

WESTERN AUSTRALIA

**WATER SERVICES COORDINATION
ACT 1995**

(No. 72 of 1995)

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WATER SERVICES COORDINATION ACT 1995

No. 72 of 1995

AN ACT to establish a scheme for the licensing of water services, to provide for a public officer —

- **to administer the licensing scheme;**
- **to coordinate and advise on water services policy; and**
- **to perform functions under certain written laws relating to the provision of water services,**

and to confer powers and make related provisions.

[Assented to 27 December 1995.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY**Short title**

1. This Act may be cited as the *Water Services Coordination Act 1995*.

Commencement

2. This Act comes into operation on the day on which Part 2 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* comes into operation, that is, on the day fixed by proclamation made under section 2 (2) of that Act.

Interpretation

3. In this Act, unless the contrary intention appears —

“**controlled area**” means an area for the time being constituted as such under section 11 (1);

“**Coordinator**” means the Coordinator of Water Services referred to in section 4;

“**inspector**” means the Coordinator or a person designated as an inspector under section 47;

“**irrigation**” means any method of —

- (a) causing water from a watercourse, water services works or an artificial collection of water to flow upon and spread over land; or

- (b) applying water to land from a watercourse, water service works or an artificial collection of water,

for the purpose of cultivation of any kind or of tillage or improvement of pasture;

“licence” means an operating licence;

“licensee” means the holder of an operating licence;

“operating licence” means a licence granted for the purposes of section 18;

“watercourse” means —

- (a) any river, creek, stream or brook, whether artificially improved or altered or not;
- (b) any conduit that wholly or partially diverts a river, creek, stream or brook from its natural course and forms part of that river, creek, stream or brook; or
- (c) any natural collection of water into, through, or out of which any thing referred to in paragraph (a) or (b) flows, whether artificially improved or altered or not,

in which water flows or is contained whether permanently, intermittently or occasionally, together with the bed and banks of any thing referred to in paragraph (a), (b) or (c);

“water services” means water supply, sewerage, irrigation or drainage services;

“water services works” includes —

- (a) waterworks, sewerage works, drainage works and irrigation works;
- (b) excavations, structures, buildings, equipment and plant used or intended to be used for the provision of any water services; and
- (c) except where the context otherwise requires, land upon which water services works are constructed or provided.

PART 2 — COORDINATOR OF WATER SERVICES

Coordinator of Water Services

4. A Coordinator of Water Services is to be appointed under Part 3 of the *Public Sector Management Act 1994*.

Coordinator's functions

5. The functions of the Coordinator are —

- (a) to administer the licensing scheme provided for by Part 3 and to perform the other functions vested in the Coordinator by this Act or any other written law;
- (b) to assist the Minister in planning and coordinating the provision of water services in the State;
- (c) to advise the Minister on all aspects of policy relating to water services, including —
 - (i) the water services needs of the State;
 - (ii) the introduction and encouragement of competition and efficiency in the water services industries;
 - (iii) ways of promoting and achieving open access to water services systems;
 - (iv) ways of achieving greater efficiency in the use of water;
 - (v) the use of water services policy to assist in achieving other policy objectives of government;
 - (vi) matters relating to the operation of relevant legislation; and
 - (vii) charges levied for the provision of water services;

- (d) for the purposes of paragraphs (b) and (c) —
 - (i) to monitor the performance of water services industries, and those participating in them, and of providers of water services; and
 - (ii) to consult with interested groups and persons;
- (e) to undertake, sponsor and coordinate research, development and demonstration relating to water services;
- (f) to promote the development of commercial applications relating to —
 - (i) water of all descriptions including storm water and wastewater; and
 - (ii) by-products from the treatment of wastewater;and
- (g) to produce and publish information and reports on matters relating to water services.

Staff

6. Public service officers may be appointed or made available under Part 3 of the *Public Sector Management Act 1994* to enable the Coordinator to perform his or her functions.

Delegation

7. (1) The Coordinator may, by instrument in writing, delegate the performance of any of his or her functions, except this power of delegation.

(2) A delegation under subsection (1) may be made —

(a) to an officer referred to in section 6; or

(b) with the approval of the Minister, to any other person.

(3) A delegation may be general or as otherwise provided by the instrument of delegation.

(4) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) A delegate remains subject to the direction and control of the delegator.

(6) Performance of a function by a delegate is to be treated as performance by the delegator.

Minister may give directions

8. (1) The Minister may give directions in writing to the Coordinator with respect to the performance of his or her functions, either generally or in relation to a particular matter, and the Coordinator is to give effect to any such direction.

(2) The text of any direction given under subsection (1) is to be —

(a) laid before each House of Parliament within 14 sitting days of that House after the direction is given; and

(b) included in the annual report submitted by the relevant accountable officer under section 62 of the *Financial Administration and Audit Act 1985*.

Minister to have access to information

9. (1) The Minister is entitled —

- (a) to have information in the possession of the Coordinator; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Coordinator to furnish information to the Minister;
- (b) request the Coordinator to give the Minister access to information; and
- (c) for the purposes of paragraph (b) make use of the staff referred to in section 6 to obtain the information and furnish it to the Minister.

(3) The Coordinator is to comply with a request under subsection (2) and make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section —

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“information” means information specified, or of a description specified, by the Minister that relates to the functions of the Coordinator.

**PART 3 — LICENSING OF WATER SERVICES
PROVIDERS**

Division 1 — Controlled areas

Controlled areas, classification

10. (1) Controlled areas are classified as follows —

- (a) controlled area (water supply services);
- (b) controlled area (sewerage services);
- (c) controlled area (irrigation services); or
- (d) controlled area (drainage services).

(2) A controlled area is to be designated by reference to one or more of the classifications specified in subsection (1).

(3) An area of the State may at the same time be included in 2 or more categories of controlled areas but the boundaries of those controlled areas need not be coterminous.

Declaration of controlled areas

11. (1) The Governor may by order published in the *Government Gazette* —

- (a) constitute an area as a controlled area;
- (b) add an area to, or excise an area from, a controlled area; or
- (c) cancel the status of an area as a controlled area.

(2) An order is not to be made under subsection (1) excising an area from a controlled area or cancelling the status of an area as a controlled area unless the Governor is satisfied that water services provided in the area in question will not, after the excision or cancellation, be of a lower standard than those provided in that area before the excision or cancellation.

Areas need not be continuous

12. A controlled area may be one continuous area or be made up of 2 or more separate areas.

Consultation

13. Where it is proposed that an order be made under section 11, the Minister must, before the order is made, consult with any licensee who will be affected by the proposed order.

Orders to be laid before Parliament

14. An order under section 11 is to be laid before each House of Parliament under section 42 of the *Interpretation Act 1984* and that section applies as if the order were a regulation.

Division 2 — Classification of licences

Classification of operating licences

15. (1) Operating licences are classified as follows —

- (a) operating licence (water supply services);
- (b) operating licence (sewerage services);
- (c) operating licence (irrigation services); or
- (d) operating licence (drainage services).

(2) An operating licence is to be designated by reference to one or more of the classifications specified in subsection (1).

Operating licence, area to which applies

16. (1) An operating licence that has a particular designation, whether solely or together with any other designation, is to apply to an area that has a corresponding designation under section 10, whether solely or together with any other designation.

(2) For example —

- (a) an operating licence (water supply services) is only to apply to an area that is designated under section 10 as a controlled area (water supply services); and
- (b) an operating licence (water supply services and sewerage services) is only to apply in respect of each of those services to an area that is designated under section 10 for that service.

(3) If an operating licence is designated by reference to more than one classification the boundaries of the controlled areas to which it applies need not be coterminous.

Division 3 — Licensing requirements

Licensing extends to statutory providers

17. The requirements of this Division apply to a person despite the fact that the person, in providing a water service, is performing a function that —

- (a) is authorized or provided for by or under a written law; or
- (b) has been approved by the Governor or any other person under a written law.

Requirement for licences

18. (1) A person must not provide a water service in a controlled area or part of a controlled area except under the authority of an operating licence granted by the Coordinator that applies to that area or that part of the area.

Penalty: \$100 000 and a daily penalty of \$5 000.

(2) An operating licence may specify the water services works that are to be undertaken, used or operated for the provision of water services, and those works may be situated outside the controlled area for that licence.

Power to exempt

19. (1) The Governor may by order published in the *Government Gazette* provide for exemptions from section 18 (1).

(2) Section 43 (4) and (7) to (9) of the *Interpretation Act 1984* applies to an order under subsection (1) as though the order were subsidiary legislation.

Notice of intention to provide water services

20. (1) A person must not provide any water service in any part of the State that is not a controlled area designated under section 10 for that classification of water service unless the person has given the required notice to the Coordinator.

(2) The required notice is that at least 3 months before the provision of the water service commences the person give to the Coordinator notice in writing of the person's intention to commence the provision of that service.

Penalty: \$10 000.

Transitional provision

21. (1) This section applies to every person (an “**existing operator**”) that immediately before the commencement of this Part is doing anything that, after that commencement, is required to be licensed under section 18.

(2) An existing operator is to be treated as if the person were the holder of the relevant operating licence —

- (a) until the expiry of 120 days after the commencement of this Part; or
- (b) until —
 - (i) the grant of a licence of that kind to the person has been refused; and
 - (ii) the time for appeal against the refusal under section 44 has expired without an appeal being brought or an appeal has been brought but has been unsuccessful,

whichever happens first.

(3) For the purposes of paragraph (b) (ii) of subsection (2) an appeal is unsuccessful if it —

- (a) results in the refusal referred to in paragraph (b) (i) of that subsection being confirmed; or
- (b) is withdrawn, discontinued or dismissed.

Division 4 — Licence application, grant etc.**Application for licence**

22. (1) An application for a licence is to be —

- (a) made in a form approved by the Coordinator; and
- (b) accompanied by the prescribed fee.

(2) Without limiting subsection (1) (a), an applicant for a licence is to inform the Coordinator of —

- (a) the nature of the business activities undertaken or to be undertaken by the applicant;
- (b) where, if a licence is granted, the applicant will have power to determine prices or charges, the methods or principles that the applicant proposes to apply in doing so;
- (c) the methods or principles that the applicant proposes to apply in the provision of water services;
- (d) the nature of the construction, operation or maintenance of water services works undertaken or to be undertaken to provide water services; and
- (e) the terms and conditions of any proposed standard customer contract between the applicant and any purchaser of water services from the applicant.

(3) The applicant must also provide such other information (including information as to surveys carried out) as the Coordinator may require for the proper consideration of the application.

Matters to be considered by Coordinator

23. The Coordinator is not to grant a licence to the applicant unless he or she is satisfied that the applicant has, and is likely to continue to have, the financial and technical ability to provide the water services that will be covered by the licence.

Terms and conditions of licences

24. (1) A licence is subject to such terms and conditions as are determined by the Coordinator.

(2) Without limiting subsection (1) the terms and conditions may include provisions relating to any matter provided for by Schedule 1.

(3) Despite subsections (1) and (2) conditions relating to any matter referred to in paragraph (d), (e), (j) (i) or (iii) or (m) of Schedule 1 cannot be included in a licence granted to —

- (a) the Water Corporation established by section 4 of the *Water Corporation Act 1995*; or
- (b) a Water Board constituted under the *Water Boards Act 1904*.

(4) A requirement made under paragraph (c) of Schedule 1 must not be inconsistent with any enactment that regulates the financial administration of the Water Corporation or a Water Board.

Duration of licence

25. A licence may be granted or renewed for such period as the Coordinator thinks fit, but the period cannot exceed 25 years from the day of grant or renewal of the licence.

Gazettal

26. (1) The Coordinator must ensure that notice of the grant of a licence is published in the *Government Gazette* as soon as is practicable after the grant.

- (2) The notice is to include —
- (a) the classification of the licence;
 - (b) the name of the licensee;
 - (c) the term of the licence;

- (d) the area or areas covered by the licence; and
- (e) the place where a copy of the licence and any plan may be inspected under section 27.

Licences to be available for inspection

27. The Coordinator is to keep available at the Coordinator's office for inspection by members of the public during normal office hours —

- (a) a copy of every licence, as in force from time to time; and
- (b) if any area covered by a licence is specified by reference to a plan, a copy of the plan.

Renewal of licence

28. An application for the renewal of a licence is to be —

- (a) made in a form approved by the Coordinator; and
- (b) accompanied by the prescribed fee.

Other laws not affected

29. The grant of a licence does not affect the licensee's obligations to comply with any other written law in relation to the matters covered by the licence.

Licence not transferable

30. A licence is not transferable.

Amendment of licence

31. (1) The Coordinator may determine that a licence is to be amended.

(2) If the licence specifies a procedure to be followed in making such a determination, the determination may only be made in accordance with that procedure.

(3) An amendment cannot take effect until it is notified to the licensee under subsection (4) or under the procedure referred to in subsection (2).

(4) If a licence is amended under this section the Coordinator must —

- (a) if subsection (2) does not apply, notify the licensee of the amendment; and
- (b) ensure that notice is published in the *Government Gazette* indicating the nature of the amendment and the place where a copy of the licence may be inspected under section 27.

(5) This section applies to the substitution of a new licence for an existing licence in the same way as it applies to the amendment of a licence.

Division 5 — Duty to provide services

General duty to provide services

32. (1) It is a condition of every licence that, subject to this Division, the licensee is to —

- (a) provide the water services; and
- (b) undertake, maintain and operate any water services works,

specified in the licence.

(2) Subsection (1) does not affect the protection given to the Water Corporation by section 27 (5) of the *Water Corporation Act 1995*.

(3) The Governor may by order published in the *Government Gazette* provide for exemptions from subsection (1).

(4) Section 43 (4) and (7) to (9) of the *Interpretation Act 1984* applies to an order under subsection (3) as though the order were subsidiary legislation.

Duty in individual cases

33. (1) Subject to section 34, regulations made under section 61 may —

- (a) prescribe standards of performance that are to be achieved in individual cases in the provision of water services; and
- (b) provide that if a licensee fails to meet such a standard, the licensee is to pay a prescribed amount to any person affected by the failure who comes within a prescribed description.

(2) The regulations may —

- (a) include a requirement for a licensee, in prescribed circumstances, to inform a person of his or her rights under the regulations;
- (b) provide for any dispute under the regulations to be referred to the Coordinator for determination;
- (c) make provision for the procedure to be followed in connection with any such reference and for the enforcement of the Coordinator's determination; and

- (d) provide for exemptions from the requirements of the regulations.

(3) Regulations referred to in subsection (1) are to have effect despite section 27 (5) of the *Water Corporation Act 1995*.

Prerequisite to making regulations referred to in section 33

34. Regulations of the kind described in section 33 (1) are not to be made or amended unless the Minister has furnished to the Governor a certificate that —

- (a) a copy of, and a statement of reasons for, the proposed regulations or amendment have been served on each existing licensee that will be affected if the proposal is carried into effect;
- (b) a reasonable opportunity has been given to each such licensee to make submissions on the proposal; and
- (c) the Minister has considered any submissions so made.

Interruption etc. of water service

35. (1) This section has effect despite any provision in this Division or in regulations referred to in section 33.

(2) A licensee may interrupt, suspend or restrict the provision of a water service if in the licensee's opinion it is necessary to do so because of an accident, emergency, potential danger or other unavoidable cause.

(3) A licensee is not liable for any loss or damage that arises from any such interruption, suspension or restriction except to the extent that an agreement to which the licensee is a party provides otherwise.

Division 6 — Other duties included in licences**Asset management system**

36. (1) It is a condition of every licence that the licensee is to —

- (a) provide for an asset management system in respect of the licensee's assets;
- (b) notify details of the system and any changes to it to the Coordinator; and
- (c) not less than once in every period of 24 months (or such longer period as the Coordinator allows) calculated from the commencement of this section, provide the Coordinator with a report by an independent expert acceptable to the Coordinator as to the effectiveness of the system.

(2) An asset management system is to set out the measures to be taken by the licensee for the proper maintenance of assets used in the provision of water services and for the undertaking, maintenance and operation of water services works.

Operational audit

37. (1) It is a condition of every licence that the licensee is to, not less than once in every period of 24 months (or such longer period as the Coordinator allows) calculated from the commencement of this section, provide the Coordinator with an operational audit conducted by an independent expert acceptable to the Coordinator.

(2) An operational audit is an audit of the effectiveness of measures taken by the licensee to maintain any quality and performance standards referred to in the licence.

(3) The Coordinator is to present to the Minister a report on each operational audit within one month after his or her receipt of the audit.

Technical standards

38. (1) The Coordinator may, by instrument published in the *Government Gazette*, set minimum technical standards (“technical standards”) for —

- (a) the provision of water services; and
- (b) the undertaking, maintenance and operation of water services works.

(2) It is a condition of every licence that the licensee is to comply with the technical standards.

(3) Sections 9, 10, 15, 43 (4) and 43 (7) to (9) of the *Interpretation Act 1984* apply to the technical standards as if they were regulations.

Division 7 — Enforcement

Failure to comply with licence

39. (1) If, in the opinion of the Minister, a licensee contravenes an operating licence, the Minister may cause a notice to be served on the licensee requiring the licensee to rectify the contravention within a specified period.

(2) If, in the opinion of the Minister, a licensee has failed to comply with a notice under subsection (1) the Minister may, subject to section 40, do one or more of the following —

- (a) serve a letter of reprimand on the licensee;

- (b) order the licensee to pay a monetary penalty fixed by the Minister but not exceeding \$100 000;
- (c) cause the contravention to be rectified to the satisfaction of the Minister.

(3) Persons authorized by the Minister may enter any premises and do all things that are necessary for the purposes of subsection (2) (c).

(4) The Minister may recover —

- (a) a penalty imposed under subsection (2) (b); or
- (b) the costs and expenses of any action taken under subsection (2) (c),

in a court of competent jurisdiction as a debt due by the licensee to the Crown.

Right of licensee to make submissions

40. The Minister is not to take any action under section 39 (2) (b) or (c) unless he or she has notified the licensee of the proposed action and given the licensee a reasonable opportunity of making submissions on the matter.

Exception where public health endangered

41. If in the opinion of the Minister the health or safety of members of the public is or may be at risk, the Minister may cause any contravention of a licence to be rectified under section 39 (2) (c) without —

- (a) serving notice on the licensee under section 39 (1); or
- (b) complying with section 40.

Cancellation of licence

42. (1) The Governor may cancel a licence if he or she is satisfied that the licensee —

- (a) has failed to comply with the condition imposed by section 32 or is otherwise in default as defined in subsection (2);
- (b) in the case of a company, is an externally administered corporation within the meaning of the Corporations Law; or
- (c) has within a period of 12 months been convicted of more than 3 offences for which the prescribed punishment is a fine of \$10 000 or more or imprisonment for 12 months or more.

(2) For the purposes of subsection (1) (a) a licensee is in default if the Governor is satisfied that —

- (a) the licensee has failed to comply with a term or condition of the licence, other than that imposed by section 32;
- (b) the failure is material in terms of the operation of the licence as a whole;
- (c) the Minister has given to the licensee written notice of the failure and the fact that in the Minister's opinion paragraph (b) applies to it; and
- (d) the licensee has not, within the time specified in the notice, either remedied the failure or shown cause why the licence should not be cancelled.

(3) If a licence is cancelled under this section the Coordinator must ensure that notice of the cancellation is published in the *Government Gazette*.

(4) Regulations may be made under section 61 providing, in the event of a licence being cancelled, for —

- (a) the vesting of assets and rights of the former licensee in a person (including the Minister as a corporation) for the purpose of enabling water services to be provided after the cancellation;
- (b) the conferral of powers and duties for that purpose;
- (c) the discharge or assignment of liabilities;
- (d) the disposal of property; and
- (e) all matters that are necessary or convenient for dealing with the consequences of the cancellation and the vesting referred to in paragraph (a).

Minister to be informed

43. The Coordinator is to —

- (a) monitor and report to the Minister on compliance by licensees with their licences;
- (b) inform the Minister about any failure by a licensee to meet operational standards or other requirements of the licence; and
- (c) provide advice to the Minister for the purposes of section 39.

Division 8 — Appeal

Appeal against Coordinator's decision

44. (1) A person who is aggrieved by a decision of the Coordinator —

- (a) to refuse to grant or renew a licence;
- (b) as to the length of the period for which a licence is granted or renewed;
- (c) as to any term or condition of a licence; or
- (d) to amend a licence under section 31,

may appeal to the Minister against the decision within 30 days after receiving notice in writing of the decision from the Coordinator.

(2) The Minister is to refer an appeal to one or more suitably qualified persons appointed by him or her to examine, and advise the Minister on, the matter.

(3) The person or persons so appointed are to give the appellant the opportunity to be heard on the matter of the inquiry.

(4) The Minister, after considering the advice given under subsection (2), may confirm, vary or reverse the decision.

(5) If an appeal against a decision is brought under this section the decision is to continue to have effect pending the appeal, unless the Minister otherwise directs.

Division 9 — Powers of licensees, other than Corporation**Extension of certain enactments to licensees**

45. (1) A reference to the Corporation in an enactment referred to in a Part of Schedule 2 includes a licensee if that licensee —

- (a) is prescribed by regulations made under section 61 for the purposes of that Part; or
- (b) belongs to a class of licensees that is so prescribed.

(2) Any such prescription may be made in terms that —

- (a) modify the operation of, add a further requirement to, or make inapplicable an enactment or part of an enactment in relation to a licensee or class of licensees;
- (b) impose conditions or restrictions on the doing of any thing by a licensee or a member of a class of licensees;
- (c) prohibit a licensee or a member of a class of licensees from doing any thing; or
- (d) require a consent or approval to be obtained for the doing of, or the manner of doing, any thing.

(3) This section does not apply to a licensee that is a water board under the *Water Boards Act 1904*.

(4) In subsection (1) —

“Corporation” means the Water Corporation established by section 4 of the *Water Corporation Act 1995*.

Parliamentary disallowance

46. (1) Regulations referred to in section 45 do not come into operation until they have been —

- (a) published in the *Government Gazette*; and
- (b) laid before each House of Parliament and either —
 - (i) 15 sitting days of each House have passed after the regulations were so laid and notice of a motion to disallow the regulations has not been given; or
 - (ii) if notice of a motion to disallow the regulations has been given, the motion has lapsed or has been withdrawn or defeated.

(2) The Minister is to cause notice to be published in the *Government Gazette* showing the day on which any such regulations came into operation.

PART 4 — INSPECTORS**Designation of inspectors**

47. (1) The Coordinator may designate persons to be inspectors for the purposes of this Act, and amend or revoke a designation.

(2) An instrument of designation of an inspector is to specify —

- (a) the classification of that inspector by reference to the kind of water services to which his or her powers relate;
- (b) the powers of inspection that the inspector may exercise; and
- (c) any limitations or restrictions that apply to that exercise.

(3) A person is not to be designated as an inspector unless he or she has the qualifications or experience, or both, prescribed for the classification that applies to him or her.

(4) The Coordinator has the powers of an inspector by virtue of his or her office.

Certificates of designation

48. (1) The Coordinator is to issue to an inspector a certificate specifying the matters referred to in section 47 (2) that apply to that inspector.

(2) An inspector must produce the certificate whenever requested to do so by any person apparently having charge of any land, premises, or thing in respect of which the inspector has exercised or is about to exercise any power.

(3) Production of the certificate is evidence in any court of the designation, classification and powers of the inspector to whom that certificate relates.

Powers of inspection etc.

49. An inspector may, subject to this Part and the terms of his or her designation as an inspector —

- (a) enter without notice on or into any land, premises or thing where he or she has reason to believe that —
 - (i) any water services of the kind to which his or her powers relate are or may be provided; or
 - (ii) any water services works used for the provision of any of those water services are or may be situated;
- (b) require any person having the control or custody of any land, premises or thing which the inspector is authorized to inspect to furnish reasonable access to it and other reasonable assistance;
- (c) inspect any water service works used or intended to be used for or in connection with the provision of any water service to which his or her powers relate;
- (d) make any inspection, examination, sampling, inquiry or test, and request any information (including by way

of answers to questions) and production of any records or other documents, that he or she considers necessary or desirable to ascertain —

- (i) whether any order, condition, restriction, or limitation is being or has been observed; or
- (ii) the cause, results and other aspects of any failure of any water service works including damage and other matters arising from or suspected of being related to the failure.

Incriminating statements

50. Where a person, before making a statement or answering a question for the purposes of section 49 (d), objects to having to make it on the ground that the statement might tend to incriminate the person, any statement made after that objection —

- (a) is not admissible in evidence in any prosecution against the person for any offence other than an offence against section 55; and
- (b) if recorded, in writing or otherwise, must set out the fact of the objection having been made.

Inspector may be accompanied

51. An inspector may be accompanied by any person that the inspector thinks necessary to assist the inspector in the performance of his or her functions.

Inspector to comply with reasonable requests

52. In the performance of his or her functions an inspector is to comply so far as is practicable with any reasonable requirement

of a person owning or using the land, premises, or thing inspected.

Power to prohibit use etc.

53. (1) If an inspector is of the opinion that any thing that the inspector is authorized to inspect does not conform with the requirements of any term or condition of a water services licence, the inspector must as soon as practicable report his or her opinion in writing to the Coordinator.

(2) Where the Coordinator has received a report under subsection (1) about any thing, the Coordinator may —

- (a) by order in writing prohibit the use of that thing absolutely or except in accordance with any condition or restriction; and
- (b) disconnect the supply of water services to or from that thing, or to or from the premises on which it is situated, until the Coordinator is satisfied that the thing conforms with the requirements referred to in subsection (1).

Appeal

54. (1) Any person aggrieved by any order made by the Coordinator under section 53 may appeal in the prescribed manner to the Minister.

(2) The Minister may confirm, cancel or vary the order and his or her decision is final.

(3) An order has effect pending the determination of the appeal unless the Minister otherwise directs.

Offences

- 55.** (1) A person must not without reasonable excuse —
- (a) obstruct an inspector, or a person to whom section 51 applies, in the performance of his or her functions; or
 - (b) fail to comply with a requirement under section 49 (b).
- (2) A person must not without reasonable excuse, and subject to section 50, fail to comply with a request under section 49 (d).
- (3) A person must not give false or misleading information in response to a request under section 49 (d).
- (4) A person must not contravene or fail to comply with an order under section 53.

Penalty applicable to this section —

- (a) for an individual: \$5 000;
- (b) for a body corporate: \$20 000.

**PART 5 — OBTAINING OF INFORMATION
BY COORDINATOR**

Coordinator may require information to be given

56. (1) The Coordinator may request a person, or the occupier of any premises, to give prescribed information to the Coordinator, including information by way of periodical returns at specified times, if —

- (a) the information is required to enable the Coordinator to perform his or her functions; and
- (b) the Coordinator has reasonable grounds for believing that the person is able to give the information.

(2) The request must —

- (a) be made by written notice given to the person or the occupier; and
- (b) specify the time before which the information is to be given.

(3) The information must be given —

- (a) in writing; and
- (b) before the time specified in the request.

(4) In this section —

“prescribed information”, in relation to a person or occupier, means information as to —

- (a) the quantity, quality, service or supply of any water services provided or required by the person or occupier in the State, or imported into the State by the person or occupier;

- (b) water services facilities available to or held by the person or occupier; and
- (c) any water services works, apparatus or process that conveys or contains water and that is used by or available to the person or occupier.

Trade secrets

57. (1) Where a request is made under section 56 a person may object to complying with it on the ground that it will result in the disclosure of a trade secret.

(2) An objection must be made in writing served on the Minister within 7 days after the request is received.

(3) The Minister may by notice in writing exempt the objector from the obligation to comply with the request either in whole or in part.

(4) If the Minister refuses to exempt the objector or grants a partial objection the objector may, within 21 days of receiving notice of the Minister's decision, appeal to a Judge of the District Court sitting in chambers.

(5) The Judge may make such order on the appeal, including an order as to costs, as he or she thinks fit and that decision is final.

(6) For the purposes of this section —

“trade secret” means any knowledge or information relating to technology, marketing, water services, water services works, water resources or reserves, or as to the business of the person objecting, that might reasonably be expected to adversely affect the business or interests of that person if disclosed to any other person.

Obligation to comply with request

58. (1) Subject to section 57, a person must not, without reasonable excuse, fail to comply with a request under section 56.

(2) A person must not give false or misleading information in response to a request under section 56.

Penalty applicable to this section —

- (a) for an individual: \$5 000;
- (b) for a body corporate: \$20 000.

Confidentiality

59. (1) A person to whom this section applies must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —

- (a) for the purpose of performing functions under this Act;
- (b) as required or allowed by this Act or under another written law; or
- (c) with the written consent of the person to whom the information relates.

Penalty: (a) in the case of information to which section 56 applies, \$10 000 and imprisonment for 12 months;

- (b) in any other case, \$5 000.

(2) Subsection (1) does not apply to the disclosure of any summary or statistical information that could not reasonably be expected to enable particulars relating to any person or business to be ascertained.

- (3) This section applies to any person who is or has been —
- (a) the Coordinator; or
 - (b) a person performing functions under this Act.

PART 6 — GENERAL

Establishment of committees

60. (1) The Minister may establish committees for the purpose of considering and advising on a particular matter specified by the Minister.

(2) Subject to subsection (3), the Minister may —

- (a) prescribe the membership, constitution and procedures of; and
- (b) discharge, alter or reconstitute,

any such committee.

(3) The Coordinator or his nominee is to be the chairperson of every committee established under this section.

(4) The Minister may determine that a member of a committee is to receive remuneration or an allowance and, if the Minister so determines, he or she is to fix the remuneration or allowance on the recommendation of the Minister for Public Sector Management.

(5) Subject to this section, a committee may determine its own procedure.

(6) The Coordinator is to provide a committee with such support services as it may reasonably require.

Regulations

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

Review

62. (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement.

(2) In the course of that review the Minister is to consider and have regard to —

- (a) the effectiveness of the operations of the Coordinator;
- (b) the need for the continuation of the functions of the Coordinator; and
- (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

(3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

SCHEDULE 1

[Section 24]

LICENCE TERMS AND CONDITIONS

A water services licence may include provisions —

- (a) requiring the licensee to enter into agreements on specified terms or on terms of a specified type;
- (b) requiring the licensee to observe specified industry codes with such modifications or exemptions as may be determined by the Coordinator;
- (c) requiring the licensee to maintain specified accounting records and to prepare accounts according to specified principles;
- (d) preventing the licensee from engaging in or undertaking specified business activities or any other business;
- (e) specifying methods or principles to be applied by the licensee in proposing prices or charges for inclusion in authorizing by-laws;
- (f) specifying methods or principles to be applied in the provision of water services authorized by the licence;
- (g) specifying procedures for amendment, revocation or surrender of the licence;
- (h) requiring the licensee to provide specified information to the Coordinator in the manner and form determined by the Coordinator;
- (i) requiring or regulating the construction, operation or maintenance of water services works;
- (j) relating to the performance of functions by the licensee including —
 - (i) the range of functions that may be performed by the licensee;
 - (ii) quality and performance standards to be met by the licensee, except to the extent that regulations of the kind described in section 33 apply; and
 - (iii) community service obligations, that is obligations that are not commercially justified, to be discharged by the licensee;

- (k) specifying —
 - (i) the terms and conditions of any customer contract which an owner or occupier of land is required to enter into with the licensee in the absence of any express agreement between the customer and the licensee to the contrary; and
 - (ii) any limitation on the capacity of the parties by express agreement to exclude, modify or restrict the terms and conditions of the customer contract;
- (l) relating to obligations of the licensee with respect to public authorities and other licensees;
- (m) relating to the disposal or transfer of property, rights or liabilities of a specified kind either during the currency of the licence or on or after its expiration by effluxion of time including provisions —
 - (i) prohibiting any disposal or transfer of property except with the approval of a specified person;
 - (ii) prohibiting the giving of any encumbrance over specified property except with the approval of the Coordinator;
 - (iii) requiring the transfer of property, rights or liabilities of a specified kind to a specified person on or within a specified time after the expiration of the licence;
 - (iv) with respect to the consideration to be provided in respect of any disposal or transfer;
 - (v) with respect to the arbitration of disputes that arise in connection with any disposal or transfer;
 - (vi) of a supplementary, consequential or transitional nature in relation to any disposal or transfer;
- (n) requiring the licensee to develop and implement specified programmes for the conservation and efficient use of water including programmes intended to educate the community about the conservation and efficient use of water; and
- (o) requiring the licensee to establish committees of consumers for the purpose of obtaining the opinions of consumers on the prices charged and the standard of service provided by the licensee.

SCHEDULE 2

[Section 45]

**ENACTMENTS THAT MAY APPLY TO LICENSEES, OTHER
THAN THE CORPORATION****PART 1 — PROVISIONS FOR WHICH ANY LICENSEE MAY BE
PRESCRIBED***Water Agencies (Powers) Act 1984*

| | | | |
|---|-----------------|-------|--------|
| s. 3 (definitions of “officer” and “works”) | s. 62 (1) | s. 83 | s. 100 |
| | s. 63 | s. 84 | s. 101 |
| | s. 64 | s. 86 | s. 102 |
| s. 3 (3) | s. 66 | s. 87 | |
| s. 34 | s. 67 | s. 88 | |
| s. 36 | s. 68 | s. 89 | |
| s. 37 | s. 69 | s. 90 | |
| s. 41 | s. 69A | s. 91 | |
| s. 41B | s. 69B | s. 92 | |
| s. 41E | s. 70 (except | s. 93 | |
| s. 41F | sub | s. 94 | |
| s. 41G | -section | s. 95 | |
| s. 41H | (3) (b)) | s. 96 | |
| s. 41J | s. 71 (1) & (3) | s. 97 | |
| s. 41K | s. 72 | s. 98 | |
| s. 41M | s. 73 | s. 99 | |

Town Planning and Development Act 1928

- s. 20D (a) (ii)
- s. 27A (1) (b) (ii)

PART 2 — PROVISIONS FOR WHICH A LICENSEE (WATER SUPPLY SERVICES) MAY BE PRESCRIBED*Country Areas Water Supply Act 1947*

| | | | |
|-------|--------|--------|--------|
| s. 11 | s. 37 | s. 45 | s. 77 |
| s. 14 | s. 38 | s. 46 | s. 78 |
| s. 28 | s. 39A | s. 58 | s. 108 |
| s. 29 | s. 40 | s. 59 | s. 111 |
| s. 30 | s. 42 | s. 60 | s. 112 |
| s. 31 | s. 43 | s. 62A | s. 113 |
| s. 32 | s. 43A | s. 71 | s. 115 |
| s. 33 | s. 43B | s. 73 | |
| s. 35 | s. 44 | s. 76 | |

Metropolitan Water Authority Act 1982

- s. 4 (definition of “works”)
- s. 43

Metropolitan Water Supply, Sewerage and Drainage Act 1909

| | | | |
|-------|--------|---------|--------|
| s. 14 | s. 49 | s. 57 | s. 153 |
| s. 37 | s. 50 | s. 57EA | s. 154 |
| s. 38 | s. 50A | s. 103 | s. 156 |
| s. 39 | s. 51 | s. 105B | s. 157 |
| s. 40 | s. 52 | s. 110 | s. 159 |
| s. 41 | s. 53 | s. 146 | s. 161 |
| s. 42 | s. 54 | s. 148 | |
| s. 43 | s. 55 | s. 150 | |
| s. 45 | s. 56 | s. 152 | |

Energy Corporations (Powers) Act 1979

- s. 42 (2) (a)

Home Building Contracts Act 1991

- s. 9 (1) (d)
- s. 9 (6)

PART 3 — PROVISIONS FOR WHICH A LICENSEE (SEWERAGE SERVICES) MAY BE PRESCRIBED

Country Towns Sewerage Act 1948

| | | | |
|--------|--------|--------|--------|
| s. 11 | s. 34 | s. 45 | s. 105 |
| s. 23 | s. 35 | s. 46 | s. 108 |
| s. 23A | s. 36 | s. 61 | s. 110 |
| s. 24 | s. 37 | s. 62 | s. 111 |
| s. 25 | s. 39 | s. 63 | s. 113 |
| s. 28 | s. 40 | s. 65A | s. 119 |
| s. 29 | s. 41 | s. 75 | |
| s. 30 | s. 41A | s. 79 | |
| s. 31 | s. 42 | s. 80 | |
| s. 32 | s. 43 | s. 81 | |
| s. 33 | s. 44 | s. 102 | |

Metropolitan Water Authority Act 1982

- s. 4 (definition of “works”)
- s. 43

Metropolitan Water Supply, Sewerage and Drainage Act 1909

| | | | |
|--------|-------|--------|--------|
| s. 31 | s. 63 | s. 70 | s. 154 |
| s. 32 | s. 64 | s. 110 | s. 156 |
| s. 33 | s. 65 | s. 146 | s. 157 |
| s. 58 | s. 66 | s. 148 | s. 159 |
| s. 59 | s. 67 | s. 150 | s. 161 |
| s. 61 | s. 68 | s. 152 | |
| s. 61A | s. 69 | s. 153 | |

Health Act 1911

- s. 63A

Home Building Contracts Act 1991

- s. 9 (1) (d)
- s. 9 (6)

PART 4 — PROVISIONS FOR WHICH A LICENSEE (DRAINAGE SERVICES) MAY BE PRESCRIBED*Land Drainage Act 1925*

| | | | |
|-------|--------|---------|--------|
| s. 64 | s. 81 | s. 100B | s. 161 |
| s. 70 | s. 81A | s. 152 | s. 162 |
| s. 71 | s. 85 | s. 153 | s. 167 |
| s. 73 | s. 94 | s. 154 | s. 171 |
| s. 74 | s. 100 | s. 155 | |

Metropolitan Water Authority Act 1982

| | | | |
|---------------------------------|--------|--------|--------|
| s. 4 (definition of "works") | s. 100 | s. 103 | s. 108 |
| s. 43 | s. 101 | s. 105 | |
| | s. 102 | s. 107 | |

Metropolitan Water Supply, Sewerage and Drainage Act 1909

| | | | |
|--------|--------|--------|--------|
| s. 103 | s. 148 | s. 153 | s. 161 |
| s. 109 | s. 150 | s. 156 | |
| s. 110 | s. 151 | s. 157 | |
| s. 146 | s. 152 | s. 159 | |

Health Act 1911

s. 63A

**PART 5 — PROVISIONS FOR WHICH A LICENSEE
(IRRIGATION SERVICES) MAY BE PRESCRIBED**

Rights in Water and Irrigation Act 1914

| | | | |
|--------|--------|-------|--------|
| s. 33 | s. 39G | s. 44 | s. 71 |
| s. 35 | s. 39I | s. 45 | s. 75 |
| s. 36 | s. 41 | s. 63 | s. 79A |
| s. 37 | s. 42 | s. 66 | |
| s. 38 | s. 42A | s. 69 | |
| s. 39E | s. 43 | s. 70 | |
