

”.

68. Section 26GZI amended

Section 26GZI(3) is amended by deleting all of the subsection from and including “hours at” and inserting instead —

“

hours at the office or offices of the Department designated by the CEO for the purposes of this subsection.

”.

69. Section 26GZK amended

Section 26GZK is amended as follows:

- (a) by deleting “Commission” in the first place where it occurs and inserting instead —
“ Minister ”;
- (b) by deleting “Commission” in the second place where it occurs and inserting instead —
“ CEO ”.

70. Section 26GZO amended

Section 26GZO is amended as follows:

- (a) by deleting “Commission” in the first, second and third places where it occurs and inserting instead —
“ Minister ”;
- (b) by deleting “Commission” in the fourth place where it occurs and inserting instead —
“ CEO ”.

71. Section 26GZQ amended

Section 26GZQ(2)(b)(i) is amended by deleting “it” and inserting instead —

“ the CEO ”.

72. Section 26H amended

(1) Section 26H(1) is amended as follows:

(a) by deleting “Commission, any officer of the Commission or any person authorised by the Commission, may” and inserting instead —

“ Minister may, ”;

(b) by deleting “their duties” and inserting instead —

“ the Minister’s duties ”.

(2) Section 26H(1a) is repealed and the following subsection is inserted instead —

“

(1a) The provisions of Part VI of the *Water Agencies (Powers) Act 1984* that regulate entry onto land apply in relation to any entry under subsection (1).

”.

(3) Section 26H(2) is amended by deleting “Commission or any person acting in the exercise of an authorisation conferred under subsection (1) by the Commission,” and inserting instead —

“

Minister or any other person exercising powers under subsection (1)

”.

73. Section 26J amended

(1) Section 26J(1) is amended by deleting “Commission shall be entitled, in the name and on behalf of the Crown, to institute and

s. 74

maintain by any officer of the Commission authorised for that purpose by the Commission” and inserting instead —

“

Minister, or an officer of the Department authorised by the Minister for the purpose, may institute and maintain

”.

(2) Section 26J(2) is amended as follows:

- (a) by deleting “Commission” in the first, fourth and fifth places where it occurs and inserting instead —
“ Minister ”;
- (b) by deleting “either the Crown or the Commission or any person” and inserting instead —
“ the Crown or any other person ”;
- (c) by deleting “or the Commission” in the second place where it occurs;
- (d) by deleting “Commission’s” and inserting instead —
“ Crown’s ”.

74. Section 26N amended

- (1) Section 26N(2)(e) is amended by deleting “Minister” and inserting instead —
“ Water Resources Council ”.
- (2) Section 26N(3) is amended by deleting “(2)(c)” and inserting instead —
“ (2)(d) ”.

75. Section 26Q amended

Section 26Q(1) is amended by deleting “with the approval of the Minister,”.

76. Section 27 amended

- (1) Section 27(1)(a) is deleted.
- (2) Subsection 27(1) is amended by inserting after section 27(1)(ga) —
“
 (h) the fees or charges payable in respect of licenses under section 5C;
”.
- (3) At the end of section 27 the following subsection is inserted —
“
 (3) Without limiting the generality of paragraph (h) of subsection (1) the fees or charges referred to in that paragraph may be set by reference to the volume of water allocated under a license.
”.

77. Section 27C amended

Section 27C(2)(a) is amended by deleting “the operations of the Commission” and inserting instead —

“ operations ”.

78. Section 35 amended

Section 35 is amended as follows:

- (a) by deleting “, the Commission” in both places where it occurs;
- (b) by deleting “the Commission or” in the second place where it occurs.

79. Section 36 amended

- (1) Section 36 is amended by inserting before “Subject to” the subsection designation “(1)”.

s. 80

(2) At the end of section 36 the following subsection is inserted —

“

(2) This section does not make the Minister or the Crown liable for anything done or omitted to be done by the Corporation.

”.

80. Section 39 replaced

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

“

39. Allocation of water for irrigation

The Minister may, under Part III, allocate water for the purposes of this Part.

”.

81. Section 69 amended

Section 69 is amended by deleting “Commission” and inserting instead —

“ Crown ”.

82. Section 70 amended

Section 70 is amended as follows:

(a) by deleting “Commission” in the first, third and fourth places where it occurs and inserting instead —

“ Minister ”;

(b) by deleting “Commission” in the second place where it occurs and inserting instead —

“ Department ”.

83. Section 71 amended

Section 71 is amended by deleting “Commission” and inserting instead —

“ Crown ”.

84. Section 73 amended

Section 73 is amended by deleting “Commission” and inserting instead —

“

Department authorised by the Minister for the purposes of this section

”.

85. Section 75 replaced

Section 75 is repealed and the following section is inserted instead —

“

75. Corporation may be represented by officer

In any proceeding before a court, judge or person acting judicially, any authorised officer of the Corporation may represent the Corporation in all respects as if he or she were the party concerned.

”.

86. Section 79A amended

Section 79A is amended by deleting “chief executive officer of the Commission or” and inserting instead —

“ CEO or the chief executive officer of ”.

87. Schedule 1 clause 3 amended

Schedule 1 clause 3(d) is amended as follows:

- (a) by deleting “is” in the first place where it occurs;

s. 88

- (b) in subparagraph (i) by inserting before “authorised” —
“ is ”.

88. Schedule 1 clause 6 amended

- (1) Schedule 1 clause 6(2) is amended as follows:

- (a) in paragraph (a) by deleting “its” and inserting
instead —

“ the Minister’s ”;

- (b) by deleting paragraph (b) and inserting the following
paragraph instead —

“

- (b) that the applicant has a right to make written
submissions to the Minister, or be heard by a person
designated by the Minister for that purpose, before
the Minister makes a decision on the application.

”.

- (2) Schedule 1 clause 6(4) is amended by deleting “its” and
inserting instead —

“ a ”.

89. Schedule 1 clause 12 amended

Schedule 1 clause 12(5) is amended by deleting “accountable
authority of the Commission” and inserting instead —

“ accountable authority of the Department ”.

90. Schedule 1 clause 15 amended

Schedule 1 clause 15(2) is amended by deleting “its” and
inserting instead —

“ the Minister’s ”.

91. Schedule 1 clause 22 amended

Schedule 1 clause 22(2)(b) is amended by deleting “its” and inserting instead —

“ the ”.

92. Schedule 1 clause 26 amended

(1) Schedule 1 clause 26(4) is amended as follows:

(a) in paragraph (a) by deleting “its” and inserting instead —

“ the Minister’s ”;

(b) by deleting paragraph (b) and inserting the following paragraph instead —

“

(b) that the licensee has a right to make written submissions to the Minister, or be heard by a person designated by the Minister for that purpose, before the Minister makes a decision to exercise the power.

”.

(2) Schedule 1 clause 26(5) is amended by deleting “applicant” and inserting instead —

“ licensee ”.

(3) Schedule 1 clause 26(6) is amended by deleting “it makes its” and inserting instead —

“ the Minister makes a ”.

93. Schedule 1 clause 29A inserted

After clause 29 the following clause is inserted —

“

29A. Transfers of licence — death of licence holder

(1) If —

- (a) a holder of a licence (the “**deceased holder**”) dies; and
- (b) probate of the will, or letters of administration of the estate, of the deceased holder is granted before the end of the 12 months immediately following the death of the deceased holder or that period as extended under subclause (5) in relation to the deceased holder,

the executor or administrator becomes, on the grant of probate or letters of administration, the holder of the deceased holder’s interest in the licence to deal with as executor or administrator.

(2) If the death of a holder of a licence (the “**deceased holder**”) means that no person holds the licence, the licence does not cease but continues, under this subclause, until the earlier of —

- (a) the end of the 12 months immediately following the death of the deceased holder or that period as extended under subclause (5) in relation to the deceased holder; or
- (b) the time at which probate of the will, or letters of administration of the estate, of the deceased holder, or any other person who was a holder of the licence at the time of his or her death, is granted.

(3) Any thing done or omitted to be done under the licence, while it continues under subclause (2), on behalf of the deceased holder, or any other person who was a holder of the licence at the time of his or her death, is as valid and as lawful as it would have been if done, or omitted to be done, by the deceased holder or that other person.

- (4) This clause does not apply so as to extend the term of a licence that is for a fixed term.
- (5) The Minister may, on application, extend the period referred to in subclause (1)(b) or (2)(a) in relation to a particular deceased holder if the circumstances of the case warrant it.

”.

94. Schedule 1 clause 30 amended

Schedule 1 clause 30(5) is amended by deleting “(7)(2)” and inserting instead —

“ 7(2) ”.

95. Schedule 1 clause 35 amended

(1) Schedule 1 clause 35(6) is amended as follows:

- (a) by deleting “Commission” in the first place where it occurs and inserting instead —

“ Minister ”;

- (b) by deleting “an appearance before the Commission” and inserting instead —

“ that the person be heard ”;

- (c) in paragraph (a) by deleting “the Commission” and inserting instead —

“ a person designated by the Minister for that purpose ”.

(2) Schedule 1 clause 35(8)(a) is amended by deleting “its” and inserting instead —

“ the Minister’s ”.

96. Heading to Schedule 1 Division 8 amended

The heading to Schedule 1 Division 8 is amended by deleting “Commission” and inserting instead —

“ **Minister** ”.

97. Schedule 1 clause 38 amended

Schedule 1 clause 38(1)(d) is amended by deleting “it” in the second place where it occurs and inserting instead —

“ the Minister ”.

98. Heading to Schedule 1 Division 10 amended

The heading to Schedule 1 Division 10 is amended by deleting “Commission” and inserting instead —

“ **Minister** ”.

99. Schedule 1 clause 40 amended

Schedule 1 clause 40(1)(b) is amended by deleting “Commission” and inserting instead —

“ Crown ”.

100. Schedule 1 clause 45 amended

Schedule 1 clause 45 is amended by deleting “Commission” in both places where it occurs and inserting instead —

“ CEO ”.

101. Various references to “Commission” changed to “Minister”

- (1) Each provision of the Act listed in the Table to this subsection is amended by deleting “Commission” in each place where it occurs and inserting instead —

“ Minister ”.

Table

s. 4(3)	s. 26GM(1) and (2)
s. 5C(1)(d)	s. 26GP(1) and (2)
s. 6(4) and (6)	s. 26GQ
s. 11(1)(a)	s. 26GW(2) and (3)
s. 17(3a), (4), (6) and (7)	s. 26GX(2) and (3)

s. 21A(1)(a)	s. 26GY(2) and (3)
s. 22(1), (2), (2a), (3) and (4)	s. 26GZB(a) and (b)
s. 25(4) and (5)	s. 26GZC(1), (2), (3) and (4)
s. 26B(4)(d) and (5)(d)	s. 26GZD
s. 26D(1) and (2)	s. 26GZG(2), (3), (4) and (5)
s. 26E(1) and (2)	s. 26N(2) and (3)
s. 26F(1) and (2)	s. 26P(c)
s. 26G(1), (2), (2b) and (4)	s. 26Q(1) and (2)
s. 26GC(1) and (4)	s. 27A(1)(a) and (c)
s. 26GD(1) and (2)	s. 27B
s. 26GE(1) and (2)	s. 36
s. 26GG(1)	s. 37
s. 26GH(2)	s. 38(a), (c) and (d)
s. 26GI	s. 66(3)

- (2) Each provision of the Act listed in the Table to this subsection is amended by deleting “it” in each place where it occurs and inserting instead —

“ the Minister ”.

Table

s. 26GE(2)	Sch. 1 cl. 18(3)(b)(ii)
s. 26GZC(2)	Sch. 1 cl. 22(2)(b) and (3)(b)
s. 26GZD	Sch. 1 cl. 30(5)
Sch. 1 cl. 6(1)(b) and (4)	Sch. 1 cl. 31(5)
Sch. 1 cl. 7(2) and (4)	Sch. 1 cl. 36(c) and (d)
Sch. 1 cl. 8	Sch. 1 cl. 39(4)
Sch. 1 cl. 17(2)	

- (3) Each clause of Schedule 1 (other than clauses 6(2)(b), 12(5), 26(4)(b), 35(6), 40(1)(b) and 45) is amended by deleting “Commission” in each place where it occurs and inserting instead —

“ Minister ”.

s. 102

102. Various references to “Commission” changed to “CEO”

Each provision of the Act listed in the Table to this subsection is amended by deleting “Commission” in each place where it occurs and inserting instead —

“ CEO ”.

Table

s. 26GZI(1), (2), (4) and (5)	s. 26GZP(1)
s. 26GZJ(1)(e)	s. 26GZQ(1) and (2)
s. 26GZL	s. 26GZR
s. 26GZM(1)	s. 26GZS
s. 26GZN(1)	

Note: The heading to section 26J will be altered by deleting “Commission entitled to” and inserting instead “**Minister may**”.

The headings to sections 26G, 26GC, 26GQ and 26Q and Schedule 1 clauses 8, 10, 18, 24, 25, 31, 33, 38, 40 and 41 will be altered by deleting “Commission” and inserting instead “**Minister**”.

The heading to Schedule 1 clauses 7 and 32 will be altered by deleting “Commission’s” and inserting instead “**Minister’s**”.

The heading to section 26GZN will be altered by deleting “Commission” and inserting instead “**CEO**”.

**Part 6 — Amendments to the *Water Agencies (Powers)*
Act 1984**

103. The Act amended

The amendments in this Part are to the *Water Agencies (Powers) Act 1984**.

[* Reprinted as at 4 January 2000.

*For subsequent amendments see Western Australian
Legislation Information Tables for 2005, Table 1, p. 484 and
Act No. 38 of 2005.]*

104. Long title amended

The long title is amended by deleting all of the words from and including “vest powers in the Water Corporation” to and including “their functions” and inserting instead —

“

give the Minister functions and powers, to give the Water Corporation powers, to make other provision in respect of their functions, to establish the Water Resources Ministerial Body and the Water Resources Council

”.

105. Section 3 amended

(1) Section 3(1) is amended as follows:

(a) by inserting in the appropriate alphabetical positions —

“

“CEO” means the chief executive officer of the Department;

“Department” means the department of the Public Service principally assisting in the administration of this Act;

“former Commission” means the Water and Rivers Commission established by section 4 of the *Water*

and Rivers Commission Act 1995 and in existence before the repeal of that Act;

“**Ministerial Body**” means the Water Resources Ministerial Body established by section 11;

“**officer**”, in relation to the Corporation, means a member of the staff of the Corporation engaged under section 15 of the *Water Corporation Act 1995*;

“**watercourse**” has the meaning given to that term in section 2(1) of the *Rights in Water and Irrigation Act 1914*;

“**water resources**” includes —

- (a) watercourses, reservoirs, wetlands, estuaries and inlets, together with their beds and banks;
- (b) aquifers and underground water; and
- (c) drainage, surface and surplus water;

“**wetland**” has the meaning given to that term in section 2(1) of the *Rights in Water and Irrigation Act 1914*;

”;

- (b) in the definition of “statutory authority” by deleting “Commission” and inserting instead —
“ Minister, the CEO ”;
- (c) in the definition of “works” by inserting after “drainage works” —
“ , gauging works, wells, weirs ”;
- (d) in the definition of “works” by deleting “Commission” and inserting instead —
“ Minister ”;
- (e) by deleting the definitions of “officer”, “Commission” and “watercourse”.

- (2) Section 3(3) is amended as follows:
- (a) by deleting “Commission” in the first, third and fourth places where it occurs and inserting instead —
“ Minister ”;
 - (b) by deleting “Commission” in the second place where it occurs and inserting instead —
“ Department ”.

106. Section 8 amended

Section 8(3) is amended as follows:

- (a) by deleting “or the Commission” in the first place where it occurs and inserting instead —
“
, or the Minister for the purposes of this or a relevant Act,
”;
- (b) by deleting “Commission” in the second and third places where it occurs and inserting instead —
“ Minister ”.

107. Parts II, IIA and heading to Part IIB inserted

After section 8 the following is inserted —

“

**Part II — The Minister and the Water
Resources Ministerial Body**

**Division 1 — General functions and powers of
the Minister**

9. General functions and powers of the Minister

- (1) The Minister has the general functions of —
 - (a) conserving, protecting and managing water resources;

s. 107

- (b) assessing water resources;
 - (c) planning for the use of water resources;
 - (d) promoting the efficient use of water resources;
 - (e) promoting the efficient provision of water services;
 - (f) developing plans for and providing advice on flood management.
- (2) The Minister has power to do all things necessary or convenient to be done for or in connection with the performance of the Minister's functions.
- (3) Without limiting subsection (2), the Minister may acquire, hold, manage, improve, develop, dispose of and otherwise deal in real and personal property, including for the general purposes of the Department.
- (4) In performing the Minister's functions under this section —
- (a) the Minister is to have regard to water recycling and efficient water use measures when planning the development of new water resources; and
 - (b) the Minister, where appropriate, is to promote decision making processes that involve public consultation.

**10. Functions and powers of the Minister —
relationship to other functions and powers and to
the Corporation**

- (1) A function or power given to the Minister by this Act is in addition to any other function or power of the Minister.
- (2) If the Corporation has a function or power under this Act that corresponds to a function or power that the Minister has under this Act, the Minister is not to perform that function or exercise that power in

substitution for the Corporation performing that function or exercising that power, unless the contrary intention appears or the context otherwise requires.

Division 2 — The Water Resources Ministerial Body

11. The Water Resources Ministerial Body

- (1) The Water Resources Ministerial Body is established.
- (2) The Ministerial Body is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Ministerial Body in its corporate name.
- (4) The Ministerial Body is to be governed by the Minister.
- (5) The Ministerial Body is an agent of the Crown and has the status, immunities and privileges of the Crown.

12. Purpose and nature of the Ministerial Body

- (1) The Ministerial Body is established to provide a body corporate through which the Minister can perform any of the Minister's functions under this Act, a relevant Act, the *Land Administration Act 1997* or the *Public Works Act 1902* that can more conveniently be performed by a body corporate than an individual.
- (2) Despite the employment under the *Public Sector Management Act 1994* of ministerial officers for the purpose of assisting the Minister to perform functions that the Minister performs through the Ministerial Body, the Ministerial Body and those officers are not an organisation for the purposes of that Act.

13. Execution of documents by the Ministerial Body

- (1) The Ministerial Body is to have a common seal.

s. 107

- (2) A document is duly executed by the Ministerial Body if —
 - (a) the common seal of the Ministerial Body is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Ministerial Body by the Minister; or
 - (c) it is signed on behalf of the Ministerial Body, as authorised under subsection (5), by the CEO or another officer of the Department.
- (3) The common seal of the Ministerial Body is not to be affixed to a document except as authorised by the Ministerial Body.
- (4) The common seal of the Ministerial Body is to be affixed to a document in the presence of the Minister, and the Minister is to sign the document to attest that the common seal was so affixed.
- (5) The Ministerial Body may, by writing under its seal, authorise the CEO or another officer of the Department to sign documents on behalf of the Ministerial Body, either generally or subject to any conditions or restrictions specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) A document executed by the CEO or another person under this section without the common seal of the Ministerial Body is not to be regarded as a deed unless it is executed as a deed as authorised under subsection (5).
- (8) When a document is produced bearing a seal purporting to be the common seal of the Ministerial Body, it is to be presumed that the seal is the common

seal of the Ministerial Body until the contrary is shown.

- (9) For the purposes of this Act, a facsimile of —
- (a) the Ministerial Body's seal; or
 - (b) the signature of the Minister or a person authorised under subsection (5) to execute deeds or other documents,

may be used, and a deed or other document purporting to be endorsed with such a facsimile is, until the contrary is shown, to be regarded as bearing the facsimile under this subsection.

Division 3 — Minister to have access to certain information

14. Minister to have access to certain information

- (1) The Minister may direct a water service licensee to give the Minister specified information, or information relevant to a specified matter, that the Minister considers is relevant to the Minister's functions under, or relating to, this Act or a relevant Act.
- (2) The direction must be in writing, must specify the time period (in days) within which it must be complied with and may specify the form and manner in which the information is to be provided.
- (3) The licensee must comply with the direction even though the direction requires the licensee to give the Minister information that is confidential or commercially sensitive.
- (4) If the licensee objects to the direction the licensee is to notify the Minister, in writing within 7 days of receipt of the direction, of its objection and any reasons for it.

s. 107

- (5) If the licensee gives a notice to the Minister under subsection (4) —
 - (a) the Minister is to consult with the ERA Minister and, having regard to those consultations, is to cancel or confirm the direction; and
 - (b) the licensee is not required to comply with the direction unless it is confirmed.
- (6) If the Minister confirms a direction —
 - (a) the Minister must notify the licensee; and
 - (b) the time period within which the direction must be complied with commences on the day on which it is confirmed.
- (7) The licensee, a subsidiary of the licensee or a person performing functions for or on behalf of the licensee or subsidiary incurs no civil or criminal liability as a result of complying with the direction, and is not to be regarded for any purpose as being in breach of any duty of confidentiality.
- (8) A water services licensee that does not comply with a direction that has not been objected to or that has been confirmed commits an offence.
Penalty: \$5 000.
- (9) The Minister must cause a copy of a direction under subsection (1) (other than a direction that has been cancelled) to be laid before each House of Parliament, or dealt with under section 110, within 14 days after the day on which the direction is given or confirmed (which ever is the later).
- (10) The annual report submitted by the accountable authority of the Department under Part 5 of the *Financial Management Act 2006* is to list each

direction under subsection (1) in the year (other than a direction that has been cancelled).

- (11) For the purposes of subsection (9) or (10), the Minister or the accountable authority (which ever is relevant) may obliterate or omit so much of the direction as is necessary to avoid disclosing confidential or commercially sensitive material.
- (12) In this section —
- “ERA Minister”** means the Minister administering the *Economic Regulation Authority Act 2003*;
- “water services licensee”** means a licensee as defined in section 3 of the *Water Services Licensing Act 1995*.

15. Use or disclosure of information obtained under section 14

- (1) This section applies to the Minister, a ministerial officer assisting the Minister, an officer of the Department and a person who was such a person.
- (2) Despite anything else in this Act or a relevant Act, a person to whom this section applies must not disclose information obtained, whether directly or indirectly, under section 14 unless —
- (a) it is disclosed in the course of duty to a person who is an officer of the Department; or
 - (b) the Minister considers the disclosure to be in the public interest; or
 - (c) it is disclosed under a written law.
- Penalty: \$12 000 and imprisonment for one year.
- (3) If the Minister proposes to disclose information under subsection (2)(b), the Minister must notify the person who gave the information under section 14, unless the

Minister considers that it would be contrary to the public interest to delay the disclosure.

- (4) The Minister must take into account any comments or objections received, within 7 days of giving the notification, from the person notified.
- (5) This section does not apply to the extent to which —
 - (a) the information is already in the public domain; or
 - (b) the information is summary or statistical information that could not reasonably be expected to enable particulars relating to a person or a particular commercial operation to be ascertained; or
 - (c) the disclosure of the information is authorised by the person who gave the information under section 14.
- (6) In this section —

“**ministerial officer**” has the meaning given to that term in the *Public Sector Management Act 1994*.

Part IIA — The Water Resources Council

16. Water Resources Council established

The Minister is to appoint 6, 7 or 8 persons to be the members of a body called the Water Resources Council.

17. Membership of the Council

- (1) The Minister is, to the extent practicable, to choose the members of the Council in such a way that its membership covers or includes —
 - (a) expertise or experience in water resources management; and

- (b) expertise or experience in conservation; and
 - (c) expertise or experience in economic development; and
 - (d) expertise or experience in community interests; and
 - (e) expertise or experience in law (in the natural resources field); and
 - (f) expertise or experience in mining; and
 - (g) expertise or experience in agriculture; and
 - (h) an indigenous person; and
 - (i) a person who lives in regional Western Australia.
- (2) The Minister is to designate one of the members as the chairman.

18. Functions of the Council

- (1) The Council has the following functions —
- (a) advising the Minister in relation to the management of water resources generally and on any matter that the Minister refers to it for advice;
 - (b) consulting with persons, or bodies, having functions under, or related to the purposes of, a water resources Act;
 - (c) advising the Minister on whether the objectives of each water resources Act are being achieved.
- (2) In this section —
- “water resources Act”** means an Act that the Minister administers, to the extent to which the Act relates to water resources.

19. Term of office

- (1) The term for which a person is appointed to be a member of the Council is to be fixed in the instrument of appointment and is not to exceed 3 years.
- (2) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.

20. Casual vacancy

- (1) A member of the Council may at any time resign from office by notice in writing given to the Minister.
- (2) The Minister may remove a person who is a member of the Council from office on the grounds of —
 - (a) mental or physical incapacity to carry out the person's duties in a satisfactory manner; or
 - (b) the person being an insolvent under administration within the meaning of that term in the *Corporations Act 2001* of the Commonwealth; or
 - (c) neglect of duty; or
 - (d) misconduct.
- (3) If a member of the Council dies, resigns, or is removed from office, the office of the member becomes vacant.

21. Remuneration and allowances

Members of the Council are entitled to any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Minister for Public Sector Management.

22. Quorum

A quorum for a meeting of the Council is any 4 members.

23. Presiding at meetings

- (1) The chairman, if present, is to preside at a meeting of the Council.
- (2) If the chairman is not presiding under subsection (1), the members present at the meeting are to appoint one of their number to preside.

24. Disclosure of interests by Council members

- (1) A member of the Council who has a direct or indirect pecuniary interest in a matter that is before a meeting of the Council must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Council members who are at that meeting.
- (2) If a member of the Council has, in the opinion of the person presiding at a meeting of the Council, a direct or indirect pecuniary interest in a matter before that meeting, the person presiding may call on the member to disclose the nature of that interest and, in default of any such disclosure, may determine that that interest exists.
- (3) A disclosure by a member of an interest in a matter or a determination that a member is interested in a matter must be recorded in the record of the meeting concerned.
- (4) A member who has made a disclosure of an interest in a matter, or in respect of whom a determination has been made in relation to a matter, may take part in the consideration or discussion of the matter, but not in

advising, or any decision related to advising, the Minister on the matter.

- (5) An interest need not be disclosed under this section if it is an interest common to a significant number of persons in the State.

25. Procedure at meetings

Except as otherwise stated in this Act, the Council is to determine its own meeting procedures.

26. Minutes

The Council is to cause accurate minutes to be kept of the proceedings at its meetings.

27. Staff and other resources of the Council

- (1) There is to be an executive officer of the Council.
- (2) The executive officer and any other staff whose assistance the executive officer needs are to be made available by the CEO on terms agreed to by the chairman of the Council and the CEO.
- (3) The Council may make use of the services and facilities of the Department on terms agreed to by the chairman of the Council and the CEO.

28. Application of the *Financial Administration and Audit Act 1985*

Acts or things done by or for the Council under this or a relevant Act are to be regarded —

- (a) as services under the control of the Department for the purposes of section 52 of the *Financial Management Act 2006*; and
- (b) as part of the operations of the Department for the purposes of Part 5 of that Act.

Part IIB — Regulations and by-laws

”.

108. Section 34 amended

- (1) Section 34(1) is amended by deleting “Commission, the Corporation or the Coordinator” and inserting instead —
“ Minister or the Corporation ”.
- (2) Section 34(3)(k) is amended by deleting “and confer functions on the Coordinator in relation to those matters”.

109. Section 36 amended

- (1) Section 36(1) is amended as follows:
 - (a) paragraph (c) is deleted and the following paragraph is inserted instead —
“
 - (c) as to provide that where, by reason of the unavailability of materials or any other reason that the Minister or the Corporation considers valid, any requirement imposed by the Minister or the Corporation cannot be conformed to in any particular case, the Minister or the Corporation may in writing dispense with that requirement and instead require the use of materials or any other matters which the Minister or the Corporation considers to be appropriate; or”;
 - (b) by inserting at the end of each of paragraphs (a) and (b) —
“ or ”.
- (2) Section 36(6) is amended as follows:
 - (a) by deleting “Commission” in the first and third places where it occurs and inserting instead —

s. 110

“ Minister ”;

- (b) by deleting “Commission” in the second place where it occurs and inserting instead —

“ Department ”.

110. Section 38 amended

Section 38(1) is amended by deleting “the Commission or”.

111. Section 62 amended

- (1) Section 62(1) is amended by deleting “its” and inserting instead —

“ the Minister’s or the Corporation’s ”.

- (2) Section 62(3) is amended as follows:

- (a) by deleting “Commission” in the first place where it occurs and inserting instead —

“ Crown ”;

- (b) in paragraph (a) by deleting “Commission” and inserting instead —

“ Minister ”;

- (c) in paragraph (b) by deleting “Commission” in the first place where it occurs and inserting instead —

“ Minister ”;

- (d) in paragraph (b) by deleting “Commission” in the second place where it occurs and inserting instead —

“ Crown ”.

112. Section 63 amended

- (1) Section 63(1) is amended as follows:

- (a) by deleting “Commission” in the first place where it occurs and inserting instead —

“ Crown ”;

- (b) by deleting “Commission” in the second and third places where it occurs and inserting instead —
“ Minister ”.

(2) Section 63(2) is amended as follows:

- (a) by deleting “Commission” in the first place where it occurs and inserting instead —
“ Crown ”;
- (b) by deleting “Commission” in the second, third and fourth places where it occurs and inserting instead —
“ CEO ”.

113. Section 66 amended

Section 66 is amended by deleting “Commission” and inserting instead —

“ CEO ”.

114. Section 70 amended

Section 70(2) is amended as follows:

- (a) by deleting “a person authorized by the Commission or” and inserting instead —
“ the Minister or a person authorised by ”;
- (b) by deleting “authorized” in the second place where it occurs and inserting instead —
“ authorised ”;
- (c) by deleting “Commission” in the second and third places where it occurs and inserting instead —
“ Minister ”.

s. 115

115. Section 71 amended

Section 71(3) is repealed and the following subsection is inserted instead —

“

- (3) Whenever the Minister, or the Corporation by its officers or agents, enters or has entered on or into any land, premises or thing the person responsible for the conduct of the entry shall, on request, produce evidence of his designation or appointment and give particulars of the power conferred on the Minister or the Corporation by virtue of which the person claims a right of entry.

”.

116. Section 72 amended

- (1) Section 72(6) is amended as follows:

- (a) by deleting “Commission” in the first place where it occurs and inserting instead —

“ Minister ”;

- (b) by deleting “authorize the Commission or the Corporation by its officers” and inserting instead —

“

authorise an officer of the Department, or the Corporation by its officers,

”.

- (2) Section 72(7) is amended by deleting “its” and inserting instead —

“ the Minister’s or the Corporation’s ”.

117. Section 73 amended

- (1) Section 73(1) is amended as follows:
- (a) by deleting “Commission or the Corporation an officer of the Commission” in the first place where it occurs and inserting instead —
“
Minister or the Corporation, an officer of the
Department
”;
 - (b) by deleting “act on behalf of the Commission” and inserting instead —
“ exercise a power of the Minister ”;
 - (c) by deleting “Commission” in the fourth, fifth and sixth places where it occurs and inserting instead —
“ Minister ”.
- (2) Section 73(3) is amended by deleting “Commission” and inserting instead —
“ Department ”.

118. Section 78 amended

- (1) Section 78(1) is amended as follows:
- (a) by deleting “Commission” in the first and third places where it occurs and inserting instead —
“ Minister ”;
 - (b) by deleting “or the Commission” and inserting instead —
“ , the former Commission, the Minister ”.
- (2) Section 78(2) is amended by deleting “or the Commission” and inserting instead —
“ , the former Commission, the Minister ”.

119. Section 79 amended

Section 79 is amended by deleting “Commission” in the first, third and fourth places where it occurs and inserting instead —
“ Minister ”.

120. Section 81 amended

(1) Section 81(1) is amended as follows:

- (a) by deleting “Commission” in the first place where it occurs and inserting instead —
“ Crown ”;
- (b) by deleting “subsection (1) of section 84” and inserting instead —
“ section 84(1) or (1a) ”;
- (c) by deleting “subsection (2) of that section to be vested in the Commission” and inserting instead —
“ section 84(2) to be vested in the Minister ”.

(2) Section 81(2) is amended as follows:

- (a) by deleting “Commission” in the first place where it occurs and inserting instead —
“ Crown ”;
- (b) by deleting “Commission” in the second place where it occurs and inserting instead —
“ Minister ”.

(3) Section 81(3) is amended as follows:

- (a) by deleting “Commission” in the first and fourth places where it occurs and inserting instead —
“ Crown ”;
- (b) by deleting “Commission” in the second and third places where it occurs and inserting instead —
“ Minister ”.

- (4) Section 81(4) is amended as follows:
- (a) by deleting “Commission” in the first, second and third places where it occurs and inserting instead —
“ Minister ”;
 - (b) by deleting “its” and inserting instead —
“ the Minister’s ”;
 - (c) by deleting “directed the Commission” and inserting instead —
“ decided ”;
 - (d) by deleting all of the words from and including “as may in the opinion” to and including “be necessary”.
- (5) Section 81(5) is amended by deleting “required”.
- (6) Section 81(6) is amended as follows:
- (a) by deleting “Commission” in the first and third places where it occurs and inserting instead —
“ Minister ”;
 - (b) by deleting “Commission” in the second place where it occurs and inserting instead —
“ Crown ”.
- (7) Section 81(8) is repealed and the following subsection is inserted instead —
- “
- (8) For the purposes of this Act or a relevant Act, the Minister may exercise or delegate any power that is by the *Public Works Act 1902* or Parts 9 and 10 of the *Land Administration Act 1997* vested in the relevant Minister and in so far as that Act applies, or those Parts apply, to or in relation to the compulsory taking of any land, or the entry on, occupation or use of any land,

s. 120

under this Act or a relevant Act, any reference in that Act or those Parts —

- (a) to the relevant Minister, may be read for the purposes of this Act or a relevant Act as a reference to the Minister; and
- (b) to the department of the Public Service principally assisting the relevant Minister in the administration of that Act or those Parts, may be read for the purposes of this Act or a relevant Act as a reference to the Department,

and that Act or those Parts may be construed accordingly.

”.

(8) Section 81(10) is repealed.

(9) Section 81(11) is amended as follows:

- (a) by deleting “Commission” in the first and second places where it occurs and inserting instead —
“ Minister ”;
- (b) by deleting all of the subsection after “the Minister” and inserting instead —
“ may vary the taking accordingly. ”.

(10) Section 81(12) is amended as follows:

- (a) by deleting “Minister administering that Act” and inserting instead —
“ Land Administration Minister ”;
- (b) by deleting “that Minister” and inserting instead —
“ the Land Administration Minister ”.

(11) Section 81(14) is amended as follows:

- (a) by deleting “subsections (8) and (9)” and inserting instead —
“ this section ”;

(b) by inserting in the appropriate alphabetical position —

“

“Land Administration Minister” means the Minister
administering the *Land Administration Act 1997*;

”.

121. Section 82 amended

After section 82(1) the following subsection is inserted —

“

(1aa) The conservation, protection or management of water resources is to be regarded as a public work for the purposes of this Act and Part 9 of the *Land Administration Act 1997*, even though the conservation, protection or management of water resources may be achieved on or in relation to an area of land without any works being carried out on the land.

”.

122. Section 83 amended

Section 83(1a) is amended as follows:

(a) by deleting “its” in the first place where it occurs and inserting instead —

“ the Minister’s ”;

(b) in paragraph (a) by deleting “its” and inserting instead —

“ the Minister’s ”.

123. Section 84 amended

(1) Section 84(1) is amended by deleting “the Commission or”.

s. 124

(2) After section 84(1) the following subsection is inserted —

“

(1a) Where the Minister places or has placed, or causes or permits or has caused or permitted any works or other things to be placed upon, in, over or under any land for the purposes of this Act or a relevant Act those works or other things shall be taken to have been lawfully so placed.

”.

(3) Section 84(4) is amended by inserting after “former Authority” —

“ , to the former Commission ”.

124. Section 86 amended

Section 86 is amended as follows:

(a) in the definition of “exempt works”, in paragraph (c), by deleting “Commission” and inserting instead —

“ Minister ”;

(b) in the definition of “major works”, in paragraph (b)(ii), by deleting “directs the Commission or” and inserting instead —

“ in the case of the Corporation — directs ”.

125. Section 87 amended

(1) Section 87 is amended as follows:

(a) by inserting before “The” the subsection designation “(1)”;

(b) by deleting “Commission or the” in both places where it occurs.

(2) At the end of section 87 the following subsection is inserted —

“

- (2) The Minister may carry out, or undertake the construction or provision of, major works, if —
- (a) the Minister has complied with sections 88 and 89; and
 - (b) the Minister is satisfied that any objections or comments lodged under section 89 have been met by amendment of the proposal for the major works or that it is not in the public interest to amend the proposal; and
 - (c) a notice of the decision to carry out, or undertake the construction of or provide, the works has been published in the *Government Gazette*.

”.

126. Section 88 amended

Section 88(1) is amended as follows:

- (a) by deleting “Commission or the Corporation shall” in the first place where it occurs and inserting instead —

“

Minister must, before carrying out, construction or provision of major works, and the Corporation must

”;

- (b) in paragraph (a) by deleting all of the paragraph from and including “copies to be deposited” and inserting instead —

“

copies, to be deposited in the office of the Department or Corporation nearest to the locality in which the proposed works are to be situated; and

”.

s. 127

127. Section 89 amended

Section 89(3) is amended as follows:

- (a) by deleting “but” and inserting instead —
“ and, in the case of the Corporation, ”;
- (b) by inserting after “for authorization” —
“ , the Corporation ”.

128. Section 90 amended

- (1) Section 90(1) is amended by deleting “the Commission or” in both places where it occurs.
- (2) Section 90(2) is amended by deleting “Commission or the”.

129. Section 91 amended

- (1) Section 91(1) and (3) are amended by deleting “the Commission or”.
- (2) After section 91(3) the following subsections are inserted —
“
 - (4) If the Minister proposes that major work be substantially altered or extended, the Minister must decide whether the procedures in sections 88 and 89 should be complied with in relation to the alteration or extension.
 - (5) If the Minister decides that the procedures in sections 88 and 89 should be complied with in relation to the alteration or extension, section 87(2) applies in relation to the alteration or extension as if the references to major works were references to the alteration or extension.”.

130. Section 93 amended

Section 93(1) is amended as follows:

- (a) by deleting “Commission” in the first place where it occurs and inserting instead —

“ Minister ”;

- (b) in paragraph (a) by deleting all of the paragraph from and including “deposited” and inserting instead —

“

deposited in the office of the Department or Corporation nearest to the locality in which the proposed works are to be situated;

”.

131. Section 95 amended

- (1) Section 95(1), (2) and (3) are amended by deleting “the Commission or” in each place where it occurs.

- (2) After section 95(4) the following subsection is inserted —

“

- (5) Where the Minister has complied with the requirements of sections 93 and 94 and —

- (a) no objections or comments have been received by the time specified in the notices served pursuant to section 93(1); or

- (b) the Minister is satisfied that any objections or comments material to the proposal have been met or that it is not in the public interest that they be met,

the Minister is authorised to proceed to carry out, construct or provide the general works.

”.

s. 132

132. Section 97 amended

- (1) Section 97(3) is amended by deleting “authorized” and inserting instead —
- “ of authorised works ”.
- (2) Section 97(4) is amended by deleting all of the subsection from and including “he may authorize” and inserting instead —
- “
- the Minister may —
- (a) in the case of works of the Corporation —
authorise the carrying out of the works as so varied; or
- (b) in the case of works of the Minister — carry out the works as so varied,
- despite the provisions of sections 88, 89 and 90, or 93, 94 and 95, not having been complied with.
- ”.

133. Section 103 amended

Section 103(11) is amended by deleting “Commission” and inserting instead —

“ CEO ”.

134. Part X inserted

After section 103 the following Part is inserted —

“

Part X — Administrative provisions

104. Delegation by the Minister

- (1) The Minister may delegate to —
- (a) the CEO; or
- (b) another officer of the Department; or

- (c) an officer of another department or an employee of an organisation; or
- (d) another Minister; or
- (e) the employing authority of another department or organisation; or
- (f) any other person or body (whether incorporated or not),

any power or duty of the Minister under a provision of this or a relevant Act (other than this section and sections 14 and 106).

- (2) Without limiting the things that may be delegated to the CEO under subsection (1), they include things that are to be done in the course of governing the affairs of the Ministerial Body under section 11(4).
- (3) The delegation must be in writing signed by the Minister.
- (4) A person to whom a power or duty is delegated under subsection (1)(b), (c) or (f) cannot delegate that power or duty.
- (5) A delegation under subsection (1)(d) may expressly authorise the other Minister to further delegate the power or duty but only to an officer or employee of a department administered by the other Minister.
- (6) A delegation under subsection (1)(a) or (e) may expressly authorise the delegate to further delegate the power or duty but only to an officer or employee of the department or organisation.
- (7) A person exercising or performing a power or duty that has been delegated to the person under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

s. 134

- (8) Nothing in this section limits the ability of —
- (a) the Minister to perform a function through an officer or agent; and
 - (b) a Minister or employing authority to whom a power or duty is delegated under this section from exercising that power or performing that duty through an officer or agent.
- (9) In this section, “**department**”, “**employing authority**” and “**organisation**” each have the meaning given to them in section 3 of the *Public Sector Management Act 1994*.

105. Delegation by the CEO

- (1) The CEO may delegate to —
- (a) another officer of the Department; or
 - (b) the employing authority of another department or an organisation; or
 - (c) an officer of another department or an employee of an organisation; or
 - (d) any other person or body (whether incorporated or not),
- any power or duty of the CEO under another provision of this or a relevant Act.
- (2) The delegation must be in writing signed by the CEO.
- (3) Except in the case of an officer of the Department, a power or duty can only be delegated to a person or body under subsection (1) if the person or body has been approved, or is in a class of person or body approved, by the Minister for the purposes of this section.

- (4) A person to whom a power or duty is delegated under subsection (1)(a), (c) or (d) cannot delegate that power or duty.
- (5) A delegation under subsection (1)(b) may expressly authorise the delegate to further delegate the power or duty but only to an officer or employee of the department or organisation.
- (6) A person or body exercising or performing a power or duty that has been delegated to the person or body under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of —
 - (a) the CEO to perform a function through an officer or agent; and
 - (b) an employing authority to whom a power or duty is delegated under this section from exercising that power or performing that duty through an officer or agent.
- (8) In this section, “**department**”, “**employing authority**” and “**organisation**” each have the meaning given to them in section 3 of the *Public Sector Management Act 1994*.

106. Directions about Government policy

- (1) The Minister may, in writing, direct the Water Corporation or a water board to have regard to a general policy of the Government relating to water resources, to the extent specified in the direction.
- (2) The Minister must cause a copy of a direction under subsection (1) to be laid before each House of Parliament, or dealt with under section 110, within 14 days after the day on which the direction is given.

- (3) The text of a direction under subsection (1) is to be included in the annual report submitted by the accountable authority of the Department under Part 5 of the *Financial Management Act 2006*.
- (4) In this section —
 - “**water board**” means a water board constituted under section 6 of the *Water Boards Act 1904*;
 - “**Water Corporation**” means the Water Corporation established by section 4 of the *Water Corporation Act 1995*.

107. Non-public sector staff

- (1) The CEO may engage persons as wages staff otherwise than under the *Public Sector Management Act 1994*.
- (2) Persons referred to in subsection (1) are to be employed, subject to any relevant industrial award, order or agreement, on such terms and conditions as the CEO determines.
- (3) Nothing in subsection (2) affects the operation of the *Workplace Agreements Act 1993* or Part VID of the *Industrial Relations Act 1979* or section 100 of the *Public Sector Management Act 1994*.

108. Provision of staff, services and facilities

- (1) The CEO may arrange with a related entity to provide it with the use of —
 - (a) the services of any officer or employee of the Department; and
 - (b) any services or facilities of the Department,that are necessary for the entity to perform its functions.

- (2) This section does not limit any power the related entity has to engage its own staff or provide its own facilities, or to enter into any other arrangement for the provision to it of staff, services or facilities.
- (3) In this section —
“related entity” means —
 - (a) a body (whether incorporated or not); or
 - (b) the holder of an office; or
 - (c) a person,
established by or under, or having functions under, this Act or a relevant Act.

109. Advisory committees

- (1) The Minister may establish committees for the purpose of advising the Minister on any aspect of the administration of this or a relevant Act, with terms of reference in each case determined by the Minister.
- (2) A member of a committee is entitled to the remuneration and allowances (if any) determined by the Minister, on the recommendation of the Minister for Public Sector Management.
- (3) The terms and conditions, other than those referred to in subsection (2), applicable to or in relation to a person appointed to a committee are to be determined by the Minister, from time to time either generally or with respect to a particular appointment.
- (4) This section does not limit the Minister’s power to establish committees for any other purpose.

110. Laying documents before Parliament

- (1) If a provision of this Act requires the Minister to cause a document to be laid before each House of Parliament,

or be dealt with under this section, within a period and —

- (a) at the commencement of the period, a House of Parliament is not sitting; and
- (b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a document that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

111. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this or a relevant Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this or the relevant Act had been enacted.
- (3) Despite subsection (1), the Crown is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) Subsection (1) does not apply in respect of the Corporation.

- (5) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

112. Confidentiality

- (1) A person who misuses confidential information obtained by reason of any function that person has, or at any time had, in the administration of this or a relevant Act commits an offence.
Penalty: \$12 000 and imprisonment for one year.
- (2) A person misuses confidential information if it is, directly or indirectly, recorded, used or disclosed to another person, other than —
- (a) in the course of duty; or
 - (b) under this or a relevant Act or any other written law; or
 - (c) with the written permission of the CEO; or
 - (d) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence; or
 - (e) with the consent of the person or persons to whom the information relates; or
 - (f) in circumstances prescribed by the regulations.
- (3) This section does not apply —
- (a) to or in respect of the Corporation; or
 - (b) to information to which section 15 applies.
- (4) In this section —
- “**confidential information**” means information that has not been made public and that —
- (a) is by its nature confidential; or

s. 135

- (b) was specified to be confidential by the person who supplied it; or
- (c) is known by the person using or disclosing it to be confidential.

”.

135. Various references to “Commission” changed to “Minister”

Each provision of the Act listed in the Table to this section is amended by deleting “Commission” in each place where it occurs and inserting instead —

“ Minister ”.

Table

s. 34(3)(b)	s. 82(1)
s. 36(3), (4) and (7)	s. 83(1a), (2) and (3)
s. 62(1)	s. 84(2), (3) and (4)
s. 70(1) and (3)	s. 88(1)(c)
s. 71(1) and (2)	s. 89(2) and (3)
s. 72(1), (2), (4) and (7)	s. 92
s. 73(4)	s. 93(1)(b) and (2)
s. 75(1) and (2)	s. 94(2) and (3)
s. 77(1), (2) and (3)	s. 96
s. 81(5), (7), (9), (12) and (13)	s. 97(1), (2) and (3)

Note: The heading to sections 8 and 96 will be altered by deleting “Commission” and inserting instead “**Minister**”.

The heading to section 81 will be altered by deleting “Commission” and inserting instead “**Crown**”.

The heading to section 90 will be altered by adding at the end “ — **proposals of the Corporation**”.

Part 7 — Amendments to the *Water Corporation Act 1995*

136. The Act amended

The amendments in this Part are to the *Water Corporation Act 1995**.

[* *Reprint 2 as at 4 July 2004.*]

137. Section 7 amended

After section 7(2)(a) the following paragraph is inserted —

“

- (ab) each nomination is made only after consultation with the Minister administering the *Water Agencies (Powers) Act 1984*; and

”.

138. Section 49 amended

- (1) Section 49 is amended by inserting before “The” the subsection designation “(1)”.
- (2) At the end of section 49 the following subsection is inserted —

“

- (2) If the Minister does not administer the *Water Agencies (Powers) Act 1984*, the Minister must consult with the Minister administering that Act prior to taking an action under subsection (1).

”.

139. Section 58 amended

- (1) Section 58 is amended by inserting before “The” the subsection designation “(1)”.

s. 139

(2) At the end of section 58 the following subsection is inserted —

“

(2) If the Minister does not administer the *Water Agencies (Powers) Act 1984*, the Minister must consult with the Minister administering that Act prior to taking an action under subsection (1).

”.

Part 8 — Amendments to the *Waterways Conservation Act 1976*

140. The Act amended

The amendments in this Part are to the *Waterways Conservation Act 1976**.

[* *Reprinted as at 20 September 2002.*
For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 491 and Act No. 38 of 2005.]

141. Long title amended

The long title is amended by deleting “, for the establishment of a Rivers and Estuaries Council and certain Management Authorities”.

142. Heading to Part 1 inserted

Before section 1 the following heading is inserted —

“

Part 1 — Preliminary

”.

143. Section 3 amended

Section 3(1) is amended as follows:

- (a) by deleting the definitions of “Commission”, “committee”, “Council”, “Management Authority” or “Authority” and “the Environmental Protection Authority”;
- (b) by inserting in the appropriate alphabetical positions —

“

“CEO” means the chief executive officer of the Department;

s. 144

“Department” means the department of the Public Service principally assisting in the administration of this Act;

”.

144. Section 5 amended

Section 5(3)(c) is amended by deleting “and in the event of any dispute thereon the provisions of section 15 shall apply”.

145. Section 8 amended

Section 8(2) is amended by deleting “it” and inserting instead —

“ the Minister ”.

146. Heading to Part 2 inserted

After section 8 the following heading is inserted —

“

Part 2 — Application of the Act

”.

147. Section 9 amended

- (1) Section 9(1) is amended by deleting “The powers of the Commission apply” and inserting instead —

“ This Act applies ”.

- (2) Section 9(2) is repealed.

- (3) Section 9(3) is amended by deleting “the powers of the Commission and the relevant Authority shall be deemed to apply” and inserting instead —

“ this Act applies ”.

148. Section 10 amended

- (1) Section 10(1) is amended as follows:
 - (a) by deleting “Environmental Protection Authority” and inserting instead —
“ Minister ”;
 - (b) in paragraph (a) by deleting “constitute a Management Authority for the area,”;
 - (c) in paragraph (a) by deleting “and place the area under the control and management of the Authority so constituted”;
 - (d) in paragraph (c) by deleting “dissolve a Management Authority, or”.
- (2) Section 10(2) is repealed.
- (3) Section 10(4) is amended by deleting “the area to which the powers of the Commission or an Authority are to apply unless, in the opinion of the Commission” and inserting instead —
“ a management area unless, in the opinion of the Minister ”.
- (4) Section 10(5) is amended as follows:
 - (a) by deleting “the waters and associated land to which the powers of the Commission or an Authority apply or are to apply” and inserting instead —
“ a management area ”;
 - (b) by deleting “section 36 of the *Interpretation Act 1918*” and inserting instead —
“ section 42 of the *Interpretation Act 1984* ”.

149. Heading to Part 3 inserted

After section 10 the following heading is inserted —

“

Part 3 — Functions of the Minister

”.

150. Sections 11 to 30 replaced by sections 11 and 12

Sections 11 to 30 are repealed and the following sections are inserted instead —

“

11. Functions of the Minister

- (1) The Minister has the overall responsibility for the conservation of the waters and associated land to which this Act applies and for —
 - (a) the preservation and enhancement of the quality of the environment and amenity of those waters and that land; and
 - (b) the control and prevention of any act or omission which may cause the pollution of those waters or that land.
- (2) In addition to any other functions of the Minister, the Minister has the following functions —
 - (a) to maintain and manage all areas to which this Act applies and to carry out works for the purposes of improving and maintaining the condition of the waters and associated land to which this Act applies;
 - (b) to carry out, or cause to be carried out, river training, dredging, reclamation and structural works;
 - (c) to control, under the regulations, acts or omissions which may cause the pollution of waters and associated land to which this Act applies;
 - (d) to promote coordinated action by owners and occupiers of land, and public authorities having the control of land adjacent to or associated with any of the waters to which this Act

- applies, for the control and prevention of pollution;
- (e) to establish and develop criteria for the assessment of the extent of environmental change or pollution;
 - (f) to specify standards and criteria and the methods of sampling and testing to be used for any purpose;
 - (g) to conduct or promote relevant research or enter into projects for research or the collation of information;
 - (h) to provide advice and disseminate knowledge on the conservation and good management of rivers, inlets and estuaries and of associated lands;
 - (i) to publish reports and provide information for the purpose of increasing public awareness of the problems and remedies that exist in relation to environmental pollution as it relates to waters and associated land;
 - (j) to carry out, or cause to be carried out, works for the preservation or enhancement of amenities or facilities for recreation;
 - (k) to control, under the regulations, the excision or reclamation of any waters or associated land;
 - (l) generally promote, encourage, coordinate and carry out planning and projects in the management and conservation of rivers, inlets and estuaries.
- (3) In performing his or her functions under this Act, the Minister may arrange for local governments and other public authorities to carry out works and may finance the works or reimburse the local government or authority concerned.

12. Performance of the functions of the Minister

- (1) The Minister is to perform his or her functions under this Act —
 - (a) to the extent practicable, in consultation with relevant bodies, residents and other persons affected by the operation of this Act; and
 - (b) to the extent practicable, jointly with relevant bodies, residents and other persons affected by the operation of this Act.

- (2) In relation to a management area, the Minister is to perform his or her functions under this Act —
 - (a) in a way that is consistent with the management programme for that area and any working plan included in that programme; and
 - (b) having regard to —
 - (i) the interests of navigation, fisheries, agriculture, water supply and recreation in the area; and
 - (ii) the natural beauty and amenity of the area; and
 - (iii) the preservation of public rights of access to the area; and
 - (iv) the rights acquired by persons in relation to boat houses, jetties and other structures to the extent that the exercise of those rights is not likely to impair the environment.

- (3) In subsection (1) —

“relevant bodies”, for any particular area to which this Act applies, means —

 - (a) the local government or governments for the area; and

- (b) any other public authority exercising functions in relation to the area; and
- (c) other bodies representing persons interested in the use of the waters and land in the area.

”.

151. Heading to Part 4 and section 30 inserted

Before section 31 the following heading and section are inserted —

“

Part 4 — Agreements, management programmes and consultation

30. Covenants

The Minister may take and enforce covenants as to the conservation of the land and waters to which this Act applies to the same extent as if the Minister were possessed of adjacent land for the benefit of which the covenant is to have effect.

”.

152. Section 31 amended

Section 31(1) is amended by deleting “Commission or a Management Authority” and inserting instead —

“ Minister ”.

153. Section 32 amended

(1) Section 32(1) is amended as follows:

- (a) by deleting “Minister administering the *Land Administration Act 1997*” and inserting instead —
“ Land Administration Minister ”;
- (b) by deleting “Commission” and inserting instead —
“ Minister ”.

s. 154

- (2) Section 32(2) is amended as follows:
- (a) by deleting “Minister referred to in that subsection” and inserting instead —
“ Land Administration Minister ”;
 - (b) in paragraph (b) by deleting “Commission” in each place where it occurs and inserting instead —
“ Minister ”;
 - (c) by deleting “that Minister” and inserting instead —
“ the Land Administration Minister ”.
- (3) After section 32(2) the following subsection is inserted —
- “
- (3) In this section —
- “Land Administration Minister”** means the Minister administering the *Land Administration Act 1997*.
- ”.

154. Section 33 amended

- (1) Section 33(1) is repealed and the following subsection is inserted instead —
- “
- (1) The Minister may refer to a local government any matter that may affect the district of the local government for any information and advice the local government may be able to offer and is to have regard to the views of the local government.
- ”.
- (2) Section 33(3) is amended as follows:
- (a) by deleting “Commission or the relevant Management Authority” and inserting instead —
“ Minister ”;
 - (b) by deleting “an Authority” and inserting instead —

“ the Minister ”;

(c) by deleting “Commission or that Management Authority” and inserting instead —

“ Minister ”.

155. Section 34 repealed

Section 34 is repealed.

156. Section 35 amended

(1) Section 35(1) is amended as follows:

(a) by deleting “Commission, in consultation with the relevant Management Authority and” and inserting instead —

“ Minister, in consultation ”;

(b) by deleting all of the subsection from and including “in relation to” and inserting instead —

“

in relation to waters and associated land to which this Act applies, during the period to which the programme relates.

”.

(2) Section 35(2) is amended by deleting “Commission or relevant Management Authority” and inserting instead —

“ Minister ”.

(3) Section 35(4) is amended as follows:

(a) by deleting “Proposals” and inserting instead —

“

The Minister must consult publicly, in accordance with section 78, in relation to proposals

”;

(b) by deleting “shall be brought to the notice of persons likely to be affected by being published in a newspaper

s. 156

circulating in the locality and in such other manner as the Minister may direct, but” and inserting instead —

“ and ”;

- (c) by deleting “that newspaper, indicates that the representations” and inserting instead —

“

the newspaper referred to in section 78(3), indicates that submissions

”.

- (4) Section 35(5) is amended by deleting all of the subsection from and including “with the approval of” and inserting instead —

“ by the Minister. ”.

- (5) Section 35(6) is amended by deleting “Commission and the relevant Management Authority” and inserting instead —

“ CEO ”.

- (6) Section 35(7) is repealed and the following subsection is inserted instead —

“

- (7) If the Minister considers it appropriate, the Minister may conduct a public inquiry into the establishment of a management programme for the first time for an area and the regulations may provide for the conduct of such an inquiry.

”.

- (7) Section 35(8) is amended by deleting “the Management Authority and the Commission recommend and the Minister approves” and inserting instead —

“ the Minister considers appropriate ”.

- (8) Section 35(9) is amended as follows:
- (a) by deleting “Commission may, with the approval of the Minister,” and inserting instead —
“ Minister may ”;
 - (b) by deleting “on behalf of the Commission or Management Authority, and whether or not under the direction of the Commission or that Authority” and inserting instead —
“ , whether or not under the direction of the Minister ”.

157. Section 36 amended

- (1) Section 36(1) is amended by deleting “Commission” in the first, third, fourth and fifth places where it occurs and inserting instead —
“ Minister ”.
- (2) Section 36(2) is amended as follows:
- (a) in paragraph (a) by deleting “to it”;
 - (b) in paragraph (b) by deleting “its” and inserting instead —
“ the Minister’s ”;
 - (c) in paragraph (b) by deleting “Commission’s” and inserting instead —
“ Minister’s ”.
- (3) Section 36(3) is amended as follows:
- (a) by deleting “it has furnished its” and inserting instead —
“ the Minister has given the ”;
 - (b) by deleting “it” in the second place where it occurs and inserting instead —
“ the Minister ”.

s. 158

- (4) Section 36(4) is amended as follows:
- (a) by deleting “it” and inserting instead —
“ the Minister ”;
 - (b) by deleting “its” in both places where it occurs.

158. Section 37 amended

- (1) Section 37(1) is amended as follows:
- (a) by deleting “the powers of the Commission apply” and inserting instead —
“ this Act applies ”;
 - (b) by deleting “Commission” in the second and third places where it occurs and inserting instead —
“ Minister ”;
 - (c) by deleting “and the relevant Management Authority all such aid, information and facilities as are practicable, and the Commission shall report to the Minister on the matter when and as often as the Minister requires” and inserting instead —
“
such aid, information and facilities as are practicable
”.
- (2) Section 37(2) is amended by deleting “in any management area or area to which section 31 or section 32 applies” and inserting instead —
“ to which this Act applies ”.

159. Section 38 amended

- Section 38(1) is amended as follows:
- (a) by deleting “Commission” in the first place where it occurs and inserting instead —
“ Minister ”;

- (b) by deleting “the powers of the Commission apply” and inserting instead —
“ this Act applies ”.

160. Sections 39 to 45 repealed

Sections 39, 42, 43 and 45 are repealed.

161. Heading to Part 5 inserted

Before section 46 the following heading is inserted —

“

Part 5 — Protection of waters and land

”.

162. Section 46 amended

Section 46(2) is repealed.

163. Section 48 amended

- (1) Section 48(1) is amended by deleting “for the time being subject to the powers of the Commission” and inserting instead —
“ to which this Act applies ”.
- (2) Section 48(3) and (4) are repealed.
- (3) Section 48(5a) is amended by deleting “1948” and inserting instead —
“ 1982 ”.
- (4) Section 48(9) is amended by deleting “of an offence against subsection (3), or”.

164. Section 49 amended

Section 49(1) is amended by deleting “Commission or a Management Authority” and inserting instead —

“ Minister ”.

165. Section 50 amended

- (1) Section 50(1) is amended as follows:
 - (a) by deleting “Commission, or the relevant Management Authority,” and inserting instead —
“ Minister ”;
 - (b) by deleting “for the time being subject to its control” and inserting instead —
“ to which this Act applies ”.
- (2) Section 50(2) is amended as follows:
 - (a) by deleting “Commission and any Management Authority” and inserting instead —
“ Minister ”;
 - (b) by deleting “subject to its control or on any associated land” and inserting instead —
“ or associated land to which this Act applies ”.

166. Section 51 amended

Section 51 is amended by deleting “or a Management Authority”.

167. Section 52 amended

Section 52 is amended as follows:

- (a) by deleting “Commission or a Management Authority” and inserting instead —
“ Minister ”;
- (b) by deleting “subject to its control” and inserting instead —
“ to which this Act applies ”;
- (c) by deleting “Commission or that Authority” in both places where it occurs and inserting instead —
“ Minister ”.

168. Section 53 amended

Section 53 is amended as follows:

- (a) by deleting “Commission or a Management Authority” and inserting instead —
“ Minister ”;
- (b) by deleting “Commission or that Authority” in the first place where it occurs and inserting instead —
“ Minister ”;
- (c) by deleting “Commission or that Authority, as the case may be,” and inserting instead —
“ Minister ”.

169. Headings to Part 6 and Division 1 inserted

After section 53 the following headings are inserted —

“

Part 6 — General provisions

Division 1 — By-laws

”.

170. Section 54 replaced

Section 54 is repealed and the following section is inserted instead —

“

54. By-laws

- (1) The Minister may make by-laws for the purposes of this Act that are applicable in the management area or areas specified in the by-laws.
- (2) By-laws may be made under subsection (1) prescribing or providing for any matter —

s. 171

- (a) that is required or permitted by this Act to be prescribed or provided for by by-laws; or
 - (b) that is necessary or convenient to be prescribed for the purpose of achieving the objects of this Act.
- (3) Before the Minister makes, amends or repeals any by-laws the Minister must consult publicly, in accordance with section 78.

”.

171. Section 56 amended

- (1) Section 56(2) and (3) are repealed and the following subsection is inserted instead —

“

- (2) If there is conflict or inconsistency between the provisions of a by-law made under this Act and the provisions of a local law made under this Act, the provisions of the by-law prevail to the extent of the conflict or inconsistency.

”.

- (2) Section 56(5) is repealed and the following subsection is inserted instead —

“

- (5) Local laws made under this section are to be prepared according to the same procedures and requirements as if prepared by the local government under and for the purposes of the provisions of the *Local Government Act 1995*.

”.

172. Section 57 amended

Section 57 is amended by deleting “made under this Act by a Management Authority or a local government” and inserting instead —

“ or local law made under this Act ”.

173. Sections 58 and 59 repealed

Sections 58 and 59 are repealed.

174. Heading to Division 2 inserted

Before section 61 the following heading is inserted —

“

Division 2 — Enforcement provisions

”.

175. Section 61 amended

- (1) Section 61(1) is repealed.
- (2) Section 61(2) is amended by deleting all of the words from and including “, but” to and including “for that area”.
- (3) Section 61(5)(a) is amended as follows:
 - (a) by deleting subparagraph (i) and inserting instead —

“

- (i) a conservation and land management officer, forest officer, wildlife officer or ranger, under the *Conservation and Land Management Act 1984*; or

”;

- (b) by deleting subparagraphs (iii) and (iv).

176. Section 62 amended

- (1) Section 62(1) is repealed.
- (2) Section 62(2) is amended by deleting all of the words from and including “, but” to and including “for that area”.

177. Section 63 amended

- (1) Section 63(1)(a) and (b) are deleted.

s. 178

- (2) Section 63(5) is amended by deleting “Commission or a specified Management Authority” and inserting instead —
“ Minister ”.

178. Section 64 amended

Section 64 is amended by deleting “Commission or to the Management Authority for the area concerned” and inserting instead —

“ Minister ”.

179. Sections 66 and 67 repealed

Sections 66 and 67 are repealed.

180. Heading to Division 3 inserted

Before section 68 the following heading is inserted —

“

Division 3 — General offence and procedural provisions

”.

181. Section 69 amended

Section 69(3) is amended as follows:

- (a) by deleting “Commission or the relevant Management Authority” and inserting instead —
“ Minister ”;
- (b) by deleting “Commission or that Authority” and inserting instead —
“ Minister ”.

182. Section 71 amended

Section 71(2)(c) is amended by deleting “Commission or a Management Authority on behalf of the Commission” and inserting instead —

“ Minister ”.

183. Section 75 amended

- (1) Section 75(1) is repealed and the following subsection is inserted instead —

“

- (1) In a prosecution or in other legal proceedings instituted under this Act, proof of the following is not required unless evidence is given to the contrary —

- (a) the particular or general appointment of a person by the CEO under this Act;
- (b) authorisation by the Minister of a person to make a complaint, prosecute an offence or otherwise institute proceedings under this Act.

”.

- (2) Section 75(2) is amended by deleting “land or waters under the control or management of the Commission or a Management Authority” and inserting instead —

“ waters or associated land to which this Act applies ”.

- (3) Section 75(3)(a) and (b) are amended by deleting “Commission or a Management Authority” and inserting instead —

“ Minister ”.

- (4) Section 75(4)(b) and (5) are amended by deleting “chief executive officer of the Commission” and inserting instead —

“ CEO ”.

- (5) Section 75(7) is amended by deleting “, the Chairman of a Management Authority, or the chief executive officer or other authorised officer of the Commission or of a Management Authority” and inserting instead —

“

, the CEO, a delegate of the minister or CEO or a person otherwise authorised or appointed by the Minister or the CEO under this Act

”.

s. 184

- (6) Section 75(8) is repealed.
- (7) Section 75(9) is amended by deleting “section 36(2) of the *Interpretation Act 1918*” and inserting instead —
“ section 42(2) of the *Interpretation Act 1984* ”.

184. Heading to Division 4 and sections 76 to 81 inserted

After section 75 the following heading and sections are inserted —

“

Division 4 — Administrative provisions

76. Delegation by the Minister

- (1) The Minister may delegate to —
 - (a) the CEO; or
 - (b) another officer of the Department; or
 - (c) an officer of another department or an employee of an organisation; or
 - (d) another Minister; or
 - (e) the employing authority of another department or organisation; or
 - (f) any other person or body (whether incorporated or not),

any power or duty of the Minister under another provision of this Act.

- (2) The delegation must be in writing signed by the Minister.
- (3) A person to whom a power or duty is delegated under subsection (1)(b), (c) or (f) cannot delegate that power or duty.
- (4) A delegation under subsection (1)(d) may expressly authorise the other Minister to further delegate the

power or duty but only to an officer or employee of a department administered by the other Minister.

- (5) A delegation under subsection (1)(a) or (e) may expressly authorise the delegate to further delegate the power or duty but only to an officer or employee of the department or organisation.
- (6) A person exercising or performing a power or duty that has been delegated to the person under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of —
 - (a) the Minister to perform a function through an officer or agent; and
 - (b) a Minister or employing authority to whom a power or duty is delegated under this section from exercising that power or performing that duty through an officer or agent.
- (8) In this section, **“department”**, **“employing authority”** and **“organisation”** each have the meaning given to them in section 3 of the *Public Sector Management Act 1994*.

77. Delegation by the CEO

- (1) The CEO may delegate to —
 - (a) another officer of the Department; or
 - (b) the employing authority of another department or organisation; or
 - (c) an officer of another department or an employee of an organisation; or
 - (d) any other person or body (whether incorporated or not),

any power or duty of the CEO under another provision of this Act.

- (2) The delegation must be in writing signed by the CEO.
- (3) Except in the case of an officer of the Department, a power or duty can only be delegated to a person or body under subsection (1) if the person or body has been approved, or is in a class of person or body approved, by the Minister for the purposes of this section.
- (4) A person to whom a power or duty is delegated under subsection (1)(a), (c) or (d) cannot delegate that power or duty.
- (5) A delegation under subsection (1)(b) may expressly authorise the delegate to further delegate the power or duty but only to an officer or employee of the department or organisation.
- (6) A person or body exercising or performing a power or duty that has been delegated to the person or body under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of —
 - (a) the CEO to perform a function through an officer or agent; and
 - (b) an employing authority to whom a power or duty is delegated under this section from exercising that power or performing that duty through an officer or agent.
- (8) In this section, “**department**”, “**employing authority**” and “**organisation**” each have the meaning given to them in section 3 of the *Public Sector Management Act 1994*.

78. Public consultation

- (1) If the Minister considers it appropriate to do so, or is required to do so by this Act, the Minister must consult publicly on any proposal for making, amending or repealing regulations, by-laws, a management programme or a working plan.
- (2) To consult publicly, the Minister must —
 - (a) if the Minister 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 — submit the proposal to that body; and
 - (b) call for public comment on the proposal in accordance with subsection (3); and
 - (c) consider any submissions made by a body to which a proposal was submitted or a person under subsection (3).
- (3) The Minister is taken to have complied with subsection (2)(b) if the Minister —
 - (a) publishes in 2 issues of a daily newspaper circulating in the area or areas concerned a notice outlining the proposal; and
 - (b) includes in the notice a statement —
 - (i) specifying the places at which a copy of the proposal may be inspected or obtained; and
 - (ii) indicating that written submissions on the proposal may be made by any person within a specified period; and
 - (iii) showing the address to which submissions may be delivered or posted.

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

79. Information officially obtained to be confidential

- (1) A person who misuses confidential information obtained by reason of any function that person has, or at any time had, in the administration of this Act commits an offence.

Penalty: \$10 000 or 12 months imprisonment.

- (2) A person misuses confidential information if it is, directly or indirectly, recorded, used, or disclosed to another person, other than —
 - (a) in the course of duty; or
 - (b) under this Act or another law; or
 - (c) with the consent of the CEO; or
 - (d) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence; or
 - (e) with the consent of the person or persons to whom the information relates; or
 - (f) in circumstance prescribed in the regulations.
- (3) In this section —
 - “**confidential information**” means information that has not been made public and that —
 - (a) is by its nature confidential; or
 - (b) was specified to be confidential by the person who supplied it; or
 - (c) is known by the person using or disclosing it to be confidential.

80. Annual reports

- (1) The Minister may delete from —
- (a) a copy of a report under the *Financial Management Act 2006* (and any accompanying document) that is to be laid before a House of Parliament or made public; or
 - (b) any other document of the Department that is to be, or might be, made public,

information that is of a commercially sensitive nature, despite section 64 of the *Financial Management Act 2006* or an obligation, however arising, to make the document public.

- (2) Subsection (1) does not apply to the extent to which —
- (a) the information is already in the public domain; or
 - (b) the information is summary or statistical information that could not reasonably be expected to enable particulars relating to any person to be ascertained; or
 - (c) disclosure of the information is authorised by each person or organisation to whom it relates.
- (3) A copy of a document from which any matter has been deleted must —
- (a) contain a statement, at the place in the document where the matter was deleted, detailing the reasons for the deletion; and
 - (b) be accompanied by an opinion from the Auditor General stating that the information deleted is commercially sensitive.

81. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person other than the Crown for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the Crown is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

”.

185. Section 76 renumbered

Section 76 is renumbered as 82.

186. Section 76 (as renumbered) amended

- (1) Section 76(1) (as renumbered) is repealed and the following subsection is inserted instead —

“

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

”.

- (2) Section 76(2) (as renumbered) is amended as follows:
- (a) in paragraph (a) by deleting “land and waters under the control or management of the Commission or a Management Authority” and inserting instead —
“ waters or associated land to which this Act applies ”;
 - (b) in paragraph (f) by deleting “for the form and use of the seal of the Commission and the conduct of proceedings of the Commission and of the Management Authorities,”.

187. Schedule repealed

The Schedule is repealed.

188. Various references to “Commission” changed to “Minister”

Each provision of the Act listed in the Table to this section is amended by deleting “Commission” in each place where it occurs and inserting instead —

“ Minister ”.

Table

s. 5(3)	s. 47(1), (3), (4), (5), (6), (7),
s. 8(1) and (2)	(8) and (9)
s. 36(2), (3), (4) and (5)	s. 48(7) and (8)
s. 37(2)	s. 51
s. 38(2)	
s. 46(3), (4), (5), (6), (7), (8), (9), (10) and (11)	

Note: The heading to section 32 will be altered by deleting “Commission” and inserting instead “**Minister**”.

Part 9 — Repeal of Acts

189. The *Water and Rivers Commission Act 1995* repealed

The *Water and Rivers Commission Act 1995* is repealed.

190. The *Water Supply, Sewerage, and Drainage Act 1912* repealed and savings provision

- (1) The *Water Supply, Sewerage, and Drainage Act 1912* is repealed.
- (2) Despite the repeal of the *Water Supply, Sewerage, and Drainage Act 1912*, the effect of section 2(4) and (5) continues in respect of any act, matter or thing in respect of which those subsections had effect prior to their repeal.

Part 10 — Consequential amendments to other Acts

191. Conservation and Land Management Act 1984 amended

- (1) The amendments in this section are to the *Conservation and Land Management Act 1984**.

[* *Reprint 5 as at 24 September 2004.*

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 77 and Act No. 38 of 2005.]

- (2) Section 3 is amended as follows:

- (a) by inserting in the appropriate alphabetical position —

“

“Minister (Water Resources)” means the Minister administering the *Water Agencies (Powers) Act 1984*;

”;

- (b) in the definition of “public water catchment area” in paragraph (a) by deleting “Water and Rivers Commission” and inserting instead —

“ Minister (Water Resources) ”;

- (c) by deleting the definition of “Water and Rivers Commission”.

- (3) Section 53 is amended by deleting the definition of “Minister for Water Resources”.

- (4) Section 54(3)(a)(iii) is amended by deleting “Water and Rivers Commission” and inserting instead —

“ Minister (Water Resources) ”.

- (5) Section 58(3) is amended by deleting “Water and Rivers Commission” and inserting instead —

“ Minister (Water Resources) ”.

s. 192

- (6) Section 59(7) is amended by deleting “Minister for Water Resources” and inserting instead —

“ Minister (Water Resources) ”.

192. Constitution Acts Amendment Act 1899 amended

- (1) The amendments in this section are to the *Constitution Acts Amendment Act 1899**.

[* *Reprint 13 as at 18 March 2005.*

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 89 and Acts No. 18 and 38 of 2005.]

- (2) Schedule V Part 3 is amended as follows:

- (a) by deleting the item relating to the board of management of the Water and Rivers Commission;
- (b) by deleting the item relating to management authorities under the *Waterways Conservation Act 1976*;
- (c) by deleting the item relating to the Rivers and Estuaries Council established by the *Waterways Conservation Act 1976*;
- (d) by inserting before the item relating to the Western Australia Marine Manning Committee the following item —

“

The Water Resources Council established by the *Water Agencies (Powers) Act 1984*.

”.

193. *Energy Operators (Powers) Act 1979* amended

- (1) The amendments in this section are to the *Energy Operators (Powers) Act 1979**.

[* *Reprint 4 as at 23 September 2005.*
For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 146 and Acts No. 33 of 2004, 18 and 38 of 2005 and 8 of 2006.]

- (2) Section 42(2)(a) is amended by deleting “Water and Rivers Commission established by the *Water and Rivers Commission Act 1995*” and inserting instead —

“

Minister referred to in the *Water Agencies (Powers) Act 1984*

”.

194. *Environmental Protection Act 1986* amended

- (1) The amendments in this section are to the *Environmental Protection Act 1986**.

[* *Reprint 5 as at 16 September 2005.*
For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 148 and Act No. 38 of 2005.]

- (2) Section 57 is amended as follows:

- (a) in subsection (2)(b)(ii) by deleting “the Water and Rivers Commission” and inserting instead —

“

a person nominated by the Minister
(Water Resources)

”;

- (b) in subsection (3) by deleting “or from the Water and Rivers Commission”;

s. 195

- (c) in subsection (5) by deleting the definition of “Water and Rivers Commission” and inserting instead —

“

“Minister (Water Resources)” means the Minister administering the *Water Agencies (Powers) Act 1984*.

”.

195. *Financial Management Act 2006* amended

- (1) The amendment in this section is to the *Financial Management Act 2006**.

[* *Act No. 76 of 2006*.

For subsequent amendments see Act No. 77 of 2006.]

- (2) Schedule 1 is amended by deleting “Water and Rivers Commission”.

196. *Land Administration Act 1997* amended

- (1) The amendments in this section are to the *Land Administration Act 1997**.

[* *Reprint 2 as at 24 June 2005*.

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 242 and Acts No. 18 and 38 of 2005.]

- (2) Section 160(1)(e) is amended as follows:

- (a) by deleting “Commission” in the first place where it occurs and inserting instead —

“ CEO ”;

- (b) by deleting “Commission” in the second place where it occurs and inserting instead —

“ Department ”.

197. Public Sector Management Act 1994 amended

- (1) The amendment in this section is to the *Public Sector Management Act 1994**.

[* *Reprint 6 as at 14 May 2004.*
For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 368-9 and Act No. 18 of 2005.]

- (2) Schedule 2 is amended by deleting item 56.

198. Public Works Act 1902 amended

- (1) The amendments in this section are to the *Public Works Act 1902**.

[* *Reprinted as at 1 June 2001.*
For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, p. 373 and Act No. 18 of 2005.]

- (2) Section 5A(ea) is amended by deleting “*Water and Rivers Commission Act 1995*” and inserting instead —

“ *Water Agencies (Powers) Act 1984* ”.

- (3) Section 5B(1)(da) is amended by deleting “*Water and Rivers Commission established by the Water and Rivers Commission Act 1995 or an officer of that commission*” and inserting instead —

“

chief executive officer of the department
principally assisting that Minister in the
administration of the *Water Agencies (Powers)*
Act 1984 or an officer of that department

”.

199. Sentencing Act 1995 amended

- (1) The amendments in this section are to the *Sentencing Act 1995**.

[* *Reprint 4 as at 12 August 2005.*
*For subsequent amendments see Western Australian
Legislation Information Tables for 2005, Table 1, p. 412.*]

- (2) Schedule 1 is amended by deleting the item relating to the *Waterways Conservation Act 1976*.

200. Soil and Land Conservation Act 1945 amended

- (1) The amendment in this section is to the *Soil and Land Conservation Act 1945**.

[* *Reprint 6 as at 3 October 2003.*
*For subsequent amendments see Western Australian
Legislation Information Tables for 2005, Table 1, p. 417-8
and Act No. 38 of 2005.*]

- (2) Section 4 is amended in the definition of “Public Authority” by deleting paragraph (e).

201. Water Boards Act 1904 amended

- (1) The amendments in this section are to the *Water Boards Act 1904**.

[* *Reprint 5 as at 12 August 2005.*]

- (2) Section 3(1) is amended by deleting the definition of “Commission”.

- (3) Sections 36(1)(c) and (d) and 37 are amended by deleting “Commission” in each place where it occurs and inserting instead —

“ Minister ”.

Part 11 — Transitional provisions

Division 1 — Interpretation

202. Terms used in this Part

In this Part —

“assets” means property of any kind whether tangible or intangible, real or personal and, without limiting that meaning, includes —

- (a) any chose in action; and
- (b) goodwill; and
- (c) any right, interest or claim of any kind,

whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

“CEO” means the chief executive officer of the Department;

“Commission” means the Water and Rivers Commission established by the *Water and Rivers Commission Act 1995* section 4 and in existence before the repeal of that Act;

“Department” means the department of the Public Service principally assisting in the administration of the *Water Agencies (Powers) Act 1984*;

“former body” means the Commission or a former Management Authority;

“former Management Authority” means a Management Authority constituted under the *Waterways Conservation Act 1976* sections 10 and 14 as in force before the transfer time;

“liability” means any liability, duty or obligation —

- (a) whether actual, contingent or prospective, liquidated or unliquidated; or

- (b) whether owed alone or jointly or jointly and severally with any other person;

“management area” has the meaning given by the *Waterways Conservation Act 1976* section 3(1);

“Minister” means the Minister administering the *Water Agencies (Powers) Act 1984*;

“Ministerial Body” means the Water Resources Ministerial Body established by the *Water Agencies (Powers) Act 1984* section 11;

“Minister for the Environment” means the Minister to whom the administration of the *Environmental Protection Act 1986* is committed;

“relevant successor” means —

- (a) the Minister in relation to a former body and a function of the former body that, after the transfer time, became a function of the Minister; and
- (b) the CEO in relation to a former body and a function of the former body that, after the transfer time, became a function of the CEO; and
- (c) the State in relation to assets and liabilities transferred to the State by section 205; and
- (d) the Ministerial Body in relation to assets and liabilities transferred to the Ministerial Body by section 205;

“repealed Act” means the *Water and Rivers Commission Act 1995*;

“right” means any right, power, privilege or immunity whether actual, contingent or prospective;

“transfer order” means an order under section 204;

“transfer time” means the time at which section 4 comes into operation.

203. Interpretation Act 1984 not limited

This Part does not limit the operation of the *Interpretation Act 1984*.

Division 2 — Transfer of assets, liabilities, accounts, proceedings etc.

204. Minister to make transfer orders

- (1) As soon as is practicable after this section comes into operation the Minister is to make and publish in the *Gazette* a transfer order that —
- (a) specifies which assets and liabilities of the Commission are to be assigned to the Ministerial Body by operation of section 205; and
 - (b) specifies proceedings in which the Ministerial Body is to be substituted for the Commission as a party by operation of section 205; and
 - (c) specifies any agreement or instrument that, by operation of section 205, is to have effect as if references to the State or the Ministerial Body were substituted, in accordance with the order, for references in it to the Commission; and
 - (d) specifies land the care, control and management of which is to be placed with the Minister for the Environment by operation of section 206.
- (2) A transfer order may also deal with incidental or supplementary matters and has effect accordingly.
- (3) The transfer order may specify things by reference to schedules which —
- (a) need not be published in the *Gazette*; but
 - (b) must be available for public inspection,
- and anything specified in a Schedule is to be taken to be specified in the order.

- (4) A thing may be specified in a transfer order by describing the class to which it belongs.
- (5) Before a transfer order is made specifying anything by reference to a Schedule, a copy of which will be required to be delivered to a relevant official under section 210, the Minister is to consult with the, or each, relevant official as to the form and content of the Schedule.
- (6) To the extent to which a Schedule to a transfer order relates to the functions of the Registrar of Titles, the Schedule is to be in a form that meets the requirements of the Registrar.
- (7) A thing done by, under or for the purposes of this Part is not invalid merely because subsection (5) or (6) was not complied with.
- (8) A transfer order can only be made before the transfer time.
- (9) The fact that a previous transfer order has been made does not prevent a further transfer order from being made.
- (10) A transfer order, or a Schedule to which it refers, may be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the transfer time.

205. Transfer of assets and liabilities

If a transfer order is made, then —

- (a) at the transfer time —
 - (i) the assets of the Commission specified in the transfer order are, by operation of this section, assigned to the Ministerial Body; and
 - (ii) the rest of the assets of the Commission are, by operation of this section, assigned to the State;
- and

- (b) at the transfer time —
- (i) the liabilities of the Commission specified in the transfer order are, by operation of this section, assigned to and become the liabilities of the Ministerial Body; and
 - (ii) the rest of the liabilities of the Commission are, by operation of this section, assigned to and become the liabilities of the State;
- and
- (c) at the transfer time, the Ministerial Body is substituted for the Commission as a party to any proceedings specified in the transfer order and the State is substituted for the Commission as a party to all other proceedings in which the Commission was a party immediately before the transfer time; and
- (d) any agreement or instrument specified in the order has effect, by operation of this section, as if references to the State or the Ministerial Body were, at the transfer time, substituted, in accordance with the order, for references in it to the Commission; and
- (e) any proceedings or remedy that might have been commenced by, or available against or to, the Commission in relation to the assets and liabilities assigned by paragraphs (a) and (b) may be commenced by, or are available against or to —
- (i) the Ministerial Body, in the case of assets and liabilities assigned by paragraphs (a)(i) and (b)(i); and
 - (ii) the State, in the case of assets and liabilities assigned by paragraphs (a)(ii) and (b)(ii);
- and
- (f) anything done or omitted to be done in relation to the assets and liabilities assigned by paragraphs (a) and (b) before the assignment, by, to or in respect of the

Commission (to the extent that that thing has any effect) is to be taken to have been done or omitted by, to or in respect of —

- (i) the Ministerial Body, in the case of assets and liabilities assigned by paragraphs (a)(i) and (b)(i); and
- (ii) the State, in the case of assets and liabilities assigned by paragraphs (a)(ii) and (b)(ii).

206. Transfer of care, control and management of reserved land

- (1) In this section —
“**Minister for the Environment**” means the Minister administering the *Environmental Protection Act 1986*.
- (2) Land that, immediately before the transfer time, is under the care, control and management of the Commission under the *Land Administration Act 1997* is to be regarded as if it had, at that time, been placed under the care, control and management of the Minister, under section 46 of that Act.
- (3) Land that, immediately before the transfer time, is under the care, control and management of the Commission under an enactment (other than the *Land Administration Act 1997*) is to be regarded as if it had, at that time, been placed under the care, control and management of the Minister, under that enactment as in force after the transfer time.
- (4) Subsections (2) and (3) do not apply to land specified in a transfer order under section 204(1)(d).
- (5) Land to which subsection (2) or (3) would apply but for subsection (4), is to be regarded as if it had, immediately before the transfer time, been placed under the care, control and management of the Minister for the Environment under the relevant enactment as in force after the transfer time.
- (6) Any conditions to which the care, control or management was subject immediately before the transfer time apply to the

Minister or the Minister for the Environment (which ever is relevant) after the transfer time.

207. The Water and Rivers Commission Account

The balance, immediately before the transfer time, of the Water and Rivers Commission Account referred to in section 26 of the repealed Act is, at the transfer time, to be credited to an account established under the *Financial Management Act 2006* section 16 for the Department.

208. Commission to complete necessary transactions

- (1) If an asset or liability of the Commission cannot be properly assigned to the State or the Ministerial Body by the operation of this Division (whether because the matter is governed otherwise than by the law of the State or for any other reason) —
 - (a) the Commission is to be taken to continue to hold that asset or be liable for that liability until it is effectively assigned to the State or the Ministerial Body in accordance with this Division; and
 - (b) the Commission is to take all practicable steps for the purpose of ensuring that the asset or liability is effectively assigned to the State or the Ministerial Body in accordance with this Division.
- (2) The fact that subsection (1)(a) applies to an asset or liability that is assigned to the State or the Ministerial Body under this Division does not affect the duty of the accountable authority of the Department under the *Financial Management Act 2006*.
- (3) Despite the repeal of the repealed Act, the Commission continues in existence for the purpose of performing the functions described in subsection (1).
- (4) The Commission is to perform the functions referred to in subsection (3) through a person appointed by the Minister.

- (5) The person holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
- (6) The Commission as continued by this section has the powers that are necessary or convenient for the purposes of this section.

209. The Water Supply, Sewerage, and Drainage Act 1912

- (1) In this section —
“the body corporate” means the body corporate constituted under the *Water Supply, Sewerage, and Drainage Act 1912*.
- (2) At the transfer time, the Ministerial Body becomes the successor of the body corporate.
- (3) Despite subsection (2), land that, immediately before the transfer time, is under the care, control and management (however described) of the body corporate —
 - (a) under the *Water Supply, Sewerage, and Drainage Act 1912* — is to be regarded as if it had, at that time, been placed under the care, control and management of the Minister, under the *Land Administration Act 1997* section 46; and
 - (b) under an enactment (other than the *Water Supply, Sewerage, and Drainage Act 1912*) — is to be regarded as if it had, at that time, been placed under the care, control and management of the Minister, under that enactment as in force after the transfer time.

210. Registration of documents

- (1) In this section —
“relevant official” means —
 - (a) the Registrar of Titles; or
 - (b) the Minister administering the *Mining Act 1978*; or

- (c) any other person authorised by a written law to record and give effect to the registration of documents relating to property transactions, according to which of them, if any, has responsibility for a register relating to the relevant property;

“relevant property” means property of a kind affected by this Part, whether it is an estate or interest in land or any other property.

- (2) The relevant officials are to take notice of this Part and any transfer order, including a Schedule to which the order refers, and are to record and register in the appropriate manner the documents necessary to show the effect of this Part and the transfer order.
- (3) The Minister is to cause a copy of each transfer order and any Schedule to which it refers to be delivered to each relevant official.

211. Exemption from State taxes

- (1) In this section —
“State tax” includes stamp duty chargeable under the *Stamp Act 1921* and any other tax under a written law.
- (2) State tax is not payable in relation to —
- (a) anything that occurs by the operation of this Part; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (3) The Minister may certify in writing that —
- (a) a specified thing occurred by the operation of this Part; or

- (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is sufficient evidence of the matters it certifies, except so far as the contrary is shown.

212. Rectifying error in transfer order

- (1) The Minister may, by order published in the *Gazette*, make any provision that is necessary to correct any error in a transfer order or a Schedule to which a transfer order refers.
- (2) An order under this section may be made so as to have effect from the transfer time.
- (3) To the extent that a provision of an order under this section has effect before the day of its publication in the *Gazette*, section 205 does not, as a result of that provision, operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State, the Ministerial Body, or a Minister, officer or agency of the State), the rights of that person existing before the day of publication; or
 - (b) to impose liabilities on any person (other than the State, the Ministerial Body, or a Minister, officer or agency of the State) in respect of anything done or omitted to be done before the day of publication.

Division 3 — Staff etc.

213. Transfer of staff

- (1) At the transfer time, the CEO becomes the employing authority, within the meaning of the *Public Sector Management Act 1994*, of each person for whom the board of the Commission was the employing authority under that Act immediately before the transfer time.

- (2) A person whose engagement under section 23(2) of the repealed Act is in force immediately before the transfer time becomes, at the transfer time, a person engaged by the CEO under the *Water Agencies (Powers) Act 1984* section 107.

214. Transfer of arrangements about use of other staff

An arrangement between the Commission and an employer under the repealed Act section 24 that is in force immediately before the transfer time becomes, at the transfer time, an arrangement between the CEO and the employer.

215. Employees' rights preserved

- (1) Except as otherwise agreed by an employee, the operation of this Division does not —
- (a) affect the employee's pay, as that term is defined in the *Public Sector Management (Redeployment and Redundancy) Regulations 1994* regulation 3; or
 - (b) affect the employee's existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave, which are enforceable against the State; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt the continuity of the employee's service.
- (2) For the purposes of subsection (1)(d), the employee's service with the Commission is to be taken to have been with the Department.

216. Transfer of contracts for services

A person engaged by the Commission under a contract for services (under the *Public Sector Management Act 1994* section 100) that is in force immediately before the transfer time, is to be taken to have been engaged, at the transfer time, by the CEO under that section on the same terms and conditions, for the remainder of the duration of the contract.

Division 4 — Committees of the Commission

217. Transfer of members of committees of the Commission

- (1) The members of a committee of the board of the Commission (established under the repealed Act Schedule 1 clause 15) that was in existence immediately before the transfer time become, at the transfer time, the members of an equivalent committee that is to be taken, for all purposes, to have been established by the Minister under the *Water Agencies (Powers) Act 1984* section 109.
- (2) A committee that is to be taken to have been established because of subsection (1) —
 - (a) has the same name as that of the committee from which the members came; and
 - (b) has the same functions (to the extent to which the functions are not inconsistent with the *Water Agencies (Powers) Act 1984* section 109) as those of the committee from which the members came.

**Division 5 — Former Management Authorities under the
*Waterways Conservation Act 1976***

218. By-laws under the *Waterways Conservation Act 1976*

By-laws made under the *Waterways Conservation Act 1976* section 54 by a former Management Authority in relation to a management area and in force immediately before the transfer time become, at the transfer time, by-laws under that section (as in force after the transfer time) in relation to that management area, as if they had been made by the Minister administering the *Waterways Conservation Act 1976*.

219. Proceedings in relation to a former Management Authority

At the transfer time —

- (a) in relation to any proceedings by or against a former Management Authority commenced before the transfer time, the State is substituted for the Authority as a party to the proceedings; and
- (b) any proceedings or remedy that might have been commenced by, or available against or to, a former Management Authority in relation to anything done or omitted to be done by the Authority, may be commenced by, or are available against or to, the State.

Division 6 — Continuing effect of things done

220. Continuing effect of licences, directions, determinations, notices etc.

- (1) A licence, permit or permission (however described) granted under an enactment by a former body and in force immediately before the transfer time is to be taken, for all purposes, to have been granted, at the transfer time, by the relevant successor of the former body under that enactment (as in force after the transfer time).
- (2) A direction, determination or notice (however described) given under an enactment by a former body and in force immediately before the transfer time is to be taken, for all purposes, to have been given or made, at the transfer time, by the relevant successor of the former body under that enactment (as in force after the transfer time).

221. Completion of things commenced

Anything commenced to be done by a former body under a written law before the transfer time may be continued by the relevant successor of the former body so far as the doing of that thing is within the functions of the relevant successor after the transfer time.

222. Continuing effect of things done generally

Any act, matter or thing done or omitted to be done before the transfer time by, to or in respect of a former body, to the extent that that act, matter or thing —

- (a) has any force or significance after the transfer time; and
- (b) is not governed by another provision of this Part,

is to be taken, after the transfer time, to have been done or omitted by, to or in respect of the relevant successor of the former body.

223. Agreements and instruments generally

- (1) Any agreement or instrument (including subsidiary legislation) in force immediately before the transfer time —
 - (a) to which a former body was a party; or
 - (b) which contains a reference to a former body,

has effect after the transfer time, to the extent to which the agreement or instrument relates to the functions of a relevant successor to the former body, as if —

- (c) the relevant successor were substituted for the former body as a party to the agreement or instrument; and
 - (d) any reference in the agreement or instrument to the former body were (unless the context otherwise requires) amended to be or include a reference to the relevant successor.
- (2) This section does not apply to any agreement or instrument covered by another provision of this Part.

Division 7 — General transitional provisions

224. Confidentiality obligations to continue

- (1) Despite the repeal of the repealed Act section 34, the section continues to apply to a person to whom it applied immediately

before the transfer time as if paragraph (a) of that section were amended by inserting “or under another written law” after “this Act”.

- (2) Subsection (1) only applies to the extent that another enactment about the use and disclosure of the information does not apply to the person and the information.

225. Further transitional provision may be made

- (1) If there is not sufficient provision in this Part for any matter or thing necessary or convenient to give effect to the transition from a former body to a relevant successor, the regulations may make that provision.
- (2) The regulations may be made so as to have effect from the transfer time.
- (3) To the extent that a provision of the regulations 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 Ministerial Body or any other authority of 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, the Ministerial Body or any other authority of the State) in respect of anything done or omitted to be done before the day of publication.
- (4) The Governor may make regulations for the purposes of this section.
- (5) Regulations may not be made under this section after the end of the 24 months after the day on which this Act receives the Royal Assent.

226. Saving

The operation of any provision of this Part is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities or the disclosure of information; or
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset or liability; or
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

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Defined Terms

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

Defined Term	Provision(s)
assets	202
CEO	202
Commission	202
Department.....	202
former body.....	202
former Management Authority	202
liability	202
management area	202
Minister	202
Minister for the Environment.....	202, 206(1)
Ministerial Body	202
relevant official	210(1)
relevant property	210(1)
relevant successor	202
repealed Act	202
right.....	202
State tax	211(1)
statutory rule	3(4)
the body corporate	209(1)
transfer order.....	202
transfer time	202