

WESTERN AUSTRALIA

**WATER SERVICES
COORDINATION AMENDMENT
ACT 1997**

No. 33 of 1997

AN ACT to amend the *Water Services Coordination Act 1995*.

[Assented to 3 October 1997.]

The Parliament of Western Australia enacts as follows:

Short title

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

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Part 3, Divisions 10 and 11, inserted in *Water Services Coordination Act 1995*

3. After Part 3, Division 9, of the *Water Services Coordination Act 1995** the following Divisions are inserted —

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Division 10 — Transfer of certain assets on land not held by the statutory asset owner

Definitions

46A. In this Division, unless the contrary intention appears —

“**affected land**” means the land upon, in, over, or under which an asset has been placed;

“**asset**” means any works, or any other thing used or intended to be used for the provision of irrigation or drainage services, that —

- (a) is the property of a statutory asset owner; and
- (b) is upon, in, over, or under land that is not the property of the statutory asset owner;

“**statutory asset owner**” means —

- (a) a person who is or was the holder of an operating licence authorizing the licensee to provide irrigation or drainage services,

whether or not also authorizing the provision of any other water services; or

- (b) a person who is a holding body, within the meaning given to that term by section 46K, of a person described in paragraph (a) of this definition;

“transfer day” means the day on which a transfer order takes effect under section 46B (11);

“transfer order” means the order and any amendments to it made by the Minister under section 46B;

“transferee” means the person to whom any asset is to be transferred by a transfer order;

“works” means irrigation works or drainage works and includes excavations, structures, buildings, equipment and plant used or intended to be used for the provision of irrigation or drainage services.

Minister may make order for transfer of assets

46B. (1) With the consent of a statutory asset owner from whom assets are to be transferred, the Minister may make and publish in the *Gazette* an order specifying —

- (a) the statutory asset owner;
- (b) the assets that are to be transferred and the affected land; and
- (c) the transferee.

(2) The transfer order may specify assets and the affected land by reference to schedules which —

- (a) need not be published in the *Gazette*; but
- (b) must be available for inspection by the public at a place identified in the order.

(3) If the transfer order specifies by reference to schedules assets that are in a local government district, the schedules must be available for inspection by the public under subsection (2) (b) at least by exhibiting them —

- (a) on a notice board at the local government's offices; and
- (b) on a notice board at every local government library in the district.

(4) Schedules must be exhibited under subsection (3) for a reasonable time, being not less than —

- (a) the time prescribed for the purposes of this subsection; or
- (b) if no time is prescribed, 7 days.

(5) Notice of the places where schedules are to be exhibited under subsection (3) must be published in a newspaper circulating in the relevant local government district at least 14 days before the schedules are so exhibited.

(6) The form and content of a schedule by reference to which a transfer order specifies assets and affected land is to be approved, before the order is made, by each relevant official to whom a copy of it will be required to be delivered under section 46G.

(7) The transfer order may, with the consent of the transferor and the transferee, be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the transfer day.

(8) For the purposes of this section the Water Corporation is to be taken to have consented to anything that it is obliged to do because of a direction given to it under the *Water Corporation Act 1995* by the Minister administering that Act.

(9) The Minister is to cause a copy of an order published under this section to be laid before each House of Parliament within 6 sitting days of that House after the order is published.

(10) Either House of Parliament may, by resolution of which notice has been given within 14 sitting days of that House after an order has been laid before it, pass a resolution disallowing the order.

(11) As soon as an order is no longer subject to disallowance under subsection (10), the order takes effect.

(12) The Minister is to cause notice to be published in the *Gazette* showing the day on which an order took effect under subsection (11).

Transfer of assets etc.

46C. (1) On and after the transfer day —

- (a) the assets specified in the transfer order vest in the transferee by force of this section;
- (b) except as agreed, any agreement or instrument relating to the assets transferred has effect, by force of this section, as if the transferee were

substituted for the transferor in the agreement or instrument;

- (c) except as agreed, any proceedings or remedy that might have been commenced by or available against or to the transferor in relation to the assets may be commenced and are available, by or against or to the transferee;
- (d) except as agreed, any act, matter or thing done or omitted to be done in relation to the assets before the transfer day by, to or in respect of the transferor (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the transferee; and
- (e) the transferor is to deliver to the transferee all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the assets transferred.

(2) In this section —

“except as agreed” means except as agreed between the transferor and transferee;

“transferor” includes a person to whom, or through whom, the transferor is the legal successor.

Transferor to complete necessary transactions

46D. (1) Where any asset of the transferor cannot be properly vested in the transferee by the operation of this Division (whether because it is governed otherwise than by the law of the State, or for any other reason) —

- (a) the transferor is to be taken to continue to hold that asset until the same is effectively vested in

the transferee in accordance with the transfer order; and

- (b) the transferor is to take all practicable steps for the purpose of securing that such asset is effectively vested in the transferee in accordance with the transfer order.

(2) The fact that subsection (1) (a) applies to an asset does not affect the duty of the transferee to take that asset into account in providing for the asset management system required by section 36.

Exemption from stamp duty

46E. (1) In this section —

“**stamp duty**” means stamp duty chargeable under the *Stamp Act 1921*.

(2) Stamp duty is not payable in relation to —

- (a) anything that occurs by the operation of this Division; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Division, or to give effect to this Division, or for a purpose connected with or arising out of giving effect to this Division.

(3) The Treasurer or a person authorized by the Treasurer may, on request by the transferee, certify in writing that —

- (a) a specified thing occurred by the operation of this Division; or

- (b) a specified thing was done under this Division, or to give effect to this Division, or for a purpose connected with or arising out of giving effect to this Division.

(4) For all purposes and in all proceedings, a certificate under subsection (3) is conclusive evidence of the matters it certifies, except so far as the contrary is shown.

Assets no longer required

46F. (1) If the Minister is satisfied that the use, or further use, of an asset is not necessary or expedient for the performance of the licensee's functions and the statutory asset owner consents to the making of the order, the Minister may make and publish in the *Gazette* an order extinguishing the rights of the statutory asset owner in the asset if it is a fixture or requiring the statutory asset owner to remove the asset if it is not a fixture.

(2) The order is to specify the statutory asset owner, the assets, and the affected land, and is to identify whether or not a specified asset is a fixture.

(3) The order may operate by reference to schedules which —

- (a) need not be published in the *Gazette*; but
- (b) must be available for inspection by the public at a place identified in the order.

(4) Upon the publication of the order in the *Gazette* —

- (a) any right existing before the publication of the order in a specified asset that is a fixture is extinguished and it merges with the land that was the affected land; and

- (b) the statutory asset owner is required, as soon as is practicable, to remove from the affected land a specified asset that is not a fixture.

(5) The extinguishment under this section of a right does not give rise to any right to compensation.

(6) An asset that would be a fixture if it were the property of the owner of the affected land is a fixture.

Notation on title to affected land

46G. (1) The Minister is to —

- (a) cause a copy of each transfer order, and any schedule to which it refers, to be delivered to each relevant official; and
- (b) give notice in writing of the transfer order to the owner of any affected land.

(2) The relevant official is to —

- (a) keep the order and any schedule delivered under subsection (1) and make them available for public inspection; and
- (b) make any entry in, or endorse or note, the relevant title, land register or record,

so as to ensure that a person searching the title to that land receives notice that the assets on the land that were transferred vest in the statutory asset owner.

(3) If an asset specified in a transfer order —

- (a) ceases to be upon, in, over, or under the affected land; or

- (b) merges, under section 46F, with the affected land,

the statutory asset owner is to deliver to the relevant official a notice in writing to that effect, in a form approved by the relevant official, and the relevant official is to make any entry in, or endorse or note, the title, land register or record in respect of the land accordingly.

- (4) In this section —

“**relevant official**” means —

- (a) the Registrar of Titles;
(b) the Registrar of Deeds; or
(c) the Minister administering the *Land Act 1933*,

according to which of them has responsibility for the register relating to the affected land.

Rectifying omission from transfer order

46H. (1) The Minister may by order published in the *Gazette* make any provision that is necessary to rectify any omission from, or to correct any error in, a transfer order.

(2) An order under this section may be made so as to have effect from the same time as the transfer order.

(3) To the extent that a provision of an order under this section 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 Water Corporation,

the Coordinator or any 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 Water Corporation, the Coordinator or any authority of the State), in respect of anything done or omitted to be done before the day of publication.

Saving

46I. The operation of any provision of this Division is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets or the disclosure of information;
- (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;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

Regulations

46J. Regulations may be made under section 61 providing for —

- (a) any matter or thing for which it is necessary or convenient to make provision in order to give effect to a transfer of assets;
- (b) any matter that it is necessary or convenient to deal with as a consequence of the making of an order under section 46F.

Division 11 — Licensee operating with holding body

Coordinator may approve of licensee operating with holding body

46K. The Coordinator may approve of an arrangement under which assets that are to be used by a licensee in the provision of irrigation or drainage services (in this Division called “**the assets**”) are to be held by another person (in this Division called “**the holding body**”).

Licensee to be treated as holder of assets for certain purposes

46L. (1) If assets are held in accordance with an arrangement approved under section 46K —

- (a) the licensee has the same duties under this Part; and
- (b) the powers given by this Part, other than Division 10, in respect of the licensee or the assets are the same,

as if the assets were held by the licensee rather than the holding body.

(2) Without limiting section 45 (2) or section 46M, regulations made in accordance with section 45 (1) may provide that an enactment applies in relation to a licensee prescribed as if the assets were held by the licensee rather than the holding body.

(3) In subsection (2) —

- (a) the reference to an enactment includes reference to part of an enactment; and
- (b) if the regulations prescribe a class of licensees, the reference to a licensee prescribed includes a reference to a licensee of a class prescribed.

Certain enactments can be applied to holding body

46M. (1) Section 45 applies in relation to the holding body as if the holding body were the licensee.

(2) For the purposes of subsection (1), section 83 (2) (a) of the *Water Agencies (Powers) Act 1984* (which is listed in Schedule 2, Part 1, of this Act) is to be read and construed as though it did not include a reference to section 112A of the *Land Acquisition and Public Works Act 1902*.

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[* *Act No. 72 of 1995.*

For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 243.]