

WESTERN AUSTRALIA

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# **WATER LEGISLATION AMENDMENT ACT 1997**

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**No. 32 of 1997**

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**AN ACT to amend the —**

- ***Country Areas Water Supply Act 1947;***
- ***Metropolitan Water Supply, Sewerage, and Drainage Act 1909;***
- ***Rights in Water and Irrigation Act 1914;***
- ***Water Agencies (Powers) Act 1984; and***
- ***Water Services Coordination Act 1995.***

[Assented to 3 October 1997.]

The Parliament of Western Australia enacts as follows:

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Water Legislation Amendment Act 1997*.

**Commencement**

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

**PART 2 — COUNTRY AREAS WATER SUPPLY ACT 1947**

**Principal Act**

3. In this Part the *Country Areas Water Supply Act 1947\** is referred to as the principal Act.

[\* Reprinted as at 27 May 1996.  
For subsequent amendments see Acts Nos. 14 and 81  
of 1996.]

**Section 45 amended**

4. Section 45 of the principal Act is amended —

(a) in subsection (1) —

(i) by deleting “is supplied with water by the Corporation and who”; and

(ii) in paragraph (d) by deleting “belonging to the Corporation”;

(b) by deleting the penalty provision at the foot of subsection (1) and substituting the following —

“

Penalty: For an individual — \$10 000.

For a body corporate — \$20 000.

”;

**s. 4**

- (c) by repealing subsections (2) and (3) and substituting the following subsections —

“

(2) If a person is convicted of an offence against this section or section 46, the court sentencing the person for the offence may make an order requiring the person to pay to the Corporation or the Commission, as the case requires, the reasonable costs of and incidental to any measurement, testing, analysis or other matter undertaken in connection with the investigation of the offence and the provision of evidence.

(3) The amount payable under an order —

(a) is to be fixed by the court; and

(b) may be recovered as a debt due in a court of competent jurisdiction.

(3a) An order does not affect any civil remedy the Corporation or Commission may have against the person convicted.

(3b) An order is in addition to any compensation order made by the court under Part 16 of the *Sentencing Act 1995*.

(3c) For the purposes of making a compensation order under Part 16 of the *Sentencing Act 1995* against a person convicted of an offence against this section or section 46, the value of any water unlawfully taken, wasted, misused, unduly consumed, contaminated or diverted is to be determined on the basis of the charge that would have been payable for the

water under the *Water Agencies (Powers) Act 1984* if the water had been lawfully taken or used.

”;

and

- (d) by inserting after subsection (4) the following subsection —

“

(5) In this section, unless the contrary intention appears —

“**order**” means an order under subsection (2).

”.

#### **Section 46 amended**

5. Section 46 of the principal Act is amended —

- (a) in subsection (1) by deleting “belonging to the Corporation”; and
- (b) by deleting the penalty provision at the foot of subsection (1) and substituting the following —

“

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

For a body corporate — \$20 000.

”.

**s. 6**

**Section 46A inserted**

**6.** After section 46 of the principal Act the following section is inserted —

“

**Evidentiary provision**

**46A.** In proceedings for an offence against section 45 if it is proved that at a particular time —

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

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

”.

**PART 3 — METROPOLITAN WATER SUPPLY, SEWERAGE,  
AND DRAINAGE ACT 1909**

**Principal Act**

7. In this Part the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*\* is referred to as the principal Act.

[\* Reprinted as at 28 May 1996.  
For subsequent amendments see Acts Nos. 14 and  
81 of 1996.]

**Section 52 amended**

8. Section 52 of the principal Act is amended —

- (a) by deleting “supplied with water by the Corporation”;  
and
- (b) by deleting the passage beginning “he shall forfeit”  
and ending “unduly consumed.” and substituting the  
following —

“

the person commits an offence.

Penalty: For an individual — \$10 000.

For a body corporate — \$20 000.

”.

**s. 9**

**Section 53 amended**

**9.** Section 53 of the principal Act is amended —

- (a) by deleting “supplied with water by the Corporation”;  
and
- (b) by deleting the passage beginning “he shall forfeit”  
and ending “shall continue.” and substituting the  
following —

“  
the person commits an offence.

Penalty: For an individual — \$10 000.

For a body corporate — \$20 000.

”.

**Section 54 amended**

**10.** Section 54 of the principal Act is amended by deleting the  
passage beginning “he shall forfeit” and ending “such forfeited  
sum.” and substituting the following —

“  
the person commits an offence.

Penalty: For an individual — \$10 000.

For a body corporate — \$20 000.

”.

**Section 55 amended**

**11.** Section 55 of the principal Act is amended —

- (a) by deleting “belonging to the Corporation”; and
- (b) by deleting “he shall forfeit and pay to the Corporation a sum not exceeding \$1 500.” and substituting the following —

“ the person commits an offence.

Penalty: For an individual — \$10 000.

For a body corporate — \$20 000.

”.

**Section 56 amended**

**12.** Section 56 of the principal Act is amended —

- (a) by deleting “belonging to the Corporation”; and
- (b) by deleting “is guilty of a misdemeanour.” and the penalty provision at the foot of the section and substituting the following —

“ commits an offence.

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

For a body corporate — \$20 000.

”.

**Sections 56A and 56B inserted**

**13.** After section 56 of the principal Act the following sections are inserted —

“

**Recovery of moneys by Corporation**

**56A.** (1) If a person is convicted of an offence against section 52, 53, 54, 55 or 56, the court sentencing the person for the offence may make an order requiring the person to pay to the Corporation the reasonable costs of and incidental to any measurement, testing, analysis or other matter undertaken in connection with the investigation of the offence and the provision of evidence.

(2) The amount payable under an order —

- (a) is to be fixed by the court; and
- (b) may be recovered as a debt due in a court of competent jurisdiction.

(3) An order does not affect any civil remedy the Corporation may have against the person convicted.

(4) An order is in addition to any compensation order made by the court under Part 16 of the *Sentencing Act 1995*.

(5) For the purposes of making a compensation order under Part 16 of the *Sentencing Act 1995* against a person convicted of an offence against section 52, 53, 54, 55 or 56, the value of any water unlawfully taken, wasted, misused, unduly consumed or contaminated is to be determined on the basis of the charge that would have been payable for the water under the *Water Agencies (Powers) Act 1984* if the water had been lawfully taken or used.

(6) In this section, unless the contrary intention appears —

“**order**” means an order under subsection (1).

**Evidentiary provision**

**56B.** In proceedings for an offence against section 52, 53, 54 or 55 if it is proved that at a particular time —

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

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

”.

**Section 147A repealed**

**14.** Section 147A of the principal Act is repealed.

**PART 4 — RIGHTS IN WATER AND IRRIGATION  
ACT 1914**

**Principal Act**

**15.** In this Part the *Rights in Water and Irrigation Act 1914*\* is referred to as the principal Act.

[\* *Reprinted as at 2 April 1996.*  
*For subsequent amendments see Acts Nos. 14, 49 and 81 of 1996.*]

**Section 39A amended**

**16.** Section 39A of the principal Act is amended —

- (a) by inserting after the section designation “**39A.**” the subsection designation “(1)”;
- (b) by deleting the penalty provision at the foot of the section and substituting the following —

“  
Penalty: For an individual — \$20 000.  
For a body corporate — \$50 000.”;

and

- (c) by inserting the following subsections —

“  
(2) If a person is convicted of an offence against subsection (1) or section 39C, the court sentencing the person for the offence may make an order requiring the person to pay to the Corporation the reasonable costs of and

incidental to any measurement, testing, analysis or other matter undertaken in connection with the investigation of the offence and the provision of evidence.

(3) The amount payable under an order —

(a) is to be fixed by the court; and

(b) may be recovered as a debt due in a court of competent jurisdiction.

(4) An order does not affect any civil remedy the Corporation may have against the person convicted.

(5) An order is in addition to any compensation order made by the court under Part 16 of the *Sentencing Act 1995*.

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

(7) In this section, unless the contrary intention appears —

“**order**” means an order under subsection (2).

”.

**Section 39B inserted**

17. After section 39A of the principal Act the following sections are inserted —

“

**Evidentiary provision**

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

**Fraudulent taking of water**

**39C.** Any person who fraudulently takes or causes to be taken any water from irrigation works belonging to or vested in the Corporation, or from any conduit, channel or water-course leading to or from any such works, commits an offence.

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

For a body corporate — \$50 000.

”

**PART 5 — WATER AGENCIES (POWERS) ACT 1984**

**Section 34 amended**

**18.** Section 34 (3) of the *Water Agencies (Powers) Act 1984*\* is amended —

- (a) in paragraph (f) by deleting “, water”; and
- (b) by inserting after paragraph (f) the following paragraph —

“  
    (fa) prohibit, impose restrictions on or  
        otherwise regulate the use of water;  
”.

[\* *Reprinted as at 30 April 1996.*  
*For subsequent amendments see Acts Nos. 78 of 1995*  
*and 12 and 14 of 1996.*]

**PART 6 — WATER SERVICES COORDINATION ACT 1995**

**Schedule 2 amended**

**19.** Schedule 2 to the *Water Services Coordination Act 1995*\* is amended —

(a) in Part 2, under the heading “*Metropolitan Water Supply, Sewerage and Drainage Act 1909*”, by inserting below “s. 56” the following —

“ s. 56A ”; and

(b) in Part 5 by inserting below “s. 38” the following —

“

s. 39A

s. 39C

”.

[\* *Act No. 72 of 1995.*

*For subsequent amendments see Act No. 12 of 1996.]*