

Western Australia

Public Works Act 1902

As at 09 Jan 2008

Version 09-f0-01

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Public Works Act 1902

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Western Australia

Public Works Act 1902

An Act relating to public works.

[Long title inserted by No. 31 of 1997 s. 38.]

1. Short title

This Act may be cited as the *Public Works Act 1902*¹.

[Section 1 inserted by No. 123 of 1984 s. 3; amended by No. 52 of 1995 s. 5; No. 31 of 1997 s. 39.]

Part I — Preliminary

2. Interpretation

In this Act, if not inconsistent with the context —

“**Crown land**” means and includes all land of the Crown, whether designated for any public purpose or not, except land granted or agreed to be granted in fee simple, or held or occupied under the Crown by lease or licence, or for any other estate or interest, or land reserved and classified as a class A reserve under the *Land Administration Act 1997*, or any national park referred to in section 6(3)(b) of the *Conservation and Land Management Act 1984* or land in relation to which native title exists;

“**Government work**” means any work constructed or intended to be constructed by or under the control of the Crown, or the Governor, or the Government of Western Australia, or any Minister of the Crown;

“**judge**” means a judge of the Supreme Court;

“**local authority**” means any local government or any other persons or body, however designated, having authority under any statute to undertake the construction of any public work;

“**local work**” means a work constructed or intended to be constructed by or under the control of a local authority;

“**Minister**” as regards all public works other than railways, means the Minister of the Crown for the time being administering this Act but as regards railways, “**Minister**” means the Minister of the Crown for the time being administering the *Government Railways Act 1904*;

“**public reserve**” means a reserve under the *Land Administration Act 1997*;

“**Public Transport Authority**” means the Public Transport Authority of Western Australia established by the *Public Transport Authority Act 2003* section 5;

“public work” and “work” mean and include —

- (1) every work which the Crown, or the Governor, or the Government of Western Australia, or any Minister of the Crown, or any local authority is authorised to undertake under this or any other Act;
- (2) any railway authorised by special Act or any work whatsoever authorised by any Act;
- (3) tramways;
- (4) any works for or in connection with the supply of water to, or for or in connection with the sewerage of, any city, town, or district, including all reticulations;
- (5) buildings for the occupation of either or both of the Houses of Parliament or for public offices;
- (6) hospitals within the meaning given to that term by section 2 of the *Hospitals and Health Services Act 1927*, medical clinics, hostels and institutions including residences for staff, court-houses, gaols, watch-houses, lock-ups, police barracks, or quarters;
- (7) observatory;
- (8) public schools or any other schools authorised to be established wholly or in part at the public cost by any Act in force for the time being, universities, colleges, technical and other educational institutions, including residences or hostels for teachers or students, and play-grounds;
- (9) public libraries, mechanics’ or miners’ institutes, agricultural halls, or schools of art;
- (9a) public housing;
- (10) wharves, ferries, piers, jetties and bridges;
- (11) parks or gardens or grounds for public recreation or places for bathing, and for the reclamation of land for or in connection therewith;

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- (12) public cemeteries;
- (13) public wells or works for the conservation of water;
- (14) the protection and preservation of any cave or place of scientific or historical interest;
- (14A) the protection and preservation of indigenous flora and fauna;
- (15) the establishment of public abattoirs;
- (16) harbours and ports, including the provision of storage, handling and wharfage areas and other facilities normally ancillary to the conduct of shipping operations, break-waters, leading marks, navigational aids, docks, slips, the alteration or improvement of channels, waterways and rivers, the protection of foreshores and banks, the provision of new channels and related works, including the landing and disposal of silt;
- (17) quarries or works for procuring stone, gravel, earth, or any other material required for the construction of, or any purpose connected with any public work as aforesaid;
- (17A) the procuring from land (other than Crown lands and public reserves) of timber, stone, gravel, earth and any other material required by or for the State for or in connection with the carrying on of any industrial or other undertaking or activity which is being carried on by or for the State under any law authorising the same;
- (17B) buildings and structures required for fire brigade purposes;
- (17C) the establishment and the extension by the Governor of sites for towns;
- (17D) the establishment and the extension by the Governor of agricultural research stations;

- (18) drainage works in connection with any city, town, or district, and the improvement of rivers, watercourses, lakes, or inlets, including deepening, widening, straightening or otherwise altering, and disposal of silt;
- (19) any building or structure of whatsoever kind which, in the opinion of the Governor, is necessary for any public purpose;
- (20) any road, stock route, viaduct, or canal;
- (21) any work incidental to any of the aforesaid works;
- (22) any land required for or in connection with any work as aforesaid;
- (23) any survey in connection with any proposed public work;

“railway”: see section 95;

“Registrar” means the Registrar of Titles under the *Transfer of Land Act 1893*;

“river” means a river, stream, creek, or water-course, in which water flows permanently or intermittently;

“road”: see section 84;

“special Act” means any Act of the Parliament of Western Australia with which this Act is incorporated, authorising the construction of a public work;

“surveyor” means a surveyor licensed under the *Licensed Surveyors Act 1909*.

[Section 2 amended by No. 35 of 1933 s. 3; No. 41 of 1945 s. 2; No. 48 of 1953 s. 3; No. 19 of 1972 s. 2; No. 27 of 1974 s. 19; No. 67 of 1979 s. 35; No. 112 of 1984 s. 27; No. 7 of 1991 s. 3; No. 103 of 1994 s. 18; No. 52 of 1995 s. 6; No. 14 of 1996 s. 4; No. 79 of 1996 s. 28; No. 31 of 1997 s. 40; No. 31 of 2003 s. 160; No. 28 of 2006 s. 334.]

[3. Omitted under the Reprints Act 1984 s. 7(4)(e) and (f).]

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4. Governor may make regulations for conduct of officers

The Governor may make regulations for the conduct of all persons employed by the Government under this Act, or in or about any works which may be constructed by the Government under the authority thereof.

5. Minister for Works

[(1), (2) repealed]

- (3) The Minister of the Crown for the time being administering this Act shall for the purposes of this Act become and continue to be a body corporate under the name of the “Minister for Works” with perpetual succession and a common seal; and by that name shall be capable of suing and being sued, acquiring, holding, letting and taking land on lease, and alienating real and personal property, and of doing and suffering all such other acts and things as may be necessary or expedient for carrying out the purposes of this Act.

[Section 5 amended by No. 35 of 1933 s. 4; No. 41 of 1945 s. 3; No. 27 of 1974 s. 20.]

5A. Delegation by Minister

The Minister may, either generally or as otherwise provided by the notice concerned, by notice published in the *Gazette* delegate to —

- (a) any officer of the Public Service of the State under the administrative control of the Minister and assisting him in the administration of this Act;
- (b) the Minister of the Crown to whom the administration of the *Land Administration Act 1997* is for the time being committed by the Governor;
- (c) the Minister of the Crown to whom the administration of the *Main Roads Act 1930* is for the time being committed by the Governor;

- (d) the Minister of the Crown to whom the administration of the *Electricity Corporations Act 2005* is for the time being committed by the Governor;
- [(da) deleted]
- (db) the DBNGP Land Access Minister established by section 29(1) of the *Dampier to Bunbury Pipeline Act 1997*;
- (e) the Minister of the Crown to whom the administration of the *Water Corporation Act 1995* is for the time being committed by the Governor;
- (ea) the Minister of the Crown to whom the administration of the *Water and Rivers Commission Act 1995* is for the time being committed by the Governor;
- (f) the Treasurer; or
- (g) the Minister of the Crown to whom the administration of the *Marine and Harbours Act 1981* is for the time being committed by the Governor,

any of his powers or duties under this Act, except this power of delegation.

[Section 5A inserted by No. 126 of 1987 s. 38; amended by No. 7 of 1991 s. 4; No. 32 of 1994 s. 19; No. 59 of 1994 s. 3; No. 89 of 1994 s. 109; No. 73 of 1995 s. 188; No. 31 of 1997 s. 41 and 141; No. 53 of 1997 s. 52; No. 58 of 1999 s. 107(a); No. 24 of 2000 s. 35(1); No. 18 of 2005 s. 139.]

5B. Subdelegation of delegated power or duty

- (1) A Minister of the Crown to whom a power or duty has been delegated under section 5A may, either generally or as otherwise provided by the notice concerned, by notice published in the *Gazette* delegate —
 - (a) in the case of the Minister of the Crown referred to in section 5A(b), to the chief executive officer of the department principally assisting that Minister of the

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- Crown in the administration of the *Land Administration Act 1997* or to any other officer of that department;
- (b) in the case of the Minister of the Crown referred to in section 5A(c), to the Commissioner within the meaning of the *Main Roads Act 1930* or to any officer of that Commissioner;
- (c) in the case of the Minister of the Crown referred to in section 5A(d), to a body established by section 4(1) of the *Electricity Corporations Act 2005*, namely —
- (i) the Electricity Generation Corporation;
 - (ii) the Electricity Networks Corporation;
 - (iii) the Electricity Retail Corporation; and
 - (iv) the Regional Power Corporation,
- or to an officer of such a body;
- [(ca) deleted]*
- (cb) in the case of the DBNGP Land Access Minister established by section 29(1) of the *Dampier to Bunbury Pipeline Act 1997*, to the chief executive officer of the department principally assisting the DBNGP Land Access Minister in the administration of Part 4 of that Act or to any other officer of that department;
- (d) in the case of the Minister of the Crown referred to in section 5A(e), to the Water Corporation established by the *Water Corporation Act 1995* or an officer of that corporation;
- (da) in the case of the Minister of the Crown referred to in section 5A(ea), to the Water and Rivers Commission established by the *Water and Rivers Commission Act 1995* or an officer of that commission;
- (db) in the case of the Minister of the Crown referred to in section 5A(f), to the chief executive officer of the department principally assisting that Minister in the administration of the *Financial Management Act 2006* or to any other officer of that department; or

- (e) in the case of the Minister of the Crown referred to in section 5A(g), to the chief executive officer of the department principally assisting that Minister of the Crown in the administration of the *Marine and Harbours Act 1981* or to any other officer of that department,

the whole or any part of the power or duty.

- (2) A Minister of the Crown shall as soon as is practicable after exercising the power of delegation conferred on him by subsection (1) transmit to the Minister a copy of the notice by which that power was exercised.

[Section 5B inserted by No. 126 of 1987 s. 38; amended by No. 59 of 1994 s. 4; No. 89 of 1994 s. 109; No. 73 of 1995 s. 188; No. 31 of 1997 s. 141; No. 53 of 1997 s. 52; No. 58 of 1999 s. 107(b); No. 24 of 2000 s. 14(13) and 35(4); No. 18 of 2005 s. 139; No. 77 of 2006 s. 17.]

6. Contracts etc. of Minister to devolve on his successor

Where the Minister enters into any contract or agreement, under seal or otherwise, or makes any lease or grants any easement, under this or any other Act, all the rights and liabilities in respect thereof, and all benefit and advantage thereunder, or interest therein, shall vest in and be enforceable by and against his successor or successors in office, without the necessity of any transfer or assignment whatsoever.

7. Appointment of engineers and other officers

- (1) The Governor may create such offices, and appoint such engineers, architects, clerks, and other officers and persons as may be necessary for the administration of this Act, and for the execution of all Government works; and may assign such functions as he shall think fit to such persons respectively, all of whom shall hold office at the Governor's pleasure, and shall receive such salaries as Parliament determines.

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- (2) Notwithstanding anything in subsection (1), to the extent that there is in the case of a person who is appointed under that subsection to be an engineer, architect, clerk or other officer or other person and who is a member of the Senior Executive Service within the meaning of the *Public Sector Management Act 1994* an inconsistency between this Act and that Act that Act shall prevail.

[Section 7 amended by No. 113 of 1987 s. 32.]

[8, 9. *Repealed by No. 98 of 1985 s. 3.]*

Part IA — Western Australian Building Management Authority

[Heading inserted by No. 123 of 1984 s. 4; amended by No. 59 of 1994 s. 9.]

9A. Interpretation in Part IA

In this Part, unless the contrary intention appears —

“authorised buildings” means buildings or structures which are public works and works ancillary to any such buildings or structures;

“borrow” includes —

- (a) reborrow;
- (b) obtain credit; and
- (c) arrange for financial accommodation;

“the Account” means the Western Australian Building Management Authority Account continued in existence by section 9E(1);

“the Building Management Authority” means the body corporate called the Western Australian Building Management Authority continued in existence by section 9B(1).

[Section 9A inserted by No. 123 of 1984 s. 4; amended by No. 59 of 1994 s. 5.]

9B. Western Australian Building Management Authority continued as body corporate

- (1) From the commencement of the *Public Works Amendment Act 1994*¹, the Western Australian Building Authority previously established by this section continues in existence as a body corporate but is called the Western Australian Building Management Authority.

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- (1a) The change of name of the body corporate does not affect its legal identity.
- (2) The Building Management Authority —
- (a) consists of the Minister for Works referred to in section 5(3); and
 - (b) under its corporate name —
 - (i) has perpetual succession and a common seal;
 - (ii) may sue and be sued in any court; and
 - (iii) subject to this Part, is capable of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.
- (3) The common seal of the Building Management Authority shall —
- (a) be kept in such custody as the Building Management Authority directs; and
 - (b) not be used except as authorised by the Building Management Authority.
- (4) When a document purporting to bear the common seal of the Building Management Authority is produced before any court, judge or person acting judicially, that court, judge or person shall, unless the contrary is proved, presume that —
- (a) that document bears that common seal; and
 - (b) that common seal was duly affixed to that document.
- (5) The Building Management Authority is an agent of the Crown in right of the State and, except as provided in section 9C(7), enjoys the status, immunities and privileges of the Crown.

[Section 9B inserted by No. 123 of 1984 s. 4; amended by No. 59 of 1994 s. 6 and 9.]

9C. Functions and powers of Building Management Authority

- (1) The functions of the Building Management Authority are —
- (a) to acquire, hold, lease, take on lease, dispose of, exchange, provide, construct, alter, protect or manage authorised buildings, and to acquire, hold, take on lease or dispose of land for that purpose;
 - (b) to borrow moneys for the purpose of the acquisition, provision, construction, alteration, protection or management of authorised buildings and for the purpose of acquiring, holding or taking on lease land in connection with that acquisition, provision, construction, alteration, protection or management; and
 - (c) generally to develop land acquired, held or taken on lease by it for the purposes of this Part.

- (2) Subject to this Part, the Building Management Authority may, with the approval of the Treasurer, borrow moneys from any person in the performance of the functions of the Building Management Authority on such terms and conditions and in such manner as the Treasurer approves.

- (3) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee —
- (a) repayment of; and
 - (b) payment of interest on, and of brokerage, commission, fees and other expenses incurred in respect of,

moneys borrowed by the Building Management Authority under subsection (2), and any liability of the Crown arising out of any such guarantee is to be charged to moneys in the Consolidated Account, which to the necessary extent is hereby appropriated accordingly.

- (4) A guarantee given under subsection (3) shall be in such form and subject to such terms and conditions as the Treasurer determines and, without limiting the generality of the foregoing, shall be subject to a condition that the lender shall not, without

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the consent in writing of the Treasurer, assign or encumber the benefit of the guarantee.

- (5) The Building Management Authority may —
- (a) subdivide, and grant easements and other interests in or rights over; and
 - (b) provide, arrange for the provision of or cause to be provided energy resources, roads, sewerage, drainage or water or any other resource or service conducive to the development of,

land acquired, held or taken on lease by it in the performance of its functions.

- (6) The Building Management Authority has power to do all things necessary or convenient for or in connection with the performance of its functions.
- (7) Nothing in this Part is to be read as conferring on the Building Management Authority in the performance of its functions any immunity from the operation of any written law.

[Section 9C inserted by No. 123 of 1984 s. 4; amended by No. 6 of 1993 s. 11; No. 59 of 1994 s. 7 and 9; No. 49 of 1996 s. 64; No. 77 of 2006 s. 4.]

9D. Use of staff and facilities of departments, agencies and instrumentalities

The Building Management Authority may by arrangement made between it and the Minister concerned, and on such terms and conditions as may be mutually arranged by it with that Minister and, if appropriate, with the Minister for Public Sector Management², make use, either full-time or part-time, of —

- (a) the services of any person for the time being holding or acting in any office under Part 3 of the *Public Sector Management Act 1994* or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or

- (b) any facilities of a department or of a State agency or instrumentality.

[Section 9D inserted by No. 123 of 1984 s. 4; amended by No. 113 of 1987 s. 32; No. 32 of 1994 s. 19; No. 59 of 1994 s. 9.]

9E. Funds of Building Management Authority

- (1) From the commencement of the *Public Works Amendment Act 1994*¹, the Western Australian Building Authority Account previously established by this section continues in existence but is called the Western Australian Building Management Authority Account.
- (2) The funds available for the purpose of enabling the Building Management Authority to perform its functions under this Part consist of —
 - (a) moneys from time to time appropriated by Parliament;
 - (b) all moneys borrowed by the Building Management Authority under this Part;
 - (c) the proceeds of sales by the Building Management Authority of any of its assets;
 - (d) rents derived from authorised buildings of the Building Management Authority leased by it to other persons;
 - (e) interest earned on moneys temporarily invested under subsection (5); and
 - (f) any moneys, other than moneys referred to in paragraphs (a), (b), (c), (d) and (e), lawfully received by, made available to or payable to the Building Management Authority.
- (3) The funds referred to in subsection (2) shall be credited to the Account.
- (4) The Building Management Authority shall pay from the funds standing to the credit of the Account —
 - (a) interest on and repayments of moneys borrowed by the Building Management Authority under this Part, and

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- brokerage, commission, fees and other expenses incurred in connection with that borrowing;
- (b) to be credited to the Consolidated Account, an amount equal to the amount of any moneys charged to the Consolidated Account in meeting any liability of the Crown referred to in section 9C(3);
 - (c) the expense of acquiring, holding, taking on lease, providing, constructing, altering, protecting or managing authorised buildings and of acquiring, holding or taking on lease land or any interest therein for the purpose of that acquisition, provision, alteration, protection or management; and
 - (d) all expenditure, other than expenditure referred to in paragraphs (a), (b) and (c), lawfully incurred by the Building Management Authority in the performance of its functions under this Part.
- (5) The Building Management Authority may, with the approval of the Treasurer, temporarily invest any moneys standing to the credit of the Account which are not immediately required for the purposes of this Part in one or more of the ways in which moneys standing to the credit of the Public Bank Account may be invested under the *Financial Management Act 2006*.
- (6) Moneys standing to the credit of the Account shall be applied by the Building Management Authority only for the purposes of this Part.
- (7) The Treasurer shall in each financial year include in the Consolidated Account Estimates of Revenue and Expenditure in respect of the Building Management Authority a sum of money (whether nominal or otherwise) for the purposes of this Part.

[Section 9E inserted by No. 123 of 1984 s. 4; amended by No. 98 of 1985 s. 3; No. 6 of 1993 s. 11; No. 59 of 1994 s. 8 and 9; No. 49 of 1996 s. 64; No. 28 of 2006 s. 335; No. 77 of 2006 s. 4 and 17.]

9F. Delegation by Building Management Authority

- (1) The Building Management Authority may, either generally or as otherwise provided by the instrument of delegation, by writing signed by it delegate to any person for the time being holding or acting in an office referred to in section 9D(a) of whose services he makes use under section 9D all or any of the functions imposed on the Building Management Authority by this Part.
- (2) For the purposes of this Part, the performance of a function by a delegate under this section shall be deemed to be the performance of the function by the Building Management Authority.

[Section 9F inserted by No. 123 of 1984 s. 4; amended by No. 59 of 1994 s. 9.]

9G. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Building Management Authority and its operations.

[Section 9G inserted by No. 98 of 1985 s. 3; amended by No. 59 of 1994 s. 9; No. 77 of 2006 s. 17.]

[9H.] *Repealed by No. 98 of 1985 s. 3.]*

9I. Regulations

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

[Section 9I inserted by No. 123 of 1984 s. 4.]

[Part IB (s. 9J-9S) repealed by No. 31 of 1997 s. 42.]

Part II — Authorising public works

[Heading amended by No. 31 of 1997 s. 43.]

[Heading deleted by No. 74 of 2003 s. 98.]

10. Entry on land required for a public work

- (1) Division 4 of Part 9 of the *Land Administration Act 1997* (dealing with the entry on land required for a public work) applies as if a reference in that Division to “the Minister” were a reference to the Minister responsible for the administration of this Act.
- (2) Part 10 of the *Land Administration Act 1997* (dealing with compensation) applies in relation to an act done under subsection (1) as if it had been done under that Act.

[Section 10 inserted by No. 31 of 1997 s. 44.]

11. Governor may authorise works

The Governor, by Order in Council, may authorise the Minister to undertake, construct, or provide any public work except as to railways, in which case the authorisation may be given to the Public Transport Authority and is subject to section 96, and such authorisation shall be deemed an authority given by and under this Act.

[Section 11 amended by No. 31 of 2003 s. 161.]

[Heading deleted by No. 31 of 1997 s. 45(2).]

[12-24. Repealed by No. 31 of 1997 s. 45(1).]

[Heading deleted by No. 31 of 1997 s. 45(2).]

[25. Repealed by No. 31 of 1997 s. 45(1).]

[Heading deleted by No. 31 of 1997 s. 45(2).]

[26. Repealed by No. 31 of 1997 s. 45(1).]

[Heading deleted by No. 31 of 1997 s. 45(2).]

[27. Repealed by No. 31 of 1997 s. 45(1).]

[Heading deleted by No. 31 of 1997 s. 46(2).]

28. Power may be exercised after initiation of a public work

A power under this Act that may be exercised in relation to a public work, including a power to close a road or street, may be exercised at any time when it is found convenient or desirable to exercise it for the construction, or during the existence, of the public work concerned.

[Section 28 inserted by No. 31 of 1997 s. 46(1).]

[Heading deleted by No. 31 of 1997 s. 47(2).]

[29-33B. Repealed by No. 31 of 1997 s. 47(1).]

[Part IIA: s. 33G-33L repealed by No. 52 of 1995 s. 10; s. 33C- 33F repealed by No. 31 of 1997 s. 48.]

[Part III: s. 40 repealed by No. 19 of 1972 s. 7; s. 34-39, 41-81 repealed by No. 31 of 1997 s. 49.]

Part IV — Surveys

82. Powers of entry on lands etc. for survey purposes

- (1) For all the purposes of this Act the Minister, the Minister for the time being administering the *Land Administration Act 1997*, or any local authority, or any person authorised either specially or generally by any such person or authority —
 - (a) may enter or re-enter from time to time upon any land, with such assistants as he thinks fit, for the purpose of making any survey;
 - (b) may fix or set up therein trigonometrical stations, survey pegs, marks, or poles, and the same from time to time alter, remove, inspect, reinstate, and repair;
 - (c) may dig and bore into the land so as to ascertain the nature of the soil, and set out the lines of any works thereon;
 - (d) may do all things necessary for such survey in accordance with any regulations for the time being, or for any inspection, repair, or alteration thereof.
- (2) When practicable, 48 hours' notice shall be given to the owner or occupier of the land of the intention to enter thereon, and the authority under which the person entering claims to enter or has entered on such land shall, if required by such owner or occupier, be produced and shown.

[Section 82 amended by No. 27 of 1974 s. 21; No. 31 of 1997 s. 141.]

83. Penalty for destroying survey marks etc.

Every person who, without due authority, destroys, mutilates, defaces, takes away, or alters the position of any trigonometrical station, survey peg, mark, or pole fixed or set up by any surveyor, or other person under the authority of the last preceding section, shall be liable, on summary conviction, for the first offence to a penalty not exceeding \$40, and for any

subsequent offence to a penalty not exceeding \$200; and every person who wilfully obstructs any such surveyor or other person or his assistants in carrying on such survey shall, for every such offence, be liable to a penalty not exceeding \$100.

[Section 83 amended by No. 41 of 1966 s. 11.]

Part IVA — Investigations for water

[Heading inserted by No. 48 of 1953 s. 6.]

83A. Interpretation and power of entry

(1) In this Part —

“authorised person” means —

- (a) the Minister, a Minister for the time being administering any Act relating to water supply, and any local authority; and
- (b) a person authorised, whether generally or specially to carry out testing work, by one of those Ministers or a local authority;

“testing work” means work which in the opinion of an authorised person is necessary for general investigation for water supply purposes, and includes, without limiting the generality of the foregoing, the carrying out of tests, gaugings, borings, the construction of gauging weirs, the sinking of shafts, the digging of trenches and other incidental work and things used for or in connection with that work.

- (2) An authorised person may from time to time lawfully enter upon land with such assistants and things as he thinks fit for the purpose and carry out testing work and alter, remove, inspect, reinstate and repair testing work upon the land.
- (3) Where an authorised person intends to enter upon land he shall, if it is practicable, give to the owner or occupier of the land at least 48 hours' notice of his intention, and if required by the owner or occupier shall produce to him his authority to enter the land.

[Section 83A inserted by No. 48 of 1953 s. 6; amended by No. 27 of 1974 s. 22.]

83B. Offences

A person who wilfully and unlawfully —

- (a) interferes with, alters, takes, injures, or destroys, testing work or part of it commits an offence.

Penalty: \$40 for a first offence; and \$200 for a subsequent offence;

- (b) obstructs an authorised person or his assistants in doing anything which he is authorised under this Part to do commits an offence.

Penalty: \$100.

[Section 83B inserted by No. 48 of 1953 s. 6; amended by No. 41 of 1966 s. 12.]

83C. Compensation

- (1) An authorised person or his assistants shall do as little damage as is practicable in exercising the powers conferred by this Part.
- (2) Where within one year of the exercise of a power conferred by this Part, a person suffers damage of which the exercise of the power is the proximate cause, he is entitled to compensation for the damage from the Minister or the local authority by whom, or by whose direction, the power is exercised, if within 30 days of the occurrence or commencement of the damage or within 12 months where notice of intention to enter the land was not given to the owner or occupier as required by section 83A(3) he serves on the Minister or local authority a written claim for compensation for the damage.
- (3) Subject to subsection (2), a claim shall be made and compensation assessed in accordance with Part 10 of the *Land Administration Act 1997* as if a reference in that Part to the acquiring authority were a reference to the Minister or local authority.
- (4) The Minister or local authority shall offer to negotiate with the occupier of, or the proprietor of any interest in, the land affected

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by an act under this Act for the payment of compensation for any damage caused, or expected to be caused, by the act, and a person who enters into such an agreement shall not be entitled to claim compensation for that damage under subsection (2).

[Section 83C inserted by No. 48 of 1953 s. 6; amended by No. 31 of 1997 s. 50; No. 31 of 2003 s. 162.]

Part V — Roads, rivers, and bridges

84. Definition of “road” for purposes of Act

Throughout this Act, the word “**road**” means a public highway, whether carriage-way, bridle-path, or footpath, and unless repugnant to the context, includes all roads which have been or may hereafter be set apart, defined, proclaimed, or declared roads under any law or authority for the time being in force, and all bridges, culverts, drains, ferries, fords, gates, buildings, and other things thereto belonging, upon, and within the limits of the road, and includes arable soil of every road.

85. Roads vested in the Crown

The soil of all roads is hereby declared to be and is hereby vested in the Crown, including, in the case of Government roads, all materials and things of which such roads are composed, or which are capable of being used for the purpose thereof, and are placed or laid upon any such roads.

86. Construction and repair of roads and declaration of Government roads

- (1) The Minister may construct or repair any road within any part of the State, but such road shall not, by reason of such construction or repair, become a Government road if at the time of such construction or repair it is within the limits of a local government district.
- (2) The Governor may, by Order in Council duly gazetted, declare that any road or part thereof shall be, or cease to be, a Government road, and such road or part thereof shall become or, as the case may be, shall cease to be a Government road accordingly.
- (3) The Governor may in like manner declare that any Government road or any part thereof shall be under the control of any local government, and thereupon such road or part thereof shall cease to be a Government road.

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- (4) The powers hereby conferred may be exercised from time to time, and any Order in Council made hereunder may be revoked or altered, and any road declared to be a Government road may again be declared to be within the control of a local government, and any such road may again be declared to be a Government road, as often as occasion shall require.
- (5) For the purpose of making or repairing any Government or other road the Minister shall have all the powers and authorities which, by the *Roads Act 1902*³, are given to or conferred upon a road board, and shall also have power to close any road pending repairs or in the interests of public safety.

[Section 86 amended by No. 14 of 1996 s. 4.]

87. Government roads under exclusive care of Minister

- (1) Government roads shall be under the exclusive control and management of the Minister.
- (2) In respect of all Government roads, and of all bridges and other public works connected therewith, the Minister may make all such local laws as any local government may for the time being have power to make in connection with any road within its district, and may impose a penalty not exceeding \$40 for the neglect or breach of any such local law.

[Section 87 amended by No. 41 of 1966 s. 13; No. 14 of 1996 s. 4.]

88. Local laws

In respect to local laws made under the last preceding section the following provisions shall apply:

- (a) A copy of the *Government Gazette* containing any such local law shall be evidence in all courts of the same having been duly made under the authority of this Act.
- (b) A copy of all local laws having special reference to bridges and jetties shall be conspicuously displayed and maintained, in a clearly legible condition, at each and

every bridge and jetty to which such local laws have reference.

- (c) Printed copies of all local laws having reference to the traffic on roads generally or on any one road in particular shall be on sale to every person applying for the same, at a price of not more than 10 cents.

[Section 88 amended by No. 41 of 1966 s. 14; No. 57 of 1997 s. 78(1) and (2).]

[89. Repealed by No. 7 of 1991 s. 5.]

90. Breach of local law

Nothing in this Act, nor in any local law made thereunder, shall relieve any person from any penalty, punishment, or action to which he would otherwise be liable in respect of anything done by him in breach of any such local law; and the Minister may sue any person for any damage done to any road or bridge or other works in contravention of any local law made under this Act, in addition to recovering the amount of the penalty for the breach of the local law.

[Section 90 amended by No. 57 of 1997 s. 78(2).]

91. Governor may vest control of any bridge etc. in local authority

- (1) For the purpose of this section, the words “**bridge**”, “**ferry**”, and “**ford**”, respectively, include such approaches to a bridge, ferry, or ford, and such protection works in connection therewith as may by any notice under this section be defined to be part of the bridge, ferry, or ford.
- (2) The Governor may, by notice in the *Government Gazette*, and in some newspaper circulating in the district, direct that any bridge already constructed or which may hereafter be constructed, and any ferry or ford already established or which may hereafter be established, over or across any river or arm of the sea respectively shall, from and after a date to be fixed in such

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notice, be under the exclusive care, control, and management of the Minister, or of such local authority as shall be mentioned in that behalf in such notice; and

- (3) May by any subsequent notice publicly notified in the same way from time to time vary or alter such care, control, and management; and
- (4) May by such notice as aforesaid fix and determine whether all or any, and if so, what part of the cost, whether incurred or to be incurred, of maintaining, repairing, improving, or reconstructing any such bridge, or of managing or maintaining any such ferry or ford, and the machinery and appliances used therewith, is to be provided and paid by any local authority or local authorities (if more than one), and if so, by what local authority or authorities (if more than one); and
- (5) May by any such notice as aforesaid direct how, when, and to whom any such payment is to be made; and every payment so directed to be made shall be made as directed by such notice, and unless so made may be deducted from any subsidies or moneys at any time payable by the Crown to such local authority, and may also be recovered in any court of competent jurisdiction at the suit of the Minister or local authority, as the case may be, as a debt due to the Crown or to the local authority to which such payment ought to be made.
- (6) In fixing and apportioning the cost of maintaining, repairing, improving, or constructing any such bridge, or of managing or maintaining any such ferry or ford, and the machinery and appliances used therewith, the Governor shall take into account the net revenue (if any) derived from or incident to the use of such bridge, ferry, or ford by the Minister or by the local authority, as the case may be, having the care, control, management, or maintenance thereof.
- (7) If any local authority or authorities shall refuse or neglect to maintain, work, improve, or repair any bridge, ferry, or ford (including the working of swing or lifting-spans in bridges

where such have been provided) under its or their care, control, and management, or to reconstruct any such bridge, ferry, or ford when requisite, the Minister may undertake such maintenance, repairs, improvement, or reconstruction in the place of the local authority or local authorities so refusing or neglecting as aforesaid, and may provide for the care, working, and management of such bridge, ford, or ferry, and may recover all costs, charges, and expenses attending or incidental to his so doing from such local authority or local authorities as a debt due to the Crown, in any court of competent jurisdiction.

- (8) In the exercise of the authority conferred upon him by this section, the Minister and any and every person authorised by him shall have all the powers and authorities which under any law are or may be vested in or could be exercised by the local authority or authorities in the place of which the Minister shall be acting.
- (9) Any proclamation, instrument, or notice heretofore issued, made, or published, vesting the control of any bridge, ferry, or ford, may be revoked, altered, or varied by the Governor from time to time as he may deem expedient, subject to the provisions of this Act.

[Section 91 amended by No. 31 of 1997 s. 51.]

92. Stopping or diverting of road

No road shall be stopped or diverted by the Minister unless and until a way to the lands in the vicinity is left or provided, unless the owners of such lands give consent in writing to such stoppage or diversion.

Rivers

93. Improvement of rivers and other watercourses

The Minister and also the local authority may deepen, widen, straighten, and otherwise improve, any river, and may, without limiting the generality of the foregoing power remove from any

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river, stream, or watercourse, or from the bed thereof, any earth or stone, and all weeds, refuse, and other growth, and all driftwood, logs, trees, branches, and other timber which may be lodged in the bed or against the banks thereof and be calculated to impede the free flow of water therein in its natural or deepened, widened, straightened, or otherwise improved, channel, and may dispose of the same respectively towards recouping the cost of such removal: And for the purpose aforesaid the Minister and every such local authority shall, by its servants, have the free right of ingress or egress, and regress on any land on the banks of any such river, stream, or watercourse.

[Section 93 amended by No. 48 of 1953 s. 7.]

94. Construction, repair and maintenance of bridges and culverts

The Minister may erect any bridge or culvert upon and across the bed of any river or stream, and may repair and maintain such bridge or culvert, whether erected before or after the passing of this Act.

[Section 94 amended by No. 8 of 1906 s. 5.]

[Part VA (s. 94A-94I) repealed by No. 89 of 1994 s. 109.]

Part VI — Railways

95. Definition of “railway”

The word “**railway**” includes the land upon which any railway is made or authorised to be made, and all buildings and erections of every kind thereon, and all land taken, purchased, or acquired for railway purposes; and, except where inconsistent with the context, such word, when used in this Act, also includes all works, wharves, and jetties the property of the Crown, whether of a permanent or a temporary nature, used for the purposes of or in connection with such railway, and all materials and things of which such railway, buildings, erections, works, wharves, or jetties is or are composed, or which are being used for the purposes thereof, and are erected, placed, or laid upon any such land.

Construction

96. Railways to be made only under special Act

- (1) Every railway shall be made only under the authority of a special Act which shall state as nearly as may be the line of the railway and the 2 termini thereof; but it shall be lawful to deviate from such line at a distance of 1.6 kilometres on either side thereof, or such other distance as may be provided in any special Act.
- (2) Before the second reading of the special Act in the Legislative Council and Legislative Assembly respectively, the Minister shall cause a map, to be referred to in the special Act, showing the course to be taken by, and the middle line of, the railway, to be laid upon the table of the House.
- (3) On the passing of the Act, the map, signed for the purpose of identification by the Clerk of the Parliaments, shall be deposited by him in the Central Office of the Supreme Court, and shall be open to public inspection at any reasonable hour free of charge,

and shall be admitted in all courts for all purposes as evidence of the line authorised by the special Act.

[Section 96 amended by No. 94 of 1972 s. 4 (as amended by No. 19 of 1973 s. 3); No. 67 of 1979 s. 38.]

[97, 98. Repealed by No. 31 of 1997 s. 52.]

99. Powers to make railways, railway stations etc.

- (1) The Public Transport Authority may do the following things in respect of any railway authorised by a special Act:
 - (a) Enter upon and make the railway upon, over, or under any land necessary for the construction thereof, lying along the middle line defined in the map referred to in the Act, or within the authorised limits of deviation, and for this purpose may construct works of every kind and of every material necessary to the making thereof; and locomotive engines, machines, carriages, trucks, wagons, and vehicles of all kinds may be used upon and run over any land entered upon or taken or acquired for a railway lying within the limits aforesaid; and any kind of fuel may be used for any such locomotive engine or machine:
 - (b) Make any part of such line of railway on and along any part of any road or street:
 - (c) Make the railway upon, across, over, or under any road, street, railway, tramway, or public reserve along such line, and may alter the level of any road, street, railway, tramway, or public reserve for such purpose:
 - (d) Make the railway across any arm of the sea, river, stream, or navigable water:
 - (e) Alter the course or the level of any river not navigable, or of any stream, water-course, ditch, or drain:
 - (f) Make drains or conduits on or under any land adjacent to and for the purpose of carrying water from or to the

railway; and may at all times maintain the same in good repair:

- (g) Remove or alter any drain or sewer, or any pipe or other material for the supply of water or of gas belonging to any company or person within or beyond the limits of the railway:
 - (h) Make or construct all such buildings, stations, engines, machinery, piers, wharves, roads, approaches, water supply works, gas works, electric works, telegraph, telephone, and other works in connection with the railway, as may be thought necessary:
 - (i) Do all acts necessary for making, equipping, maintaining, altering, repairing, and using the railway.
- (2) The powers by this section conferred upon the Public Transport Authority may be exercised at any time, whether before, during, or after the construction of the railway, and shall extend to additional lands beyond those on which it has previously entered.
- (3) The provisions of this section shall, subject to the provisions of Part 10 of the *Land Administration Act 1997*, be deemed to have applied and shall apply to all railways constructed under any Act heretofore in force relating to the construction of public works, or in course of construction, or hereafter to be constructed.

[Section 99 amended by No. 31 of 1997 s. 53; No. 31 of 2003 s. 166(1) and (2).]

100. Rights of way and traffic where railway made along or across road

- (1) Where any part of a road or street, except where it crosses a railway on a level, is used or occupied for a railway under the powers conferred by the last preceding section, such part of the road or street shall thereafter cease to be a highway.

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- (2) Where a road, street, or thoroughfare crosses a railway on a level, the public right of way at such crossing shall cease whenever any engine or carriage on the railway is approaching and within a distance of 400 metres from such crossing; and shall at all other times extend only to the right of crossing the line of railway with all convenient speed, but not stopping or continuing thereon.
- (3) Whenever a railway is constructed upon or across a road, or street, upon the same level, the Public Transport Authority may carry on and conduct the working and management of such railway in every respect upon or across such road or street: the Public Transport Authority may also, if it so desires, erect and maintain gates across such road or street on each side of the railway, and may keep such gates closed across such road or street on both sides of the railway, except when passengers on foot or with horses, cattle, and carriages passing along the same shall have the right, under subsection (2), to cross the railway, and may safely do so.

[Section 100 amended by No. 94 of 1972 s. 4 (as amended by No. 19 of 1973 s. 3); No. 31 of 2003 s. 166(1) and (3).]

101. Compensation where road interfered with or wholly closed

- (1) No compensation shall be payable in respect of the use or occupation of any part of any road or street for any railway, under the powers conferred by the 2 last preceding sections, or for or in respect of any inconvenience or damage to any lands fronting or adjoining any such road or street arising out of the exercise of the said powers or the construction of the railway upon such part of such road or street.
- (2)(a) No compensation shall be payable in respect of any road or street being wholly closed under the powers conferred by this Act, or in respect of the use or occupation thereof for any railway, or for or in respect of any such inconvenience or damage as mentioned in the last subsection, if reasonable and sufficient access to the nearest road or street crossing over such

railway be afforded by some other road or street, whether such last-mentioned road or street has been provided or constructed by the Public Transport Authority or not.

- (b) If any question arises as to whether such other reasonable and sufficient access as aforesaid is afforded, the same shall be determined in such manner as shall be agreed upon between the local authority having the control of roads or streets in the district and the Public Transport Authority; or if they disagree, as shall be determined upon by some independent person appointed by the Governor; and every such determination shall be conclusive as to the rights or claims of all persons affected.

[Section 101 amended by No. 31 of 2003 s. 166(1).]

102. Government to make crossings to give access to land

Where the making of a railway line has cut off all access by road to land other than Crown land, the Public Transport Authority shall make such crossing or crossings as may be necessary to give access to such land.

[Section 102 amended by No. 31 of 2003 s. 166(1).]

103. Maintenance of public roads at railway crossings and near railway stations

- (1) Where a road or a street crosses a railway on the level, the Public Transport Authority shall, until the railway is opened for traffic, maintain the road and crossing on the railway, and for a distance on each side of 10 metres outside the railway so crossed; but the local authority having charge of the roads or streets in the district shall maintain and metal the same when the railway is open for traffic.
- (2) Where a road or street crosses over or passes under any railway by means of a bridge or subway, such bridge or subway shall, until the railway is opened for traffic, be maintained by the Public Transport Authority; but when the railway is open for traffic, shall be maintained by the local authority having charge

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of the roads or streets in the district, but in case of decay from any cause other than the default of the local authority, the same shall be repaired, or reinstated by the Public Transport Authority.

- (3) Where a road or street is constructed by the Public Transport Authority to lead to a railway station, or otherwise for railway purposes, such road or street shall be, until the railway is opened for traffic, maintained by the Public Transport Authority, except so far as and until the management thereof is handed over to a local authority or it is closed as herein provided.

[Section 103 amended by No. 94 of 1972 s. 4 (as amended by No. 19 of 1973 s. 3); No. 31 of 2003 s. 166(1).]

104. Alterations in roads, drains, pipes etc. to be made without detriment to the public or to owners

Where it is found necessary for the construction of a railway to alter any public work, or any road, street, tramway, watercourse, sewer, drain, water-pipe or gas-pipe for the supply of water or gas belonging to a private person or company, such alterations shall be made at the request and cost of the Public Transport Authority and in such manner as to interfere as little as possible with the work so altered.

[Section 104 amended by No. 31 of 2003 s. 166(1).]

[105. Repealed by No. 31 of 1997 s. 54.]

106. Conversion of railway bridge to combined road and railway bridge

- (1) The Public Transport Authority may convert any railway bridge into a combined road and railway bridge. Any local authority is hereby authorised to pay the cost of such conversion, and also to pay annually to the Public Transport Authority such further amount as may be necessary to maintain the roadway of the said bridge, and any approaches, gates, or other works or structures

in connection therewith, and also to pay the wages of one or more caretakers to the said bridge.

- (2) All moneys hereby authorised to be paid by a local authority shall be paid out of the fund under its control, and charged accordingly.

[Section 106 amended by No. 31 of 2003 s. 166(1).]

107. Right-of-way and closure of combined road and railway bridges

Where a bridge is used for railway and ordinary traffic jointly, the public right-of-way on such bridge shall extend only so far as shall be defined in any by-law or local law made under any Act relating to the management of railways open for traffic. The Public Transport Authority may at any time close such bridge to public traffic during repairs or whilst the bridge is in its opinion dangerous.

[Section 107 amended by No. 57 of 1997 s. 78(3); No. 31 of 2003 s. 166(1) and (4).]

108. Tree dangerous to railway to be removed

If the Public Transport Authority is of the opinion that any tree on private land adjacent to a railway is likely, by falling or otherwise, to obstruct the traffic or endanger the travellers thereon, it may cause the tree to be removed.

[Section 108 amended by No. 31 of 2003 s. 166(1) and (5).]

109. Penalties for trespassing on railway in course of construction

- (1) Any person trespassing upon any railway in the course of construction, or upon any land occupied or temporarily occupied for the purpose of such construction under the powers hereby given, shall be liable to a penalty not exceeding \$4.

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- (2) Any person riding or driving any animal or vehicle upon such railway or land without lawful authority shall be liable to a penalty not exceeding \$10.
- (3) Any such person refusing to leave such railway or land, or to remove such animal or vehicle therefrom, when warned so to do by the overseer, contractor, or any other person in charge of or employed upon such railway, may be seized and detained by such overseer or other person who shall as soon as practicable take him to a police officer or arrange for a police officer to attend.

[Section 109 amended by No. 41 of 1966 s. 16; No. 59 of 2006 s. 73.]

110. Crown may elect to erect and maintain fences along boundaries of railways

The Governor may, by notice published in the *Government Gazette*, declare that any fences constructed or intended to be constructed by or on behalf of the Crown for separating land taken for the use of any railway in such notice mentioned from the adjoining lands not taken, shall, to such extent as is mentioned in such notice be thereafter maintained, or erected and maintained as the case may require, at the cost of the Crown during such time as the railway may continue to be used by or on behalf of the Government of the State; and such fences shall thereafter be maintained, or erected and maintained as the case may require, by the Public Transport Authority accordingly.

[Section 110 amended by No. 31 of 2003 s. 166(1).]

111. Impounding animals trespassing on railway in course of construction

Any person employed on or about any railway in the course of construction may impound animals trespassing upon such railway; and any act or matter required under the *Cattle Trespass, Fencing, and Impounding Act 1882*⁴, and any Acts amending or extending the same, to be done by the owner or

occupier of land, may be done in respect of a railway by any person authorised generally or specially for that purpose by or on behalf of the Public Transport Authority.

[Section 111 amended by No. 31 of 2003 s. 166(1).]

Part VIA — Miscellaneous

[Heading inserted by No. 36 of 2007 s. 100.]

112. Waste management operations at Mt Walton

(1) In this section —

“**waste**” has the meaning given by the Waste Avoidance and Resource Recovery Act 2007;

“**waste management operation**” means an operation for the collection, transport, receipt, storage, treatment or disposal of waste, or for 2 or more of those activities.

(2) Subject to the *Waste Avoidance and Resource Recovery Act 2007*, the *Environmental Protection Act 1986* and any other written law relating to the treatment and disposal of waste, the Minister may, but is not obliged to —

(a) carry on waste management operations at or in relation to the intractable waste disposal facility operated at Mt Walton East, Shire of Coolgardie; and

(b) do all things necessary or convenient to be done for or in connection with the performance of functions under paragraph (a).

(3) Without limiting subsection (2), the Minister may, for the purpose of performing any function under this section —

(a) enter into any contract or arrangement, including a contract or arrangement with any person for —

(i) the performance of the function by that person on behalf of the Minister; or

(ii) the supply of equipment or services;

and

(b) charge for the use of services or facilities.

[Section 112 inserted by No. 36 of 2007 s. 100.]

113. Delegation of powers and duties under section 112

- (1) In this section —
“**public authority**” means —
- (a) a Minister of the State;
 - (b) an agency, authority or instrumentality of the State;
or
 - (c) a local government; or
 - (d) a body, whether corporate or unincorporate, that is established or continued for a public purpose under a written law.
- (2) Without limiting sections 5A and 5B, the Minister may delegate any power or duty of the Minister under section 112 to —
- (a) a public authority or an officer or employee of a public authority; or
 - (b) any other person.
- (3) Notice of the delegation is to be published in the *Gazette*.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

[Section 113 inserted by No. 36 of 2007 s. 100.]

Part VII — General provisions

[112, 112A, 113. Repealed by No. 31 of 1997 s. 55.]

113A. Property in things placed on the land

Where in exercise of a power conferred by this Act the Minister or the Public Transport Authority (the “**relevant person**”) causes anything to be placed in, on, over, or under, land, it is deemed to be the property of the relevant person unless the relevant person certifies otherwise.

[Section 113A inserted by No. 19 of 1972 s. 13; amended by No. 31 of 2003 s. 163.]

114. Buildings exempted from local building regulations

No building or other erection built or erected upon a railway or upon any land taken as or in connection with a Government work shall be subject to any Act, or any by-laws, local laws or regulations made under the same, except such as relate to public health, by which any local authority is empowered to regulate the erection, construction, or use of any buildings or erection within the boundaries of such local authority.

[Section 114 amended by No. 14 of 1996 s. 4.]

115. Governor may execute instruments

The Governor may execute any deed or instrument for the purpose of granting and confirming any land, easement, right, privilege, concession, payment, or satisfaction which may have been or may hereafter be agreed to be granted or awarded under this or any other Act empowering such grant or award.

[116. Repealed by No. 31 of 2003 s. 164.]

[117. Repealed by No. 14 of 1996 s. 4.]

118. Moneys due by local authority may be deducted from moneys payable to it by Government

In all cases where, under this Act or any Act hereby repealed, any money is authorised to be recovered from any local authority as a debt due to the Crown, the Treasurer may deduct the same or any portion thereof from any subsidies or other moneys (if any) that may be payable by or on behalf of the Crown, from time to time, to such local authority under any law for the time being in force, but without prejudice to the right of the Minister to recover the unsatisfied balance (if any) of such debt from such local authority as a debt due to the Crown in any court of competent jurisdiction.

[119. Repealed by No. 31 of 1997 s. 57.]

120. Penalty for obstructing workmen or destroying survey marks, fences etc.

Every person who wilfully and unlawfully obstructs or interferes with any engineer, architect, surveyor, overseer, workman, or other person in the performance of any duty or in doing any work which he has lawful authority to do under the provisions of this Act, or obstructs, injures, interferes with, alters, or removes anything, constructed, provided, or done, under those provisions or cuts down, breaks, removes, or destroys any fence in or upon any land taken under the provisions of this Act shall be liable to a penalty not exceeding \$100 for every such offence and the cost of repairing or reinstating it, or clearing it of obstruction is recoverable by the Minister, or as to railways by the Public Transport Authority, from the person in a court of competent jurisdiction.

[Section 120 amended by No. 48 of 1953 s. 9; No. 41 of 1966 s. 17; No. 31 of 2003 s. 165.]

[121. Repealed by No. 59 of 2004 s. 141.]

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122. Works authorised or anything commenced under repealed enactments

- (1) Any public work authorised by any Act now in force, or by any Act repealed by this or by any former Act, may be continued, executed, carried out, enforced, and completed under the provisions of this Act:
- (2) Provided that, where in the opinion of the Governor the provisions of this Act are not applicable to such work, land, or thing, then, for the purpose of carrying out and completing such public work, land, or thing, the said repealed provisions shall be deemed to be in full force and operation.

[Section 122 amended by No. 31 of 1997 s. 58.]

123. Public works under previous Acts to be deemed constructed under this Act

- (1) Subject to the provisions of the last preceding section, all railways and public works of every kind constructed, and all things done under any Act now in force, or under any Act repealed by this or any former Act, shall be deemed to have been constructed or done under this Act.
- (2) And all proclamations, Orders in Council, notices, by-laws, regulations and appointments issued, published, or made under any Act hereby repealed and subsisting at the commencement of this Act shall be deemed respectively to have been issued, published, or made under this Act, and shall have effect accordingly.

[Section 123 amended by No. 31 of 1997 s. 59.]

[124. Repealed by No. 73 of 1995 s. 188.]

[125-126. Repealed by No. 25 of 1985 s. 368.]

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

[Second Schedule repealed by No. 98 of 1985 s. 3.]

[Third to Ninth Schedules repealed by No. 31 of 1997 s. 60.]

Notes

¹ This is a compilation of the *Public Works Act 1902* and includes the amendments made by the other written laws referred to in the following table^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Public Works Act 1902</i> ⁵	1902 (2 Edw. VII No. 47)	20 Dec 1902	20 Dec 1902
<i>Public Works Amendment Act 1906</i>	8 of 1906 (6 Edw. VII No. 8)	18 Sep 1906	18 Sep 1906
<i>Public Works Act Amendment Act 1926</i>	60 of 1926 (17 Geo. V No. 60)	24 Dec 1926	24 Dec 1926
Reprint of the <i>Public Works Act 1902</i> in Appendix to Session Volume 1927 (includes all amendments listed above)			
<i>Public Works Act Amendment Act 1933</i>	35 of 1933 (24 Geo. V No. 35)	4 Jan 1934	12 Feb 1934 (see s. 2(1) and <i>Gazette</i> 9 Feb 1934 p. 143)
<i>Public Works Act Amendment Act 1945</i>	41 of 1945 (9 and 10 Geo. VI No. 41)	30 Jan 1946	30 Jan 1946
<i>Public Works Act Amendment Act 1950</i>	23 of 1950 (14 Geo. VI No. 23)	5 Dec 1950	5 Dec 1950
<i>Public Works Act Amendment Act 1953</i>	48 of 1953 (2 Eliz. II No. 48)	29 Dec 1953	29 Dec 1953
<i>Public Works Act Amendment Act 1954</i>	3 of 1954 (3 Eliz. II No. 3)	25 Aug 1954	29 Dec 1953 (see s. 1(1))
<i>Public Works Act Amendment Act 1955</i>	59 of 1955 (4 Eliz. II No. 59)	13 Dec 1955	13 Dec 1955
<i>Public Works Act Amendment Act 1956</i>	55 of 1956 (5 Eliz. II No. 55)	27 Dec 1956	27 Dec 1956

Short title	Number and year	Assent	Commencement
Reprint of the <i>Public Works Act 1902</i> approved 27 Aug 1959 in Vol. 14 of Reprinted Acts (includes all amendments listed above)			
<i>Public Works Act Amendment Act 1961</i>	46 of 1961 (10 Eliz. II No. 46)	23 Nov 1961	23 Nov 1961
<i>Public Works Act Amendment Act 1965</i>	59 of 1965	19 Nov 1965	19 Nov 1965
<i>Public Works Act Amendment Act 1966</i>	41 of 1966	4 Nov 1966	4 Nov 1966
<i>Public Works Act Amendment Act 1967</i>	53 of 1967	5 Dec 1967	5 Dec 1967
<i>Public Works Act Amendment Act 1972</i>	19 of 1972	26 May 1972	26 May 1972
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 19 and 83 of 1973, 42 of 1975)	4 Dec 1972	Relevant amendments (see Second Sch. ⁶) took effect on 1 May 1974 (see s. 4(2) and <i>Gazette</i> 26 Apr 1974 p. 1393)
Reprint of the <i>Public Works Act 1902</i> approved 22 Dec 1972 (includes all amendments listed above except those in the <i>Metric Conversion Act 1972</i>)			
<i>Ministers of the Crown (Statutory Designations) and Acts Amendment Act 1974 Pt. VI</i>	27 of 1974	29 Oct 1974	1 Dec 1974 (see s. 2 and <i>Gazette</i> 6 Dec 1974 p. 5204)
Reprint of the <i>Public Works Act 1902</i> approved 13 Jun 1978 (includes all amendments listed above)			
<i>Acts Amendment (Master, Supreme Court) Act 1979 Pt. VI</i>	67 of 1979	21 Nov 1979	11 Feb 1980 (see s. 2 and <i>Gazette</i> 8 Feb 1980 p. 383)
<i>Acts Amendment (Conservation and Land Management) Act 1984 s. 27</i>	112 of 1984	19 Dec 1984	22 Mar 1985 (see s. 2 and <i>Gazette</i> 15 Mar 1985 p. 931)
<i>Public Works Amendment Act 1984</i>	123 of 1984	27 Dec 1984	27 Dec 1984 (see s. 2)

Public Works Act 1902

Short title	Number and year	Assent	Commencement
<i>Acts Amendment and Repeal (Water Authorities) Act 1985</i> Pt. XIII	25 of 1985	6 May 1985	1 Jul 1985 (see s. 2 and <i>Gazette</i> 7 Jun 1985 p. 1931)
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Public Service) Act 1987</i> s. 32	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Acts Amendment (Land Administration) Act 1987</i> Pt. VIII ⁷	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and <i>Gazette</i> 16 Sep 1988 p. 3637)
<i>Public Works Amendment Act 1991</i>	7 of 1991	13 Jun 1991	11 Jul 1991 (see s. 2)
Reprint of the Public Works Act 1902 as at 22 Jun 1992 (includes all amendments listed above) (correction in <i>Gazette</i> 13 Apr 1995 p. 1325)			
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11 and 12	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Land (Titles and Traditional Usage) Act 1993</i> s. 45	21 of 1993	2 Dec 1993	2 Dec 1993 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Public Works Amendment Act 1994</i> ⁸	59 of 1994	7 Nov 1994	5 Dec 1994
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Energy Corporations (Transitional and Consequential Provisions) Act 1994</i> s. 109	89 of 1994	15 Dec 1994	1 Jan 1995 (see s. 2(2) and <i>Gazette</i> 23 Dec 1994 p. 7069)
<i>Hospitals Amendment Act 1994</i> s. 18	103 of 1994	11 Jan 1995	3 Feb 1995 (see s. 2 and <i>Gazette</i> 3 Feb 1995 p. 333)
<i>Acts Amendment and Repeal (Native Title) Act 1995</i> Pt. 2	52 of 1995	24 Nov 1995	9 Dec 1995 (see s. 2 and <i>Gazette</i> 8 Dec 1995 p. 5935)

Short title	Number and year	Assent	Commencement
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Licensed Surveyors Amendment Act 1996</i> s. 28	79 of 1996	14 Nov 1996	5 Apr 1997 (see s. 2 and <i>Gazette</i> 4 Apr 1997 p. 1750)
<i>Transfer of Land Amendment Act 1996</i> s. 153(1)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
Reprint of the <i>Land Acquisition and Public Works Act 1902</i> as at 3 Jun 1997 (includes all amendments listed above)			
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 35 and s. 141	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Dampier to Bunbury Pipeline Act 1997</i> Sch. 4 Div. 5	53 of 1997 (as amended by this Act Sch. 4 Div. 1)	12 Dec 1997	12 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 78	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Reprint of the <i>Public Works Act 1902</i> as at 27 Aug 1999 (includes all amendments listed above)			
<i>Gas Corporation (Business Disposal) Act 1999</i> s. 107	58 of 1999	24 Dec 1999	16 Dec 2000 (see s. 2(5) and <i>Gazette</i> 15 Dec 2000 p. 7201)
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 14(13) and 35 ⁹	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)

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Short title	Number and year	Assent	Commencement
Reprint of the <i>Public Works Act 1902</i> as at 1 Jun 2001 (includes amendments listed above)			
<i>Public Transport Authority Act 2003</i> s. 160-166	31 of 2003	26 May 2003	1 Jul 2003 (see s. 2(1) and <i>Gazette</i> 27 Jun 2003 p. 2384)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 98	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Electricity Corporations Act 2005</i> s. 139	18 of 2005	13 Oct 2005	1 Apr 2006 (see s. 2(2) and <i>Gazette</i> 31 Mar 2006 p. 1153)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 10 Div. 5	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
Reprint 9: The <i>Public Works Act 1902</i> as at 6 Oct 2006 (includes amendments listed above)			
<i>Criminal Investigation (Consequential Provisions) Act 2006</i> s. 73	59 of 2006	16 Nov 2006	1 Jul 2007 (see s. 2 and <i>Gazette</i> 22 Jun 2007 p. 2838)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Waste Avoidance and Resource Recovery Act 2007</i> s. 100	36 of 2007	21 Dec 2007	9 Jan 2008 (see s. 2 and <i>Gazette</i> 8 Jan 2008 p. 33)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
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Short title	Number and year	Assent	Commencement
<i>Water Resources Legislation Amendment Act 2007</i> s. 198 ¹⁰	38 of 2007	21 Dec 2007	To be proclaimed (see s. 2(2))

² Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Commissioner is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management. This reference was changed under the *Reprints Act 1984* s. 7(5)(a).

³ Repealed by the *Roads Act 1911* which was repealed by the *Road Districts Act 1919* which was repealed by the *Local Government Act 1960* which is now cited as the *Local Government (Miscellaneous Provisions) Act 1960*. The main Act now dealing with local governments is the *Local Government Act 1995*.

⁴ Repealed by the *Dividing Fences Act 1961* s. 2(1).

⁵ Short title subsequently amended twice (see note under s. 1). Now again known as the *Public Works Act 1902*.

⁶ The Second Schedule was inserted by the *Metric Conversion Amendment Act 1973*.

⁷ The *Acts Amendment (Land Administration) Act 1987* s. 39 reads as follows:

“

39. Validation

(1) The purported exercise or performance on behalf of the Minister for Works by —

- (a) any Minister of the Crown other than the Minister for Works or by a State agency or instrumentality or other public authority; or
- (b) any person employed by the Government or by a State agency or instrumentality or other public authority,

with the consent of the Minister for Works during the period beginning on 1 January 1970 and ending immediately before the commencement of this Part of any power conferred or duty imposed on the Minister for Works by the principal Act is hereby validated and declared to have been lawfully done by that Minister of the Crown or the State agency or instrumentality or other public authority or person employed by the Government or by the State agency or instrumentality or other public authority, as the case requires.

- (2) In this section —
“**the Minister for Works**” has the meaning given by the principal Act.

”

⁸ The *Public Works Amendment Act 1994* s. 10 and 11 read as follows:

“

10. Transitional

- (1) A reference in a document executed before the commencement of this Act to the Western Australian Building Authority is to be construed, unless the context otherwise requires, as if that reference had been amended to be a reference to the Western Australian Building Management Authority.
- (2) A reference in a document executed before the commencement of this Act to the Western Australian Building Authority Account is to be construed, unless the context otherwise requires, as if that reference had been amended to be a reference to the Western Australian Building Management Authority Account.

11. Validation

- (1) The purported exercise or performance on behalf of the Minister for Works by —
- (a) the Minister of the Crown to whom the administration of the *Marine and Harbours Act 1981* is or was committed by the Governor; or
 - (b) the chief executive officer of the Department principally assisting that Minister of the Crown in the administration of the *Marine and Harbours Act 1981* or any other officer of that Department,
- with the consent of the Minister for Works during the period beginning on 1 July 1985 and ending immediately before the commencement of this Act of any power conferred or duty imposed on the Minister for Works by the principal Act is hereby validated and declared to have been lawfully done by that Minister of the Crown or that officer of that Department, as the case requires.
- (2) In this section —
“**the Minister for Works**” has the meaning given by the principal Act.

9 The *Statutes (Repeals and Minor Amendments) Act 2000* s. 35(2) and (3) read as follows:

“

- (2) The purported exercise or performance by a Minister of the Crown other than the responsible Minister of any power conferred or duty imposed on the responsible Minister and purportedly delegated to the Minister of the Crown under section 5A(f) of the Act, as in force during the period beginning on 7 December 1993 and ending immediately before the commencement of this section, is validated and declared to have been lawfully exercised or performed by that Minister of the Crown.
- (3) In subsection (2) —
“**responsible Minister**” means the Minister to whom the administration of the Act was committed by the Governor at the time of a purported delegation referred to in subsection (2).

”.

10 On the date as at which this compilation was prepared, the *Water Resources Legislation Amendment Act 2007* s. 198 had not come into operation. It reads as follows:

“

198. Public Works Act 1902 amended

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

”.

”.

