



Western Australia

## **Water Boards Act 1904**

Compare between:

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Western Australia

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## **Water Boards Act 1904**

**An Act to provide for the construction, maintenance, and  
management of works for the storage and distribution of water.**

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Water Boards Act 1904*<sup>1</sup>.

[2. Deleted by No. 25 of 1985 s. 330.]

### **3. Terms used**

(1) In this Act, unless the context otherwise requires —

**authorised**, in relation to fittings, means authorised by the water board;

**by-laws** means by-laws made by a water board;

**chairman** means the chairman of a water board, and includes —

(a) the mayor of a city or town; and

(b) the president of a shire,

within the meaning and for the purposes of the *Local Government Act 1995*;

**Corporation** means the Water Corporation established by section 4 of the *Water Corporation Act 1995*;

**country land** means any holdings within the boundaries of a water area, but not within a district, townsite, or suburban area;

**district** means an area that has been declared to be a district under the *Local Government Act 1995*;

**holding** means any piece or parcel of land held in fee simple or on conditional purchase lease, pastoral lease, or otherwise, under the *Land Administration Act 1997*, or any regulation thereunder or thereby repealed, constituting, owned, or occupied as one property;

**member** means a member of a water board;

**rateable land** means all land, with the exception of the following: — Land belonging to the Crown and not used or occupied otherwise than for public purposes; land vested in or in

the occupation or under the control of a local government, and not in the use or occupation of any private person; land used exclusively for religious or charitable purposes; land used exclusively as a public hospital, benevolent asylum, orphanage, public school, public library, miners' or mechanics' institute; public reserves and cemeteries; land belonging to any religious body and occupied only as a convent, nunnery, or monastery, or by a religious brotherhood or sisterhood, or as a place of residence of a minister of religion;

**ratepayer** means a person named in the records of a water board as a person liable to pay water rates;

**water area** means an area of the State constituted as a water area under section 4;

**water board** or **board** means a water board constituted under the provisions of this Act;

**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 the river, creek, stream or brook;
- (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);

**waterworks** or **works** means any reservoir, well, bore, tank, aqueduct, tunnel, building, engine, pipe, or other work constructed or erected before the passing of this Act, or by this Act authorised to be constructed or erected, with the appurtenances.

- (2) Terms not otherwise assigned a meaning under subsection (1) but referred to in section 3 of the *Water Agencies (Powers)*

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*Act 1984* as having a meaning assigned for the purposes of a relevant Act have that meaning in and for the purposes of this Act.

*[Section 3 amended by No. 16 of 1925 s. 2; No. 97 of 1978 s. 4; No. 63 of 1981 s. 4; No. 25 of 1985 s. 331; No. 110 of 1985 s. 136; No. 73 of 1995 s. 142; No. 14 of 1996 s. 4; No. 59 of 2000 s. 51; No. 67 of 2003 s. 62; No. 38 of 2007 s. 201(2).]*

**3A. Application of *Water Services Licensing Act 1995***

Where the performance of any function of a water board requires that the board hold a licence under the *Water Services Licensing Act 1995*, the board may only perform that function in accordance with the terms and conditions of such a licence.

*[Section 3A inserted by No. 73 of 1995 s. 143; amended by No. 67 of 2003 s. 62.]*

## **Part II — Constitution of water areas and water boards**

### *Water areas*

#### **4. Governor may constitute water areas**

The Governor may, by Order in Council, —

- (1) Constitute a district, or 2 or more districts, or any part or parts of such a district or districts, a water area, under such name as may be directed by the Order in Council;
- (2) Alter or extend the boundaries of a water area;
- (3) Unite 2 or more water areas;
- (4) Divide a water area and reconstitute the several parts thereof as new water areas, with or without the inclusion of part or parts of another water area, or other water areas, or any adjacent land;
- (5) Include within a water area any adjacent land; or
- (6) Abolish a water area;
- (7) From time to time —
  - (a) divide a water area into sub-areas;
  - (b) define the boundaries of sub-areas;
  - (c) alter the boundaries of sub-areas;
  - (d) abolish sub-areas.

*[Section 4 amended by No. 26 of 1947 s. 2; No. 14 of 1996 s. 4.]*

### *Vesting of assets*

*[Heading amended by No. 25 of 1985 s. 332.]*

#### **5. Governor may apportion and adjust assets etc. of water boards**

- (1) All lands acquired for or dedicated to the purpose of this Act, and all waterworks constructed under this Act or constructed by

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or on behalf of the Crown in right of the State and declared by the Governor to be subject to this Act, vest —

- (a) in the Minister on behalf of the Crown in right of the State unless and until vested in a board under this Act; and
- (b) in the Minister as mentioned in paragraph (a), on the dissolution of any board in which such lands or waterworks may have been vested,

and the Minister may exercise the powers and authorities conferred on a board by this Act in respect of such works until those works are so vested and after the dissolution of a board in which they have been so vested, and in so doing has the immunities conferred on a board by this Act.

- (2) On the dissolution of a board, all the property and assets of the board, and all rates, charges, and other moneys whatsoever due or accruing to the board, shall become vested in and be recoverable by the Minister as agent of the Crown in right of the State, and all the liabilities of the board shall become liabilities of the State.
- (2a) On the dissolution of a board, the Minister may, by instrument, delegate to a person —
  - (a) the powers and authorities referred to in subsection (1); and
  - (b) the power to recover anything that the Minister is authorised to recover under subsection (2).
- (2b) The immunities referred to in subsection (1) extend to a delegate of the Minister under subsection (2a).
- (3) Upon the exercise of any of the powers conferred by this Act, the Governor may apportion and adjust between the water boards of the respective water areas concerned, the assets, liabilities, and rights of the respective water boards in such manner as appears just, and every Order in Council so made shall have the same effect as if it were a part of this Act.



- (4) When by an Order in Council it is directed that any rights, powers, obligations, or authorities previously belonging to or imposed upon a water board, with respect to its assets or otherwise, shall devolve upon another water board, the such last-named water board shall have and may exercise, and shall be liable to, such rights, powers, obligations, and authorities, respectively.

*[Section 5 amended by No. 25 of 1985 s. 333; No. 73 of 1995 s. 144; No. 67 of 2003 s. 62.]*

*Water boards*

**6. Water boards**

- (1) For every water area there shall be a water board constituted under and subject to the provisions of this Act.
- (2) The water board shall be constituted by the Governor by Order in Council.
- (3) The Order in Council shall appoint a day on which it is to take effect.
- (4) The Governor may by Order in Council revoke any other Order in Council made for the purposes of this Act and constituting a water board, and may thereby dissolve any water board constituted under any Order so revoked, and effect shall be given to the Order in accordance with its terms.

*[Section 6 amended by No. 25 of 1985 s. 334.]*

**7. Modes of constitution of water board**

The water board shall be constituted in such one of the modes following as the Governor from time to time directs: —

- (1) By the appointment of the local government of a district all or part of which is within the water area to be the water board;
- (2) By the election of the members of the water board;

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- (3) By the appointment of the members of the water board by the Governor; or
- (4) By the election of some members, and the appointment of others by the Governor.

*[Section 7 amended by No. 14 of 1996 s. 4.]*

**8. Number of members**

When members of a water board are to be elected or appointed, the number of members and the period for which they are to hold office shall be prescribed, and may from time to time be varied, by the Governor; but so that at least one-third of the members shall go out of office every year.

**9. Provisions when members of water board are elected**

When members of a water board are to be elected, they shall be elected by the local government or the several local governments having jurisdiction within any part of the water area: And when in that case more local governments than one have jurisdiction within the water area, the members of the water board shall be elected by the local governments at such times, and in such manner, as the Governor shall from time to time appoint.

The Governor may direct that any local government shall by itself elect a member or members of the water board, or that any 2 or more other Authorities shall conjointly elect a member or members, or that all local governments shall severally elect a member or members, or that each member shall be elected by some 2 or more local governments conjointly.

*[Section 9 amended by No. 14 of 1996 s. 4.]*

**10. Provisions as to members**

When the members of a water board are to be elected or are to be appointed by the Governor, the following provisions shall have effect: —

- (1) Except as herein otherwise provided, every adult person who is liable to be rated in respect of rateable land within the water area is qualified to be a member:
- (2) No person who is concerned or participates in the profit of a contract with the board, and no person who is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws, and no person of unsound mind, and no person not qualified as herein required, shall be capable of being or continuing a member:
- (3) A member who for 3 months consecutively absents himself from the meetings of the board without the leave of the board, shall be disqualified from acting as a member, and his seat shall become vacant:
- (4) A person who acts as a member without being duly qualified, or after he has become disqualified, shall be liable to a penalty not exceeding \$1 000, and in any proceeding for the recovery of such penalty the burden of proving qualification shall be upon the person against whom the proceeding is taken:
- (5) When more members than one are elected or appointed at the same time, the local government or the Governor, as the case may be, shall then or afterwards declare in what order the members so elected or appointed shall retire:
- (6) A member may resign his office by writing under his hand addressed to the chairman, and the resignation shall be complete from the time when it is received by the chairman:
- (7) A member who retires by rotation or resignation shall be eligible for re-election:
- (8) In case of a vacancy arising from any cause whatsoever, except by periodical retirement, a member may be elected or appointed to fill the vacancy, and shall be

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deemed to have been elected or appointed at the same time as the last holder of the seat:

- (9) A member going out of office by rotation shall retain his office until his successor is elected or appointed, and shall then, unless he is re-elected or re-appointed, go out of office:
- (10) Elections of members shall be held at such time as the Governor prescribes:
- (11) In the event of a local government or 2 or more local governments directed to elect a member or members, as the case may be, refusing or neglecting to elect a member or members for one month after the time appointed for the election, or after the occurrence of an extraordinary vacancy, the Governor may appoint a qualified person or qualified persons to be a member or members for such local government or local governments:
- (12) A member appointed by the Governor under the provisions of the last preceding paragraph shall hold office for the period for which the member who ought to have been elected would have held office:
- (13) If an extraordinary vacancy occurs within 3 months before the time when the previous member would have gone out of office, the extraordinary vacancy need not be filled up:
- (14) If a person elected or appointed as a member refuses or neglects to act, or to attend a duly convened meeting of the board, all lawful acts and proceedings of the board shall be as valid and effectual as if they had been done or authorised by the full board.

*[Section 10 amended by No. 113 of 1965 s. 8; No. 54 of 1969 s. 2; No. 110 of 1985 s. 156; No. 14 of 1996 s. 4; No. 18 of 2009 s. 89.]*

**10A. Supply of goods or services by member**

- (1) A person is not disqualified from being or continuing a member of a water board, on the grounds that he is concerned or participates in the profit of a contract with the board, by reason only that in the ordinary course of business, and in good faith, he sells goods to, supplies services to, or does work for, the board or any person who has entered into a contract with the board so long as the value of goods so sold by him, services so supplied by him, or work so done by him, during any one financial year of the board does not exceed the prescribed amount.
- (2) In subsection (1) *prescribed amount* means \$1 000 or such greater amount as is, in any particular case, determined in writing by the Minister.

*[Section 10A inserted by No. 51 of 1978 s. 3; amended by No. 14 of 1982 s. 21.]*

**11. Water board to be body corporate**

Every water board shall be a body corporate with perpetual succession and a common seal, and shall, under such name as is assigned to it by the Governor, be capable in law of suing and being sued, of purchasing, holding, and alienating land, and of doing and suffering all other acts and things which bodies corporate may by law do and suffer.

A change in the mode of constitution of a water board shall not affect its continuity as a body corporate.

**12. Disputed elections or exercise of office**

When a person declared elected or appointed to an office under this Act has been elected or appointed unduly or contrary to the provisions of this Act, or a person who is incapable under the provisions of this Act of holding or continuing to hold such office has been elected or appointed to or holds or exercises such office, the Supreme Court or a Judge thereof may, upon the

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application of a ratepayer, grant a rule or order calling upon that person to show cause why he should not be ousted from office.

Provided that the applicant shall, before making the application, pay into Court the sum of \$40 as security for costs, to abide the event of the application.

If, upon the return of the rule or order, it appears to the Court or Judge that the person elected or appointed or holding or exercising the office was elected or appointed unduly or contrary to this Act, or was at the time of his election or appointment, or while holding or exercising his office, incapable under the provisions of this Act of holding or continuing to hold the office, the Court or Judge may make the rule or order absolute, or, if the matter does not so appear, may discharge the rule or order, and in either case with or without costs.

The person against whom any such rule or order is made absolute shall be deemed thereby to be ousted from office accordingly.

If it appears to the Court or Judge that some other person was duly elected to the office, the Court or Judge may declare such person to have been duly elected, and he shall thereupon be deemed to have been duly elected to the office at the time at which the person ousted was declared to have been elected:

Provided that no such rule or order for ousting any person as having been elected or appointed unduly or contrary to the provisions of this Act shall be granted unless the application is made before the expiration of 4 months from the declaration of the result of the election at which such person was elected, or the notification of his appointment, as the case may be.

*[Section 12 amended by No. 113 of 1965 s. 8.]*

*Proceedings of water boards*

**13. Application of Acts under which local governments appointed**

- (1) With respect to local governments which may be constituted water boards under this Act, the provisions of the Acts under which they are respectively constituted shall be applicable to them and their servants with respect to all things done and proceedings had under this Act, except so far as such provisions are varied by or are inconsistent with the provisions of this Act.
- (2) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996* so far as it applies to a water board a provision of a written law relating to protection from liability.

*[Section 13 amended by No. 14 of 1996 s. 4; No. 41 of 1996 s. 3.]*

**14. Proceedings**

With respect of water boards not being local governments the provisions of sections 15 to 29 inclusive shall have effect.

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

**15. First meeting**

The first meeting of the board shall be held at such time and place as the Governor appoints.

**16. Meetings**

The board shall hold an annual meeting, and such other meetings for the transaction of business as are necessary for properly executing its powers and performing its duties under this Act, and every meeting shall be open to the public.

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**17. Members to elect chairman**

At the first meeting of the board in every year, after the annual election or appointment of new members, or at some adjournment of the meeting, the members present shall choose one of the members to be chairman of the board, who shall hold office until the conclusion of the next annual election of members, except as next hereinafter provided.

If within one month of the time appointed for the election of a chairman no chairman is elected, the Governor may appoint one of the members to be chairman.

If the chairman resigns his office of chairman or member, or his office becomes vacated, the board shall choose a member to be chairman in his stead, who shall hold office until the period aforesaid.

If the chairman is not one of the members going out of office at the time of the next annual election or appointment of members he shall hold office until the first meeting of the board held after that election.

If the chairman is one of the members going out of office at the time of that election or appointment of members, the board may appoint a member, who is not one of the members then going out of office to act as chairman during the interval that elapses between the conclusion of the election or the time of the appointment and the first meeting of the board after the election or appointment.

**18. Chairman's duty**

The chairman shall preside at every meeting of the board at which he is present, and if he is absent from a meeting another member shall be chosen as chairman at and for that meeting.



**19. Quorum**

Business shall not be transacted at a meeting of the board unless a majority of the whole number of members for the time being prescribed by the Order in Council constituting the board are present when the business is transacted.

All powers vested in the board may be exercised by the majority of the members present at a meeting duly held, and all questions shall be decided by a majority and by open voting.

Upon every question the chairman shall have a vote, and if the members are equally divided, he shall have a second or casting vote.

At all meetings of the board, save as herein otherwise provided, all members present shall vote.

If a member refuses to vote, his vote shall be counted for the negative.

**20. Penalty for acting as member where interested**

No member shall vote or take part in debate with respect to any matter in which he has directly or indirectly, by himself or his partners, any pecuniary interest, and every member who knowingly offends against the provisions of this section shall for every offence be liable to a penalty not exceeding \$1 000.

*[Section 20 amended by No. 113 of 1965 s. 8; No. 110 of 1985 s. 156.]*

**21. Adjournment of meeting**

The members present at a meeting may from time to time adjourn the meeting.

If a quorum is not present within half-an-hour after the time appointed for a meeting of the board, the members present or the majority of them, or any one member if only one is present, or the clerk if no member is present, may adjourn the meeting to

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any time not later than 7 days from the date of such adjournment.

**22. Resolutions, how revoked or altered**

A resolution of the board shall not be revoked or altered unless notice of the intention to propose the revocation or alteration is given to each of the members 7 days at least before holding the meeting at which the revocation or alteration is to be proposed.

If the number of members present at that meeting is not greater than the number present when the resolution was adopted, the resolution shall not be revoked or altered unless the revocation or alteration is determined upon by a majority of the whole number of members prescribed by the Order in Council constituting the board.

**23. On petition or otherwise, Governor may intervene**

The Governor may on the petition of a majority of the ratepayers in a water area, or otherwise if he thinks fit, suspend, amend, or rescind any resolution or order of the board, or may prohibit the expenditure of any moneys from the Water Fund upon any work which he deems unnecessary, or which will in his opinion impose undue burdens upon the ratepayers.

**24. Notices of meetings**

Notices of any meeting or adjourned meeting of the board shall be in writing, and shall be delivered at, or sent by post or otherwise to, the usual place of business (if any) within the water area, or at or to the place of abode of each of the members, 2 clear days at least previous to the meeting.

Every such notice shall specify the time of meeting, and, in case of a special meeting, shall specify the object of it.

No business shall be transacted at any special meeting except that which is stated in the notice of the meeting.

**25. Committees of board and quorum**

The board may from time to time, as it sees fit —

- (1) Appoint committees, either for general or special purposes;
- (2) Delegate to a committee power to do any act or hold any inquiry which it thinks fit;
- (3) Fix the quorum of a committee.

A committee may from time to time appoint one of the members to be chairman of the committee; and every committee shall report to the board.

**26. Meetings, chairman etc. of committees**

A committee may meet from time to time, and may adjourn from place to place, as they think proper, but no business shall be transacted at a meeting of the committee unless the quorum of members (if any) fixed by the board, and, if no quorum is fixed, 2 members at the least, are present.

At meetings of a committee, if the chairman is not present, one of the members present shall be appointed chairman. All questions shall be determined by a majority of the votes of the members present, including the chairman; and if the numbers are equally divided, he shall have a second or casting vote.

**27. Minutes of proceedings**

The board, and every committee, shall cause entries of the proceedings of the board, or of the committee, with the names of the members present at each meeting, and of the names of the members voting upon any question for the decision of which a division is called, to be made in books to be provided for the purpose, which shall be kept by the clerk under the superintendence of the chairman.

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Every such entry shall be signed by the chairman at the meeting next succeeding the meeting at which the proceeding has taken place.

Every such entry, or a certified copy thereof, sealed with the seal of the board, and signed by the chairman, shall, upon the production alone, be received as evidence of the proceedings appearing by such entry to have been taken, without proof of the meeting to which the entry refers having been duly convened or held, or of the persons attending the meeting having been or being members of the board, or of the committee, or of the signatures of the chairman, or of the fact of his having been chairman and all such matters shall be presumed until the contrary is proved.

**28. Copies and extracts from minutes**

Such books shall at all reasonable times be open to the inspection of any member and of any ratepayer of the water area, or creditor of the board, any of whom may, at all reasonable times during office hours, make a copy of, or take extracts from, the books: And every person having the custody of any such book who does not, on the reasonable demand of a member, ratepayer, or creditor permit him to inspect the book or to make or take such copy or extract, shall be liable to a penalty of \$100.

*[Section 28 amended by No. 113 of 1965 s. 8; No. 110 of 1985 s. 156.]*

**29. Remuneration and allowances**

- (1) Each member is to be paid from the Water Fund such remuneration and allowances as the Minister, on the recommendation of the Minister for Public Sector Management, determines in the case of that member.
- (2) Remuneration is not to be paid to a member who holds a full-time office or position that is remunerated out of moneys appropriated by Parliament.

*[Section 29 inserted by No. 22 of 2003 s. 4.]*

*Delegation of authority*

**30. Water board may delegate powers**

A water board may authorise the chairman or other officer to do any of the acts, matters, and things which the water board is hereby empowered or required to do; and the chairman or other officer so authorised shall have and exercise all powers hereby conferred on the water board; and all acts, matters, and things, when done under such authority, shall be as valid and effectual as if they had been done by the water board.

*Officers of water boards*

**31. Appointment, removal etc. and salaries of officers**

Every water board shall from time to time appoint such officers and servants as may be necessary to assist in the execution of this Act, and may, out of the Water Fund, pay such salaries and allowances to such officers respectively as the board may determine.

**32. Chairman may suspend officers**

The chairman may suspend from office any officer of the board who, in his opinion, is guilty of misconduct or neglect, and may, if necessary, temporarily appoint another officer in his place: Provided that, at the next meeting of the board after the suspension, the chairman shall report the matter to the board; and if the officer suspended is dismissed by the board, no salary or wages shall be due or paid to him from the date of his suspension.

Every officer so temporarily appointed shall hold office and receive remuneration (which shall in no case exceed that paid to the officer or servant suspended) only until the board decides

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whether the person suspended shall be re-instated, or whether he shall be dismissed and a successor appointed in his stead.

**33. Officers exacting or accepting fees**

Every officer employed by a water board who exacts or accepts, on account of anything done by virtue of his office, or in relation to any matters to be done under this Act, any fee or reward, other than the salary or allowance by way of salary allowed by the board, or who is in anywise concerned or interested in any bargain or contract made by the board, shall be liable to a penalty not exceeding \$2 000.

*[Section 33 amended by No. 113 of 1965 s. 8; No. 110 of 1985 s. 156.]*

**34. Officers failing to render accounts or to pay balance and deliver over property of board**

If an officer of a water board fails, when required by the board so to do, —

- (1) To render accounts of any money received by him for or on behalf of the board, and of his dealings with it; or
- (2) To produce and deliver up the vouchers and receipts relating to the money in his possession or power; or
- (3) To pay the balance of the money when so required; or
- (4) To deliver up to the board or to any person appointed by it to receive the same, within 5 days after being so required, all papers and writings, property, matters and things in his possession or power, relating to the execution of this Act or belonging to the board,

the Magistrates Court may order the officer to render such accounts, or to deliver up such vouchers and receipts, or to pay over the balance owing by him, or to deliver up all such papers, writings, property, matters, and things; and if such officer neglects or refuses to obey such order, the court may commit him to prison for any period not exceeding 6 months.

*[Section 34 amended by No. 59 of 2004 s. 141.]*

**35. Proceedings after officer has ceased to hold office**

Such proceedings against an officer may be had and taken and enforced against him after he has ceased to hold his office: And no such proceedings against an officer shall deprive the board of any remedy which it might otherwise have against a surety of that officer.

**Part III — The construction, maintenance, and  
extension of waterworks**

**36.     Water reserves and works may be placed under control of  
water board or Minister**

- (1) The Governor may from time to time by Order in Council —
  - (a) place under the temporary management and control of a water board, or absolutely vest in a water board, any waterworks or reservoir begun, constructed, or provided for out of moneys appropriated by Parliament;
  - (b) constitute any portion of the State a water reserve or catchment area, and define the boundaries thereof;
  - (c) where a water reserve or catchment area constituted under paragraph (b) comprises only lands of the Crown which have not been alienated, place such water reserve or catchment area under the temporary management and control of the Minister, or absolutely vest the same in the Minister;
  - (d) where a water reserve or catchment area constituted under paragraph (b) comprises either in whole or in part land which has been alienated from the Crown, place such water reserve or catchment area under the temporary management and control of the Minister.
- (2) The power conferred by section 34 of the *Water Agencies (Powers) Act 1984* may be exercised by the Minister to make by-laws for the prevention of pollution of water within any water reserve or catchment area.
- (3) Any waterworks or reservoir vested in a water board by Order in Council under this section shall, while such Order in Council continues in force, be deemed to be the property of the water board, and may be used accordingly; and any waterworks or reservoir placed under the management and control of a water board by an Order in Council under this section shall, while



such Order in Council continues in force, be under the control and management of such water board, and may be used or administered by the water board for the purposes of this Act.

- (4) The expression *water reserve or catchment area* in this section means any land over, through, or under which any water flows, runs, or percolates directly or indirectly into any watercourse or reservoir used or erected in connection with any water supply.

*[Section 36 inserted by No. 10 of 1941 s. 2; amended by No. 110 of 1985 s. 137; No. 73 of 1995 s. 145; No. 38 of 2007 s. 201(3).]*

**37. Minister to have powers of local government under *Health Act 1911***

For preventing the pollution of water within a water reserve or catchment area, the Minister shall, within such reserve or area, have all the power and authority of a local government under the *Health Act 1911*, including the power to make and enforce local laws under an Act relating to public health. All the provisions of the *Health Act 1911*, and of all Acts amending the same or incorporated therewith, shall apply to such water reserve and catchment area as if the same were a local government district.

*[Section 37 amended by No. 10 of 1941 s. 3; No. 73 of 1995 s. 146; No. 14 of 1996 s. 4; No. 38 of 2007 s. 201(3).]*

- [38. Deleted by No. 73 of 1995 s. 147.]*

**39. Works to be property of water board**

The whole of the works, and all water which at any time is in any reservoir, pipe, or other part of the works, under the control of the water board, and all moneys received by it under the authority of this Act, shall be the property of the water board, and shall be used by it for the purposes of this Act.

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**40. Board may construct waterworks**

- (1) Subject to the provisions of this Act, a water board shall have power to construct waterworks for the purposes of this Act, and shall be deemed a Local Authority within the meaning of the *Public Works Act 1902*.
- (2) A water board shall not undertake the construction of works in the water area pursuant to subsection (1), other than works consisting wholly of exempt works, unless the requirements of sections 41, 42, 43 and 45 have been complied with and —
  - (a) the Minister has in writing authorised the carrying out of such works; and
  - (b) notice of that authorisation has been published by the water board in the *Government Gazette*.

*[Section 40 amended by No. 51 of 1978 s. 4; No. 25 of 1985 s. 335; No. 73 of 1995 s. 148.]*

**41. Preliminaries to construction**

Where a water board formulates proposals for the construction of works in the water area pursuant to section 40(1), other than works consisting wholly of exempt works, the water board shall —

- (a) cause the necessary surveys and levels of lands to be made and taken;
- (b) cause to be prepared plans of the proposed works, and cause the same, or certified copies thereof, to be deposited in the office of the water board; and
- (c) cause an advertisement to be published in the *Government Gazette*, and in one or more newspapers generally circulating in the water area, specifying —
  - (i) a description of the proposed works;
  - (ii) the localities at which they will be constructed;
  - (iii) the purposes for which they are to be constructed;

- (iv) the times when and places at which the plans may be inspected.

*[Section 41 inserted by No. 51 of 1978 s. 5; amended by No. 25 of 1985 s. 336; No. 73 of 1995 s. 149.]*

**42. Plans open to inspection**

The plans so deposited shall be open to inspection by any person interested at the advertised times and places, and every such person shall be allowed to make copies of and extracts from the same free of charge.

*[Section 42 inserted by No. 51 of 1978 s. 6.]*

*[43. Deleted by No. 73 of 1995 s. 150.]*

**44. Objections**

- (1) Any local government, corporation, or person interested may object in writing to the construction of the whole or any part of the proposed works.
- (2) Every such objection shall be lodged with the water board within one month from the date of the last publication of the advertisement hereinbefore prescribed.
- (3) The water board is to consider any objections made under subsection (1) and then prepare a report on the proposal.

*[Section 44 amended by No. 25 of 1985 s. 338; No. 73 of 1995 s. 151; No. 14 of 1996 s. 4.]*

**45. Submission for approval**

- (1) Where the water board is satisfied that the requirements of sections 41, 42 and 43 have been complied with and that the objections, if any, are, in the general public interest, not sufficient to cause the proposals to be amended, the water board shall submit to the Minister the proposals and the report prepared on the proposals and furnish to the Minister such plans, specifications, estimates or other information as the Minister may require relating thereto.

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- (2) After considering the proposals submitted to him the Minister may —
- (a) authorise the carrying out of the works for the purposes of section 40; or
  - (b) decline to authorise the carrying out of the works.
- (3) The water board shall cause notice of an authorisation given under subsection (2) to be published in the *Government Gazette*.
- [Section 45 inserted by No. 51 of 1978 s. 8; amended by No. 25 of 1985 s. 339; No. 73 of 1995 s. 152.]*

**45A. Exempt works**

- (1) For the purposes of this Part the Governor may from time to time by Order in Council declare that reticulation works of the nature specified in that Order shall be exempt works not subject to the provisions of section 40(2) or section 41, 42, 43, 44 or 45 notwithstanding that such works may form part of or be related to works comprised in proposals to which those provisions apply.
- (2) Works which are in, on, under or over —
- (a) private land, being works constructed or provided on, in respect of, and at the request of the owner of, that land; or
  - (b) road reserves, being works required to link other exempt works to existing works,

shall be exempt works not subject to the provisions of section 40(2) or section 41, 42, 43, 44 or 45 notwithstanding that such works may form part of or be related to works comprised in proposals to which those provisions apply.

*[Section 45A inserted by No. 51 of 1978 s. 9; amended by No. 25 of 1985 s. 340.]*

**46. Powers of water board**

Subject to the provisions of this Act, the water board may, as the case requires, do or continue any of the following acts, and may execute or complete any of the following works for constructing

any works authorised by this Act, or for extending and maintaining them or any works now existing, or for supplying water under this Act, that is to say: —

- (1) It may, without a previous agreement with the owner or occupier, enter upon any land shown or delineated on the plans and sections, and described in the books of reference deposited as aforesaid, which it may be necessary to enter upon, take, or use for the purposes of the works; and may take levels of the same, and set out such parts thereof as the water board or its officer deems necessary, and may dig and break up the soil of such land, and trench and fence-in the same, and remove or use any earth, stones, minerals, trees, and other things taken therefrom;
- (2) It may, under and subject to the provisions of Part 9 of the *Land Administration Act 1997*, take any lands which are required for the purposes of the works or of this Act;
- (3) It may construct and maintain in and across any lands, any pipes, ditches, aqueducts, flumes, or other works necessary for conveying water;
- (4) It may, from time to time, sink or acquire wells or shafts, erect buildings, pumping stations and pumping machinery, and make, maintain, alter, or discontinue streams, reservoirs, drains, culverts, aqueducts, flumes, or other waterworks, upon the lands authorised to be taken;
- (5) It may, subject to Part III of the *Rights in Water and Irrigation Act 1914*, from time to time divert and intercept for that purpose the water from any watercourse mentioned in the plans of the works, or alter the course of any such watercourse, and may take any water found under or on the lands taken for constructing the works:

Provided that, in the exercise of the powers conferred by this section, the water board shall do as little damage as may be, and shall make to every person interested compensation for any

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damage actually sustained by him through the exercise of those powers, and such compensation, if not agreed upon between the parties, shall be made in the manner provided in Part 10 of the *Land Administration Act 1997*.

*[Section 46 amended by No. 73 of 1995 s. 153; No. 31 of 1997 s. 138 and 142.]*

**47. Power to break road etc.**

For the purposes of constructing the works authorised by this Act, or extending or maintaining the same or any works now existing, a water board may —

- (1) Open and break up the soil and pavement of a road;
- (2) Lay down and place in, on, or under a road or elsewhere, pipes, conduits, service pipes, and other fittings, and from time to time repair, alter, or remove any of them;
- (3) For the purposes aforesaid remove or use any earth or materials in or under a road; and
- (4) Do any other acts which the water board from time to time deems expedient for constructing and maintaining the works.

**48. Notices to be served on local government having control before breaking up road or opening drains**

Before a water board, not being the local government having jurisdiction in the place in question, opens or breaks up a road, it shall give to that local government notice in writing of the intention to open or break up the same; and the notice shall be given not less than 48 hours before beginning the work, except in cases of emergency which, in the opinion of the water board, justify the omission to give notice, in which case the notice shall be given as soon as conveniently may be after beginning the work, or after the necessity for it has arisen.

*[Section 48 amended by No. 14 of 1996 s. 4.]*

**49. Roads not to be broken up except under superintendence of local government**

In cases in which a notice is required to be given, a road shall not, except in case of emergency, be opened or broken up except under the superintendence of the local government having control thereof or its employee:

Provided that if the employee of the local government, after such notice, fails to attend at the time fixed for the opening or breaking up of the road, or if the local government or its employee refuses or neglects to superintend the work, the water board may perform the work specified in the notice without such superintendence.

*[Section 49 amended by No. 14 of 1996 s. 4.]*

**50. Roads etc. broken up to be re-instated without delay**

When a water board opens or breaks up the soil or pavement of a road, it shall, —

- (1) With all convenient speed complete the work for which it is broken up, and fill in the ground, and re-instate and make good the road or pavement so opened or broken up.
- (2) While any such road or pavement continues to be opened or broken up, cause it to be fenced or guarded, and a sufficient light to be kept there at night.

**51. Local governments to give particulars as to levels**

- (1) Every local government shall, when requested by the water board, give particulars of the ascertained levels of any street or road in which it is proposed to lay any main or other pipe.
- (2) The local government shall give to the water board at least 48 hours notice, in writing, of its intention to alter the level of any street or road in which pipes are laid down.

Thereupon the water board may lower any pipe, and may raise or lower the fittings and covers of any stop cock, valve, or fire

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plug, and the cost of so doing shall be a debt due by the local government to the water board, and may be recovered in any Court of competent jurisdiction.

Any local government failing to give the notice required by this subsection shall be liable to a penalty not exceeding \$1 000.

*[Section 51 amended by No. 113 of 1965 s. 8; No. 110 of 1985 s. 156; No. 14 of 1996 s. 4.]*

**51A. Water quality, and provision of works etc.**

- (1) A water board shall ensure that water supplied under this Act by the board is in all respects as to turbidity, colour, dissolved solids, disinfection, bacteriological content and fluorine content in accordance with the requirements of the *Health Act 1911* or the *Fluoridation of Public Water Supplies Act 1966*, as the case requires, and of a quality satisfactory to the Minister.
- (2) A water board shall ensure that the works (including any equipment, facilities or other measures required to be provided or taken in relation thereto) necessary and appropriate for the provision of sufficient reserve storage, to ensure adequate pressure and for disinfection and fluoridation systems to meet the obligations of the board under this Act are provided, maintained or taken to a standard satisfactory to the Minister.
- (3) Where a water board contravenes subsection (1) or (2), the Minister may for the purposes of ensuring compliance with that subsection —
  - (a) direct in writing that the water board give effect to the requirements contained in that direction (which may include a requirement to construct, extend or improve works or to take other measures or to permit the Minister or the Corporation or any other person on behalf of the Minister so to do);



- (b) construct, extend or improve works or take other measures as he thinks necessary to ensure that the quality of the water supplied, the works provided and the measures taken meet the requirements referred to in subsections (1) and (2), or authorise and require the Corporation or any other person so to do; and
  - (c) send to the water board a statement of account showing the cost of and incidental to any such works carried out or measures taken by or on behalf of the Minister and require that such cost, or such part of the cost as the Minister thinks appropriate, be borne by the water board.
- (4) Where the Minister sends to a water board a statement of account pursuant to subsection (3)(c) and requires that the cost of works or other measures, or a specified part of that cost, referred to in that statement be borne by the water board —
  - (a) that cost, or that specified part of that cost, is payable by the water board in accordance with the requirement of the Minister; and
  - (b) if the water board fails to pay that cost, or any part of that cost, within 30 days of being required to do so by the Minister the amount in question may be recovered in a court of competent jurisdiction from the board by the Minister as a debt due by the water board to the Crown in right of the State.
- (5) For the purposes of any proceedings relating to this section, a certificate that purports to be signed by the Minister certifying that —
  - (a) a water board has or has not been directed in writing by the Minister to give effect to requirements contained in that direction;
  - (b) any such direction has or has not been revoked; or

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- (c) the direction contained the requirements specified in the certificate,

is, without proof of the signature or of the official character of the person appearing to have signed the certificate, evidence of the matters certified in and by the certificate.

*[Section 51A inserted by No. 25 of 1985 s. 341; amended by No. 73 of 1995 s. 159.]*

**52. Works may be constructed by Minister**

- (1) Subject to section 51A and section 53, all or any of the powers conferred by this Act on a water board in and for the construction of works in any water area may be exercised by —
  - (a) the Minister;
  - (b) the Corporation, on the request of the water board; or
  - (c) the Corporation, if the Minister so directs or approves.
- (2) Where at the request of a water board —
  - (a) any works are constructed, extended or improved by the Minister or the Corporation; or
  - (b) any other work is carried out or caused to be carried out by the Minister or the Corporation in advising, or providing designs for, a water board or in investigating, monitoring or testing water supplies for, or water supplied by, a water board,

the Minister or the Corporation, as the case requires, may send to the water board a statement of account showing the cost of and incidental to those works or that work and require that such cost, or a specified part of such cost, be borne by the water board.

- (3) Where the Minister or the Corporation sends to a water board a statement of account pursuant to subsection (2) and requires that

the cost, or a specified part of the cost, of the matters referred to in that statement be borne by the water board —

- (a) that cost, or that specified part of that cost, is payable by the water board in accordance with that requirement; and
- (b) if the water board fails to pay that cost, or any part of that cost, within 30 days of being required to do so by the Minister or the Corporation, as the case may be, the amount in question may be recovered in a court of competent jurisdiction from the board by the Minister as a debt due by the water board to the Crown in right of the State or, as the case requires, by the Corporation as a debt due by the water board to the Corporation.

*[Section 52 amended by No. 25 of 1985 s. 342; No. 73 of 1995 s. 154 and 159.]*

**53. Water board to be advised of Minister's intention to construct works**

- (1) Before authorising any expenditure in the construction of works in any water area other than works the subject of a direction given by the Minister under section 51A, the Corporation shall cause the water board to be advised of the intentions of the Corporation, and of the estimated cost of the works, and shall give the water board such other information and particulars as the Corporation deems necessary or as the water board may reasonably require.
- (2) The water board, upon receipt of such notice, shall report upon the matter, and make such recommendations to the Minister as the circumstances may require.
- (3) The Minister shall, after consideration of such recommendations, decide thereon, and his decision shall be final.

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- (4) The Corporation shall not carry out any works to which subsection (1) applies, until the Minister pursuant to subsection (3) has authorised the expenditure.

*[Section 53 amended by No. 25 of 1985 s. 343; No. 73 of 1995 s. 159.]*

**54.        Works to be transferred to water board on payment of cost**

Such works may, on completion, and on payment by the water board to the Minister or the Corporation, as the case requires, of the cost thereof, be transferred to the water board.

*[Section 54 amended by No. 25 of 1985 s. 344; No. 73 of 1995 s. 159.]*

## **Part IV — The supply and distribution of water**

### **55. Supply to rated land**

The owner or occupier of land rated under this Act shall, as far as practicable, and subject to the provisions of this Act, be supplied by the water board with the quantity of water, if any, to which he is entitled in respect of the rates; and, on payment of the prescribed charge, with such further quantity as he may take by measure.

*[Section 55 amended by No. 110 of 1985 s. 138.]*

### **56. Request for supply to rated land**

On receiving from the owner or occupier of any land rated under this Act a written request for a supply of water, the water board shall provide, lay down to the boundary of the land, and fix the communication pipe and fittings necessary for complying with such request.

Provided that no owner or occupier of rateable country land shall be entitled to be supplied with water or to have a communication pipe laid from the main to the boundary of his land until an agreement has been entered into by him with the board to pay the cost of such pipe in advance, nor unless all rates due in respect of the land have been paid.

*[Section 56 amended by No. 16 of 1925 s. 7.]*

### **57. Supply to land not rated**

- (1) The owner or occupier of land not rated under this Act may in writing request the water board to supply water to that land.
- (2) On receiving a request made under subsection (1), the water board may —
  - (a) comply with that request on and subject to such terms and conditions as may be mutually agreed; or
  - (b) refuse that request.

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- (3) Whenever the water board complies with a request made under subsection (1), it may provide, lay down and fix all necessary pipes and fittings for supplying water to the land concerned.

*[Section 57 inserted by No. 97 of 1978 s. 5; amended by No. 25 of 1985 s. 345.]*

**58. Water board may supply meter and charge by measure**

The water board may cause a meter to be attached to any pipe on any land supplied with water under this Act.

When a meter is so attached, the owner or occupier shall not receive a supply of water except by means of the meter, unless the water board consents to its removal, or to a supply of water to a part of the land otherwise than by means of the meter.

The water board may charge the prescribed rent for the use of the meter, and the cost of fixing, removing, or replacing it and its fittings whenever in the opinion of the water board necessary.

**59. Meter records and testing of meters**

- (1) Whenever a meter is used —
- (a) the quantity of water shown by the index or register shall be taken *prima facie* to be the quantity of water which has actually passed through the meter and has been supplied; and
  - (b) a certificate purporting to be signed by an officer of the water board stating the quantity so shown shall in any proceeding in which the quantity of water is in question, be *prima facie* evidence of the quantity of water supplied,

but this subsection does not apply where the meter is found not to be in proper order.

- (2) The water board may at any time, and, where requested in writing by the person who will be liable to pay for water supplied through the meter, shall, cause a test of a meter to

- which subsection (1) applies to be made by an officer of the water board or a person appointed by the water board.
- (3) Where, pursuant to a request under subsection (2), the water board causes a meter to be tested and upon being so tested the meter is found to register not more than the quantity of water actually passed through it, the person upon whose request the test was made shall pay to the water board —
- (a) the amount of the prescribed meter testing fee; or
  - (b) such greater amount as in the opinion of the water board approximates the actual cost of testing the meter,
- as the water board may in each case specify.
- (4) A meter shall be deemed not to be in proper order if —
- (a) on being tested or otherwise, the meter is found not to register within the limits of error prescribed;
  - (b) the meter is found by an officer of the water board to be so damaged or otherwise in such a condition that, in the opinion of that officer, the meter is likely to inaccurately show the quantity of water passing through it; or
  - (c) the register of the meter is found to be unreadable.
- (5) Where a meter through which water is supplied to land is found not to be in proper order the quantity of water supplied to the land through the meter may be assessed by the water board in such manner as may be prescribed and, unless the contrary is shown, the quantity of water so supplied shall be deemed to be as so assessed.
- (6) Where, pursuant to a request under subsection (2), the water board causes a meter to be tested and upon being so tested the meter is found to register less than the quantity of water actually passed through it, the water board may, as an alternative to assessing the quantity of water supplied to the land through the meter, deem the quantity of water shown by the index or register of the meter to be the quantity of water which has actually

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passed through the meter and been supplied, and a certificate purporting to be signed by an officer of the water board stating the quantities so shown shall, in any proceedings in which the quantity of water is in question, be *prima facie* evidence of the matters stated.

- (7) Where an account is submitted upon the basis of an assessment, it shall be clearly marked as such and the water board shall, upon request, give details of the basis upon which the assessment was made.

*[Section 59 inserted by No. 14 of 1982 s. 22.]*

**60. Water may be cut off from unoccupied premises etc.**

- (1) The water board may turn or cut off or reduce the available rate of flow of the water supply —
- (a) if the land to which water is supplied is unoccupied; or
  - (b) when any rates or moneys due for water supplied, or agreed to be supplied, or any rent or charges for any meter or other fittings remain unpaid for 7 days after they become due; or
  - (c) if the occupier refuses to permit a meter to be attached to any pipe on his land; or
  - (d) if a person or local government (being the owner or occupier of the land) fails to comply with the requirements of, or his or its obligations under, section 62B; or
  - (e) if the occupier commits or permits any breach of any of the provisions of this Act or the by-laws thereunder.
- (2) Turning or cutting off or reducing the available rate of flow of the water shall be a cumulative remedy for enforcing payment of water rates or other moneys due, and shall not relieve the owner or occupier from liability in respect thereof.
- (3) Where under this section the water board has turned or cut off or reduced the available rate of flow of the water supply to land,



the water board may, before restoring the water supply to land, require payment of the amount of such charges as the water board may from time to time determine in respect of —

- (a) the turning or cutting off or the reduction; and
- (b) the restoration of the water supply.

*[Section 60 inserted by No. 14 of 1982 s. 23; amended by No. 14 of 1996 s. 4.]*

**61. Provisions for supplying groups of houses**

The water board may supply a group of dwelling-houses by means of a stand-pipe or other prescribed fittings, and the water board shall be entitled to receive and recover water rates from the owners and occupiers thereof in the same manner as if the supply had been distributed in each of the dwelling-houses in the ordinary manner.

The expense of providing the stand-pipe or other prescribed fittings, and fixing them in readiness for use, and of renewing and repairing them from time to time, shall be borne by the owners or occupiers of such dwelling-houses in such proportions as the water board may direct.

**61A. Owners and occupiers to provide tanks and appliances**

- (1) The board may by notice in writing require the owner or occupier of any rateable country land to provide, at his own cost and to the satisfaction of the board, such tanks for or in connection with the storage of water for his own use, as may, in the opinion of the board, be necessary to facilitate the equitable distribution of the water available from the main between all consumers having the right to be served thereby.
- (2) If at the expiration of 3 months from the service of such notice any owner or occupier shall have failed to make such provision as aforesaid, the board may by its servants or workmen make such provision and charge the owner or occupier with the cost

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thereof, and such cost may be recovered from the owner or occupier in the same manner as water rates are recoverable.

- (3) In the event of the owner and occupier of land failing to agree between themselves in regard to such provision for the storage of water, or the payment of the cost thereof, such occupier may, if holding a tenancy extending for more than one year from the date of such notice, construct such tanks and other appliances as aforesaid, and may deduct the cost thereof from any rent due or to become due under such tenancy: Provided that such cost so deducted shall not in any case exceed one year's net rent in respect of the land the subject of the tenancy.

*[Section 61A inserted by No. 16 of 1925 s. 3.]*

**62.      Supply to land outside water area**

- (1) The owner or occupier of land not situated within a water area may request the water board of the water area closest to that land to supply water to that land.
- (2) On receiving a request made under subsection (1), the water board may —
- (a) with the approval of the Minister, comply with that request on and subject to such terms and conditions as it thinks fit; or
  - (b) refuse that request.
- (3) Whenever the water board complies with a request made under subsection (1), it may construct all necessary works for supplying water to the land concerned.

*[(4) deleted]*

- (5) Any land to which a water board supplies water under this section and the owner and occupier of that land shall, while that land is so supplied, be subject to the provisions of this Act as modified by the terms and conditions referred to in

subsection (2) in the same manner as if that land were situated within the water area concerned.

- (6) The water board may, for the purpose of supplying the land concerned with water, employ works and fittings of such nature, size and description as it thinks fit.

*[Section 62 inserted by No. 97 of 1978 s. 6; amended by No. 25 of 1985 s. 345.]*

**62A. Water supply to subdivided land**

- (1) A person or local government (in this section called *the subdivider*) who subdivides or wishes to subdivide land, whether rateable land or not and whether or not situated in a water area, into a lot or lots may in writing request the water board of the water area concerned or the water board of the water area closest to that land, as the case may be, to arrange for water to be supplied to the lot or lots.
- (2) On receiving a request made under subsection (1), the water board may —
- (a) with the approval of the Minister, comply with that request on and subject to such terms and conditions, including the financial contribution to be made by the subdivider in respect of any existing or proposed works which benefit or will benefit the lot or all or any of the lots concerned, as may be mutually agreed; or
  - (b) refuse that request.
- (3) Whenever the water board complies with a request made under subsection (1), it may carry out, construct or provide all or any of the necessary works.

*[Section 62A inserted by No. 97 of 1978 s. 7; amended by No. 14 of 1982 s. 24; No. 25 of 1985 s. 345; No. 14 of 1996 s. 4.]*

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**62B.      Water supply on development of land**

A person or local government (in this section called *the developer*) who proposes to develop or redevelop land in any way that will result in a demand for the supply of water greater than that determined by the water board to be likely in the case of single residence on a lot in the area where the land is situated, whether the land is rateable or not or within the water area or not, shall in writing request the water board to arrange for water to be supplied to the land as so developed or redeveloped to meet the increased demand and before proceeding to undertake, construct, or effect that development or redevelopment shall comply with such terms and conditions as the water board may impose in respect of the proposal, including the financial contribution to be made by the developer in respect of any existing or proposed water works which benefit or will benefit the developed or redeveloped land.

*[Section 62B inserted by No. 14 of 1982 s. 25; amended by No. 14 of 1996 s. 4.]*

**62C.      Deferring headworks payments for certain subdivisions**

- (1) If, because of a demand for the supply of water as a result of a subdivision, a developer is required by the water board to pay any amount in respect of a particular lot as payment or an advance in respect of headworks and the developer requests in writing that the time for paying the amount be deferred in accordance with this section, the water board is required to agree in writing to defer payment of the amount as requested.
- (2) This section applies only if the lot —
  - (a) is not serviced and is not a habitable lot;
  - (b) is created to be used solely or principally for residential purposes; and

- 
- (c) has an area of not more than 2 000 m<sup>2</sup> or, if its area is more than 2 000 m<sup>2</sup>, is to be used for a building or group of buildings that —
- (i) is solely for residential purposes; and
  - (ii) contains a number of separate residential units.
- (3) For the purposes of this section a lot is serviced if it has a connection to the water supply.
- (4) If a mortgage is registered against land, payment of an amount in respect of the land can be deferred under this section only if the mortgagee consents in writing.
- (5) Payment is deferred under this section until —
- (a) the lot becomes serviced or becomes a habitable lot; or
  - (b) one year passes after the subdivisional plan or diagram is approved by the Western Australian Planning Commission,
- but payment may be made at an earlier time.
- (6) If full payment of the deferred amount is not made within one year after the subdivisional plan or diagram is approved by the Western Australian Planning Commission, interest calculated as approved by the Minister accrues on any amount remaining unpaid.
- (7) Subsection (6) does not limit the ability of the water board to recover any amount outstanding under the agreement, and interest on the amount may be recovered as if it were a part of the amount.
- (8) In an agreement that provides for deferment under this section, if the water board so requires, the developer is to agree to pay to the water board the amount, as determined by the water board, of any costs or disbursements payable by the water board that are attributable to the deferment or to making section 62D apply or cease to apply.

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(9) If, with the consent of the water board, a lot is transferred while it is land to which section 62D applies, the transferor and transferee are jointly and severally liable for payment of the deferred amount but, subject to any agreement between them or any court order, the transferee may recover from the transferor as a debt due any amount paid by the transferee that the transferee became liable to pay under this subsection.

(10) In this section —

*agreement* means an agreement under this section to defer payment of an amount;

*deferred amount* includes any amount owing in respect of costs or disbursements agreed under this section to be paid and, where applicable, any interest payable under this section;

*developer* means a person who is the owner of land from which it is proposed to create 2 or more lots by subdivision;

*habitable lot* means a lot that has on it a building that is used, or suitable to be used, for residential purposes;

*headworks* means all works necessary to provide and maintain water supply, not being reticulation works;

*lot* does not include a lot depicted on a strata plan unless it is a lot in a survey-strata scheme;

*reticulation* means the system of works necessary to provide water supply to particular land, being works connecting headworks to the point at which water supply is provided.

*[Section 62C inserted by No. 12 of 1996 s. 14.]*

**62D.      Transfer of land restricted until deferred amount paid**

(1) The Registrar cannot register or accept for registration an instrument to transfer land to which this section applies unless the water board consents in writing.

(2) This section applies to a lot in respect of which payment is deferred under section 62C if —

- (a) on the subdivisional plan or diagram approved by the Western Australian Planning Commission and deposited with the Registrar it is shown that this section is to apply to the lot; or
  - (b) the water board delivers to the Registrar a memorial, in a form approved by the Registrar, to make this section apply to the lot.
- (3) When a plan or diagram that makes this section apply is deposited with the Registrar —
- (a) the prescribed fee is payable for making this section apply; and
  - (b) the Registrar is required to endorse or note the Register Book to show that this section applies.
- (4) A plan or diagram that does not make this section apply cannot, after it is deposited with the Registrar, be altered to make this section apply.
- (5) When a memorial that makes this section apply is delivered to the Registrar, the Registrar is required, on payment of the prescribed fee, to register the memorial and endorse or note the Register Book accordingly.
- (6) When the deferred amount has been paid, the water board is required to provide a notice in writing directing that this section cease to apply to the land in respect of which the payment is made.
- (7) The notice is to be in the form approved by the Registrar and is to be signed by a person authorised by the water board.
- (8) Upon delivery of the notice to the Registrar and payment of the prescribed fee, the Registrar is required to endorse or note the Register Book to indicate that this section has ceased to apply to the land, and this section ceases to apply accordingly.
- (9) In this section —
- prescribed fee*** means such fee as may be prescribed under the *Transfer of Land Act 1893*;
- Registrar*** means the Registrar of Titles.

*[Section 62D inserted by No. 12 of 1996 s. 14.]*

**63. Fire hydrants**

- (1) In this section, unless the context requires otherwise —
- Authority* means the Fire and Emergency Services Authority of Western Australia established by section 4 of the *Fire and Emergency Services Authority of Western Australia Act 1998*;
- Fire Brigades Act* means the *Fire Brigades Act 1942*;
- fire district* means a fire district constituted as such by or pursuant to the provisions of the Fire Brigades Act;
- fire hydrant* means a fire-plug or fixed pillar hydrant;
- proclaimed day* means the day fixed by Proclamation for the coming into operation of the *Acts Amendment (Fire Brigades Board and Fire Hydrants) Act 1951* <sup>1</sup>;
- re-instatement* means the filling in of ground opened up and the re-instating and making good of the paving of any street broken up in the course of installing or abolishing a fire hydrant, or keeping a fire hydrant in effective order.
- (2) Subject to the provisions of the succeeding subsections of this section, the water board shall fix hydrants upon the main or other pipes within the area, or abolish fire hydrants.
- (3) The Authority may request the water board to install or abolish a fire hydrant at such location in a fire district as the Authority specifies.
- (4) A local government may request the water board to install or abolish a fire hydrant at such location in the district of the local government elsewhere than in a fire district as the local government specifies.
- (5) So soon after receiving the request as is reasonably practicable, the water board shall comply with the request.
- (6) The water board shall keep all fire hydrants in the area in effective order.



- (7) The water board on installing, abolishing, or keeping a fire hydrant in effective order, shall render to the Authority, where the fire hydrant is in a fire district, a statement of account of the cost to the water board of the labour and materials incurred in doing so, except the cost of re-instatement, and shall render to the local government of the district in which the work is done a statement of account of the cost to the water board of the labour and materials incurred in re-instatement.
- (8) The water board on installing, abolishing or keeping a fire hydrant in effective order, shall render to the local government, where the fire hydrant is in the district of the local government but elsewhere than in a fire district, a statement of the cost to the water board of the labour and materials in doing so, including that of re-instatement.
- (9) In the event of non-payment of the amount shown in a statement of account rendered pursuant to the provisions of the last 2 preceding sections it shall be recoverable from the Authority or the local government to whom the statement is rendered at the suit of the water board in a court of competent jurisdiction as a debt due.
- (10) The property in fire hydrants, whether installed before, on, or after the proclaimed day, shall —  
if the fire hydrant is in a fire district, whether constituted wholly or partly before, on, or after the proclaimed day, vest in the Authority as owner;  
if the fire hydrant is in the district of a local government but elsewhere than in a fire district, vest in the local government as owner.
- (11) The water board shall on installing, abolishing or keeping a fire hydrant in effective order deposit the keys of the fire hydrant at such station as shall be specified —  
by the Authority where the fire hydrant is in a fire district;

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by the local government where the fire hydrant is in the district of the local government elsewhere than in a fire district.

- (12) A person having the possession or control of the keys to a fire hydrant shall at the request of the water board deliver them to such person at such time as the water board specifies.
- (13) A local government or any person authorised in that behalf by a local government may, for the purpose of extinguishing any fire, or for the purpose of drills, competitions, and practice conducted under the authority of the local government, take water free of charge from a fire hydrant that is in the district of the local government elsewhere than in a fire district.
- (14) Subsection (13) does not affect any right conferred by section 61 of the Fire Brigades Act.
- (15) Notwithstanding that the property in a fire hydrant is, under subsection (10), vested in the Authority or a local government, the water board may, in writing, permit a person to take water from a fire hydrant subject to such conditions as the water board specifies in the permit but shall, upon request, provide to the Authority or the local government, as the case may be, in which the property in the fire hydrant is vested particulars of the person to whom, and conditions subject to which, any such permit has been given.
- (16) A person shall not take water from a fire hydrant unless —
  - (a) he is authorised so to do by section 61 of the Fire Brigades Act or subsection (13); or
  - (b) he takes the water pursuant to and in accordance with the conditions specified in a permit given under subsection (15).

Penalty: \$1 000.

*[Section 63 inserted by No. 41 of 1951 s. 5(3); amended by No. 97 of 1978 s. 8; No. 110 of 1985 s. 139; No. 14 of 1996 s. 4; No. 42 of 1998 s. 38.]*

[64. Deleted by No. 41 of 1951 s. 5(4).]

[65. Deleted by No. 73 of 1995 s. 155.]

**65A. Acquisition by agreement of works from person or local government**

- (1) A water board may, at the request of a person or local government and with the approval of the Minister, acquire from the person or local government the whole or part of any works of the person or local government and all or any property used in connection with those works on and subject to such terms and conditions as may be mutually agreed.
- (2) The water board concerned shall cause notice of the fact of any acquisition made under subsection (1) to be published in the *Government Gazette*.
- (3) As and from the date of the publication referred to in subsection (2), the works and property concerned shall, by force of this subsection and without any conveyance, transfer or assignment, be transferred to and vested in the water board concerned and shall be deemed to be works under and for the purposes of this Act.

*[Section 65A inserted by No. 97 of 1978 s. 9; amended by No. 14 of 1996 s. 4.]*

**Part V — The protection of works and fittings and the prevention of waste**

**66.      Duty to keep fittings in repair**

Every person supplied with water under this Act shall keep the service or communication pipe and all prescribed fittings within or attached to his land in good repair, so as to effectually prevent the water from running to waste.

**67.      Fittings not to be connected or disconnected without notice**

No person shall —

- (1) Connect a meter, pipe, or other fitting through which water is, or is intended to be supplied; or
- (2) Disconnect a meter, pipe, or other fitting from any other meter, pipe, or other fitting through which water is, or is intended to be supplied,

unless he has given the prescribed notice of his intention so to do, and has received the consent, in writing, of the water board or of an authorised officer in that behalf.

**68.      Power to enter and examine whether water is wasted etc.**

- (1) Any officer of the water board may, at all reasonable times, enter upon any land to which water is supplied under this Act, and may examine and ascertain —

What quantity of water has been consumed there;

Whether there has been or is any waste, misuse, fouling, or contamination of the water; and

Whether all fittings, with the materials and mode of arrangement thereof, used or intended to be used are in accordance with the by-laws, and in proper order and repair.

- (2) When a fitting is not in accordance with the by-laws, or is out of proper order and repair, the officer of the water board may repair or remove it, and if necessary substitute others in its stead, or may alter the mode of arrangement, as the case requires.

Any expense incurred by the water board in that behalf shall, on demand, be repaid by the owner or occupier of the land, and if not repaid on demand may be recovered by the water board in the same manner in which water rates may be recovered.

**69. Protection of fittings**

No person shall remove, alter, repair, renew, or uncover any pipe or other fitting which is the property of the water board until the prescribed notice has been given to the water board, and the consent of the water board, in writing, obtained.

No such pipe or fitting shall be subject or liable to be seized or taken in execution by process of law, or under distress for rent.

**70. Power to enter on land and fix fittings**

Any person authorised by the water board may at all reasonable times enter upon any land to which water is or is intended to be supplied under this Act, and may place and fix thereon and attach thereto, wherever the water board thinks proper, such fittings as the water board may think expedient, and may there do all other acts and execute all other works which the water board may think fit.

Any person so authorised may at all reasonable times enter upon such lands and examine, remove, repair, alter, or replace all or any of such fittings.

**71. Penalty for using unauthorised fittings**

If any person supplied with water by the water board does any of the following things for the purpose of taking water in a manner not authorised by this Act, that is to say —

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- (1) Uses in, places upon, or attaches to the land, or permits to be so used, placed, or fitted, any fitting, instrument, or thing not authorised by the water board; or
- (2) Alters, misuses, injures, or removes any authorised fitting, except for the purpose of necessary repair,

he shall forfeit and pay to the water board a sum not exceeding \$2 000, and shall, in addition, be liable to pay to the water board any damages sustained by the water board in respect of any injury done to their property, and the value of any water wasted, misused, or unduly consumed.

*[Section 71 amended by No. 113 of 1965 s. 8; No. 110 of 1985 s. 156.]*

**72. Penalty for not repairing fittings**

If any person supplied with water by the water board causes or suffers any pipe, receptacle, fitting, or other apparatus used in connection with water supplied to him by the water board to be out of repair without repairing it within a reasonable time, or to be so used or contrived that the water supplied to him by the water board is, or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to allow the return of foul air or any noisome or impure matter into a pipe belonging to the water board, or connected with any such pipe, he shall forfeit and pay to the water board a sum not exceeding \$1 000.

*[Section 72 amended by No. 113 of 1965 s. 8; No. 25 of 1985 s. 346; No. 110 of 1985 s. 156.]*

**73. Penalty for destroying valves etc.**

If any person, not being authorised by the water board —

- (1) Wilfully or carelessly breaks, injures, opens or shuts, or wilfully permits to be broken, injured, or opened or shut, any lock, sluice, cock, valve, pipe, or other authorised fitting, or any work belonging to the water board;

- (2) Flushes or draws off the water from any reservoir or other work of the water board; or
- (3) Does any other wilful act, or wilfully permits to be done any act whereby such water is wasted,

he shall forfeit and pay to the water board a sum not exceeding \$2 000, and shall, in addition, be liable to pay to the water board any damage sustained in respect thereof, as well for the value of the water wasted as in repairing the fittings or other parts of the works; and the amount of such damage shall be ascertained, determined, and recovered in the same manner as such forfeited sum.

*[Section 73 amended by No. 113 of 1965 s. 8; No. 110 of 1985 s. 156.]*

**74. Penalty for taking etc. water in contravention of this Act**

If any person uses or consumes, or permits to be used or consumed, any water belonging to the water board, contrary to the provisions of this Act and the by-laws thereunder, he shall forfeit and pay to the water board a sum not exceeding \$1 500.

*[Section 74 amended by No. 113 of 1965 s. 8; No. 110 of 1985 s. 156.]*

**75. Fraudulent taking of water**

Any person who fraudulently takes, or procures to be taken, any water belonging to the water board from a reservoir main or pipe belonging to the water board, or from any pipe leading to or from any such reservoir main or pipe, is guilty of a crime.

Penalty: \$2 000 or imprisonment for a term of 2 years, or both.

*[Section 75 amended by No. 110 of 1985 s. 140; No. 70 of 2004 s. 82.]*

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**76.        Other consequences of contravening this Act or by-laws**

If any person supplied with water by the water board —

- (1) Does, or causes or permits to be done, anything in contravention of the provisions of this Act or of the by-laws; or
- (2) Omits to do, or prevents being done, anything which under any of those provisions ought to be done for the prevention of the waste, misuse, or undue consumption of the water of the water board,

the water board may (without prejudice to any other remedy against him) cut off any of the pipes by or through which water is supplied by the water board to him or for his use, and may discontinue the supply of water to him so long as the cause of injury remains or is not remedied; but such cutting off shall not affect or take away his liability to payment of rates.



## **Part VI — Water rates and payment for water**

### *The rating records*

*[Heading amended by No. 110 of 1985 s. 142.]*

**76A. Terms used**

In this Part —

**gross rental value**, in relation to rateable land, means the gross rental value of that land in force under the *Valuation of Land Act 1978*;

**rating year** where used in relation to a water board means the period of 12 months appointed by the Minister under section 76B as the rating year for the water board;

**unimproved value**, in relation to rateable land, means the unimproved value of that land in force under the *Valuation of Land Act 1978*.

*[Section 76A inserted by No. 32 of 1953 s. 3; amended by No. 76 of 1978 s. 144; No. 25 of 1985 s. 347.]*

**76B. Authority for Minister to appoint rating years**

The Minister is authorised, and is regarded as always having been authorised —

- (a) to appoint a period of any 12 consecutive months as the rating year for a water board or a class of water board;
- (b) to appoint different rating years for different water boards; and
- (c) from time to time to alter the rating year appointed for a water board, from one period of 12 consecutive months to another.

*[Section 76B inserted by No. 32 of 1953 s. 3.]*

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**76C. Adjustment of rate on alteration of rating year**

Where after an alteration in the rating year of a water board, or the constitution of a water board for a newly-constituted water area, the making and levying, or adjusting, as the case requires, of a water rate for part only of a rating year becomes necessary, the water board may make and levy, or adjust, as the case requires, as the rate for that part, such proportion of the rate for the whole of the rating year as does not exceed the ratio which the number of days in the part of the rating year bears to the number of days in the whole of the rating year.

*[Section 76C inserted by No. 32 of 1953 s. 3.]*

**77. Rating records**

- (1) A water board shall, for the purposes of this Act, compile, from time to time amend, and maintain rating records in respect of all rateable land showing —
  - (a) the description and situation of the land rated;
  - (b) the name and address of the owner and the person rated;
  - (c) the assessment number;
  - (d) the gross rental value, the unimproved value or the area of the land, as the case requires;
  - (e) the amount payable in respect of rates that is levied for the current rating year of that water board;
  - (f) the class of the land; and
  - (g) such other information as is prescribed or the water board requires.
- (2) The board may decide that any piece or parcel of land shall be rated separately from any other land of the same ratepayer that is —
  - (a) separately owned or occupied; or
  - (b) used for the purposes of a separate farm, business, trade or residence; or

(c) situated in a different or separate locality,

and the same shall be so rated accordingly, and a separate and distinct entry thereof shall be made in the rating records.

*[Section 77 amended by No. 16 of 1925 s. 4; No. 32 of 1964 s. 2; No. 76 of 1978 s. 145; No. 25 of 1985 s. 348; No. 110 of 1985 s. 144.]*

**[78.]** *Deleted by No. 76 of 1978 s. 146.]*

**79. Inspection of rating records**

The rating record for any rateable land shall at all reasonable times be made available for inspection by any ratepayer without payment, and a water board shall, on request by any person who satisfies the water board that he has a material interest in any portion of the records, furnish a copy of that portion of the records to that person.

*[Section 79 inserted by No. 110 of 1985 s. 145.]*

**80. Water board may inspect rating records of local governments**

Any person authorised by the chairman, in writing, may, as of right, at all reasonable times inspect, free of charge, all valuations, lists, and rating records of any local government relating to any land situate in the water area, and may take copies or extracts from them.

*[Section 80 amended by No. 110 of 1985 s. 141; No. 14 of 1996 s. 4.]*

**81. Access to be given**

All persons having the custody of such valuations, lists, or rating records shall, at all reasonable times and without any fee or charge, afford to the water board, and all persons authorised by the chairman, free access to the same.

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*[Section 81 amended by No. 110 of 1985 s. 141.]*

**82. Penalty for not permitting inspection**

Every person having the custody of a valuation list or rating records of any local government which a person authorised by the water board is entitled to inspect, who neglects or refuses to permit any such person to inspect the same free of charge, or to make or take copies or extracts therefrom, shall be liable to a penalty not exceeding \$500.

*[Section 82 amended by No. 113 of 1965 s. 8; No. 110 of 1985 s. 142 and 156; No. 14 of 1996 s. 4.]*

**83. Rateable value**

Where a water board has made up the rating records for the water board's rating year, the gross rental value of land from the beginning of the rating year is that shown in the rating records unless during the rating year the value so shown is altered in a manner authorised pursuant to this Act and where that value has been so altered, the gross rental value of the land for the rating year is that as so altered.

*[Section 83 inserted by No. 32 of 1953 s. 5; amended by No. 76 of 1978 s. 147; No. 25 of 1985 s. 350; No. 110 of 1985 s. 142.]*

**84. Rating records may be amended**

The water board may from time to time amend the rating records by inserting the particulars of any land which may have become rateable or of any rateable land omitted therefrom, or by substituting for the name of any person erroneously inserted as the owner or occupier of any land the name of the true owner or occupier, and by correcting any error that may need rectification, and otherwise amending the same.

*[Section 84 amended by No. 110 of 1985 s. 142; No. 14 of 1996 s. 4.]*

**85. Notice of amendment to be given**

Within 14 days of any such amendment, the water board shall cause notice to be given to every person affected by the same, and every such person shall have the same right of objection to such amendment as he would have had if the amendment had appeared in the rating records as made up.

*[Section 85 amended by No. 76 of 1978 s. 148; No. 110 of 1985 s. 142.]*

*[86. Deleted by No. 110 of 1985 s. 146.]*

*Objections and review*

*[Heading amended by No. 76 of 1978 s. 149; No. 55 of 2004 s. 1289.]*

**87. Objection to entry in rating records**

- (1) Subject to section 90, any person who is dissatisfied with any entry in the rating records and who stands rated on the basis of that entry, may serve upon the water board a written objection to that entry.
- (2) An objection to an entry in the rating records shall —
  - (a) be served within 42 days after the issue of the relevant assessment;
  - (b) describe the relevant land so as to identify it;
  - (c) identify the entry objected to; and
  - (d) set out fully and in detail the grounds of objection.
- (3) The grounds upon which an objection may be made include, in the case of any holding to which the system of rating on the area applies, that the area set out in the rating records is in excess of the actual area of the holding and in relation to any land or holding or any piece or parcel thereof, that the classification set out in the rating records pursuant to section 92(4) is incorrect.

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- (4) The water board may, for reasonable cause shown by a person entitled to make an objection, extend the time for service of the objection for such period as the water board considers reasonable in the circumstances.
- (5) The water board shall, with all reasonable despatch, consider any objection and may either disallow it or allow it, wholly or in part.
- (6) The water board shall promptly serve upon the person by whom the objection was made written notice of its decision on the objection and a brief statement of its reasons for that decision.
- (7) If the water board decides to allow an objection, wholly or in part, it shall also advise the person by whom the objection was made of any consequent amendment of the relevant entry in the rating records, and if the water board decides to disallow an objection, wholly or in part, it shall also advise the person of the time within which and the manner in which a review of the decision may be sought.

*[Section 87 inserted by No. 76 of 1978 s. 150; amended by No. 25 of 1985 s. 351; No. 110 of 1985 s. 147; No. 55 of 2004 s. 1290.]*

**88. Review of decision of water board on objection**

- (1) Any person who is dissatisfied with the decision of the water board on an objection by that person may, within 42 days (or such further period as the water board shall, for reasonable cause shown by the person, allow) after service of notice of the decision of the water board, serve on the water board a notice requiring that the water board refer the relevant entry in the rating records to the State Administrative Tribunal for a review.
- (2) Upon receipt of such notice the water board shall promptly refer the relevant entry in the rating records to the State Administrative Tribunal for a review.
- (3) The water board is to effect the reference by forwarding the notice to the executive officer of the State Administrative

Tribunal together with the objection and a copy certified by or on behalf of the water board of —

- (a) the relevant entry in the rating records; and
- (b) the reasons, if any, for the entry.

*[Section 88 inserted by No. 76 of 1978 s. 151; amended by No. 110 of 1985 s. 148; No. 55 of 2004 s. 1291.]*

**89. Objections and review of valuations**

- (1) A person who is dissatisfied with a decision of the water board to refuse to extend the time for service of an objection against an entry in the rating records or for service of a notice requiring the water board to refer the relevant entry in the rating records to the State Administrative Tribunal for a review may serve on the water board a notice requiring it to refer the decision to refuse to extend time to the State Administrative Tribunal for a review.
- (2) Upon receipt of such notice the water board shall promptly refer the decision to the State Administrative Tribunal for a review.
- (3) The water board is to effect the reference by forwarding the notice to the executive officer of the State Administrative Tribunal together with the objection and a copy certified by or on behalf of the water board of —
  - (a) the decision to refuse to extend the time; and
  - (b) the reasons, if any, for the decision.

*[Section 89 inserted by No. 76 of 1978 s. 152; amended by No. 110 of 1985 s. 143; No. 55 of 2004 s. 1292.]*

**89A. New matters raised on review**

- (1) Upon a review by the State Administrative Tribunal on a reference under section 88 or 89, the State Administrative Tribunal may consider —
  - (a) grounds in addition to those stated in the notice of objection; and

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(b) reasons in addition to any reasons previously given for the water board's decision that is under review.

- (2) The State Administrative Tribunal is to ensure, by adjournment or otherwise, that each party and any other person entitled to be heard has a reasonable opportunity of properly considering and responding to any new ground or reason that the State Administrative Tribunal proposes to consider in accordance with subsection (1).

*[Section 89A inserted by No. 55 of 2004 s. 1293.]*

**89B. Written reasons for certain determinations to be given and published**

- (1) If the State Administrative Tribunal considers that an order it makes determining a matter coming before it on a reference under section 88 or 89 is of general interest or significance, it is to prepare written reasons for its order and give a copy of the reasons to each party and publish the written reasons.
- (2) The obligation imposed by subsection (1) is in addition to, and does not derogate from, any obligation of the State Administrative Tribunal under the *State Administrative Tribunal Act 2004*.

*[Section 89B inserted by No. 55 of 2004 s. 1293.]*

**90. No other objections and reviews against valuations**

There shall be no objection or review in respect of a valuation of rateable land appearing in the rating records, except in accordance with the *Valuation of Land Act 1978*.

*[Section 90 inserted by No. 76 of 1978 s. 153; amended by No. 110 of 1985 s. 143; No. 55 of 2004 s. 1294.]*

**91. Objection not to affect liability to pay rates**

The making of an objection, whether in respect of an entry in the rating records or in respect of a valuation of rateable land,



shall not affect the liability of the ratepayer to pay any rates assessed under this Act pending determination of the objection.

*[Section 91 inserted by No. 76 of 1978 s. 154; amended by No. 110 of 1985 s. 143; No. 55 of 2004 s. 1295; No. 8 of 2009 s. 131.]*

**91A. Water board to amend rating records and assessment consequent on objection or review**

- (1) The water board shall make any amendment of an entry in the rating records which shall be necessary in consequence of the allowance, wholly or in part, of an objection under this Act or under the *Valuation of Land Act 1978* or in consequence of a review by the State Administrative Tribunal.
- (2) The water board shall issue a notice of an amended assessment of rates under this Act when amendment of an assessment is necessary under subsection (1).

*[Section 91A inserted by No. 76 of 1978 s. 155; amended by No. 110 of 1985 s. 143; No. 55 of 2004 s. 1296.]*

**92. Land subject to water rate**

- (1) Subject to this section and section 93, a water board shall make and levy water rates in respect of all rateable land, whether actually occupied or not, and although the land may not be actually supplied with water.
- (2) The basic water rate applicable to the land —
  - (a) where the land is situated wholly or partly within 90 metres of any main or other pipe from which the board is prepared to supply water, shall be assessed on the gross rental value of the land entered in the rating records as kept in accordance with section 77(1) and computed in cents in the dollar; or
  - (b) where the land (being only that part of the holding which is within a distance of 2.5 kilometres from the pipe)

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comprises a holding of country land situated wholly or partly within 200 metres of any main or other pipe laid down by the board from which the board is prepared to supply water shall, subject to section 93(2)(b), be assessed and computed in cents per hectare by reference to the area entered in the rating records as kept in accordance with section 77(3) to which shall be added a fixed charge of such amount not exceeding \$10.00 as the board determines,

but no land rated in any rating year by reference to the system of rating on the area or the unimproved value shall in the same rating year be rateable on the gross rental value.

- (3) The water rate payable in respect of rateable land for each rating year shall be assessed on the basis of —
  - (a) the basic water rate applicable to that land; and
  - (b) where the land is actually supplied with water by the board, a charge calculated by reference to the quantity (other than any prescribed quantity which the owner or occupier is entitled to receive by way of allowance in respect of the basic water rate) of water supplied or agreed to be supplied by measure during the consumption year.
- (4) For the purpose of making and levying the water rate and fixing the charges to be made for water supplied under this Act, a water board, subject to the approval of the Minister, may by notice published in the *Government Gazette* and a newspaper usually circulating in the water area prescribe classes of rateable land by reference to the purposes for which water may be used or primarily used by owners or occupiers of land or holdings of country land, or any piece or parcel thereof, and may by entry in the rating records classify any such land or holding, or piece or parcel thereof, by reference to those prescribed classes.

- (5) Subject to this Act, a water rate or charge for water supplied may be made —
- (a) so as to vary by reference to a scale (whether calculated by graduated or cumulative increments by reference to the valuation, or otherwise);
  - (b) so as to make separate or varied provisions in respect of any land or to have effect in a particular circumstance or specified part of the water area;
  - (c) so as to make different provision in relation to different classes of land or different kinds of land use or water use;
  - (d) so as to take into account in relation to particular land or a particular class of case antecedent circumstances, including the provision or sharing of existing works, the making of contributions towards the cost of works, and the effect of agreements entered into with the board,

and may take into account the matters referred to in section 99A.

- (6) For the purpose of determining what rates shall be payable in respect of any rating year, the water board shall estimate as nearly as may be —
- (a) the amount required to meet the expenses and commitments referred to in section 111 and to make provision for amounts owing or anticipated in respect of the matters referred to in section 51A or 52; and
  - (b) the amount that is required to be obtained from rates in order that revenue shall be sufficient to cover that amount, due regard being had to the other revenues of the board,

and shall calculate, and by resolution made pursuant to subsection (8) recommend to the Minister, a rate to be made and charges to be fixed accordingly, and any minimum basic water rate applicable.

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- (7) On request by the Minister, a water board shall forward to the Minister the estimates prepared for the purposes of any rating year pursuant to subsection (6) and furnish the Minister with such detail and information relating to those estimates and as to the proposed rates and charges recommended as the Minister may require.
- (8) Recommendations as to the manner in which water rates and charges for water supplied or agreed to be supplied are proposed by the water board to be made applicable pursuant to this section shall be set out in a resolution of the water board and submitted to the Minister for approval, not later than one month after the beginning of the rating year, and on the Minister approving the resolution the water board shall, pursuant to section 94, cause a notice of the effect of the resolution to be published.

*[Section 92 inserted by No. 25 of 1985 s. 352; amended by No. 110 of 1985 s. 142 and 149.]*

*[92A. Deleted by No. 25 of 1985 s. 352.]*

**93. Amount of rate**

- (1) No rate or charge for water supplied or agreed to be supplied shall be made or levied except in accordance with a resolution of the water board submitted to and approved by the Minister pursuant to section 92.
- (2) Subject to this section, the basic water rate applicable to any land shall not exceed —
  - (a) in the case of land to which section 92(2)(a) applies —
    - (i) where the use classification under section 92(4) is “domestic purposes” — 10 cents in the dollar on the gross rental value; and
    - (ii) in any other case — such other rate in the dollar, or such amount, as the Minister may in writing approve;

or

- (b) in the case of land to which paragraph (b) of section 92(2) applies — 30 cents per hectare or 3 cents in the dollar on the unimproved value of the land, whichever is the lesser, together with the fixed charge referred to in that paragraph.
- (3) Notwithstanding subparagraph (i) of subsection (2)(a), a water board may, with the approval of the Governor, and within such limit as the Governor may from time to time determine, make and levy in any year in relation to the land referred to in that subparagraph, a basic water rate not exceeding 15 cents in the dollar on the gross rental value.
- (4) Where the basic water rate in respect of any land as assessed under section 92(2) would yield less than an amount determined by the Minister by notice published in the *Government Gazette*, the board may make and levy a minimum basic water rate in respect of that land not exceeding the amount so determined by the Minister, notwithstanding that if imposed under any other provisions of this Act the rate payable in respect of that land might have been less.
- (5) Where, pursuant to an application in writing made to the board and signed by two-thirds of the owners and occupiers of holdings of country land in an area defined in that application (the applicants being owners or occupiers or partly owners or partly occupiers of land comprising not less than one half of the land concerned), a pipe is laid down by the board to supply water to the area the annual basic water rate applicable to land in that area may exceed the limitations imposed by this section but shall not exceed the limits specified in the application.
- (6) The Minister, by notice published in the *Government Gazette*, may determine the maximum amount of the basic water rate to be payable in respect of any land or holding or any classification under section 92(4), or in relation to any matter or circumstances therein specified, and where the basic water rate

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assessed and computed in accordance with this Act would yield an amount in excess of that computed in accordance with the notice so published —

- (a) the basic water rate payable is fixed at the amount computed in accordance with the notice; and
- (b) in respect to the rating year to which the notice applies, the assessment of basic water rate on land affected by the notice shall be deemed to have been amended accordingly,

and any such determination of an amount may be made by reference to a percentage of the basic water rate payable in respect of a rating year specified in the notice.

*[Section 93 inserted by No. 25 of 1985 s. 352.]*

**93A. Re-assessment of gross rental value after rating records made up**

- (1) Where, as a result of an interim valuation, a determination of the gross rental value of rateable land comes into force under the *Valuation of Land Act 1978* during a rating year, and that value is an amount different from the amount stated in the rating records for that year as the gross rental value of that land, the water board shall adopt the former value and amend the entry in the rating records accordingly.
- (2) Where the water board amends the rating records under subsection (1), it may, on the basis of that amendment, amend the assessment of rates payable on that land in respect of the portion of the rating year unexpired as at the date the determination of the gross rental value comes into force under the *Valuation of Land Act 1978*.

*[Section 93A inserted by No. 76 of 1978 s. 157; amended by No. 110 of 1985 s. 142.]*

**93B. Concession on water rates after subdivision**

- (1) Where, through a subdivisional plan or diagram approved by the Western Australian Planning Commission, a lot is created by subdivision, no basic water rate is payable to the water board in respect of the lot for the concession period if —
  - (a) the lot is not serviced and is not a habitable lot;
  - (b) it was created to be used solely or principally for residential purposes; and
  - (c) its area is not more than 2 000 m<sup>2</sup> or, if its area is more than 2 000 m<sup>2</sup>, it is to be used for a building or group of buildings that —
    - (i) is solely for residential purposes; and
    - (ii) contains a number of separate residential units.
- (2) The concession period for the lot is the period from when the subdivisional plan or diagram is approved until —
  - (a) the ownership of the lot changes as a result of an agreement for the sale of land;
  - (b) the lot becomes serviced or becomes a habitable lot; or
  - (c) one year passes after the approval.
- (3) For the purposes of this section a lot is serviced if it has a connection to the water supply.
- (4) This section does not affect a basic water rate for any time after the concession period ends.
- (5) In this section —

**concession period** has the meaning given by subsection (2);

**habitable lot** means a lot that has on it a building that is used, or suitable to be used, for residential purposes;

**lot** does not include a lot depicted on a strata plan unless it is a lot in a survey-strata scheme;

*subdivision* refers to the creation of 2 or more lots.

[Section 93B inserted by No. 12 of 1996 s. 15.]

**94. Manner of making rate**

- (1) When a resolution of the water board is approved by the Minister pursuant to section 92(8), and a basic water rate in accordance with that resolution is to be ordered by the water board to be made and levied, the chairman shall cause notice of the basic water rate and a summary of the effect of the resolution approved by the Minister to be published in the *Government Gazette* and a newspaper usually circulating in the water area.
- (2) On the publication of such notice, the said basic water rate shall, subject to any by-law as to the time and mode of payment, become due and payable by the occupier or owner of the land rated as hereinafter provided.
- (3) The production of a copy of the *Government Gazette* containing a notice published pursuant to this section as to the making of rates and the fixing of charges shall in all courts be conclusive evidence of the making of those rates and the fixing of those charges and its publication.

[Section 94 amended by No. 44 of 1979 s. 4; No. 25 of 1985 s. 353; No. 110 of 1985 s. 150.]

**95. Rate for unexpired portion of year in case of new main or sewer**

Whenever a main pipe is laid down or extended after a basic water rate has been struck for the year, and notice thereof is published in the *Government Gazette*, a proportionate part of the basic water rate shall thereupon become payable in respect thereof for the unexpired portion of the year from the date of such notice.

[Section 95 amended by No. 44 of 1979 s. 4.]



[96. Deleted by No. 25 of 1985 s. 354.]

*Payment*

**97. Water rates when payable**

Basic water rates shall be payable in advance in accordance with the by-laws for the time being.

*[Section 97 amended by No. 44 of 1979 s. 4.]*

**98. Payment for water supplied by measure**

Payment for water supplied or agreed to be supplied by measure shall become due and shall be made at the times and in manner prescribed.

**99. Payment by measure when land rated**

Where water is supplied by measure to the owner or occupier of land rated under this Act, all water in excess of the prescribed quantity, if any which the owner or occupier is entitled to receive in respect of the basic water rate shall be paid for by him at the prescribed price.

*[Section 99 amended by No. 44 of 1979 s. 4; No. 110 of 1985 s. 151.]*

**99A. Discounts and additional charges**

- (1) A person who is liable to pay money due for water rates or for water supplied by measure —
  - (a) may, if payment in full of the total amount due is made within such period or by such date as is prescribed for the purpose, be allowed a discount of such a kind as is prescribed;
  - (b) may pay the amount due by instalments to the extent and in the manner provided for in the by-laws, but a person who chooses to pay by instalments an amount due may

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be required also to pay such additional charges as are prescribed; and

- (c) if he does not pay the money in full within the period or by the date when payment is due, shall, subject to paragraph (b), be liable to pay such penalties as are prescribed.

- (2) Additional charges and penalties imposed under this section in respect of moneys due for water rates or for water supplied by measure shall be deemed to be part of the amount due for water rates or water supplied, as the case may be, for the purposes of the recovery provisions of this Act.

*[Section 99A inserted by No. 25 of 1985 s. 355.]*

*[100. Deleted by No. 32 of 1953 s. 9.]*

*[101. Deleted by No. 32 of 1953 s. 10.]*

**102. Recovery by action or complaint**

The water board may, 14 days after demand thereof, in writing, by the clerk or secretary, or any authorised collector, and notwithstanding any change of occupation or ownership, recover any money due for rates or for water supplied by measure from the occupier or owner for the time being of the land in respect of which the money is due by action in any Court of competent jurisdiction.

*[Section 102 amended by No. 32 of 1953 s. 11; No. 59 of 2004 s. 141.]*

**103. In action against owner, proof of demand on occupier not necessary**

In any action or other proceeding against the owner of land for the recovery of money due for basic water rates or water supplied, it shall not be necessary to prove service upon the occupier of any demand for payment.

*[Section 103 amended by No. 44 of 1979 s. 4.]*

**104. Persons liable may be resorted to in succession**

Any unsatisfied judgment or order of any Court against any person for the recovery of money due for basic water rates or water supplied shall not be a bar to the recovery thereof from any other person liable under the provisions of this Act to the payment thereof.

*[Section 104 amended by No. 44 of 1979 s. 4.]*

**105. Rating records to be evidence**

In any proceeding to levy and recover, or consequent on the levying or recovering of any basic water rate under the provisions of this Act, the rating records of the water board, and all entries purporting to be made therein, by the production thereof alone, or a certified copy thereof or extract therefrom signed by the chairman and sealed with the seal of the water board, shall be *prima facie* evidence of such basic water rate and of the contents thereof, without any evidence that the notices required by or other requirements of this Act have been given or complied with.

*[Section 105 amended by No. 44 of 1979 s. 4; No. 110 of 1985 s. 142.]*

**106. Recovery of rates paid by owner from occupier**

- (1) When the owner of any land has paid any money due for basic water rates or water supplied, which, as between the owner and occupier, should have been paid by the occupier, the owner may recover the sum so paid, on demand, from the occupier as arrears of rent could be recovered from the occupier by the owner.
- (2) When the occupier of land has paid any money due for basic water rates or water supplied, which, as between such occupier and the owner should have been paid by the owner, the occupier

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may deduct the amount paid from any rent due or to become due to the owner, or may recover the amount from the owner in any Court of competent jurisdiction.

*[Section 106 amended by No. 44 of 1979 s. 4.]*

**107. Apportionment of rates between successive owners or occupiers**

When an occupier or owner ceases to be the occupier or owner of the land in respect of which a basic water rate is made, before the end of the period in respect of which such rate was made, such occupier or owner shall, as between himself and the succeeding occupier or owner, be liable to pay a portion only of the basic water rate payable for the whole of such period proportionate to the time during which he continued to be the occupier or owner.

Any person who is the occupier or owner of the land during the remainder of the period shall as between himself and the preceding occupier or owner, be liable to pay a portion of such rate in proportion to the time during which he is such occupier or owner:

But any basic water rate made in respect of such property, and any money due for water supplied, shall continue in force, and may be recovered by the water board from the owner or occupier for the time being, without regard to any change in the occupation or ownership.

In case any holding or any land rated as one property has been divided between 2 or more owners or occupiers, any basic water rates imposed in respect of the period current when the division took place shall, for the purposes of this section, be deemed to be apportionable between the different portions of the holding or land on the basis of the respective values or areas (according to the method of assessment adopted) of such portions.

*[Section 107 amended by No. 16 of 1925 s. 8; No. 44 of 1979 s. 4.]*

**108. Prohibition on dealings in land**

- (1) Where, in relation to any land, payment of any water rates or charges for water supplied thereon is in arrear, the water board may deliver a memorial, in the prescribed form, to that effect to the Registrar of Titles, or the Registrar of Deeds, as the case requires, who, without payment of a fee, shall register the memorial and endorse or note the title and land register or record, in respect of that land.
- (2) When the memorial is registered the Registrar of Titles, or the Registrar of Deeds, as the case requires, is prohibited from registering and from accepting for registration an instrument affecting the land without the consent of the water board until the land ceases under subsection (3) to be bound by this subsection.
- (3) When the payment in respect of which a memorial is registered under this section ceases to be in arrear, the water board shall deliver to the Registrar of Titles, or the Registrar of Deeds, as the case requires, a certificate sealed by the board certifying that the payment has ceased to be in arrear and the Registrar of Titles, or the Registrar of Deeds, as the case requires, shall endorse the title and land register or record to that effect and when the certificate is so noted, the land ceases to be bound by subsection (2).

*[Section 108 inserted by No. 59 of 2004 s. 141.]*

*[109. Deleted by No. 59 of 2004 s. 141.]*

## **Part VII — Finance**

### **110. Minister may determine value of works transferred to water board**

On the constitution of a water area the Minister shall, if the Governor so directs, prepare a statement of such waterworks as may have been, before or after the commencement of this Act, constructed out of public money, and shall determine the amount expended upon such works to be charged against the water board.

*[Section 110 amended by No. 25 of 1985 s. 356; No. 73 of 1995 s. 156; No. 67 of 2003 s. 62.]*

### **111. Revenue how applied**

- (1) All moneys received by a water board from rates, charges, rents, or otherwise under this Act, shall be carried to the account of a fund to be called the **Water Fund**, and such fund shall be applied in manner following, that is to say: —
  - (a) In defraying the expenses incurred in the maintenance and management of the works, and the conduct of the business of the water board;
  - (b) In payment of the interest and contributions to the sinking fund in respect of any loan raised by the water board;
  - (c) In the payment of any interest or instalments of principal or contributions to the sinking fund due in respect of any money advanced to the water board by the Treasurer;
  - (d) In the construction, extension, and improvement of works;
  - (e) In the payment of any losses incurred in previous years;
  - (f) In providing funds for the maintenance of provision and reserve accounts;
  - (g) In the payment of remuneration and allowances to the members of the water board.

- (2) A water board shall establish, and operate in its accounting records, provisions, reserve accounts and reserve funds for such purposes and within such limits as the Treasurer requires or approves.
- (3) Subject to the approval of the Minister moneys so set aside under subsection (2) may be utilised —
  - (a) as a contribution to the sinking fund in respect of any loan raised by the water board; or
  - (b) for the construction, extension or improvement of works.

*[Section 111 amended by No. 25 of 1985 s. 357; No. 22 of 2003 s. 5.]*

**112. Payments to be made out of Water Fund for any authorised purpose**

The water board may pay out of the Water Fund any sum due under an agreement lawfully made for the purposes of this Act, and any sum recovered against the water board by process of law, and any sum which by any order made or purporting to be made under this Act, the water board is directed to pay by way of compensation, damages, costs, or otherwise.

**113. Power to borrow money**

- (1) A water board may, with the approval of the Governor, borrow money —
  - (a) For the construction of works for the storage, distribution, and supply of water;
  - (b) For payment of the cost of works charged to the water board under section 110;
  - (c) To discharge the principal money of any loan to or other indebtedness of the water board;
  - (d) For any other purpose approved by the Governor.

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- (2) The Governor may grant an approval under the provisions of the last succeeding subsection —
  - (a) unconditionally; or
  - (b) subject to such conditions as he may decide to impose, including all or any of the following conditions as to the time within which —
    - (i) the water board shall borrow the money;
    - (ii) commence to carry out the purpose for which the approval to borrow the money is sought;
    - (iii) complete the carrying out of that purpose.
- (3) Where any conditions are imposed pursuant to the provisions of the last preceding subsection they shall be specified in the Order in Council promulgating the approval.
- (4) The Governor may, from time to time, extend any period of time mentioned in any condition.
- (5) Where a water board does not comply with the requirements of any condition imposed pursuant to the provisions of the last 3 preceding subsections, then, by virtue of the provisions of this subsection, the Governor's approval shall, unless the Governor orders otherwise, be cancelled and if the whole or any part of the amount has been borrowed, so much of that amount as remains unexpended, shall not be used for any purpose other than such as the Governor in Council may, by further Order direct.

*[Section 113 amended by No. 10 of 1949 s. 3; No. 25 of 1985 s. 358; No. 73 of 1995 s. 157.]*

**114. Proposition to borrow money to be advertised**

No proposition for borrowing money shall be adopted by any water board unless a notice thereof has been published in the *Government Gazette* and in a newspaper generally circulating in the water area.



**115. Debentures**

Any money borrowed by a water board may be raised by the issue of debentures in the form of the Ninth Schedule, or to the effect thereof.

**116. Repayment of debentures**

Every debenture shall be repayable at a place and time therein named, such time being not longer than 30 years from the issue thereof.

**117. Payment of interest**

The interest on every debenture shall be payable half-yearly or otherwise, and separate coupons for each sum so payable, bearing the same number as the debenture, shall be annexed thereto.

**118. Debentures and coupons transferable by delivery**

Debentures and coupons respectively shall be transferable by delivery, and payment to any person in possession of any such debenture or coupon of the sum named therein shall discharge the water board of all liability in respect of such debenture or coupon.

**119. Debentures and interest a charge on property and revenues of water board**

All debentures, and the interest thereon, shall be a charge upon the works constructed by or vested in the water board under this Act, and upon the revenues of the water board.

**120. Sinking fund to be created**

Before raising any loan the water board shall make provision for the repayment thereof by the creation of a sinking fund; and for such purposes may, with the approval of the Governor,

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permanently appropriate any part of the revenues of the water board.

Provided that it shall be lawful for the board, and it shall be deemed to have been lawful for a board, on the raising of any loan and the issue of debentures to provide for the repayment of the principal money with interest by half-yearly or other periodical instalments in lieu of the formation of a sinking fund, in which case such sum as may be necessary for the repayment of such instalments shall be set aside from time to time and applied to that purpose, and sections 115 to 119, both inclusive, shall have effect, with such adaptations as are necessary, subject to this proviso.

*[Section 120 amended by No. 10 of 1941 s. 5.]*

**121. Investment of sinking fund**

All moneys so appropriated as a sinking fund, and all interest accruing thereon, shall be invested by the Treasurer in the joint names of the Treasurer and the water board, in such securities as the Treasurer may think fit.

**122. Accumulated sinking fund to be applied in payment of loan**

The accumulated sinking fund shall be applied in payment of the principal of the loan when the same becomes payable, or may be applied from time to time in the redemption of debentures issued.

**123. Powers of receiver**

If at any time the principal or interest due upon any debentures is in arrear, a Receiver for the debenture holders, appointed by the Supreme Court, may take possession of any works the property of the water board, and may levy and enforce water rates and charges, and for that purpose may exercise all the powers of a water board for the recovery of such rates and charges.

**123A. Overdraft**

Notwithstanding anything to the contrary contained elsewhere in this Act, the board, pending the collection of any rates or the receipt of any subsidies in aid of rates or grants payable by the Government, may, for the purpose of commencing, carrying on, or completing works, obtain advances from any bank by overdraft of the current account, but no such overdraft shall at any time exceed one-third of the ordinary revenue of the board for the year then last preceding:

Provided that the bank making such advances shall not be concerned to inquire whether the same have been obtained for the purposes set forth in this section, nor be required to see to the application of such advances.

*[Section 123A inserted by No. 10 of 1941 s. 6.]*

**124. Treasurer may advance moneys**

The water board of any water area may borrow from the Treasurer such sums of money on loan as are required for the construction and extension of works therein.

All such sums shall bear interest at such rate and shall be repaid in such instalments as may be agreed upon between the Treasurer and the water board.

*[Section 124 amended by No. 98 of 1985 s. 3.]*

**125. Such advances to be a charge on the works and revenue**

All moneys advanced by the Treasurer to a water board shall, by virtue of this Act, be charged upon all works constructed by or vested in the water board and on all the revenues thereof.

**126. Subsidy may be withheld**

If a water board, being a local government, in any year fails to pay the full amount of all such interest and instalments, the Treasurer may withhold so much of any subsidy payable to the

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local government as is sufficient to provide for such interest and instalments.

*[Section 126 amended by No. 14 of 1996 s. 4.]*

**127. Treasurer may levy and collect rates and charges**

If at any time the payments due to the Treasurer by a water board are in arrear, the Treasurer may take possession of any works the property of the water board, and may levy and enforce the water rates and charges, and for that purpose shall have and may exercise all the powers of the water board for the recovery of such rates and charges.

**128. Governor may appoint Commissioners**

If in any water area such payments continue in arrear through the refusal or neglect of the water board to levy and collect any rate or other moneys after being required to do so by the Treasurer as aforesaid, the Governor may, by Order in Council, suspend the functions of the water board, and may appoint a Commissioner for the management of the business which ought to be performed by the water board in the water area.

**129. Powers of Commissioners**

Such Commissioner may forthwith take possession of all works the property of the water board, and may, subject to the control of the Minister, exercise within the water area all the powers of the water board under the provisions of this Act, and may receive such remuneration as to the Governor may seem fit:

Provided that, at any subsequent time, the Governor may, by like Order in Council, supersede such Commissioner, and restore the functions of the water board under the provisions of this Act.

## Part VIII — Accounts and audit

**130. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

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

*[Section 130 inserted by No. 98 of 1985 s. 3; amended by No. 77 of 2006 Sch. 1 cl. 176(1).]*

**131. Inspection of accounts by Minister**

- (1) The accounts caused to be kept by a water board in accordance with the *Financial Management Act 2006* shall, at all reasonable times, be open to the inspection of the Minister and any person appointed by the Minister, and all persons so empowered may take copies of or extracts from the accounts without payment of any fee.
- (2) Every person having custody of the accounts referred to in subsection (1) who does not, on the reasonable demand of a person empowered under subsection (1), permit that person to inspect, take copies of or extracts from the accounts shall be liable to a penalty not exceeding \$1 000.

*[Section 131 inserted by No. 98 of 1985 s. 3; amended by No. 77 of 2006 Sch. 1 cl. 176(2).]*

*[132-140. Deleted by No. 98 of 1985 s. 3.]*

## **Part IX — By-laws**

### **141. Water board may make by-laws**

A water board may, subject to the provisions of this Act, make by-laws with respect to the following matters, that is to say: —

- (1) The general conduct of its business and proceedings.
- (2) The control, supervision, guidance, and duties of, and the granting of long service leave to, its officers and servants.
- [(3) deleted]*
- (4) The due management and use of the water and other property of the water board and of any water under their jurisdiction or authority and the construction, maintenance, extension, and management of the works.
- (5) The construction, maintenance, repair, management, and use of the works and other property of the water board.
- (6) Protecting the water, and the works, pipes, and fittings from trespass and injury.
- (7) Preventing and remedying the waste, misuse, undue consumption, fouling, or contamination of water contained in or supplied from the works or otherwise under the control of the water board.
- (8) Making, levying, and collecting rates and fixing a minimum rate to be paid in respect of land under a prescribed value.
- (9) Prescribing the quantity of water which a consumer may take in respect of any rates paid for any given period.
- (10) Prescribing scales of charges for water supplied by measure, and the minimum quantity of water to be charged for, and the rent for the use of meters.
- (10a) Providing service charges to be paid by persons who are supplied with water but who are not liable for payment of water rates.

- (10b) Prescribing discounts, additional charges, and penalties payable in respect of payments for water rates and charges for water supplied.
- (11) Specifying the purposes for which, and the persons or classes of persons to whom, water may be supplied under agreement, and the general and special terms and conditions upon which water shall be so supplied.
- (12) The quantity of water which a consumer may take or consume for any specified purposes; and the price to be paid for water supplied for any specified purposes.
- (13) Fixing the level beyond which water supplied from the works may not be allowed to rise at any particular place within the water area.
- (14) Compelling persons using water supplied by the water board to keep their pipes and fittings in proper repair.
- (15) Prohibiting any alteration of or interference with any meter, pipes, or fittings, without the consent of or notice to the water board; and prohibiting the sale by any person to whom water is supplied by the water board of water so supplied, except with the authority in writing of the water board.
- (16) Enabling the water board to repair such pipes or fittings so as to prevent waste of water, and to recover the cost of such repairs from the owner or occupier of the land.
- (17) Prohibiting any mode of arrangement, and the use of any fittings which may, in the opinion of the water board, cause or tend to cause waste, misuse, undue consumption, fouling, or contamination of the water.
- (18) The inspection of all pipes, fittings, and meters.
- [(19), (20) deleted]*

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- (20a) Prescribing fees payable for the issue upon request of statements as to moneys due or paid for rates or for water supplied by measure under this Act, prescribing fees for the reading of meters upon request, and making provision as to the recovery of such fees.
- (21) Prescribing forms to be used for the purposes of this Act, and modifying any of the forms contained in the Schedules.
- (22) And for any other purposes relating to the administration of this Act and the exercise of the powers vested in the water board.

*[Section 141 amended by No. 32 of 1953 s. 12; No. 25 of 1985 s. 359; No. 73 of 1995 s. 158; No. 39 of 1999 s. 11(8).]*

**142. Penalties for breach of by-laws**

Every by-law —

- (1) May impose a penalty not exceeding \$2 000 for the breach thereof, and in the case of a continuing breach, a further penalty not exceeding \$200 for each day the offence continues after notice thereof has been given by or on behalf of the water board to the offender; and
- (2) May provide that, in addition to the penalty, any expense incurred by the water board in consequence of the breach of such by-law shall be paid by the person committing such breach.

*[Section 142 amended by No. 113 of 1965 s. 8; No. 110 of 1985 s. 156.]*

**143. Regulations**

- (1) The Governor may make regulations under or for the purposes of this Act prescribing all matters as are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for the purposes of this Act or to facilitate the operations of water boards.



- (2) Regulations made under or for the purposes of this Act may prescribe penalties not exceeding \$2 000 in respect of any contravention of any of the regulations.

*[Section 143 inserted by No. 110 of 1985 s. 153.]*

## **Part X — General provisions**

### **144. Notices**

All notices and demands under this Act, may be in writing or in print, or partly in writing and partly in print.

### **145. Notices and demands, how served**

- (1) Any notice or demand required by this Act to be given to or made upon any person may be served —
  - (a) By delivering the same to such person;
  - (b) By leaving the same at his usual or last known place of abode;
  - (c) By forwarding the same by post in a prepaid letter addressed to such person at his usual or last known place of abode.
- (2) A notice or demand forwarded by post shall be deemed to have been given or made and to have been received at the time when, by ordinary course of post, the letter would be delivered.
- (3) When a notice or demand under this Act is required to be given or made to any owner or occupier whose name or address is unknown to the water board it shall not be necessary to name such owner or occupier, and such notice or demand may be served by placing it on some conspicuous part of the land of such owner or occupier, and by publishing it 3 times, at intervals of not less than a week between any 2 publications, in a newspaper usually circulating in the district.
- (4) A notice or demand may be served on a corporation, or incorporated company, or the members of a partnership, by being delivered, left, or posted in a prepaid letter; the notice or demand being addressed in each case to the corporation, company, or partnership at the principal office or place of business thereof in the State.

**146. Notices binding on persons claiming under owner or occupier**

All notices and demands duly given to or made upon any owner or occupier shall be binding upon all persons claiming by, from, or under such owner or occupier.

**147. Notices may be authenticated by signature of chairman without seal**

Every order, summons, notice, or other document requiring authentication by the water board may be sufficiently authenticated without the common seal of the water board, if signed by the chairman.

**148. Service on water board**

Any summons or notice, or any writ or other proceeding requiring to be served upon the water board may be served upon the chairman or secretary of the water board.

**149. Saving of civil remedy**

The institution of any proceedings, or the conviction of any person for any offence against this Act, shall not affect any remedy which the water board or any person aggrieved may be entitled to in any civil proceedings.

**150. Recovery of value of water misused etc.**

When any water supplied under this Act has been wasted, misused, or unduly consumed, the water board may recover the value thereof, as a debt due to them by the person who wasted, misused, or unduly consumed the same, and the remedy given by this section shall be additional to any other remedy which the water board may possess, and to the liability to any penalty which such person has incurred.

**s. 151**

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**151.     Obstructing water board or officers in performance of duty**

Every person who obstructs the water board or any member thereof, any person employed by the water board, in the performance of any act or thing which they are respectively authorised or required to do in the execution of this Act or any by-law made thereunder, shall be liable to a penalty not exceeding \$500.

*[Section 151 amended by No. 113 of 1965 s. 8; No. 110 of 1985 s. 156.]*

**152.     Penalty for refusing to give up possession of works**

Any person having charge of any works, the property of a water board, who refuses, on lawful demand, to give up peaceable and quiet possession of the same to any person entitled to possession under the provisions of this Act, shall be guilty of a crime, and shall be liable to a penalty not exceeding \$4 000 and to be imprisoned for any period not exceeding 12 months.

*[Section 152 amended by No. 113 of 1965 s. 8; No. 110 of 1985 s. 156; No. 70 of 2004 s. 82.]*

**153.     Offender may be arrested**

Any officer of the water board may, without warrant, arrest any person found committing an offence against this Act or any by-law thereunder, if the offender refuses to give his name and address.

**154.     Proceedings for an offence**

- (1) Proceedings for an offence against this Act may be taken by the water board or an officer or servant of the water board.

*[(2) deleted]*

*[Section 154 inserted by No. 78 of 1995 s. 132; amended by No. 84 of 2004 s. 80.]*

**155. Application of penalties**

All penalties and forfeitures recovered under this Act, or any by-law thereunder, shall be paid to the water board, and the proceeds are hereby appropriated for the purposes of this Act.

**156. Water board may be represented by secretary or other officer**

In any proceeding in the Children's Court or the Magistrates Court, the secretary or any other officer of the water board appointed by the chairman, in writing, under his hand, may represent the water board in all respects as if he were the party concerned.

*[Section 156 amended by No. 59 of 2004 s. 141.]*

*[157. Deleted by No. 73 of 1954 s. 8.]*

**158. Public registers of WA Land Information Authority and other departments may be searched without fee**

Any person appointed under the hand of the chairman of the water board may, for the purposes of this Act, search the public registers of the office of the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5, of the department principally assisting with the administration of the *Land Administration Act 1997*, or of the department principally assisting with the administration of the *Mining Act 1978*, without payment of any fee.

*[Section 158 amended by No. 60 of 2006 s. 165(2).]*

**159. Property of water board not to be taxed**

All lands and works vested in or under the management and control of the water board shall be exempt from any rate, tax, or imposition which any local government might, but for this section, lawfully levy and impose.

*[Section 159 amended by No. 14 of 1996 s. 4.]*

**s. 160**

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**160. Proof of ownership or occupancy**

In any legal proceedings under this Act, in addition to any other method of proof available —

- (1) Evidence that the person proceeded against is rated as owner or occupier of any land; or
- (2) Evidence by the certificate, in writing, of —
  - (a) The Registrar of Deeds, that any person appears from any memorial of registration of any deed, conveyance, or other instrument to be the owner of any land; or
  - (b) The Registrar of Titles, or any assistant registrar, that any person's name appears in the Register under the *Transfer of Land Act 1893*, as proprietor of any land; or
  - (c) the chief executive officer of the department principally assisting in the administration of the *Land Administration Act 1997* or of the department principally assisting in the administration of the *Mining Act 1978*, that any person is registered in the department as the occupier or lessee of any land,

shall, until the contrary is proved, be evidence that such person is the owner or occupier, as the case may be, of such land.

*[Section 160 amended by No. 81 of 1996 s. 153(1); No. 60 of 2006 s. 165(3).]*

**161. Powers of water board may be exercised by Minister**

The Governor may authorise the Minister of the Crown designated by him or the Corporation to exercise, within a water area, all or any of the powers conferred by this Act on a water board:

- (1) Until the constitution of a board; or

- (2) With respect to any works constructed before or after the commencement of this Act, until such works are transferred to the board.

*[Section 161 amended by No. 25 of 1985 s. 360; No. 73 of 1995 s. 159.]*

## Part XI — Infringement notices

[Heading inserted by No. 110 of 1985 s. 154.]

### 162. Infringement notices

(1) In this section —

**alleged offence**, in relation to an infringement notice, means offence to which the infringement notice relates;

**alleged offender**, in relation to an infringement notice, means the person to whom the infringement notice is given;

**authorised person** means a person authorised under subsection (10) to give infringement notices;

**designated person** means a person designated, or of a class designated, under subsection (10);

**infringement notice** means a notice given under subsection (2);

**modified penalty**, in respect of an offence to which an infringement notice relates, means the amount of money specified in the notice as being the modified penalty for that offence;

**prescribed** means prescribed by the regulations;

**prescribed person** means a person whom the regulations prescribe to be a prescribed person for the purposes of this section.

(2) An authorised person who has reason to believe that a person has committed an offence against this Act that is prescribed to be an offence that may be dealt with under this section may give to that person a notice in the prescribed form informing him that if he does not wish to be prosecuted for the alleged offence in a court he may, within a period of 21 days after the giving of the notice, pay to a person specified in the notice, other than the person giving the notice, the amount of money specified in the notice as being the modified penalty for that offence.



- (3) In an infringement notice —
  - (a) the amount of money specified as being the modified penalty for an offence to which the infringement notice relates shall be the amount that is, when the infringement notice is given, for the time being prescribed to apply in respect of the offence if it is dealt with under this section; and
  - (b) the persons specified as being persons to whom the modified penalty may be paid shall be designated persons.
- (4) An infringement notice may be given to an alleged offender personally at or about the time the alleged offence is believed to have been committed or, where the offence is one that is committed by the owner or occupier of land in relation to which the offence is committed, by posting it to him at his address as shown in rating records kept under this Act.
- (5) A person to whom an infringement notice is given may decline to be dealt with under this section and, if the modified penalty is not paid within the period specified in the notice or within such further time as may, whether before or after the expiry of that period, be allowed by a prescribed person, is deemed to have declined to be so dealt with.
- (6) A prescribed person may, whether or not the modified penalty has been paid, withdraw an infringement notice, other than an infringement notice given by that person, at any time within a period of 28 days after it was given by sending to the alleged offender a notice in the prescribed form, signed by the prescribed person, advising the alleged offender that the infringement notice has been withdrawn.
- (7) Any amount paid by way of modified penalty pursuant to an infringement notice that has been withdrawn under subsection (6) shall be refunded.

**s. 162**

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- (8) Where, pursuant to an infringement notice, the modified penalty has been paid in accordance with the notice within the period specified therein or within such further time as is allowed and the infringement notice has not been withdrawn under subsection (6), no proceedings shall be brought or penalty shall be imposed that could not be brought or imposed if the person to whom the infringement notice was given had been convicted by a court of, and punished for, the alleged offence.
- (9) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (7), be dealt with as if it were a fine imposed by a court as a penalty for an offence.
- (10) A water board may —
- (a) by resolution, authorise persons, or classes of persons, who are officers of the water board to give infringement notices; and
  - (b) by notice published in the *Government Gazette*, designate the persons, or classes of persons, to whom payment may be made of any modified penalty,
- and may, in like manner, revoke any such authorisation or notice.
- (11) A water board shall issue to each authorised person a certificate in the prescribed form which that person shall produce whenever required to do so by a person to whom he has given or is about to give an infringement notice.

*[Section 162 inserted by No. 110 of 1985 s. 154; amended by No. 78 of 1995 s. 133; No. 84 of 2004 s. 80.]*

*[First Schedule deleted by No. 110 of 1985 s. 155.]*

*[Second, Third and Fourth Schedules deleted by No. 76 of 1978 s. 159.]*

*[Fifth and Sixth Schedules deleted by No. 32 of 1953 s. 14.]*

*[Seventh and Eighth Schedules deleted by No. 59 of 2004 s. 141.]*

**Ninth Schedule**

[Section 115]

*WATER BOARDS ACT 1904*

..... Water Area

No. Debenture \$  
(Total Issue \$ )

Issued by the Western Australia.

**TRANSFERABLE BY DELIVERY**

This Debenture was issued by the Water Board of , Western Australia, and is to secure to the bearer the principal sum of dollars, payable on the day of , 20 .

Interest on such principal sum at the rate of per centum per annum is payable in the meantime by half-yearly payments on the day of , and the day of in every year, and a coupon is annexed for each payment, which entitles the bearer of such coupon thereto.

Such principal sum and interest are payable at , and are charged on the property and revenues of the said water board, and are not otherwise secured.

Dated the day of , 20 .

[SEAL]

(Signed) Chairman.  
Member.

Secretary.

*[Ninth Schedule amended by No. 113 of 1965 s. 8.]*

*[Tenth Schedule deleted by No. 59 of 2004 s. 141.]*



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## Notes

- <sup>1</sup> This reprint is a compilation as at 14 May 2010 of the *Water Boards Act 1904* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Water Boards Act 1904</i>	4 of 1904 (3 Edw. VII No. 19)	16 Jan 1904	16 Jan 1904
<i>Rights in Water and Irrigation Act 1914 s. 40(4)</i>	19 of 1914 (5 Geo. V No. 19)	22 Sep 1914	22 Sep 1914
<i>Water Boards Act Amendment Act 1918</i> <sup>2</sup>	4 of 1919 (9 Geo. V No. 34)	3 Jan 1919	3 Jan 1919
<i>Ministers' Titles Act 1925</i>	8 of 1925 (16 Geo. V No. 8)	24 Sep 1925	24 Sep 1925
<i>Water Boards Act Amendment Act 1925</i>	16 of 1925 (16 Geo. V No. 16)	4 Nov 1925	4 Nov 1925
<i>Water Boards Act Amendment Act 1928</i> <sup>2</sup>	26 of 1928 (19 Geo. V No. 26) (as amended by No. 19 of 1973 s. 4)	27 Dec 1928	27 Dec 1928
<i>Water Boards Act Amendment Act 1937</i>	25 of 1937 (1 & 2 Geo. VI No. 25)	18 Jan 1938	18 Jan 1938
<i>Water Boards Act Amendment Act (No. 2) 1941</i>	10 of 1941 (5 Geo. VI No. 10)	20 Oct 1941	20 Oct 1941
<i>Water Boards Act Amendment Act 1942</i>	6 of 1942 (6 Geo. VI No. 6)	31 Oct 1942	31 Oct 1942

## Water Boards Act 1904

Short title	Number and year	Assent	Commencement
<i>Water Boards Act Amendment Act 1947</i>	26 of 1947 (11 Geo. VI No. 26)	12 Nov 1947	12 Nov 1947
<i>Water Boards Act Amendment Act 1949</i>	10 of 1949 (13 Geo. VI No. 96)	14 Sep 1949	14 Sep 1949
<b>Reprint of the <i>Water Boards Act 1904</i> approved 23 Feb 1951 in Vol. 5 of Reprinted Acts</b> (includes amendments listed above)			
<i>Acts Amendment (Fire Brigades Board and Fire Hydrants) Act 1951 s. 5</i>	41 of 1951 (15 & 16 Geo. VI No. 41)	20 Dec 1951	4 Apr 1952 (see s. 2 and <i>Gazette</i> 4 Apr 1952 p. 799-800)
<i>Water Boards Act Amendment Act 1953</i>	32 of 1953 (2 Eliz. II No. 32)	18 Dec 1953	18 Dec 1953
<i>Limitation Act 1935 s. 48A(1)</i>	35 of 1935 (26 Geo. V No. 35) (as amended by No. 73 of 1954 s. 8)	14 Jan 1955	Relevant amendments (see s. 48A and Second Sch. <sup>3</sup> ) took effect on 1 Mar 1955 (see No. 73 of 1954 s. 2 and <i>Gazette</i> 18 Feb 1955 p. 343)
<i>Water Boards Act Amendment Act 1964</i>	32 of 1964 (13 Eliz. II No. 32)	4 Nov 1964	4 Nov 1964
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Water Boards Act Amendment Act 1969</i>	54 of 1969	29 Sep 1969	29 Sep 1969
<b>Reprint of the <i>Water Boards Act 1904</i> approved 18 Aug 1971</b> (includes amendments listed above)			
<i>Water Boards Act Amendment Act 1978</i>	51 of 1978	6 Sep 1978	Act other than s. 4-9: 6 Sep 1978 (see s. 2(1)); s. 4-9: 15 Dec 1978 (see s. 2(2) and <i>Gazette</i> 15 Dec 1978 p. 4691-2)
<i>Acts Amendment and Repeal (Valuation of Land) Act 1978 Pt. XV</i>	76 of 1978	20 Oct 1978	1 Jul 1979 (see s. 2 and <i>Gazette</i> 11 May 1979 p. 1211)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Water Boards Act Amendment Act (No. 2) 1978</i>	97 of 1978	17 Nov 1978	15 Dec 1978 (see s. 2)
<i>Water Boards Act Amendment Act 1979</i>	44 of 1979	25 Oct 1979	1 Jul 1979 (see s. 2)
<i>Acts Amendment (Statutory Designations) and Validation Act 1981 s. 4<sup>4</sup></i>	63 of 1981	13 Oct 1981	13 Oct 1981
<i>Acts Amendment (Country Water and Sewerage) Act 1982 Pt. III</i>	14 of 1982	14 May 1982	11 Jun 1982 (see s. 2 and <i>Gazette</i> 11 Jun 1982 p. 1911)
<i>Acts Amendment and Repeal (Water Authorities) Act 1985 Pt. X</i>	25 of 1985	6 May 1985	1 Jul 1985 (see s. 2 and <i>Gazette</i> 7 Jun 1985 p. 1931)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Water Authorities) Act 1985 Pt. IX</i>	110 of 1985	17 Dec 1985	14 Mar 1986 (see s. 2 and <i>Gazette</i> 14 Mar 1986 p. 726)
<i>R &amp; I Bank Amendment Act 1994 s. 13</i>	6 of 1994	11 Apr 1994	26 Apr 1994 (see s. 2(2) and <i>Gazette</i> 26 Apr 1994 p. 1743)
<i>Bank of Western Australia Act 1995 s. 44(1)</i>	14 of 1995	4 Jul 1995	1 Dec 1995 (see s. 2 and <i>Gazette</i> 29 Nov 1995 p. 5529)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 Pt. 9</i>	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 81</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996 Pt. 4<sup>5,6</sup></i>	12 of 1996	28 Jun 1996	28 Jun 1996 (see s. 2)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Statutory Corporations (Liability of Directors) Act 1996 s. 3</i>	41 of 1996	10 Oct 1996	1 Dec 1996 (see s. 2 and <i>Gazette</i> 12 Nov 1996 p. 6301)

## Water Boards Act 1904

Short title	Number and year	Assent	Commencement
<b>Reprint of the <i>Water Boards Act 1904</i> as at 4 Nov 1996</b> (includes amendments listed above except those in the <i>Statutory Corporations (Liability of Directors) Act 1996</i> )			
<i>Transfer of Land Amendment Act 1996</i> s. 153(1)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 65 and s. 142	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998</i> s. 38	42 of 1998	4 Nov 1998	1 Jan 1999 (see s. 2 and <i>Gazette</i> 22 Dec 1998 p. 6833)
<i>Water Services Coordination Amendment Act 1999</i> s. 11(8)	39 of 1999	9 Nov 1999	19 Jun 2000 (see s. 2 and <i>Gazette</i> 16 Jun 2000 p. 2939)
<i>Land Administration Amendment Act 2000</i> s. 51	59 of 2000	7 Dec 2000	10 Apr 2001 (see s. 2(2) and <i>Gazette</i> 10 Apr 2001 p. 2073)
<b>Reprint 4: The <i>Water Boards Act 1904</i> as at 3 Jan 2003</b> (includes amendments listed above)			
<i>Water Boards Amendment Act 2003</i>	22 of 2003	23 Apr 2003	23 Apr 2003 (see s. 2)
<i>Economic Regulation Authority Act 2003</i> s. 62	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 132 <sup>7,8</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Law Amendment (Simple Offences) Act 2004</i> s. 82	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))



Short title	Number and year	Assent	Commencement
<b>Reprint 5: The Water Boards Act 1904 as at 12 Aug 2005</b> (includes amendments listed above)			
<i>Land Information Authority Act 2006</i> s. 165	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and <i>Gazette</i> 8 Dec 2006 p. 5369)
<i>Financial Legislation Amendment and Repeal Act 2006</i> Sch. 1 cl. 176	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Water Resources Legislation Amendment Act 2007</i> s. 201	38 of 2007	21 Dec 2007	1 Feb 2008 (see s. 2(2) and <i>Gazette</i> 31 Jan 2008 p. 251)
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 131	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 89	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<b>Reprint 6: The Water Boards Act 1904 as at 14 May 2010</b> (includes amendments listed above)			

<sup>1a</sup> [On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.](#)

**Provisions that have not come into operation**

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
<a href="#">Standardisation of Formatting Act 2010</a> s. 40, 44(2) and 51 <sup>9</sup>	<a href="#">19 of 2010</a>	<a href="#">28 Jun 2010</a>	<a href="#">To be proclaimed (see s. 2(b))</a>

- <sup>2</sup> The *Water Boards Act Amendment Act 1918* and the *Water Boards Act Amendment Act 1928* which were to be read as one with this Act were repealed by the *Acts Amendment and Repeal (Water Authorities) Act 1985* s. 361.
- <sup>3</sup> Section 48A and the Second Schedule were inserted by No. 73 of 1954 s. 5 and 8.
- <sup>4</sup> The *Acts Amendment (Statutory Designations) and Validation Act 1981* s. 5 was a validation provision that is of no further effect.
- <sup>5</sup> The *Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996* s. 13 reads as follows:

**13. Application**

- (1) The amendments made by section 14 apply if the request to defer payment of an amount in respect of headworks is made after 30 June 1996, regardless of whether the requirement to pay the amount was imposed before or after this Act commenced.
- (2) The amendments made by section 15 apply only in relation to a charge in respect of a lot created through a subdivisional plan or diagram approved by the Western Australian Planning Commission after 30 June 1996.

<sup>6</sup> The *Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996* Pt. 6 is a review provision that is of no further effect.

<sup>7</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>8</sup> The *State Administrative Tribunal Regulations 2004* r. 66 reads as follows:

**66. Water Boards Act 1904**

- (1) In this regulation —  
**commencement day** means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 132 comes into operation;  
**the WB Act** means the *Water Boards Act 1904*;  
**Water Board** means a Water Board constituted under the WB Act.
- (2) If advice has been given under the WB Act section 87(7) before the commencement day, on or after the commencement day the advice is to be taken to refer to the time within which and the manner in which a review of the decision may be sought.
- (3) If a Water Board receives, before the commencement day, a notice in accordance with the WB Act section 88(1) (as in force when the notice was received by the Water Board) but does not before the commencement day refer the objection referred to in the notice to a Land Valuation Tribunal as an appeal, on and after the commencement day the Water Board must refer the relevant entry in the rating records to the State Administrative Tribunal for a review as if the notice were a notice served on the Water Board under the WB Act section 88(1).

- (4) If a Water Board receives, before the commencement day, a notice in accordance with the WB Act section 89(1) (as in force when the notice was received by the Water Board) but does not before the commencement day refer a decision referred to in the notice to a Land Valuation Tribunal as an appeal, on and after the commencement day the Water Board must refer the decision to refuse to extend time to the State Administrative Tribunal for a review as if the notice were a notice served on the Water Board under the WB Act section 89(1).

<sup>9</sup> On the date as at which this compilation was prepared, the *Standardisation of Formatting Act 2010* s. 40, 44(2) and 51 had not come into operation. They read as follows:

**40. Water Boards Act 1904 amended**

(1) This section amends the *Water Boards Act 1904*.

(2) In section 115 delete “the Ninth Schedule.” and insert:

Schedule 9.

(3) In the Ninth Schedule:

(a) delete “**Ninth Schedule**”;

(b) delete “[Section 115]”.

and insert:

**Schedule 9 — Debenture**

[s. 115]

**44. Ad hoc headings**

(1) This section amends the Acts listed in Tables 1 and 2.

(2) In each Act listed in Table 1 before each section listed in the Table delete the heading and insert the heading or headings set out in the Table in relation to that section.

<b><u>8. Water Boards Act 1904</u></b>	
<u>s. 4</u>	<b><u>Division 1 — Water areas</u></b>
<u>s. 5</u>	<b><u>Division 2 — Vesting of assets</u></b>
<u>s. 6</u>	<b><u>Division 3 — Water boards</u></b>
<u>s. 13</u>	<b><u>Division 4 — Proceedings of water boards</u></b>
<u>s. 30</u>	<b><u>Division 5 — Delegation of authority</u></b>
<u>s. 31</u>	<b><u>Division 6 — Officers of water boards</u></b>
<u>s. 76A</u>	<b><u>Division 1 — The rating records</u></b>
<u>s. 87</u>	<b><u>Division 2 — Objections and review</u></b>
<u>s. 97</u>	<b><u>Division 3 — Payment</u></b>

**51. Various written laws amended**

- (1) This section amends the written laws listed in the Table.  
 (2) Amend the provisions listed in the Table as set out in the Table.

<b><u>95. Water Boards Act 1904</u></b>		
<u>s. 4</u>	(1) <u>Constitute</u>	(a) <u>constitute</u>
	(2) <u>Alter</u>	(b) <u>alter</u>
	(3) <u>Unite</u>	(c) <u>unite</u>
	(4) <u>Divide</u>	(d) <u>divide</u>
	(5) <u>Include</u>	(e) <u>include</u>
	(6) <u>Abolish</u>	(f) <u>abolish</u>
	(7) <u>From</u>	(g) <u>from</u>
	(a) <u>divide</u>	(i) <u>divide</u>

	<p><u>(b) define</u></p> <p><u>(c) alter</u></p> <p><u>(d) abolish</u></p>	<p><u>(ii) define</u></p> <p><u>(iii) alter</u></p> <p><u>(iv) abolish</u></p>
<u>s. 7</u>	<p><u>(1) By</u></p> <p><u>(2) By</u></p> <p><u>(3) By</u></p> <p><u>(4) By</u></p>	<p><u>(a) by</u></p> <p><u>(b) by</u></p> <p><u>(c) by</u></p> <p><u>(d) by</u></p>
<u>s. 9</u>	<p><u>When members</u> <u>area: And when in that</u> <u>case more</u> <u>The Governor</u></p>	<p><u>(1) When members</u> <u>_____ area.</u> <u>(2) When more</u> <u>(3) The Governor</u></p>
<u>s. 10</u>	<p><u>When the</u> <u>the following provisions</u> <u>shall have effect: —</u> <u>member:</u> <u>(each occurrence)</u> <u>vacant:</u> <u>taken:</u> <u>retire:</u> <u>chairman:</u> <u>re-election:</u> <u>seat:</u> <u>office:</u> <u>(each occurrence)</u> <u>prescribes:</u></p>	<p><u>(1A) When the</u> <u>subsections (1) to (14)</u> <u>have effect.</u> <u>member.</u> <u>vacant.</u> <u>taken.</u> <u>retire.</u> <u>chairman.</u> <u>re-election.</u> <u>seat.</u> <u>office.</u> <u>prescribes.</u></p>

	<a href="#">governments:</a> <a href="#">the last preceding paragraph</a> <a href="#">up:</a>	<a href="#">governments.</a> <a href="#">subsection (11)</a> <a href="#">up.</a>
<a href="#">s. 11</a>	<a href="#">Every water</a> <a href="#">A change</a>	(1) <a href="#">Every water</a> (2) <a href="#">A change</a>
<a href="#">s. 12</a>	<a href="#">When a</a> <a href="#">Provided that the applicant</a> <a href="#">If, upon</a> <a href="#">The person</a> <a href="#">If it appears elected:</a> <a href="#">Provided that no such</a>	(1) <a href="#">When a</a> (2) <a href="#">An applicant under subsection (1)</a> (3) <a href="#">If, upon</a> (4) <a href="#">The person</a> (5) <a href="#">If it appears elected.</a> (6) <a href="#">No such</a>
<a href="#">s. 17</a>	<a href="#">At the next hereinafter provided.</a> <a href="#">If within</a> <a href="#">If the chairman (first occurrence)</a> <a href="#">If the chairman (second occurrence)</a> <a href="#">If the chairman (third occurrence)</a>	(1) <a href="#">At the provided in subsections (2) to (5).</a> (2) <a href="#">If within</a> (3) <a href="#">If the chairman</a> (4) <a href="#">If the chairman</a> (5) <a href="#">If the chairman</a>
<a href="#">s. 19</a>	<a href="#">Business</a> <a href="#">All powers</a>	(1) <a href="#">Business</a> (2) <a href="#">All powers</a>

	<u>Upon every</u> <u>At all</u> <u>If a member</u>	(3) <u>Upon every</u> (4) <u>At all</u> (5) <u>If a member</u>
<u>s. 21</u>	<u>The members</u> <u>If a quorum</u>	(1) <u>The members</u> (2) <u>If a quorum</u>
<u>s. 22</u>	<u>A resolution</u> <u>If the</u>	(1) <u>A resolution</u> (2) <u>If the</u>
<u>s. 24</u>	<u>Notices</u> <u>Every such</u> <u>No business</u>	(1) <u>Notices</u> (2) <u>Every such</u> (3) <u>No business</u>
<u>s. 25</u>	<u>The board</u> (1) <u>Appoint</u> (2) <u>Delegate</u> (3) <u>Fix</u> <u>A committee</u>	(1) <u>The board</u> (a) <u>appoint</u> (b) <u>delegate</u> (c) <u>fix</u> (2) <u>A committee</u>
<u>s. 26</u>	<u>A committee</u> <u>At meetings</u> <u>chairman. All</u>	(1) <u>A committee</u> (2) <u>At meetings</u> <u>chairman.</u> (3) <u>All</u>
<u>s. 27</u>	<u>The board,</u>  <u>Every such</u> <u>(first occurrence)</u>  <u>Every such</u>	(1) <u>The board,</u>  (2) <u>Every such</u>  (3) <u>Every such</u>

	<u>(second occurrence)</u>	
<u>s. 32</u>	<u>The chairman</u> <u>place: Provided that, at</u> <u>Every officer</u>	<u>(1) The chairman</u> <u>place.</u> <u>(2) At</u> <u>(3) Every officer</u>
<u>s. 34</u>	<u>(1) To</u> <u>(2) To</u> <u>(3) To</u> <u>(4) To</u>	<u>(a) to</u> <u>(b) to</u> <u>(c) to</u> <u>(d) to</u>
<u>s. 46</u>	<u>Subject to</u> <u>(1) It may,</u> <u>(2) It may,</u> <u>(3) It may</u> <u>(4) It may,</u> <u>(5) It may,</u> <u>works:</u> <u>Provided that, in the</u>	<u>(1) Subject to</u> <u>(a) it may,</u> <u>(b) it may,</u> <u>(c) it may</u> <u>(d) it may,</u> <u>(e) it may,</u> <u>works.</u> <u>(2) In the</u>
<u>s. 47</u>	<u>(1) Open</u> <u>(2) Lay</u> <u>(3) For</u> <u>(4) Do</u>	<u>(a) open</u> <u>(b) lay</u> <u>(c) for</u> <u>(d) do</u>
<u>s. 49</u>	<u>In cases</u> <u>employee:</u> <u>Provided that if</u>	<u>(1) In cases</u> <u>employee.</u> <u>(2) Despite</u>



		<u>subsection (1), if</u>
<u>s. 50</u>	<u>(1) With</u> <u>up.</u> <u>(2) While</u>	<u>(a) with</u> <u>up:</u> <u>(b) while</u>
<u>s. 51(2)</u>	<u>Thereupon the</u>  <u>Any local</u> <u>this subsection</u>	<u>(3) Upon being given</u> <u>notice under</u> <u>subsection (2) the</u> <u>(4) Any local</u> <u>subsection (2)</u>
<u>s. 56</u>	<u>On receiving</u> <u>Provided that no</u>	<u>(1) On receiving</u> <u>(2) Despite</u> <u>subsection (1), no</u>
<u>s. 58</u>	<u>The water</u> <u>When a</u> <u>The water</u>	<u>(1) The water</u> <u>(2) When a</u> <u>(3) The water</u>
<u>s. 61</u>	<u>The water</u> <u>The expense</u>	<u>(1) The water</u> <u>(2) The expense</u>
<u>s. 63(10)</u>	<u>if the fire</u> <u>(first occurrence)</u> <u>if the fire</u> <u>(second occurrence)</u>	<u>(a) if the fire</u> <u>(b) if the fire</u>
<u>s. 63(11)</u>	<u>by the Authority</u> <u>by the local</u>	<u>(a) by the Authority</u> <u>(b) by the local</u>
<u>s. 67</u>	<u>(1) Connect</u>	<u>(a) connect</u>

	<u>(2) Disconnect</u>	<u>(b) disconnect</u>
<u>s. 68(1)</u>	<u>What quantity</u> <u>Whether there</u> <u>Whether all</u>	<u>(a) what quantity</u> <u>(b) whether there</u> <u>(c) whether all</u>
<u>s. 68(2)</u>	<u>Any expense</u>	<u>(3) Any expense</u>
<u>s. 69</u>	<u>No person</u> <u>No such</u>	<u>(1) No person</u> <u>(2) No such</u>
<u>s. 70</u>	<u>Any person authorised</u> <u>Any person so</u>	<u>(1) Any person authorised</u> <u>(2) Any person so</u>
<u>s. 71</u>	<u>(1) Uses</u> <u>(2) Alters,</u>	<u>(a) uses</u> <u>(b) alters,</u>
<u>s. 73</u>	<u>(1) Wilfully</u> <u>(2) Flushes</u> <u>(3) Does</u>	<u>(a) wilfully</u> <u>(b) flushes</u> <u>(c) does</u>
<u>s. 76</u>	<u>(1) Does,</u> <u>(2) Omits</u>	<u>(a) does,</u> <u>(b) omits</u>
<u>s. 107</u>	<u>When an</u> <u>Any person</u> <u>But any</u> <u>In case any</u>	<u>(1) When an</u> <u>(2) Any person</u> <u>(3) But any</u> <u>(4) In case any</u>
<u>s. 120</u>	<u>Before raising</u> <u>Provided that it</u>	<u>(1) Before raising</u> <u>(2) Despite</u>

	<u>this proviso.</u>	<u>subsection (1), it</u> <u>this subsection.</u>
<u>s. 123A</u>	<u>Notwithstanding</u> <u>preceding:</u> <u>Provided that the bank</u>	(1) <u>Notwithstanding</u> <u>preceding.</u> (2) <u>The bank</u>
<u>s. 124</u>	<u>The water</u> <u>All such</u>	(1) <u>The water</u> (2) <u>All such</u>
<u>s. 129</u>	<u>Such</u> <u>fit:</u> <u>Provided that, at any</u>	(1) <u>Such</u> <u>fit.</u> (2) <u>At any</u>
<u>s. 141</u>	(1) <u>The</u> <u>proceedings.</u> (2) <u>The</u> <u>servants.</u> (4) <u>The</u> <u>works.</u> (5) <u>The</u>  <u>board.</u> <u>(first to third</u> <u>occurrences)</u> (6) <u>Protecting</u> <u>injury.</u> (7) <u>Preventing</u>	(a) <u>the</u> <u>proceedings;</u> (b) <u>the</u> <u>servants;</u> (c) <u>the</u> <u>works;</u> (d) <u>the</u>  <u>board;</u>  (e) <u>protecting</u> <u>injury;</u> (f) <u>preventing</u>

<u>(8) Making value.</u>	<u>(g) making value;</u>
<u>(9) Prescribing period.</u>	<u>(h) prescribing period;</u>
<u>(10) Prescribing meters.</u> <u>(each occurrence)</u>	<u>(i) prescribing meters;</u>
<u>(10a) Providing rates.</u>	<u>(j) providing rates;</u>
<u>(10b) Prescribing supplied.</u> <u>(each occurrence)</u>	<u>(k) prescribing supplied;</u>
<u>(11) Specifying</u>	<u>(l) specifying</u>
<u>(12) The purposes.</u>	<u>(m) the purposes;</u>
<u>(13) Fixing area.</u>	<u>(n) fixing area;</u>
<u>(14) Compelling repair.</u>	<u>(o) compelling repair;</u>
<u>(15) Prohibiting</u>	<u>(p) prohibiting</u>
<u>(16) Enabling land.</u>	<u>(q) enabling land;</u>
<u>(17) Prohibiting water.</u>	<u>(r) prohibiting water;</u>
<u>(18) The</u>	<u>(s) the</u>
<u>(20a) Prescribing</u>	<u>(t) prescribing</u>

	<u>fees.</u> <u>(21) Prescribing</u> <u>Schedules.</u> <u>(22) And for any</u>	<u>fees:</u> <u>(u) prescribing</u> <u>Schedules;</u> <u>(v) any</u>
<u>s. 142</u>	<u>(1) May</u> <u>(2) May</u>	<u>(a) may</u> <u>(b) may</u>
<u>s. 160</u>	<u>(1) Evidence</u> <u>(2) Evidence</u> <u>(a) The</u> <u>(b) The</u> <u>(c) the</u>	<u>(a) evidence</u> <u>(b) evidence</u> <u>(i) the</u> <u>(ii) the</u> <u>(iii) the</u>
<u>s. 161</u>	<u>board:</u> <u>(1) Until</u> <u>(2) With</u>	<u>board —</u> <u>(a) until</u> <u>(b) with</u>