

COUNTRY AREAS WATER SUPPLY.

No. 75 of 1980.

AN ACT to amend the Country Areas Water Supply Act 1947-1979.

[Assented to 5 December 1980.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Country Areas Water Supply Amendment Act 1980*.

Short title
and citation.

(2) In this Act the Country Areas Water Supply Act 1947-1979 is referred to as the principal Act.

Reprinted as
approved
8 July
1971 and
amended by
Acts Nos. 94
of 1972 (as
amended by
No. 19 of
1973), 78
of 1974,
81 of 1976,
13 of 1977,
76 and 95 of
1978, and 43
and 92 of
1979.

(3) The principal Act as amended by this Act may be cited as the Country Areas Water Supply Act 1947-1980.

Section 2
amended.

2. Section 2 of the principal Act is amended—
- (a) as to the reference to Part IIA, by deleting “12F” and substituting the following—
- “ 12G ” ; and
- (b) by deleting the reference to Part VIII and substituting the following—
- “ PART VIII.—ss. 105 to 107—BY-LAWS
AND REGULATIONS.
PART IX.—ss. 108 to 122—MISCELLA-
NEOUS. ” .

Section 12A
amended.

3. Section 12A of the principal Act is amended in subsection (1) by deleting “The provisions” and substituting the following—
- “ Subject to the provisions of subsection (2) and of paragraph (a) of subsection (6) of section twelve E of this Act, the provisions ” .

Section 12AA
inserted.

4. After section 12A of the principal Act, the following section is inserted—

Interpreta-
tion.

- “ 12AA. In this Part of this Act, unless the contrary intention appears—
- “the land in question” means that part of a holding that is situate within the area to which this Part of this Act applies;
- “the subject land”, in relation to an application for the grant or transfer of a clearing licence, means the land for the clearing or partial clearing of which the licence is sought;
- “to clear”, in relation to land to which this Part of this Act applies, means to cause or permit the indigenous undergrowth,

bush, or trees on the land to be removed or destroyed, or so damaged as to eventually be destroyed, or to cause the removal from the land of vegetation not under cultivation, and cognate expressions have corresponding meanings. ” .

5. Sections 12B, 12C, and 12D of the principal Act are repealed and the following sections are substituted—

Sections 12B, 12C and 12D repealed and sections 12B, 12BA, 12BB, 12BC, 12BD, 12BE, 12C and 12D substituted. Clearing to be controlled.

“ 12B. (1) Subject to—

- (a) any Order made pursuant to subsection (2) of section twelve A of this Act; and
- (b) section twelve C of this Act,

a person who clears land to which this Part of this Act applies commits an offence.

(2) A person guilty of an offence against subsection (1) of this section shall be liable to a fine not exceeding one thousand dollars and, if the Department so requests and having regard to the recommendations of the Department, the court before which a person is convicted shall, unless the court thinks that having regard to the special circumstances of the case it would be inappropriate to do so, by order direct—

(a) that either—

- (i) the land on which the clearing was carried out; or
- (ii) such other land in the same ownership as may be agreed between the Department, the person convicted, and, where the person convicted is not the owner of the land, the owner of the land,

be restored by establishing on that land a tree cover in accordance with the order; and

- (b) what measures are to be taken for the purpose of restoring the land and the time within which any such measure shall be taken,

and any such order shall, subject to the registration of an appropriate memorial under section twelve BB of this Act, run with the land and may be made and have effect notwithstanding any change in the ownership of the land subsequent to the time the offence was committed.

(3) The court by which an order is made under subsection (2) of this section may, upon a subsequent application made by any person affected by the order and with the consent of all such persons and of the Minister, vary that order, and a reference in this Part of this Act to an order under subsection (2) of this section includes a reference to an order as varied under this subsection.

Memorials
as to unlaw-
ful clearing.

12BA. (1) Where clearing is carried out on any land contrary to this Part of this Act and, although no person has yet been convicted of an offence against subsection (1) of section twelve B of this Act by reason of the clearing—

- (a) the time for making a complaint of such an offence has not elapsed; or
- (b) the time for making a complaint of such an offence has elapsed but a complaint of such an offence that was made within time has not been disposed of,

the Minister may deliver a memorial in the prescribed form to the Registrar of Titles, the Registrar of Deeds, or the Minister for the time being administering the Land Act 1933, (as the relevant category of title may require), who shall, without payment of a fee, register the

memorial and endorse or note the title and land register or record in respect of the land in such manner as will ensure that a person searching the title to that land receives notice that the land may become the subject of an order under subsection (2) of section twelve B of this Act.

(2) A memorial delivered under subsection (1) of this section shall specify the land cleared and contain a warning that if a person is convicted of an offence by reason of the clearing an order for the restoration of the land is liable to be made.

(3) Where in respect of land no memorial is registered and recorded under subsection (1) of this section a person may apply to the Department in writing for a certificate to the effect that up to a date specified in the certificate no clearing in respect of which an order under subsection (2) of section twelve B of this Act will be requested by the Department has been carried out on the land, and the Department shall be bound by any certificate it gives in response to an application under this subsection.

12BB. (1) Where a person is convicted of an offence against subsection (1) of section twelve B of this Act and the court before which he is convicted orders the restoration of any land the Minister may, within fourteen days of the making of that order, deliver a memorial of the order in the prescribed form, specifying the land to which the order relates, to the Registrar of Titles, the Registrar of Deeds, or the Minister for the time being administering the Land Act 1933, (as the relevant category of title may require), who shall, without payment of a fee, register the memorial and endorse or note the title and land register or record in respect of that land accordingly.

Memorials of restoration orders.

(2) Where under subsection (1) of this section the Minister causes a memorial of an order for the restoration of any land to be

registered and recorded, the Minister shall forthwith give to the owner of the land notice in writing that he has done so.

Removal of
memorials.

12BC. Where a memorial is registered under section twelve BA or section twelve BB of this Act the Minister may, at any time thereafter, deliver a notice in writing directing that the memorial cease to have effect, to the Registrar of Titles, the Registrar of Deeds, or the Minister for the time being administering the Land Act 1933, (as the relevant category of title may require), who shall, without payment of a fee, endorse or note the title and land register or record in respect of that land accordingly and thereupon the memorial shall have no further effect.

Default
under
restoration
order.

12BD. (1) Where an order is made under subsection (2) of section twelve B of this Act for the restoration of any land and—

- (a) the order is not complied with within the time or in the manner specified in the order; or
- (b) the order is complied with but the tree cover is subsequently destroyed, or is not maintained to the satisfaction of the Minister,

officers of the Department may, where the ownership of the land has not changed since the order was made or a memorial of the order was registered and recorded under section twelve BB of this Act, enter upon the land with such persons and things as may be necessary to ensure that the land is restored and may thereon carry out such works as are necessary for that purpose, and the Minister may recover any expenses thereby reasonably incurred as a debt due from any person who is then the owner of the land.

(2) Where a person who is an owner of the land reasonably incurs expense in complying with an order made under subsection (2) of section twelve B of this Act, or where the Min-

ister recovers expenses from a person under subsection (1) of this section, that person may, if he is not the person on the conviction of whom the order was made, recover as a debt due from the person so convicted the amount—

- (a) reasonably incurred in complying with the order; or
- (b) where expenses are recovered from him by the Minister under subsection (1) of this section, which is attributable to the act or default in respect of which the person was so convicted.

12BE. (1) On the application of the Minister Injunctions.
the Supreme Court may, without regard to whether or not proceedings have been, or may be, taken against any person for an offence against section 12B of this Act, grant an injunction—

- (a) restraining a person from doing or causing or permitting to be done any thing that constitutes or would constitute a contravention of, or an attempt to contravene, section twelve B of this Act;
- (b) requiring a person to take or cause to be taken, such reasonable steps as the Supreme Court considers necessary to prevent the doing of any thing that constitutes or would constitute a contravention of, or an attempt to contravene, section twelve B of this Act; or
- (c) restraining a person from doing or causing or permitting the doing of any thing on land that has been cleared contrary to this Part of this Act, or using or causing or permitting the use of such land in any way, if the doing of the thing on the land or the use of the land in that way would or may

impair or delay the establishing or natural regeneration on the land of a tree cover,

notwithstanding that an appeal under section twelve D of this Act may lie or be pending in respect of a licence relating to the matter.

(2) The Supreme Court shall not, as a condition of granting an interim injunction, require any undertaking as to damages.

(3) An injunction granted for the purposes of this section—

(a) shall have effect for such period as is specified therein; and

(b) may be varied or rescinded by the Supreme Court.

(4) This section does not limit any right of the Minister that would exist but for this section to apply for an injunction, and the grant, refusal, variation, rescission, or expiry of an injunction shall not affect the taking of proceedings against any person for an offence against section twelve B of this Act nor the making of an order under that section.

**Clearing
licences.**

12C. (1) A person who clears land does not contravene section twelve B of this Act if the clearing is carried out—

(a) under, and in accordance with the conditions of, a clearing licence granted under this Part of this Act;

(b) as a reasonably necessary emergency measure in order to avoid danger to persons or property, where, as soon as is reasonably practicable, the land is restored to the satisfaction of the Minister;

- (c) as an essential measure in performing an obligation or carrying out a duty under the Agriculture and Related Resources Protection Act 1976 or the Bush Fires Act 1954; or
- (d) under, and in accordance with, a regulation made under this Part of this Act permitting the clearing of land by reference to the location of the land, the circumstances in which, the purposes for which, or the extent to which, the land is proposed to be cleared, or any of those matters,

or is attributable to events none of which that person could reasonably have been expected to prevent.

(2) The owner or occupier of land proposed to be cleared, or any person proposing to clear land in the course of exercising any statutory function, may, in the prescribed manner, if any, apply to the Department for a clearing licence and on payment of such fees or charges as may be prescribed the Under Secretary may grant or transfer any such licence, but where such an application is made and no decision is given within six months thereafter, or within such further period as the applicant may agree, then the Under Secretary is deemed to have decided to refuse the application.

(3) The Under Secretary may refuse any application for the grant or transfer of a clearing licence and, unless he is satisfied that there are exceptional reasons for not refusing an application, shall do so where, in his opinion, after the clearing that would otherwise be authorised there would be less than one-tenth part of the land in question left under tree cover including the indigenous undergrowth.

(4) The grant or transfer of a licence may be in respect of—

- (a) the whole or a part of the land; and

(b) the whole or a part of the clearing,

in respect of which application was made and may be made subject to such reasonable conditions as the Under Secretary thinks fit, which conditions shall be endorsed upon or referred to in the licence when granted or, as the case may be, transferred.

(5) A person who, in connection with an application for, or an appeal relating to, a licence, knowingly makes any statement that is false or misleading in any material particular commits an offence, and where the person convicted of an offence against this subsection is the holder of the licence to which the offence relates the Under Secretary may, whether or not any penalty is imposed by the court for the offence, by notice in writing given to that person, revoke the licence.

(6) A licence takes and shall have effect according to its tenor, but—

(a) the Under Secretary may, by notice in writing given to the holder of the licence, from time to time after the licence is granted—

(i) vary or add to the conditions of a licence; or

(ii) provide that an unconditional licence shall be subject to the conditions specified in the notice, or that a conditional licence shall cease to be subject to any condition; and

(b) where a licence was granted before the coming into operation of the Country Areas Water Supply Amendment Act 1980 for a period specified in the licence, that licence shall have effect for that period notwithstanding paragraph (a) of this subsection.

(7) Where the holder of a licence contravenes or fails to comply with any condition endorsed on or referred to in the licence—

- (a) he commits an offence and is liable for his act or omission to the extent that it was not authorised by the licence;
- (b) whether or not any other penalty is imposed or order made, the court may cancel that licence, and no compensation shall be payable in respect of any such cancellation; and
- (c) the Under Secretary may, by notice in writing given to the holder of the licence, revoke the licence or suspend the operation of it for such period as he thinks fit.

12D. (1) Where—

Appeals.

- (a) an application to grant or transfer a clearing licence is refused;
- (b) a clearing licence is granted or transferred in respect of only a part of the subject land, or a part of the clearing in respect of which application was made;
- (c) a clearing licence is revoked or its operation is suspended;
- (d) a condition is imposed in relation to a clearing licence,

the applicant in the case of paragraph (a) or (b) of this subsection, or the holder of the licence in the case of paragraph (c) or (d) of this subsection, may, within the time and in the manner prescribed, appeal against the decision of the Under Secretary to the Minister who, after causing such inquiry, if any, to be made as he thinks fit, may determine the appeal and may

uphold, reverse, or vary the decision of the Under Secretary and effect shall be given to any such determination.

(2) For the purposes of ascertaining when any claim for compensation arises under this Part of this Act a decision which is the subject of an appeal under subsection (1) of this section shall have effect as from the day on which the appeal is determined. ” .

Section 12E
amended.

6. Section 12E of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting after “the land” the following—

“ in question ” ; and

(ii) by deleting “any land” and substituting the following—

“ the land in question ” ; and

(b) by repealing subsections (3), (4), (5), and (6) and substituting the following subsections—

“ (3) The amount to be paid under this Part of this Act as compensation for injurious affection shall be assessed on the basis of values applying at the time at which the claim for compensation is made in accordance with this Part of this Act, and shall include interest computed from that time on the balance of compensation outstanding from time to time at the rate ruling at the time at which the claim for compensation is made in respect of overdraft accommodation granted by the Commonwealth Trading Bank of Australia.

(4) Subject to section twelve D of this Act, upon an application for the grant or transfer of a clearing licence in respect of land being refused, or deemed to be refused, or granted subject to conditions that are unacceptable to the applicant, or granted in respect of only a part of the subject land, or part of the clearing in respect of which application was made, any owner or occupier of the subject land, or other person having an estate or interest in the subject land, may claim compensation for injurious affection in accordance with the provisions of this Part of this Act.

(5) A claim for compensation shall be made in the prescribed manner to the Department not later than twelve months, or such further time as the Minister may in a particular case allow, after the claim for compensation arises under this Act, and shall not (other than with the consent of the Minister) be capable of being withdrawn, and if compensation for injurious affection has previously been paid under this Part of this Act to any person in respect of any land, or any estate or interest in land, no further compensation shall be paid under this Part of this Act to that or any other person in respect of injurious affection to the same estate or interest in land notwithstanding any subsequent applications or decisions under this Part of this Act affecting that land, except to the extent that further injurious affection to the land results after the date of previous payment by reason of the operation of the provisions of this Part of this Act and is injurious affection of a kind or degree not taken into account in the computation of the previous payment.

(6) Subject to subsection (5) of this section, where a claim is made under and in accordance with this section for com-

compensation for injurious affection to land, or any estate or interest in land, the Minister may—

- (a) purchase by agreement the estate or interest of the claimant in the whole or part of the land injuriously affected, whether or not that land is situate within the area to which this Part of this Act applies; or
- (b) if he gives written notice within three months of the receipt of the claim that he intends to do so, compulsorily take or resume pursuant to the Public Works Act 1902 the whole or part of the subject land,

and the Minister shall pay compensation for injurious affection only in respect of land, or an estate or interest in land, that is not purchased, taken or resumed in accordance with this subsection. ” .

Sections
12EA, 12EB,
12EC and
12ED
inserted.

Memorials as
to injurious
affection.

7. After section 12E of the principal Act the following sections are inserted—

“ 12EA. (1) Where compensation has been paid under this Part of this Act for injurious affection to any land, or any estate or interest in land, the Minister may deliver a memorial to that effect in the prescribed form, specifying the land, estate, or interest in respect of which, and the date on which, compensation has been paid, to the Registrar of Titles, the Registrar of Deeds, or the Minister for the time being administering the Land Act 1933, (as the relevant category of title may require), who shall, without payment of a fee, register the memorial and endorse or note the title and land register or record in respect of that land accordingly.

(2) Where the Minister is satisfied that a memorial that is registered under subsection

(1) of this section in respect of land serves no further purpose he may deliver a notice in writing to that effect to the Registrar of Titles, the Registrar of Deeds, or the Minister for the time being administering the Land Act 1933, (as the relevant category of title may require), who shall, without payment of a fee, thereupon cancel the registration of that memorial and endorse or note the title and land register or record in respect of that land accordingly.

12EB. (1) Where any land, estate, or interest is, or is to be, taken or resumed pursuant to subsection (6) of section twelve E of this Act that land shall thereafter be so dealt with, by restoration if necessary, as to conserve the water resources, and for the purposes of the Public Works Act 1902 that use shall be regarded as a public work for the conservation of water notwithstanding that the object of conserving water resources may be achieved without any restoration or other works being required or carried out, and that Act shall apply to such taking or resumption.

Dealing
with land.

(2) Notwithstanding subsection (1) of this section or anything in the Public Works Act 1902, where it is consistent with the achievement of the object of conserving the water resources the Minister may lawfully sell, exchange, or otherwise deal with the whole or any part of any land, or any estate or interest in land purchased, taken, or resumed or otherwise acquired by him pursuant to this Part of this Act.

(3) Where the Minister exercises a power conferred by subsection (2) of this section—

- (a) the provisions of sections twenty-nine, twenty-nine A, and twenty-nine B of the Public Works Act 1902 shall not apply in respect of any dealing in relation to that land; and

- (b) no claim for compensation for injurious affection in respect of that land shall thereafter lie under this Part of this Act in relation to any use of that land by a person deriving title through the Minister.

(4) Where under this section the Minister disposes of any interest in land to any person, the Minister and that person may, so far as the interest disposed of enables the land to be bound, agree that the land or any part of it shall thereafter, either permanently or for a specified period, be held subject to a covenant in favour of the Minister prohibiting any use of, or dealing with, the land which would have an effect detrimental to the conservation of the water resources and any such covenant may be enforced by the Minister as if he were possessed of or entitled to or interested in adjacent land and as if the covenant had been and had been expressed to be entered into for the benefit of that adjacent land.

(5) Where land to which a covenant given for the purposes of this Part of this Act relates is held under the operation of the Transfer of Land Act 1893, the provisions of Division 3A of Part IV of that Act apply to and in relation to the registration, discharge, modification, and dealing with that covenant and any restriction arising therefrom.

(6) Where the land to which a covenant given for the purposes of this Part of this Act relates is not land held under the operation of the Transfer of Land Act 1893—

- (a) the provisions of sections one hundred and twenty-nine B and one hundred and twenty-nine C of that Act apply, so far as they are capable of being applied, to and in relation to the discharge, modification and dealing

with that covenant and any restriction arising therefrom as if the land were land under that Act; and

- (b) the Registrar of Deeds shall, upon the production of the memorial required under the Registration of Deeds Act 1856, give due effect to any agreement duly made under section one hundred and twenty-nine B of the Transfer of Land Act 1893, as so applied, and any order of a judge made under section one hundred and twenty-nine C of that Act as so applied.

(7) A covenant to which any land is made subject pursuant to this section shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself, his successors in title (including the owners and occupiers for the time being of the land) and the persons deriving title under him or them and unless a contrary intention is expressed, shall have effect as if such successors and other persons were expressed.

12EC. Where the parties do not agree upon any question as to whether any land, or any estate or interest in land, is injuriously affected or as to the amount or manner of payment of the sum which is to be paid as compensation for such injurious affection the question shall be determined in the same manner as if it were a question required to be determined under Part III of the Public Works Act 1902 as to compensation payable and, subject to this Part of this Act, the provisions of Part III of the Public Works Act 1902 apply for the purposes of the determination of the question, with such modifications as the circumstances require but the principles to be applied in determining the question shall be derived from this Part of this Act.

Adjudication
on claims.

Power of
entry.

12ED. (1) Where in this section a power to enter upon land is conferred it shall, where appropriate, include the power to conduct tests on, and take samples from, the land for the purposes of this Part of this Act.

(2) Where due notice has been served upon the owner or occupier of that land the Minister and all persons acting with his authority may for the purposes of this Part lawfully enter on to any land notwithstanding that the consent of the owner or occupier has not been obtained, but except as is otherwise provided in this Part of this Act such an entry shall not be lawful unless notice has been served or such consent has been obtained.

(3) A notice required by this Part of this Act to be given in relation to an entry shall specify the purposes for which entry is required and shall continue to have effect for so long as that requirement subsists, and successive entries for that purpose shall be taken to be entries to which the notice relates.

(4) Where it is shown to the satisfaction of a Justice of the Peace that entry on or into any land is reasonably required for a purpose contemplated by this Part of this Act but that entry has been refused or is opposed or prevented, or in any case where such land is unoccupied and consent cannot be obtained or a notice required by this Part of this Act cannot be served without undue delay or difficulty, the Justice may, by warrant in the prescribed form, authorise the Minister and all persons acting with his authority to enter upon the land, using such force as may be necessary, for the purpose therein specified and any such warrant shall continue to have effect until the purpose for which it was granted has been satisfied.

(5) Where it appears to the Minister or a person acting with his authority that an offence against this Part of this Act is being, or is about

to be, committed on any land and the circumstances are such that immediate intervention is appropriate and compliance with the normal requirements of this Part of this Act is impractical or unreasonable, the Minister or that person may, without any requirement for a notice or warrant and by force of this subsection, lawfully effect immediate entry on or into any land to intervene in the commission of the offence and endeavour to ensure compliance with the provisions of this Part of this Act.

(6) A person exercising in respect of land a power of entry under this section or section twelve BD of this Part of this Act shall conform so far as is practicable to such reasonable requirements of the owner or occupier of the land as are necessary to prevent the lawful use of the land being obstructed. ” .

8. After section 12F of the principal Act, the following section is inserted—

Section 12G inserted.

“ 12G. Where before the coming into operation of the Country Areas Water Supply Amendment Act 1980 an agreement was entered into by or on behalf of the Minister or of the Crown for the purposes of, but not in accordance with, this Part of this Act, that agreement shall, in its entirety, be deemed to have been validly entered into and to have effect according to its tenor, and any act, matter, or thing done pursuant thereto shall be deemed to have been done pursuant to an agreement validly entered into under and in accordance with this Part. ” .

Validation.

9. The heading to Part IV of the principal Act is amended by inserting before “WORKS” the following—

Heading to Part IV amended.

“ WATER ” .