



Western Australia

## **Water Services Act 2012**

Compare between:

[25 Jul 2016, 01-b0-01] and [24 Jan 2017, 01-c0-02]



Western Australia

## **Water Services Act 2012**

**An Act relating to the provision of water services and the regulation of water service providers, and for related purposes.**

## Part 1 — Preliminary

### 1. Short title

This is the *Water Services Act 2012*<sup>1</sup>.

### 2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions<sup>1</sup>.

### 3. Terms used

- (1) In this Act, unless the contrary intention appears —

***area associated with a dwelling*** means —

- (a) if the dwelling is one of 2 or more dwellings in one building, the parts of the building and any area around the building that the occupiers of the dwellings use exclusively but in common with each other; or
- (b) otherwise, the area around the dwelling that is used exclusively by the occupier, such as a driveway, garden or yard;

***Authority*** means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003* section 4;

***CEO*** means the chief executive officer of the Department;

***charge*** means an obligation to pay an amount, but does not include anything described under this Act as a fee;

***class***, of water service, has a meaning affected by section 8;

***code of conduct*** means a code of conduct made under section 27;

**code of practice** includes a code of practice made under section 26;

**compliance officer** has the meaning given in section 71(1);

**conduit** means a pipe placed on land, or an artificial channel or tunnel placed on or a part of land, for conveying water or wastewater, and associated fittings, fixtures and structures;

**Crown land** has the meaning given in the *Land Administration Act 1997* section 3(1);

**customer**, of a licensee, means a person to whom water services are provided by the licensee or who is entitled to the provision of water services by the licensee, other than a person who is a member of the licensee;

**department** has the meaning given in the *Public Sector Management Act 1994* section 3(1);

**Department** means the department principally assisting in the administration of this Act;

**drainage assets** has the meaning given in section 108;

**drainage service** means, subject to subsection (2), a service —

- (a) principally constituted by —
  - (i) the management of the flow of stormwater, surface water or ground water by means of reticulated drainage assets; or
  - (ii) the management of soil salinity by means of reticulated drainage assets;
- and
- (b) which may include the management of the quality of the water dealt with;

**dwelling** means —

- (a) a building or structure, or part of a building or structure, that is ordinarily used for human habitation, except common property as defined in the *Strata Titles Act 1985* section 3(1); or

- (b) a mobile home,  
(whether or not it is uninhabited from time to time) and includes the area associated with the dwelling;
- exemption** means an exemption granted under section 7;
- inspector** has the meaning given in section 39;
- irrigation** means any method of applying water to land for the purpose of agriculture or improvement of pasture;
- irrigation service** means, subject to subsection (2), a service principally constituted by the provision of water for irrigation by means of reticulated conduits and other appropriate irrigation works;
- licence** means a licence granted, transferred or renewed under Part 2 Division 2;
- licensee** means the holder of a licence;
- member of a licensee** means a member of a co-operative, registered under the *Co-operatives Act 2009*, that is a licensee;
- meter** means a device for measuring or estimating the quantity or flow of liquid passing through the device;
- mobile home** includes a mobile home that is permanently or semi-permanently stationary in a single location;
- occupier**, of land, means a person who is an occupier of the land within the meaning given in the *Local Government Act 1995* section 1.4;
- operate**, in relation to water service works, includes use;
- operating area**, of a licence, means, for a class of water service authorised by the licence, the area or areas specified in the licence as the operating area or areas of the licence for that class of water service;
- owner**, of land, means a person who is an owner of the land within the meaning given in the *Local Government Act 1995* section 1.4;
- place** means any land, building, structure or dwelling, or a part of any land, building, structure or dwelling;

**Planning Minister** means the Minister responsible for the administration of the *Planning and Development Act 2005*;

**prescribed** means prescribed by regulations made under this Act;

**prescribed fee** means a fee, the amount of which, or the method for determining the amount of which, is prescribed;

**property connection** has the meaning given in section 71(1);

**provide**, in relation to water service works, includes carry out, undertake, construct, install, erect and fabricate;

**public authority** means —

- (a) a Minister of the State; or
- (b) an agency, authority or instrumentality of the State; or
- (c) a body, whether incorporated or not, that is established or continued for a public purpose by or under a written law; or
- (d) a local government or regional local government;

**reasonably suspects** has the meaning given in the *Criminal Investigation Act 2006* section 4;

**road** has the meaning given in the *Land Administration Act 1997* section 3(1);

**sewerage service** means, subject to subsection (2), a service principally constituted by the collection, treatment and disposal of wastewater by means of reticulated conduits and other appropriate sewerage works;

**specified**, in relation to an instrument or document made under or referred to in this Act, means specified in that instrument or document;

**standard terms and conditions of service** has the meaning given in section 71(1);

**statutory penalty** has the meaning given in the *Sentencing Act 1995* section 4(1);

**statutory water service charge** has the meaning given in section 71(1);

**trade waste** has the meaning given in section 101;

**Treasurer** means the Treasurer of the State;

**wastewater** means sewage, and does not include stormwater, surface water or ground water of a type that is ordinarily drained from land as part of the provision of a drainage service;

**water corporation** means a water corporation established by or under the *Water Corporations Act 1995* section 4;

**Water Corporation** means the Water Corporation established by the *Water Corporations Act 1995* section 4(1);

**Water Resources Minister** means the Minister responsible for the administration of the *Water Agencies (Powers) Act 1984*;

**water service** means a water supply, sewerage, irrigation or drainage service;

**water service charge** has the meaning given in section 71(1);

**water service works** includes —

- (a) water supply works, sewerage works, drainage assets and irrigation works; and
- (b) surveys, excavations, structures and buildings provided by or used or intended to be used by a licensee in the provision of any water service; and
- (c) plant, equipment and structures attached to or otherwise associated with the works and things referred to in paragraphs (a) and (b); and
- (d) in the case where the works or assets are a part of land — the land of which the works or assets are a part;

Note for this definition:

Works or assets that are a part of land include drains, swales and reservoirs.

**water service works of a licensee** means water service works used by the licensee in the provision of water services and to which one of the following paragraphs apply —

- (a) the works are held by the licensee or for the licensee by another person under an agreement with the licensee;



- (b) the works are not held by or for the licensee but, under an agreement in relation to the works, the licensee can operate and maintain the works to the extent necessary for the licensee to comply with the licensee's obligations under the licence and this Act;
- (c) in the case of drainage assets that are not held as described in paragraph (a) — a declaration under section 109 that the assets are controlled by the licensee is in effect;
- (d) in the case of water service works that are a part of land and that are not held as described in paragraph (a) — the rights in relation to the works referred to in section 163(1)(b) are held by the licensee or for the licensee by another person under an agreement with the licensee,

but does not include a property connection and anything connected to those works via the property connection other than a thing that is owned by the licensee;

**water supply service** means, subject to subsection (2), a service principally constituted by the supply of water (whether or not potable) by means of reticulated conduits and other appropriate water supply works;

**works power** means a power, whether conferred by this Act or not —

- (a) to provide works for, or in connection with, the provision of a water service authorised by a licence of the licensee; or
- (b) to maintain, alter, replace, discontinue or remove water service works; or
- (c) to do works under a specific power in Part 2 or 5 (for example, section 31(4)(b), 98(3) or 121),

and includes any ancillary or incidental powers.

- (2) The regulations may provide that a prescribed kind of service (whether or not provided by reticulated conduits or reticulated

drainage assets) is or is not a drainage service, irrigation service, sewerage service or water supply service.

- (3) In this Act, a reference to —
- (a) works may be read, where the context so requires, as a reference to any structure, building, plant, equipment or other thing that results from providing those works; and
  - (b) works that are a part of land is a reference to works that are an intrinsic part of land (as compared to having been placed on land); and
  - (c) a thing in land or on land is a reference to a thing that is in, on, over or under the land, or a part of the land (in the case of works that are a part of land); and
  - (d) a thing placed on land is a reference to a thing that is placed in, on, over or under the land; and
  - (e) a thing being placed on land is a reference to a thing being placed in, on, over or under the land.

**4. Crown bound**

This Act binds the Crown in right of the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.

## **Part 2 — Licensing of water service providers**

### **Division 1 — Licensing requirement**

#### **5. Requirement for licences**

- (1) A person must not provide a water service except under a licence.

Penalty: a fine of \$30 000.

Daily penalty: a fine of \$1 500.

- (2) Subsection (1) does not apply to the provision of a water service by a body corporate to a related body corporate (within the meaning given in the *Corporations Act 2001* (Commonwealth) section 9).

#### **6. Licensing extends to statutory providers**

Section 5(1) applies, subject to section 7, to a person despite the fact that the person, in providing a water service, is performing a function that —

- (a) is authorised, or provided for, by or under a written law;  
or
- (b) has been approved under a written law.

#### **7. Minister may grant exemptions**

- (1) The Minister may exempt a person or class of person from the application of section 5(1) in respect of the provision of a water service in a specified area or areas of the State if satisfied that it would not be contrary to the public interest to do so.
- (2) An exemption must be in writing.
- (3) An exemption may be subject to conditions and is of no effect while a condition is not being complied with.

- (4) A licence that a person holds is of no effect to the extent to which the person is exempt from the application of section 5(1) in respect of the provision of the water service or services authorised by the licence.
- (5) The Minister may amend or revoke an exemption if satisfied that it would be in the public interest to do so.
- (6) The Minister must, as soon as is practicable after making a decision under subsection (1) or (5), publish notice of the decision in the prescribed manner with the prescribed information.
- (7) Reasons for a decision that the Minister makes to grant, amend or revoke, or to refuse to grant, amend or revoke, an exemption must be given to a person who applied for the grant, amendment or revocation, and any other person who requests those reasons.
- (8) The Minister may, at a particular time, refuse to consider an application for an exemption on the basis that the applicant has also made an application for a licence under section 10 that has not been dealt with by the Authority, if the application for the licence was made less than 90 days prior to that time.

### **Division 2 — Licences**

#### **8. Classification of water services**

- (1) Water services are classified as follows —
  - (a) water supply services;
  - (b) sewerage services;
  - (c) irrigation services;
  - (d) drainage services.
- (2) A licence may authorise the provision of one or more classes of water service.

**9. Operating areas**

- (1) For each class of water service authorised by a licence, the Authority must specify the area of the State that is the operating area of, or the areas of the State that are the operating areas of, the licence for the class of water service.
- (2) Areas need not be contiguous to be specified.
- (3) The specification of an area of the State as the operating area of a licence for a class of water service does not mean that the area cannot be included in an operating area of another licence for that class of water service.

**10. Application for licence**

- (1) An application for a licence must be —
  - (a) made in a form approved by the Authority; and
  - (b) accompanied by the prescribed fee.
- (2) Without limiting subsection (1)(a), an applicant for a licence must inform the Authority of —
  - (a) the nature of the proposed water service or services that the applicant proposes to provide; and
  - (b) for each class of water service that the applicant proposes to provide —
    - (i) the area or areas of the State in which it is proposed to provide the service; and
    - (ii) the methods or principles that the applicant proposes to apply in the provision of the service; and
    - (iii) the nature of the water service works to be used in the provision of the service; and
    - (iv) the standard terms and conditions for the provision of the service; and
    - (v) the standard customer contracts (if any) for the provision of the service.

**11. Grant of licence**

- (1) The Authority must grant a licence authorising the provision of one or more classes of water service if satisfied that —
  - (a) the applicant —
    - (i) has, and is likely to retain, for each class of water service, the financial and technical ability to provide the service in the operating area or areas to be specified for the service; or
    - (ii) will acquire within a reasonable time after the grant, and is then likely to retain, that ability;
  - and
  - (b) it would not be contrary to the public interest to do so.
- (2) For each class of water service authorised by a licence, the licence authorises the provision of the service —
  - (a) in the operating area or areas of the licence specified for the service; and
  - (b) outside of the operating area or areas, unless the licence provides otherwise.
- (3) The Authority may specify in a licence water service works that are to be provided, operated or maintained for the provision of the water service authorised by the licence.
- (4) The Authority must take all reasonable steps to make a decision in respect of an application for the grant of a licence within 90 days after the application is made.

**12. Conditions of licence**

- (1) A licence may be subject to conditions which, without limiting that, may deal with the following —
  - (a) the quality and performance standards to be met by the licensee in the provision of a water service authorised by the licence;

- (b) the community service obligations to be discharged by the licensee, that is, obligations that are not commercially justifiable;
- (c) the licensee complying with specified standards or codes of practice, with specified modifications, other than a code of practice made under section 26;
- (d) standard terms and conditions for the provision of a water service by the licensee;
- (e) standard customer contracts for the provision of a water service by the licensee, including requiring the licensee to offer to enter into standard customer contracts with specified classes of person;
- (f) the capacity of the licensee to enter into agreements that vary or displace standard terms and conditions of service, standard customer contracts or statutory water service charges;
- (g) the capacity of the licensee to cut off or restrict the rate of flow of the supply of water to land, including the matters that the licensee must take into account before doing so;
- (h) the metering of water services by the licensee including —
  - (i) the provision, operation and maintenance of metering equipment; and
  - (ii) ownership of and access to metering data;
- (i) the transfer of customers to or from the licensee;
- (j) the exercise of powers of entry by persons authorised by the licensee, including by restricting the exercise of such powers;
- (k) the giving of compliance notices by the licensee, including by restricting the giving of such notices;
- (l) methods or principles to be applied by the licensee in the preparation of accounts for customers;

- (m) the giving of encumbrances over property of the licensee, including by making that subject to the approval of the Authority;
  - (n) the disposal or transfer of property, rights or liabilities of the licensee either during the currency of the licence or on or after its expiration or cancellation, including by prohibiting the disposal or transfer;
  - (o) the imposition of obligations on the licensee with respect to public authorities and other licensees;
  - (p) planning for the future provision of water services, including planning for the development of future water sources;
  - (q) the licensee developing and implementing programmes for the conservation and efficient use of water, including in relation to the use of water by customers of the licensee;
  - (r) the provision of information to customers;
  - (s) the licensee giving the Authority information relevant to the Authority's functions under this Act.
- (2) The conditions of a licence under subsection (1) have no effect to the extent to which they are inconsistent with any other conditions to which the licence is subject under this Act.
- (3) A condition of a licence held by a public authority established by or under a written law has no effect to the extent to which it deals with one or more of the following matters —
- (a) what business activities the licensee undertakes;
  - (b) the range of functions that the licensee may perform;
  - (c) the community service obligations to be discharged by the licensee;
  - (d) the disposal or transfer of property of the licensee.
- (4) A condition of a licence held by a public authority established by or under a written law that deals with the preparation of



accounts has no effect to the extent to which it is inconsistent with that written law.

- (5) A condition on a licence under subsection (1)(n) continues, after the licence ceases to have effect, to apply to the person who was the licensee and a failure to comply with such a condition may be dealt with under this Act as if the person were a licensee and the condition were a condition of a licence held by the person.

**13. Renewal of licence**

- (1) An application for the renewal of a licence must be —
- (a) made before the expiry of the licence; and
  - (b) made in a form approved by the Authority; and
  - (c) accompanied by the prescribed fee.
- (2) The Authority may renew a licence if the Authority is satisfied that —
- (a) the applicant has, and is likely to retain, for each class of water service to be authorised by the licence, the financial and technical ability to provide the service in the operating area or areas to be specified for the service; and
  - (b) it would not be contrary to the public interest to do so.
- (3) The Authority must take all reasonable steps to make a decision in respect of an application for the renewal of a licence within 90 days after the application is made.
- (4) If —
- (a) an application for the renewal of a licence is made; and
  - (b) the licence subsequently expires before the Authority makes a decision whether or not to renew the licence,

the licence is to be taken to continue, under this subsection, until the Authority makes a decision whether or not to renew the licence.

**14. Duration of licence**

A licence, whether granted or renewed, is for the period specified in it, which cannot be for more than 25 years.

**15. Transfer of licence**

- (1) A licence cannot be transferred except —
  - (a) by the Authority; or
  - (b) with the approval of the Authority.
- (2) The Authority may transfer or approve of the transfer of a licence if satisfied that —
  - (a) the person to whom the licence is to be transferred (the *transferee*) —
    - (i) has, and is likely to retain, for each class of water service authorised by the licence, the financial and technical ability to provide the service in the operating area or areas of the licence specified for the service; or
    - (ii) will acquire within a reasonable time after the transfer, and is then likely to retain, that ability;and
  - (b) it would not be contrary to the public interest to do so.
- (3) The Authority must not transfer a licence unless —
  - (a) the transferee agrees to the transfer; and
  - (b) if practicable — the licensee agrees to the transfer.
- (4) An application for the approval of the transfer of a licence must be —
  - (a) made by the transferee in a form approved by the Authority; and
  - (b) if practicable — accompanied by the licensee's written consent to the transfer of the licence; and
  - (c) accompanied by the prescribed fee.

- (5) The approval of a transfer of a licence may be subject to conditions.
- (6) The transfer of a licence does not alter the duration of the licence, but the Authority may, subject to section 14, extend its duration.
- (7) The Authority must take all reasonable steps to make a decision in respect of an application for the approval of the transfer of a licence within 90 days after the application is made.

**16. Person who has provided water services becoming licensee**

- (1) The regulations may deal with the consequences of a person who has provided water service works as part of providing a water service other than under a licence becoming a licensee in respect of the provision of that service, including by —
  - (a) providing for the transfer of water service works, or rights in relation to water service works, used by the person in the provision of the water service to the person, or to another person in accordance with an agreement that complies with section 23(1)(b); and
  - (b) providing for transitional periods, during which specified provisions of this Act do not apply to the person or apply in a modified way, that allow for the person to bring the person's operations into compliance with this Act.
- (2) Regulations made for the purposes of this section may deal with the same sorts of matters as those that may be dealt with by regulations made for the purposes of section 38.

**17. Amendment of licence — on initiative of Authority**

- (1) The Authority may, on its own initiative, amend a licence, if satisfied that it would not be contrary to the public interest to do so.
- (2) The Authority cannot amend a term or condition of a licence that was not determined by the Authority.

- (3) If the licence specifies a procedure to be followed in amending it, the amendment must be made in accordance with that procedure unless the Authority and the licensee agree otherwise.
- (4) An amendment takes effect 14 days after the licensee has been notified of the amendment unless —
  - (a) a longer period is specified by the Authority or provided by the procedure referred to in subsection (3); or
  - (b) a shorter period is agreed to by the Authority and the licensee.

**18. Amendment or cancellation of licence — on application of licensee**

- (1) A licensee may apply to the Authority at any time for the amendment or cancellation of a licence held by the licensee.
- (2) The Authority may amend or cancel the licence in accordance with the application if satisfied that it would not be contrary to the public interest to do so.
- (3) The Authority cannot amend a term or condition of a licence that was not determined by the Authority.
- (4) If the licence specifies a procedure to be followed in amending it, the amendment must be made in accordance with that procedure unless the Authority and the licensee agree otherwise.

**19. Effect of water resource management plans**

A decision of the Authority under this Part is of no effect to the extent to which it is inconsistent with any relevant water resource management plans (however described) made under a written law and prescribed for the purposes of this section.

**20. Other laws not affected**

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

**Division 3 — Duties of licensees — statutory licence conditions**

**21. Duty to provide services and do works**

- (1) It is a condition of every licence that the licensee —
- (a) must provide a water service authorised by the licence to persons entitled to the service under this Act, except to the extent otherwise provided for by this Act; and
  - (b) if requested to provide a water service authorised by the licence to persons not covered by paragraph (a) but within the operating area or areas of the licence specified for the service — must offer to provide the service on reasonable terms, unless provision of the service is not financially viable or is otherwise not practicable; and
  - (c) must provide, operate and maintain the water service works specified in the licence for the purposes of section 11(3).

Note for this subsection:

Section 73 provides for certain entitlements to the provision of water services.

- (2) A licensee may refuse to provide, or may suspend the provision of, a water service to a person entitled to the service under this Act while the person —
- (a) unreasonably refuses to comply with a requirement of the licensee relating to the provision of the service; or
  - (b) unreasonably refuses to enter into an agreement with the licensee about the provision of the service; or
  - (c) refuses to comply with a prescribed requirement relating to the provision of the service.
- (3) A licensee may refuse to provide a water service to a person described in subsection (1)(b) while the person —
- (a) unreasonably refuses to comply with a requirement of the licensee relating to the provision of the service; or

- (b) unreasonably refuses to enter into an agreement with the licensee about the provision of the service; or
  - (c) refuses to comply with a prescribed requirement relating to the provision of the service.
- (4) In relation to a person described in subsection (1)(b), the licensee may suspend the provision of the water service in accordance with the terms and conditions under which the service is provided.
- (5) A licensee's capacity to refuse to provide, or suspend the provision of, a water supply or sewerage service under this section is subject to any restriction on that capacity in the terms and conditions of the licence authorising the provision of the service.

**22. Provision of water services outside operating areas**

- (1) It is a condition of every licence that, if the licensee provides a service outside of the operating area or areas of the licence specified for the service, the licensee must notify the Authority as soon as is practicable before commencing to provide the service.
- (2) The licence may provide alternative notification conditions.

**23. Works holding arrangements**

- (1) It is a condition of every licence that all water service works used by the licensee in the provision of a water service or services authorised by the licence —
- (a) are held by the licensee; or
  - (b) are held for the licensee by another person under an agreement that ensures that the licensee can operate and maintain the works to the extent necessary for the licensee to comply with the licensee's obligations under the licence and this Act; or
  - (c) in the case of water service works that are not held by or for the licensee — are covered by an agreement in

- relation to the works under which, the licensee can operate and maintain the works to the extent necessary for the licensee to comply with the licensee's obligations under the licence and this Act; or
- (d) in the case of drainage assets that are not held as described in paragraph (a), (b) or (c) —
    - (i) are covered by a declaration under section 109 that the assets are controlled by the licensee; or
    - (ii) are accessible to the licensee;or
  - (e) in the case of water service works that are a part of land and that are not held as described in paragraph (a) or (b) — are accessible to the licensee; or
  - (f) are held or accessible in accordance with the regulations.
- (2) Subsection (1) does not apply to a property connection and anything connected to the works via the property connection other than a thing that is owned by the licensee.
- (3) For the purposes of subsection (1), works or assets are accessible to a licensee if the licensee has access to the works or assets for the purposes of operating and maintaining the works or assets to the extent necessary for the licensee to comply with the licensee's obligations under this Act.

**24. Asset management system**

- (1) It is a condition of every licence that the licensee must —
  - (a) provide for an asset management system; and
  - (b) give details of the system and any changes to it to the Authority; and
  - (c) at least once in every period of 24 months (or any longer period that the Authority allows), provide the Authority with a report, by an independent expert engaged by the Authority, as to the effectiveness of the system.

- (2) An asset management system must include the measures to be taken by the licensee for —
  - (a) the proper maintenance of the water service works of the licensee; and
  - (b) the provision and operation of the water service works specified in the licence and of other water service works necessary for the provision of the water service or services authorised by the licence.
- (3) The Authority must consult with the licensee before engaging an independent expert for the purposes of subsection (1)(c).
- (4) The Authority may recover its reasonable costs and expenses arising from the engagement and remuneration of an independent expert under subsection (1)(c) from the licensee, and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.
- (5) The regulations may deal with the Authority reporting to the Minister in relation to reports by experts.

**25. Operational audit**

- (1) It is a condition of every licence that the licensee must, at least once in every period of 24 months (or any longer period that the Authority allows), provide the Authority with an operational audit conducted by an independent expert appointed by the Authority.
- (2) An operational audit is an assessment of —
  - (a) the effectiveness of measures taken by the licensee to meet the quality and performance standards required by the licence in relation to the provision of the water service or services authorised by the licence; and
  - (b) any other aspects of the provision of the water service or services that are nominated by the Authority in consultation with the licensee.



- (3) The Authority must consult with the licensee as to the appointment of an independent expert under subsection (1).
- (4) The Authority may recover its reasonable costs and expenses arising from the appointment and remuneration of an independent expert under subsection (1) from the licensee, and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.
- (5) The regulations may deal with the Authority reporting to the Minister in relation to audits.

**26. Compliance with codes of practice made by Minister**

- (1) The Minister may make codes of practice, and amend or revoke them from time to time.
- (2) A code of practice may deal with any matter listed in a paragraph of section 12(1) (except in paragraph (s)) or any prescribed matter.
- (3) It is a condition of every licence that the licensee must comply with each code of practice made under this section, as in force from time to time, to the extent to which it applies to the licensee.
- (4) A code of practice may provide that if a licensee fails to meet a standard, the licensee must pay a specified amount to any person affected by the failure who comes within a specified description.
- (5) The *Interpretation Act 1984* applies to, and to the making of, a code of practice as if it were subsidiary legislation and, for the purposes of section 42 of that Act, as if it were regulations.
- (6) Section 222(3) to (6) applies in relation to the making of a code of practice as if those provisions referred to a code of practice.
- (7) A provision of a code of practice is of no effect to the extent to which it is inconsistent with a provision of this Act or another written law.

- (8) The Minister's capacity to make a code of practice dealing with a matter does not, of itself, limit the Authority's capacity to —
  - (a) impose conditions on a licence relating to the matter; or
  - (b) make a code of conduct relating to the matter.
- (9) Before making a code of practice, the Minister must —
  - (a) consult with each licensee to whom the code of practice will apply; and
  - (b) undertake any other consultation required in the regulations.
- (10) The Minister must publish each code of practice in accordance with the requirements in the regulations.
- (11) The Minister must carry out a review of the operation and effectiveness of each code of practice at least once every 5 years.

**27. Compliance with code of conduct made by Authority**

- (1) The Authority may, in consultation with the consultative committee, make a code of conduct, and amend or replace it from time to time.
- (2) Before making a code of conduct, the Authority must endeavour to consult with each licensee that does not have a representative on the committee.
- (3) The purposes of the code of conduct are to deal with the conduct of licensees in relation to customers and potential customers and, without limiting that, the code may deal with the following —
  - (a) the marketing of water services;
  - (b) the connection of water services to land;
  - (c) the metering of water services;
  - (d) the billing and payment for water services;
  - (e) the provision of water services to customers in financial hardship;

- (f) the suspension of the provision of water services;
  - (g) the provision of information to customers and others about water services;
  - (h) complaints procedures.
- (4) It is a condition of every licence that the licensee must comply with the code of conduct, as in force from time to time, to the extent to which —
- (a) it applies to the licensee; and
  - (b) it is not inconsistent with the terms and conditions of the licence.
- (5) Section 26(4) to (7) applies to, and to the making of, the code of conduct as if those provisions referred to the code of conduct.
- (6) The Authority must publish the code in accordance with the requirements in the regulations.
- (7) The Authority must carry out a review of the operation and effectiveness of the code of conduct at least once every 5 years.

**28. Code of conduct — consultative committee**

- (1) For the purposes of section 27, the Authority is to establish a committee (the *consultative committee*) to advise it on matters relating to the code of conduct.
- (2) The Authority —
- (a) must determine the membership and constitution of the committee; and
  - (b) must endeavour to have a membership that represents the interests of both customers and licensees; and
  - (c) may determine the procedures of the committee; and
  - (d) may discharge, alter or reconstitute the committee.
- (3) The Authority may determine that a member of the committee is to receive remuneration or an allowance, and if the Authority so

determines it is to fix the remuneration or allowance on the recommendation of the Public Sector Commissioner.

- (4) Subject to this section, the committee may determine its own procedure.
- (5) The Authority must provide the committee with such support services as it may reasonably require.

**29. Licensee must comply with duties under Act**

It is a condition of every licence that the licensee must —

- (a) comply with the duties imposed on the licensee, in relation to that licence, under this Act; and
- (b) carry out its operations under, or for the purposes of, the licence in accordance with this Act.

**30. Prescribed conditions of licence**

The regulations may prescribe conditions to which a licence is subject.

**Division 4 — Failure to comply with licence — enforcement**

**31. Failure to comply with licence**

- (1) If the Authority is satisfied that a licensee has failed to comply with a condition of a licence, the Authority may give a notice (a *rectification notice*) to the licensee requiring the licensee to rectify the failure within a specified period.
- (2) The rectification notice must set out —
  - (a) the condition that the Authority is satisfied the licensee has failed to comply with; and
  - (b) what the licensee must do to rectify the failure; and
  - (c) the time within which the licensee must comply with the notice.
- (3) The rectification notice may be amended or revoked.

- (4) If the Authority is satisfied that the licensee has failed to comply with the rectification notice the Authority may do one or more of the following —
- (a) order the licensee to pay a monetary penalty determined by the Authority of up to —
    - (i) for an individual — \$30 000; and
    - (ii) for a body corporate — \$150 000;
  - (b) remedy the failure to comply that gave rise to the giving of the rectification notice;
  - (c) subject to section 17(2) — amend the licence under section 17.
- (5) Persons authorised by the Authority for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of subsection (4)(b).
- (6) The Authority may recover from the licensee a penalty imposed under subsection (4)(a) in a court of competent jurisdiction as a debt due by the licensee to the State.
- (7) A monetary penalty received by the Authority must be credited to the Consolidated Account.
- (8) The Authority may recover its reasonable costs and expenses of any action taken under subsection (4)(b) from the licensee, and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.
- (9) Section 17(3) does not have effect in relation to an amendment of a licence for the purposes of subsection (4)(c).

**32. Right of licensee to make submissions**

The Authority is not to take any action under section 31(4) unless it has notified the licensee of the proposed action and given the licensee a reasonable opportunity of making submissions on the matter.

**33. Exception — dangerous situations**

- (1) If the Authority is satisfied that —
- (a) a licensee has failed to comply with a condition of a licence; and
  - (b) a dangerous situation exists; and
  - (c) urgent action is needed in order to assess, reduce, eliminate or avert a risk to persons, property or the environment,

the Authority may have the failure to comply rectified, under section 31(4)(b), without giving notice to the licensee under section 31(1) or complying with section 32.

- (2) The Authority must consult with the department principally assisting in the administration of the *Health (Miscellaneous Provisions) Act 1911* about the exercise of the power in subsection (1) as soon as is practicable (whether before or after the exercise of that power), unless satisfied that the dangerous situation is not or was not a health risk.

[\[Section 33 amended by No. 19 of 2016 s. 101.\]](#)

**Division 5 — Ending of licence and cessation of water services**

**34. Cancellation of licence for serious default**

- (1) The Governor may cancel a licence.
- (2) Before the Governor does so, the Minister must be satisfied that —
- (a) the licensee is in serious default (as described in subsection (3)); or
  - (b) the licensee —
    - (i) is an externally-administered body corporate within the meaning of the *Corporations Act 2001* (Commonwealth) section 9; or
    - (ii) is otherwise in the process of being wound-up; or

- (iii) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws;
  - or
  - (c) the licensee has, within a period of 12 months, been convicted of more than 3 offences for which the statutory penalty is a fine of \$30 000 or more or imprisonment for 12 months or more; or
  - (d) the licensee has ceased to exist.
- (3) For the purposes of subsection (2)(a), a licensee is in serious default if the Minister —
- (a) is satisfied that the licensee has failed to comply with a condition of the licence; and
  - (b) is satisfied that the failure is material in terms of the operation of the licence; and
  - (c) has given to the licensee written notice setting out —
    - (i) that the Minister is satisfied as to the matters in paragraphs (a) and (b); and
    - (ii) the time within which the licensee must remedy the failure or show cause why the licence should not be cancelled under this section;
- and
- (d) is satisfied that the licensee has neither remedied the failure nor shown cause why the licence should not be cancelled under this section, within the time specified for that in the notice.
- (4) If a licence is cancelled, the Minister must publish notice of the cancellation in the *Gazette*.
- (5) The cancellation of a licence on the basis of the Minister being satisfied under subsection (2)(a), (b) or (c) does not take effect until —
- (a) the licensee has been notified of it; or

- (b) if it is not practicable to notify the licensee — 21 days after the day on which the decision to cancel the licence was made.

**35. Provision of a water service ceasing — regulations may deal with consequences**

- (1) In this section and section 36 —  
*former licensee*, in relation to an area, means a licensee who ceases to provide a water service of a particular class in the area.
- (2) The regulations may deal with the consequences of the provision of a water service ceasing, or being about to cease, in an area, including by dealing with the following to the extent necessary for water services to continue to be provided in the area or areas affected —
  - (a) the transfer of customers to a licensee;
  - (b) the transfer of assets, rights and liabilities of the former licensee to a person;
  - (c) the conferral of powers and duties on a person.
- (3) Regulations made for the purposes of this section may deal with the same sorts of matters as those that may be dealt with by regulations made for the purposes of section 38.
- (4) Regulations made for the purposes of subsection (2) have effect despite any conditions of a licence under section 12(1)(n), including such conditions as continued in effect under section 12(5).

**36. Provision of a water service ceasing — duty to leave system in safe condition**

- (1) If a licensee ceases to provide a water service in an area, the former licensee —
  - (a) must ensure that any water service works provided or operated by the former licensee for the purposes of the licence in the area are left in a safe condition; and



- (b) must not remove any part of the works except with the approval of the Minister.

Penalty: a fine of \$30 000.

- (2) If the Minister is satisfied that a former licensee has failed to comply with subsection (1)(a), the Minister may have the failure rectified to the Minister's satisfaction.
- (3) Persons authorised by the Minister for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of subsection (2).
- (4) The Minister may recover the Minister's reasonable costs and expenses of having a failure rectified from the former licensee, and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.

#### **Division 6 — Water service works and other assets**

##### **37. Licensee operating with works holding body**

- (1) If water service works used by a licensee in the provision of a water service are held for the licensee by another person (the **works holding body**) under an agreement with the licensee the provisions of this Part apply to and in relation to the licensee as if the works were held by the licensee.
- (2) If the agreement under which the works are held complies with section 23(1)(b), the provisions of Parts 6 and 7, to the extent to which they do not already apply, apply to and in relation to —
  - (a) the licensee and the works as if the works were held by the licensee rather than the works holding body; and
  - (b) the works holding body and the works as if it were a licensee who held those works.
- (3) In this section, a reference to holding works includes a reference to holding the rights in relation to the works referred to in section 163(1)(b).

**38. Regulations may deal with transfer of assets on land not held by asset holder**

(1) In this section —

**asset holder** means —

- (a) a licensee; or
- (b) a works holding body (within the meaning given in section 37(1));

**assets** means any water service works, or any other thing used or intended to be used in the provision of water services, that —

- (a) are held by an asset holder, or in respect of which the asset holder has rights (for example, rights under section 163(1)(b)); and
- (b) are on land that is not the property of the asset holder.

(2) The regulations may deal with the transfer of assets of an asset holder to another person (the **transferee**), including by —

- (a) dealing with the transfer of any rights or liabilities in or in relation to land associated with the assets; and
- (b) providing that a person is not entitled to receive from the transferee or another person any amount by way of compensation, reimbursement or otherwise for any loss, detriment or cost that the person suffers or incurs because of —
  - (i) the transfer of the assets or of rights in or in relation to land associated with the assets; or
  - (ii) the operation of this Act as a consequence of that transfer;

and

- (c) dealing with the modification of specified agreements and instruments (other than enactments) relating to the assets; and

- (d) dealing with proceedings commenced and remedies available in relation to the assets; and
  - (e) providing for and in relation to the exemption from any State tax of anything done under the regulations.
- (3) The regulations may provide that anything done under regulations made for the purposes of this section does not give rise to a breach of an existing right or obligation (whether contractual or not) or to any remedy that did not already exist.
- (4) Regulations for the purposes of this section, other than regulations of general application, may not be made unless the asset holder and the transferee agree to the regulations being made.

### **Division 7 — Inspectors**

#### **39. Terms used**

In this Division —

***designating authority*** means —

- (a) in relation to a person acting in his or her capacity as an inspector designated under section 210(1) — the Authority; and
- (b) in relation to a person acting in his or her capacity as an inspector designated under section 210(2) — the CEO;

***inspection purposes*** means the purposes of —

- (a) investigating whether this Part is being or has been complied with; and
- (b) investigating whether the obligations of a licensee under this Act are being or have been complied with; and
- (c) obtaining evidence as to those matters;

***inspector*** means a person designated as an inspector under section 210(1) or (2).

**40. Entry for inspection purposes**

An inspector may, for inspection purposes, enter a place, in accordance with Part 8 —

- (a) to which he or she reasonably suspects a water service is provided; or
- (b) at which he or she reasonably suspects water service works used in the provision of a water service are located.

**41. General powers for inspection purposes**

(1) Upon entry to a place for inspection purposes, an inspector may do one or more of the following —

- (a) require a person with control or custody of the place to give reasonable access to it and other reasonable assistance;
- (b) inspect or examine the place;
- (c) direct a person to produce any document that is or may be relevant to the inspection;
- (d) inspect any document produced, make copies of it or take extracts from it, and remove it for as long as is reasonably necessary to make copies or extracts;
- (e) direct a person to answer questions;
- (f) inspect water service works of a licensee at the place, including by —
  - (i) carrying out or supervising reasonable tests on the works, including making excavations; and
  - (ii) taking photographs of or making other recordings of the works and surrounds; and
  - (iii) taking or removing for analysis or examination samples of any thing relating to the works;

- (g) seize a thing that is relevant to an offence under this Part if that is necessary for one of the following purposes —
  - (i) to prevent it from being concealed, disturbed or lost;
  - (ii) to preserve its evidentiary value;
  - (iii) to do a forensic examination on it;
  - (iv) to prevent it from being used in the commission of another offence.
- (2) An inspector is, in that capacity, to be taken to be a public officer for the purposes of the *Criminal Investigation Act 2006* Parts 6 and 13, as if —
  - (a) the inspector were appointed to an office prescribed under section 9(1) of that Act; and
  - (b) Parts 6 and 13 of that Act were prescribed in respect of that office.
- (3) For the purposes of subsection (2), the *Criminal Investigation Act 2006* Part 13 applies as if the power to seize a thing under subsection (1)(g) were a power to seize the thing under the *Criminal Investigation Act 2006*.

**42. Power to prohibit use etc.**

- (1) If an inspector is of the opinion that anything that the inspector is authorised to inspect does not conform with the requirements of any term or condition of a licence or an exemption, the inspector must as soon as practicable report his or her opinion in writing to the designating authority.
- (2) Upon receipt of a report under subsection (1) about a thing, the designating authority may, if satisfied that the lack of conformity is materially significant —
  - (a) by order in writing given to the licensee or exempt person — prohibit the use of the thing absolutely or except in accordance with specified conditions or restrictions; and

- (b) have the water service to or from the thing, or to or from the premises on which the thing is situated, disconnected until the designating authority is satisfied that the thing conforms with the requirements referred to in subsection (1).
- (3) The order referred to in subsection (2)(a) has effect as a condition on the licence or exemption.
- (4) Persons authorised by a designating authority for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of subsection (2)(b).
- (5) A designating authority may recover its reasonable costs and expenses of having a water service disconnected from the licensee or exempt person, and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.
- (6) The court may not issue an order unless satisfied that the licensee or exempt person was responsible for the lack of conformity.

**43. Offences**

- (1) A person who does not comply with a direction given by an inspector under this Division commits an offence.
- (2) A person who obstructs an inspector, or a person assisting the inspector, in the exercise of a power under this Division commits an offence.
- (3) A person who, having been directed under this Division by an inspector to answer a question or to give the inspector a document, gives the inspector information that the person knows is false or misleading in a material particular commits an offence.

- (4) It is a defence to a charge under this section to prove that the person charged had a reasonable excuse.  
 Penalty: a fine of \$7 500.

### **Division 8 — Review of decisions**

#### **44. Review of certain decisions**

- (1) A person who is aggrieved by one of the following decisions of the Authority, or of the CEO, may apply to the State Administrative Tribunal for a review of the decision —
- (a) to grant or renew a licence or to transfer or approve of the transfer of a licence;
  - (b) to refuse to grant or renew a licence or to transfer or approve of the transfer of a licence;
  - (c) as to the length of the period for which a licence is granted or renewed or the other terms of the licence;
  - (d) as to the conditions of a licence under section 12;
  - (e) as to the conditions of the transfer of a licence under section 15;
  - (f) to amend a licence under section 17;
  - (g) to amend or refuse to amend a licence under section 18;
  - (h) to prohibit the use of a thing (whether or not absolutely) under section 42(2)(a).
- (2) A person listed in the Table as a person affected by a decision, of the Authority or the CEO, listed in the Table may apply to the State Administrative Tribunal for a review of the decision.

**Table**

<b>Decision of Authority or CEO</b>	<b>Person affected</b>
to give a rectification notice to a licensee under section 31	the licensee

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<b>Decision of Authority or CEO</b>	<b>Person affected</b>
to order a licensee to pay a monetary penalty under section 31	the licensee
to have the failure of a licensee, to comply with a rectification notice, rectified under section 31	the licensee
to have a failure to comply with section 36(1)(a) rectified under section 36(2)	the former licensee
to have a water service disconnected under section 42(2)(b)	the licensee or a person in receipt of the service

- (3) If a person makes an application under subsection (2) (other than in relation to a decision to order a licensee to pay a monetary penalty), the Authority or CEO cannot have the failure rectified or disconnect the service, or must cease having the failure rectified or the service disconnected, until the application has been finally dealt with by the State Administrative Tribunal, unless —
- (a) the State Administrative Tribunal orders otherwise; or
  - (b) the Authority or CEO is satisfied that a dangerous situation exists and that urgent action is needed in order to assess, reduce, eliminate or avert a risk to persons, property or the environment.



### **Division 9 — General licensing provisions**

**45. Applications — additional information**

An applicant for a licence or exemption must provide any additional information the decision maker requires to properly consider the application.

**46. Matters relevant to determination of public interest**

If the Authority is required under this Part to determine whether or not something would be contrary to the public interest, then, without limiting the things that the Authority may take into account, the following matters must be taken into account to the extent to which the Authority considers that they are relevant to the particular case —

- (a) environmental considerations, including the value of ecologically sustainable development;
- (b) public health considerations relating to the provision of reliable water services.

**47. Notice of and publication of certain decisions**

- (1) The Authority must, after making a decision —
- (a) to refuse to grant, renew or amend a licence; or
  - (b) to refuse to transfer or approve of the transfer of a licence,

give written notice of the decision, together with reasons for the decision, to the applicant within 14 days after the day on which the decision is made.

- (2) The Authority must, as soon as is practicable after making a decision —
- (a) to grant, renew or amend a licence; or
  - (b) to transfer or approve of the transfer of a licence,

publish notice of the decision in the prescribed manner with the prescribed information.

**48. Licences to be available for inspection**

The Authority must make available for public inspection in the prescribed manner —

- (a) a copy of each licence in force; and
- (b) if an operating area is specified by reference to a map or plan — a copy of the map or plan; and
- (c) if a declaration of a drainage asset under section 109(1) is made by reference to a map or plan — a copy of the map or plan.

**49. Regulations about public consultation**

The regulations may require the Authority to undertake public consultation in accordance with the procedure in the regulations before it makes a decision on an application for the grant, renewal, transfer or amendment of a licence.

### **Part 3 — Last resort supply arrangements**

#### **50. Terms used**

In this Part —

*designated area* means an area designated under section 51(1);

*last resort supply plan* means a plan that meets the requirements of section 53;

*supplier of last resort*, for a designated area, means the licensee approved under section 55 for the area.

#### **51. Designated areas**

- (1) The Authority may, by order published in the *Gazette*, designate an area of the State as an area for which there is to be a last resort supply plan for the provision of a specified class of water service.
- (2) The areas of the State that make up a designated area need not be contiguous.

#### **52. Authority to ensure supply plan in place for designated areas**

The Authority must ensure that —

- (a) as soon as is practicable after an area becomes a designated area and a supplier of last resort is appointed for the area in relation to the provision of the specified class of water service — a last resort supply plan for the designated area for the class of water service is approved or determined by the Authority under section 57; and
- (b) at all times after that, there is a last resort supply plan for the designated area for the class of water service that has been approved or determined by the Authority under section 57.

**53. Requirements for supply plans**

- (1) A last resort supply plan for a designated area for the provision of a particular class of water service is one that deals with the provision of that class of water service to customers in the area by the supplier of last resort if the plan comes into operation.
- (2) A last resort supply plan must —
  - (a) set out the arrangements and make the provisions that are necessary for the provision of that class of water service; and
  - (b) make provision for any prescribed matter or circumstance; and
  - (c) otherwise comply with the regulations.
- (3) A last resort supply plan is of no effect to the extent to which it is inconsistent with any written law.

**54. How supply plan brought into operation**

- (1) The Authority may, by instrument in writing, determine that the last resort supply plan for a designated area for the provision of a particular class of water service comes into operation in relation to the designated area or a specified area or areas within the designated area if —
  - (a) the provision of that class of water service has ceased or is about to cease, for whatever reason, in an area in the designated area; or
  - (b) in relation to a licence authorising the provision of that class of water service in an area in the designated area —
    - (i) the licence has been cancelled; or
    - (ii) the licence has expired and has not been renewed; or
    - (iii) the cancellation or expiry without renewal of the licence is about to come into effect.

- (2) The last resort supply plan cannot come into operation at a time that is before the time at which the determination that it comes into operation is made.
- (3) Notice of the determination must be given to the licensee and published in the *Gazette*.
- (4) The determination must have specified in it the name of the licensee, or former licensee, in respect of whose customers the last resort supply plan applies.

**55. Appointment of supplier of last resort**

- (1) Before appointing a licensee as the supplier of last resort for a designated area in relation to the provision of a particular class of water service, the Authority must invite expressions of interest from licensees in being appointed as the supplier of last resort.
- (2) The Authority may, with the concurrence of the Minister and the Treasurer, by notice in writing given to a licensee who has expressed an interest in being appointed as the supplier of last resort, appoint the licensee as the supplier of last resort for the area in relation to the provision of that class of water service.
- (3) If —
  - (a) the Authority receives no, or no suitable, expressions of interest; or
  - (b) the Minister considers that there is insufficient time to invite expressions of interest,

the Minister may, with the concurrence of the Treasurer, appoint a water corporation as the supplier of last resort for the area in relation to the provision of that class of water service, by notice in writing given to the water corporation.

- (4) The Authority may, by notice in writing given to the licensee and with the concurrence of the Minister and the Treasurer, cancel the appointment of a licensee as the supplier of last resort

for a designated area in relation to the provision of a particular class of water service.

- (5) The appointment of a licensee as the supplier of last resort for a designated area in relation to the provision of a particular class of water service cannot be expressed to have effect for more than 2 years, but on the expiry of the appointment the licensee may be reappointed any number of times.

**56. Functions of supplier of last resort**

The supplier of last resort for a designated area in relation to the provision of a particular class of water service must —

- (a) prepare a draft last resort supply plan for that area and that class of water service and submit it to the Authority within 3 months after being appointed as the supplier of last resort or within any longer period the Authority may allow; and
- (b) consult with the Authority with a view to obtaining approval of the draft plan; and
- (c) if the plan comes into operation — carry out the arrangements and other provisions in the last resort supply plan.

**57. Approval or determination of supply plan**

- (1) The Authority may —
- (a) approve a draft last resort supply plan submitted under section 56; or
  - (b) request that it be amended and approve it in an amended form.
- (2) If the Authority is unable to approve a plan within a reasonable period because a plan that it considers suitable has not been submitted to it, the Authority may determine the contents of the last resort supply plan.

**58. Amendment of supply plan**

- (1) The supplier of last resort for a designated area in relation to the provision of a particular class of water service may, with the approval of the Authority, amend the last resort supply plan for the area and that class of water service.
- (2) The Authority may at any time, after consultation with the supplier of last resort for a designated area in relation to the provision of a particular class of water service, amend the last resort supply plan for the area and that class of water service.

**59. Supplier of last resort to be treated as licensee**

- (1) If a last resort supply plan comes into operation in relation to an area, the Act (other than Part 2) has effect, with any necessary modifications, as if the supplier of last resort were a licensee in relation to the area and the provision of the class of water service covered by the plan.
- (2) This section has effect subject to any specific provision in regulations made for the purposes of section 62(1)(b).

**60. Duty to perform functions of supplier of last resort**

It is a condition of every licence that while the licensee is the supplier of last resort for a designated area in relation to the provision of a particular class of water service the licensee must —

- (a) perform the functions of the supplier of last resort for the designated area and that class of water service; and
- (b) comply with the duties imposed on the licensee, in relation to those functions, under this Act (other than Part 2); and
- (c) carry out its operations under or for the purposes of the last resort supply plan in accordance with this Act (other than Part 2).

**61. Liability and recovery of costs of supplier of last resort**

- (1) A supplier of last resort for a designated area in relation to the provision of a particular class of water service is, in carrying out the arrangements in the last resort supply plan for the area and that class of water service, not liable for any losses, damage or injury arising from —
  - (a) an act or omission of a licensee or former licensee providing those water services in the area prior to the supplier of last resort doing so; or
  - (b) the condition of the water service works used in the provision of those water services; or
  - (c) the quality of the water services or any interruptions to them.
- (2) Subsection (1) does not apply to the extent to which the loss, damage or injury —
  - (a) arose as a consequence of the negligence of the supplier of last resort; or
  - (b) is covered by section 218.
- (3) The supplier of last resort may apply to the Minister to recover, from the State, its reasonable costs and expenses arising from —
  - (a) an act or omission of a licensee or former licensee providing those water services in the area prior to the supplier of last resort doing so; or
  - (b) the condition of the water service works used in the provision of those water services; or
  - (c) dealing with or remedying such an act or omission or the condition of the water service works; or
  - (d) providing the water service as a supplier of last resort.
- (4) The Minister, with the concurrence of the Treasurer, may pay those costs and expenses if satisfied that —
  - (a) the costs and expenses arose as described in subsection (3); and



- (b) the supplier of last resort limited its cost and expenses to the extent practicable; and
  - (c) the costs and expenses are not, or not expected to be, recovered from fees and charges received from recipients of those water services.
- (5) This section has effect while there are no regulations made for the purposes of section 62(1)(b)(viii).

**62. Regulations about last resort supply arrangements**

- (1) The regulations may deal with the following —
- (a) the preparation and approval process for last resort supply plans, and the amendment of plans;
  - (b) last resort supply arrangements under a plan, including the following —
    - (i) the commencement and extent of arrangements;
    - (ii) the identification of the customers affected by the commencement of arrangements and the provision of information about customers to the supplier of last resort;
    - (iii) the transfer of customers to the supplier of last resort and the nature of the relationship between them;
    - (iv) the terms and conditions of the provision of water services under the arrangements, including those relating to fees and charges;
    - (v) the application of water service charges;
    - (vi) the recovery of costs and expenses by the supplier of last resort;
    - (vii) the duration and cessation of any obligation to provide water services under the arrangements;
    - (viii) the liability of, and indemnification of, the supplier of last resort;

- (ix) rights, powers and duties of the Authority, the supplier of last resort, customers and other persons, in connection with the carrying out of the arrangements or the operation of a last resort supply plan.
- (2) Regulations made for the purposes of this section cannot expose a licensee to greater liability, or provide for less compensation, than that provided for by section 61.

## Part 4 — Water services ombudsman scheme

### Division 1 — Preliminary

#### 63. Terms used

In this Part, unless the contrary intention appears —

*approved scheme* means a scheme approved under section 65;

*complainant*, in relation to an approved scheme, means a person who may have a complaint or dispute dealt with under the scheme;

*water services ombudsman* has the meaning given in section 65(1).

#### 64. Regulations about water services ombudsman scheme

(1) The regulations may provide for and in relation to —

- (a) the establishment and operation of a scheme of the kind referred to in section 65; and
- (b) the functions of the water services ombudsman under a scheme.

(2) The regulations may provide that this Part does not apply to a licensee.

### Division 2 — Approval of water services ombudsman scheme

#### 65. Authority may approve scheme

(1) The Authority may, by instrument in writing, approve a scheme that provides for a person (the *water services ombudsman*) to investigate and deal with —

- (a) disputes between a customer and a licensee; and
- (b) complaints about a licensee by a customer; and
- (c) complaints about a licensee by a person affected by the provision of a water service by the licensee or a failure by the licensee to provide a water service, other than

complaints by a person who is a member of the licensee;  
and

- (d) any other kind of dispute or complaint that is prescribed by the regulations.
- (2) A scheme may treat a failure to make a decision within a specified period as a decision of a particular kind.
- (3) A scheme may be made applicable to a dispute or complaint that arose before the commencement of the scheme, but not earlier than 12 months before that commencement.
- (4) The Authority may, by instrument in writing, approve an amendment to an approved scheme.
- (5) Notice of an approval under subsection (1) or (4) is to be published in the *Gazette*.

**66. Requirements for scheme or amendment to be approved**

- (1) The Authority may approve a scheme or an amendment to an approved scheme if satisfied that the scheme, or the scheme as amended, meets —
  - (a) the objectives set out in subsection (2); and
  - (b) any other prescribed objective.
- (2) The objectives are that —
  - (a) all licensees who are required to be members of the scheme —
    - (i) are members of the scheme; and
    - (ii) have agreed to be bound by decisions and directions of the water services ombudsman under the scheme; and
    - (iii) as members, are bound in that way;
  - and
  - (b) the scheme will be appropriately funded by the licensees who are required to be members; and

- (c) the scheme has satisfactory arrangements in place to deal with all disputes and complaints referred to in section 65(1); and
- (d) the water services ombudsman will be able to operate independently of all licensees in performing his or her functions under the scheme; and
- (e) the scheme will be accessible to complainants; and
- (f) membership of the scheme will —
  - (i) be accessible to all potential members; and
  - (ii) provide appropriate representation for all members on the governing body of the scheme;and
- (g) the scheme will operate expeditiously and without cost to complainants; and
- (h) the scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its constitution and procedure and in terms of its day to day operations; and
- (i) the scheme will provide for a monetary limit on claims covered by the scheme of an amount or amounts approved by the Authority; and
- (j) the scheme will maintain the capacity of the water services ombudsman, where appropriate, to refer disputes or complaints to other forums; and
- (k) the scheme will require the water services ombudsman to inform the Authority of substantial breaches of any licence condition of which the ombudsman becomes aware.

**67. Revocation of approval**

- (1) The Authority may, by instrument in writing, revoke the status of a scheme as an approved scheme if it is satisfied that the scheme no longer meets the objectives referred to in section 66.

- (2) In exercising the power of revocation the Authority must —
  - (a) follow any prescribed procedure; and
  - (b) comply with any other prescribed requirements.
- (3) A copy of an instrument under subsection (1) is to be laid before each House of Parliament within 14 sitting days of that House after the day on which the revocation took effect.

### **Division 3 — Scheme operation**

#### **68. Customers etc. may have decision or complaint reviewed**

- (1) The following persons may apply to the water services ombudsman under an approved scheme for a review of a decision or complaint to which the scheme relates —
  - (a) a customer;
  - (b) a person affected by the provision of a water service by the licensee or a failure by the licensee to provide a water service;
  - (c) in relation to a dispute or complaint prescribed for the purposes of section 65(1)(d) — a person who is involved as a customer in such a dispute or complaint.
- (2) If an application is made the water services ombudsman may, in respect of the decision or complaint —
  - (a) make any order or determination; or
  - (b) give any direction; or
  - (c) decline to deal with a matter on any ground,that is provided for by the scheme.

#### **69. Jurisdiction of courts and tribunals**

- (1) Nothing in this Part or in an approved scheme affects the jurisdiction of a court or tribunal.

- (2) The water services ombudsman must decline to deal with a matter if —
- (a) it has been or is being dealt with by a court or tribunal; or
  - (b) in his or her opinion the matter should be dealt with by a court or tribunal.

#### **Division 4 — Membership of approved scheme**

#### **70. Membership of approved scheme**

- (1) The Authority must not grant a licence to a person, approve of the transfer of a licence to a person or renew a licence held by a licensee unless it is satisfied that the person or the licensee —
- (a) is a member of an approved scheme; or
  - (b) will, if the licence is granted or the transfer is approved of, become a member of an approved scheme.
- (2) It is a condition of every licence that the licensee cannot provide water services to customers unless the licensee —
- (a) is a member of an approved scheme; and
  - (b) is bound by the scheme; and
  - (c) will comply with any decision or direction of the water services ombudsman under the scheme.
- (3) To the extent to which a person is unable to become a member of an approved scheme because of a limitation in the functions or capacities of the person, the person has the function and capacity to do so by force of this subsection.

## **Part 5 — Water services**

### **Division 1 — Terms used**

#### **71. Terms used**

- (1) In this Part, unless the contrary intention appears —
- compliance officer*** means a person designated under section 210(3) or (4) as a compliance officer for the purposes of the provision of this Part in which the term is used;
- drain*** means a conduit or a watercourse or other natural channel for conveying stormwater, surface water or ground water;
- drainage works of a licensee*** means water service works of the licensee that are used by the licensee in the provision of a drainage service;
- FESA*** means the Fire and Emergency Services Authority of Western Australia established by the *Fire and Emergency Services Authority of Western Australia Act 1998* section 4<sup>2</sup>;
- fire district*** has the meaning given in the *Fire Brigades Act 1942*;
- fittings*** means —
- (a) valves, meters and other things used for and in relation to the provision of water services; and
  - (b) cisterns, syphons, traps, manholes, ventilators and other apparatus used for and in relation to the safe and proper working of any drain, sewer or property connection;
- fixtures*** means things that may be connected to sewerage works for the collection, pumping or retention of wastewater for ultimate discharge into the sewerage works and includes closet pans, urinals, baths, sinks, basins, troughs and pumps connected to the sewerage works;
- infrastructure contribution*** has the meaning given in section 85(1);



***property connection*** means —

- (a) a property drainage connection; or
- (b) a property sewer connection; or
- (c) a property water supply connection; or
- (d) in relation to irrigation works on or in relation to particular land — that part of the irrigation works that —
  - (i) connects the irrigation works of a licensee to irrigation works on the land; and
  - (ii) is downstream of the property connection point;

***property connection point***, in relation to a property connection, means the point (determined by the licensee) at which the property connection joins the water service works of a licensee;

***property drainage connection***, in relation to drainage assets on particular land, means that part of a drainage asset that —

- (a) connects the drainage assets on the land to the drainage assets of a licensee; and
- (b) is upstream of the property connection point;

***property sewer connection*** means that part of a sewer (connecting a wastewater inlet to the sewerage works of a licensee) that is between the inlet and the property connection point;

***property water supply connection*** means that part of a conduit connecting water supply works of a licensee to a water supply outlet that is downstream from the property connection point;

***quality/quantity charge*** means a water service charge based on the quality or quantity, or quality and quantity, of water supplied or drained or wastewater discharged;

***sewer*** means a conduit for conveying wastewater;

***sewerage works of a licensee*** means water service works of the licensee that are used by the licensee in the provision of a sewerage service;

***standard terms and conditions of service***, in relation to a water service provided by a licensee to a person, means —

- (a) the terms and conditions for the provision of the service under a standard customer contract between the licensee and the person (if there is one); and
- (b) the standard terms and conditions for the provision of the service under the licence, to the extent to which the provision of the service is not covered by a standard customer contract; and
- (c) the standard terms and conditions for the provision of the service published from time to time by the licensee on the licensee's website (or as otherwise prescribed), to the extent to which the provision of the service is not covered by standard terms and conditions under the licence or a standard customer contract;

***statutory water service charge*** means a water service charge payable under the regulations;

***wastewater inlet*** means a fixture into which wastewater may enter or be introduced;

***water service charge*** means a charge for, or in relation to, the provision of a water service but does not include an infrastructure contribution;

***water supply works of a licensee*** means water service works of the licensee that are used by the licensee in the provision of a water supply service.

- (2) In this Part —
  - (a) a reference to land includes a reference to a lot (within the meaning of the *Strata Titles Act 1985* section 3(1)); and
  - (b) a reference to an owner of land includes a reference to a proprietor of a lot (within the meaning of the *Strata Titles Act 1985* section 3(1)).

- (3) For the purposes of this Part, a fitting, fixture, pipe or other thing is connected to water service works of a licensee if —
- (a) it is connected to those works via a conduit; or
  - (b) it is part of the conduit.

### **Division 2 — Provision of water services generally**

#### **72. Application of this Division in relation to certain agreements**

The agreements (about the provision of water services) to which this Division applies —

- (a) include such agreements entered into before this Division came into operation; but
- (b) do not include standard customer contracts.

#### **73. Statutory entitlement to provision of water services**

- (1) The owner of land in respect of which statutory water service charges apply for the provision of a water service by a licensee is entitled to the provision of the water service.
- (2) The owner's entitlement is subject to —
- (a) the terms and conditions of the provision of the service; and
  - (b) the charges referred to in subsection (1), that are due to the licensee, being paid; and
  - (c) the provisions of this Part.

#### **74. Terms and conditions of provision of water services**

- (1) For the purposes of section 73(2)(a), the terms and conditions of the provision of the service to which the owner is entitled under section 73 are —
- (a) the standard terms and conditions of service (if any) in relation to the service and the licensee, except to the extent to which the standard terms and conditions of

service are inconsistent with the terms and conditions referred to in paragraph (b); and

- (b) the terms and conditions of the provision of the service in an agreement about the provision of the service (if any), to the extent to which those terms and conditions are binding on the owner.

Note for this subsection:

Section 76 provides that certain terms and conditions of agreements about the provision of a water service are binding on subsequent owners of the land in certain circumstances.

- (2) To the extent to which standard terms and conditions of service apply to the provision of a water service by a licensee other than under a standard customer contract, the licensee is to be taken to have approved of the provision of the service on those terms and conditions.
- (3) If a licensee provided a non-standard water service in respect of land immediately before this section came into operation and there is no written agreement about the provision of the service, the licensee is to be taken to have approved of the provision of the service on terms and conditions that reflect the nature of the service provided.
- (4) Subsection (3) applies in relation to the provision of a non-standard water service in respect of land to the exclusion of subsections (1) and (2) until the service is no longer required or the owner of the land enters into an agreement about the provision of the service.
- (5) In subsections (3) and (4) —  
***non-standard water service*** means a water service, of a particular type, the provision of which is different in some material way from the usual provision of water services of that type.

**75. Agreements about provision of water services**

- (1) An agreement between a licensee and a person about the provision of a water service does not have effect to the extent to which it is inconsistent with this Act and the conditions of the licence under which the licensee provides the water service.
- (2) Without limiting what an agreement may cover, it may cover the following matters —
  - (a) special circumstances that result in difficulties in providing a water service (for example, low pressure or flow rates), any special measures to deal with those circumstances and additional charges to cover the cost of the special measures;
  - (b) if statutory water service charges do not apply for the provision of a water service — the water service charges for the provision of the service;
  - (c) if statutory water service charges apply for the provision of a water service — alternative water service charges for the provision of the service;
  - (d) security for the future payment of fees and charges.
- (3) If an agreement provides for alternative water service charges for the provision of a water service —
  - (a) statutory water service charges do not apply to the provision of the service to the extent to which alternative water service charges are provided for by the agreement; and
  - (b) if a statutory water service charge that does not apply because of paragraph (a) would have applied in respect of land — an alternative water service charge that corresponds to the statutory water service charge applies in respect of the land, unless the agreement provides otherwise; and
  - (c) the agreement does not have effect to the extent to which a person who is not bound by the agreement

would otherwise be placed in a less favourable position than the person would have been in if the agreement had not been made.

**76. Aspects of certain agreements binding on successors**

(1) In this section —

**Registrar** means the Registrar of Titles or Registrar of Deeds and Transfers, according to which of them is responsible for registering a notification referred to in this section.

(2) This section applies to a written agreement between a licensee and an owner of land about the provision of a water service in respect of the land, except to the extent to which the agreement is an approval to discharge trade waste.

(3) Unless the agreement provides otherwise, the terms and conditions of the agreement are binding on each subsequent owner of the land who has prior notice of the agreement, until the service is no longer required or the subsequent owner enters into an agreement about the service.

(4) Unless the agreement provides otherwise, terms and conditions of the agreement relating to —

- (a) any aspects of the service that do not ordinarily apply to a service of that type; or
- (b) the quantity or quality of water supplied or wastewater discharged; or
- (c) water service charges; or
- (d) the indemnification of the licensee for costs or expenses relating to the provision of the service,

are binding on each subsequent owner of the land whether or not the owner has prior notice of the agreement, until the service is no longer required or the owner enters into an agreement about the service.

- (5) A reference in this section to prior notice of an agreement includes a reference to notice prior to this section coming into operation.
- (6) For the purposes of subsections (3) and (4), a subsequent owner is to be taken to have prior notice of an agreement if —
  - (a) a notification of the agreement is registered under subsection (8); or
  - (b) a notification of the agreement has been lodged and the certificate of title for the land is endorsed under the *Transfer of Land Act 1893* section 70A, whether or not the endorsement occurred before or after this section came into operation.
- (7) Subsection (6) does not apply in relation to a subsequent owner unless the registration or endorsement occurred at least 21 days before the day on which the subsequent owner became the owner of the land, that is, the day on which the subsequent owner obtained possession of the land under or in anticipation of the transfer or conveyance of the interest in the land that entitles the subsequent owner to the ownership of the land.
- (8) A licensee may lodge a notification of an agreement with the Registrar who, on payment of the prescribed fee (if any), may register the notification and make appropriate endorsements on the title and records relating to that land.
- (9) If the agreement ceases to be relevant, the licensee must lodge a withdrawal of notification with the Registrar who, on payment of the prescribed fee (if any), must record the withdrawal of notification on the title and records relating to the land.
- (10) A notification or withdrawal of notification must be in a form approved by the Registrar.

**77. Interruption of water services generally**

- (1) A licensee may interrupt, suspend or restrict the provision of a water service to the extent to which it is necessary, in the

licensee's opinion, to do so because of an accident, emergency, potential danger or other unavoidable cause, or for the purposes of maintenance and repair.

- (2) A licensee is not liable for any loss or damage that arises from an interruption, suspension or restriction under subsection (1) except to the extent to which —
  - (a) the interruption, suspension or restriction results from —
    - (i) a negligent act or omission of the licensee; or
    - (ii) an act or omission of the licensee done or made in bad faith;
  - or
  - (b) the licensee has agreed otherwise.
- (3) A licensee must take reasonable steps to minimise the extent or duration of any interruption, suspension or restriction under subsection (1).
- (4) A licensee's capacity to interrupt, suspend or restrict the provision of a water service under this section for the purposes of maintenance is subject to any restriction on that capacity in the terms and conditions of the licence authorising the provision of the service.

**78. Meters**

- (1) If a water service is, or is to be, provided by a licensee in respect of land, the licensee may install or require the installation of a meter.
- (2) The meter must be located on the land in respect of which the service is provided unless the licensee decides otherwise.

**79. Accuracy and testing of meters**

- (1) For all purposes, a meter is to be presumed to be operating within the prescribed tolerance for that type of meter unless there is evidence to the contrary.



- (2) A certificate, purporting to be signed by a licensee or an employee of a licensee, setting out —
- (a) readings of a meter; or
  - (b) the quantity of water or wastewater that has passed through a meter in a specified period,
- is to be presumed to correctly set out those matters unless there is evidence to the contrary.
- (3) The regulations may deal with the accuracy and testing of meters including by —
- (a) prescribing tolerances; and
  - (b) giving persons a right to have meters tested; and
  - (c) providing for who will pay the costs of testing a meter, including costs that exceed the amount of any prescribed fee.
- (4) In subsection (2), a reference to an employee of a licensee includes a reference to a contractor of the licensee (who is an individual) or an employee of a contractor of the licensee.

### **Division 3 — Development and building control, and infrastructure contributions**

#### **80. Terms used**

In this Division —

*development* has the meaning given in the *Planning and Development Act 2005* section 4(1);

*subdivision* includes re-subdivision or amalgamation.

#### **81. Application of this Division**

This Division does not apply to or in respect of an irrigation licence.

**82. Notification of and requirements as to building work**

- (1) If a person proposes to construct, alter or demolish a building on land in the operating area of a licence, the person must give the licensee notice of the proposed construction, alteration or demolition before commencing.
- (2) The notice must be in a form approved by the licensee, together with plans and specifications of the proposed construction, alteration or demolition.
- (3) Subsection (1) does not apply to prescribed types or areas of land.
- (4) The licensee must return a copy of the plans and specifications with any written directions about the proposed construction, alteration or demolition, and any related plumbing, that the licensee thinks necessary to ensure the safety and efficacy of water services provided or to be provided in respect of the building and of the water services provided by the licensee generally.
- (5) The licensee must comply with subsection (4) within 7 days after the day on which the licensee receives the fee, calculated in accordance with the regulations, for dealing with the notification, or the licensee enters into an arrangement for the payment of the fee.
- (6) The person must not commence the construction, alteration or demolition of the building until the earlier of —
  - (a) receiving the copy of the plans and specifications from the licensee under subsection (4); or
  - (b) the end of the period referred to in subsection (5).Penalty: a fine of \$7 500.
- (7) The person must comply with directions given under subsection (4) if the directions are given before the end of the period referred to in subsection (5).  
Penalty: a fine of \$10 000.

- (8) A person who commences the construction, alteration or demolition of a building without complying with subsection (1) is liable, in addition to any penalty imposed under subsection (6), to pay the licensee an amount equal to the fees that the person would have paid if the person had complied with this section.
- (9) It is a defence to a charge of an offence under subsection (6) to prove that —
  - (a) an emergency had arisen making it necessary that the building be constructed, altered or demolished before the directions of the licensee were received; and
  - (b) the person gave the licensee notice (complying with subsection (2)) of the construction, alteration or demolition as soon as practicable.

**83. Satisfying requirements for additional water services**

- (1) This section applies if one or more of the following apply —
  - (a) there is a proposal for the development or subdivision of land and the land is in an operating area of a licence;
  - (b) there is an application for a building permit under the *Building Act 2011* and the building work under the permit will be carried out on land in an operating area of a licence;
  - (c) building work for which a building permit under the *Building Act 2011* is or was required is taking, or has taken, place on land in an operating area of a licence;
  - (d) a licensee receives an application for an approval to discharge trade waste;
  - (e) a person applies to a licensee for the provision of a water supply, sewerage or drainage service in respect of particular land;
  - (f) there is a change, or a proposed change, in the use of land in respect of which a water supply, sewerage or drainage service is provided by a licensee;

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- (g) there is a change, or a proposed change, in the use of a water service provided in respect of land by a licensee.
- (2) If the licensee is satisfied that, in order to meet a requirement for a water supply, sewerage or drainage service indicated by the proposal, application, building work or change in use —
  - (a) there will be, or has been, an increase in the demand for that type of water service; and
  - (b) water service works are or will be required to meet the demand, either at the time of the increased demand or in the future,

the licensee may require the proponent, applicant or owner or occupier of the land to give the licensee information or further information about the proposal, application, building work or change in use and may do one or more of the things set out in subsection (3).

- (3) The licensee may, by notice given to the proponent, applicant or owner of the land, require one or more of the following —
  - (a) that the water service works described in the notice be provided according to its requirements and specifications;
  - (b) that the licensee be paid an infrastructure contribution determined in accordance with the guidelines referred to in section 85(3);
  - (c) that the licensee be paid an amount to cover the costs of the licensee doing the water service works referred to in the notice.
- (4) A notice under subsection (3) may be varied —
  - (a) in relation to a requirement under subsection (3)(a) — until the earlier of the works being substantially completed or the licensee entering into an agreement about the provision of the works; or
  - (b) in relation to a requirement under subsection (3)(b) or (c) — until the earlier of the contribution or amount

being paid or the licensee entering into an agreement about the payment of the contribution or amount.

- (5) A notice under subsection (3)(a) or (c) may include water service works and requirements that take into account existing and future requirement for water services, whether or not indicated by the proposal, building work, application or change in use.
- (6) The Minister may, in writing, require the licensee to vary, replace or revoke a notice given under subsection (3).
- (7) Despite anything else in this Act, the licensee may refuse to —
- (a) grant an application for an approval to discharge trade waste; or
  - (b) provide a new, additional or expanded water supply, sewerage or drainage service in respect of land; or
  - (c) do works requested by the owner of land,

unless a requirement under subsection (3) relating to the application, service or works has been met or the applicant or owner has entered into an agreement with the licensee about meeting that requirement.

- (8) Nothing in this section prevents the licensee from entering into an agreement about the works, the contribution or the amount referred to in a notice under subsection (3), including an agreement that provides for works, a contribution or an amount different to that described or specified in the notice.
- (9) The licensee may recover a contribution or amount that a person is required to pay under a notice under subsection (3)(b) or (c) as a debt from the person in a court of competent jurisdiction, unless the licensee and the person have entered into an agreement about the contribution or amount, in which case, the matter is to be dealt with under the agreement.
- (10) The regulations may deal with deferring infrastructure contributions, including by providing for —

- (a) licensees to be required to defer a contribution in specified circumstances; and
- (b) the costs, expenses and losses of a licensee attributable to the deferment (including any costs or expenses incurred by the licensee under section 128) to be payable to the licensee; and
- (c) interest on deferred amounts that have become payable and that are overdue.

**84. Ensuring water service works are done**

- (1) If the licensee is satisfied that a person given a notice under section 83(3)(a) is not going to comply with the notice within a reasonable time, the licensee may provide the works described in the notice.
- (2) Before commencing to provide the works, the licensee must give 21 days notice of its intention to do so to the person.
- (3) Subsection (1) does not apply if the licensee has entered into an agreement about doing the works referred to in the notice.
- (4) Persons authorised by the licensee for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of subsection (1).
- (5) The licensee may recover the reasonable costs and expenses of doing the works from the person given the notice, and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.

**85. Infrastructure contributions**

- (1) An *infrastructure contribution* is a financial contribution to a licensee by a person referred to in section 83(3), whether payable under a notice under section 83(3)(b) or an agreement, the purpose of which is to assist in offsetting present or future costs to the licensee of providing or upgrading infrastructure, the provision or upgrading of which is or will be necessitated, in

part, by the increase in demand for water services brought about, or to be brought about, by the activity of a person.

(2) In subsection (1) —

**activity of a person** means, in respect of a person referred to in section 83(2), the development, subdivision, building work, discharge or application by the person, or change in use of land, or change in use of a service provided in respect of land, owned or occupied by the person;

**infrastructure** includes, subject to subsection (7) —

- (a) headworks, that is, dams, reservoirs, water treatment or reclamation plants, pumping stations, wastewater treatment plants, bores, drains, mains and similar infrastructure; and
  - (b) reticulation works, that is, the system of reticulated conduits and associated works necessary to provide a water service to or in respect of land by connecting headworks to the point at which, or the place in respect of which, the service is provided.
- (3) The Minister must approve guidelines that set out the extent to which an infrastructure contribution can be required and the methods for determining, or guiding the determination of, the amounts of infrastructure contributions.
- (4) The guidelines may use factors that do not bear a direct relationship to the costs but which are instead statistically derived in specifying methods for determining, or guiding the determination of, the amounts of infrastructure contributions.
- (5) The Minister may approve guidelines that are applicable to particular licensees or to all licensees.
- (6) The Minister must publish the guidelines on the Department's website.
- (7) The regulations may provide that prescribed works are or are not infrastructure for the purposes of this section.

**86. Property in certain works**

- (1) Sections 162 and 163 apply to water service works provided under or in accordance with a notice given by a licensee under section 83(3)(a) as if the works were provided by the licensee in the exercise of a power under this Act, except to the extent to which an agreement with the licensee provides otherwise, in which case, the agreement has effect according to its terms.
- (2) Sections 162 and 163 apply to water service works provided under an agreement with a licensee as if the works were provided by the licensee in the exercise of a power under this Act, except to the extent to which the agreement provides otherwise, in which case, the agreement has effect according to its terms.

**87. Review of certain decisions under or relating to this Division**

- (1) A person listed in the Table to this section as a person affected by a decision of a licensee listed in the Table may apply to the State Administrative Tribunal for a review of the decision.

**Table**

<b>Decision of licensee</b>	<b>Person affected</b>
as to the directions under section 82(4)	the person who gave the notice under section 82(1)
to give a notice under section 83(3)	the person given the notice
as to the requirements in a notice given under section 83(3)	the person given the notice
to vary a notice under section 83(4)	the person given the notice
to refuse to do a thing referred to in section 83(7)	a person adversely affected by the decision



<b>Decision of licensee</b>	<b>Person affected</b>
to do works under section 84(1)	the person given the notice under section 83(3)(a)
to lodge a memorial under section 128 in relation to the costs and expenses referred to in section 84(5)	a person adversely affected by the decision

- (2) If a person makes an application under subsection (1) in relation to a decision of a licensee to do works under section 84(1) —
- (a) the licensee cannot provide the works, or continue the works, until the application has been finally dealt with by the State Administrative Tribunal, unless —
    - (i) the State Administrative Tribunal orders otherwise; or
    - (ii) the licensee is satisfied that a dangerous situation exists and that urgent action is needed in order to assess, reduce, eliminate or avert a risk to persons, property or the environment;
- and
- (b) the person must not do any works or take any other similar action that would prevent the works being done, while the person’s application is not finally resolved.

Penalty: for an offence under paragraph (b), a fine of \$5 000.

#### **Division 4 — Protection of works, fittings and fixtures**

#### **88. Interfering with water service works of licensee**

- (1) A person must not —
- (a) uncover the water service works of a licensee; or
  - (b) open, shut, damage or otherwise interfere with the water service works of a licensee; or

- (c) interfere with the operation of the water service works of a licensee; or
- (d) attach a fitting, pipe or other thing to the water service works of a licensee; or
- (e) repair, replace or remove a fitting or pipe that is part of the water service works of a licensee; or
- (f) place any thing in the water service works of a licensee; or
- (g) discharge water, wastewater or any other liquid into, or allow any other thing to enter, the water service works of a licensee,

except in accordance with the approval of the licensee or in accordance with any other lawful authority.

Penalty:

- (a) for an individual —
    - (i) for an offence under paragraph (a), a fine of \$5 000;
    - (ii) for an offence under another paragraph, a fine of \$15 000;
  - (b) for a body corporate —
    - (i) for an offence under paragraph (a), a fine of \$10 000;
    - (ii) for an offence under another paragraph, a fine of \$30 000.
- (2) This section does not apply to a member of a licensee in respect of the water service works of the licensee.
- (3) If, in proceedings for an offence under subsection (1), a person is found to have damaged the water service works of a licensee in a road, a water service reserve or an easement in favour of the licensee, the person is to be presumed, in the absence of evidence to the contrary, to have done so without the approval of the licensee and without any other lawful authority.

- (4) In subsection (3) —  
***water service reserve*** means land reserved under the *Land Administration Act 1997* section 41 for the purpose of the provision of a water supply, sewerage or drainage service.
- (5) It is a defence to a charge of an offence under subsection (1) relating to any works that were underground to prove that the contravention occurred because the person charged relied on information obtained from the licensee as to the location of the works.

**89. Taking water without or contrary to approval**

- (1) A person must not take, or permit the taking of, water or wastewater from the water service works of a licensee, or a conduit connected to those works, except —
- (a) in accordance with the approval of the licensee or a person deriving authority to give such approval from the licensee; or
  - (b) under the *Fire Brigades Act 1942*, the *Bush Fires Act 1954* or another written law; or
  - (c) under section 97(1); or
  - (d) in accordance with any other right to take water that the person has because of owning or occupying land adjoining the works.

Penalty:

- (a) for an individual, a fine of \$15 000;
- (b) for a body corporate, a fine of \$30 000.

- (2) A person who contravenes subsection (1) for commercial gain commits an offence.

Penalty:

- (a) for an individual, a fine of \$50 000;
- (b) for a body corporate, a fine of \$100 000.

- (3) A person charged with committing an offence under subsection (2) may be convicted of an offence under subsection (1) which is established by the evidence.
- (4) This section does not apply to a member of a licensee taking water or wastewater from the water service works of the licensee.

**90. Construction etc. over or in vicinity of water service works of licensee**

- (1) A person must not erect, construct, install, place or demolish any building, plant, wall, fence or other obstruction —
  - (a) in, on, over or under; or
  - (b) within the prescribed proximity (if any) to,water service works of a licensee, except in accordance with the approval of the licensee.  
Penalty: a fine of \$10 000.
- (2) A person must not drill, bore, excavate or use impact equipment within the prescribed proximity to water service works, of a prescribed kind, of a licensee, or engage in any other activity within the prescribed proximity that may damage those works, except in accordance with the approval of the licensee.  
Penalty: a fine of \$10 000.
- (3) It is a defence to a charge of an offence under subsection (1) or (2) relating to any works that were underground to prove that the contravention occurred because the person charged relied on information obtained from the licensee as to the location of the works.
- (4) The regulations, in providing for a prescribed proximity, may —
  - (a) provide that the licensee or another person may, for the purposes of the regulations, determine the proximity, within limits set out in the regulations; and

- (b) prescribe different proximities for different types of works; and
  - (c) set out things that are to be taken to be, or not to be, an obstruction for the purposes of subsection (1); and
  - (d) set out activities that are to be taken to, or not to, damage works for the purposes of subsection (2).
- (5) If a licensee is satisfied that a person has contravened or is contravening subsection (1) or (2) and that the obstruction or activity is likely to interfere with or adversely affect the water service works of the licensee, the licensee may give the person a notice (a **compliance notice**) requiring the person, within a specified time and in a specified manner, to do one or more of the following —
- (a) to cease the activity;
  - (b) to demolish, remove or alter the building, plant, wall, fence or other obstruction;
  - (c) to replace excavated material or remove fill;
  - (d) to do any other works necessary to restore, reinstate or protect the licensee's works.
- (6) If a licensee is satisfied that a person has contravened subsection (1) and that the obstruction or activity is likely to interfere with or adversely affect the water service works of the licensee, the licensee may give the owner of the land on which the obstruction is located a notice under subsection (5), despite not being satisfied that the owner was the person who contravened subsection (1), but only if —
- (a) satisfied that it would be impracticable for the person who contravened subsection (1) to comply with the notice; or
  - (b) after making reasonable enquiries — the licensee cannot be satisfied as to the identity of the person who contravened subsection (1).

- (7) Before giving a notice under subsection (5), the licensee must, to the extent practicable, consult with the owner of the land on which the obstruction is located or the activity is taking place if the person to be given the notice is not the owner of that land.

**91. Requirement to use etc. approved fittings, fixtures and pipes**

- (1) A person must not —
- (a) install an unapproved fitting, fixture or pipe if it will be connected to the water service works of a licensee; or
  - (b) install a prohibited fitting, fixture or pipe if it will be connected to the water service works of a licensee; or
  - (c) modify a fitting, fixture or pipe connected to the water service works of a licensee except in an approved way; or
  - (d) use a prohibited material or substance in connection with a fitting, fixture or pipe connected to the water service works of a licensee.

Penalty: a fine of \$5 000.

- (2) Subsection (1) does not apply in relation to irrigation works.
- (3) A fitting, fixture or pipe, a way of modifying a fitting, fixture or pipe or a material or substance is approved or prohibited if it is approved or prohibited as provided for in regulations made for the purposes of this section.
- (4) The regulations may deal with the following —
- (a) the inspection, testing, marking and approval of the types of fittings, fixtures and pipes that may be connected to the water service works of a licensee;
  - (b) fees for inspecting, testing, marking and approval under the regulations.

**92. Requirement to maintain etc. fittings, fixtures and pipes**

- (1) An owner or occupier of land must ensure that each fitting, fixture or pipe for which the owner or occupier is responsible —
- (a) is maintained so that it does not cause or allow the waste of water, a nuisance or a health hazard; and
  - (b) is not used or arranged so as to cause or allow the waste of water, a nuisance or a health hazard; and
  - (c) in the case of a fitting, fixture or pipe connected to the sewerage works of a licensee — is not used or arranged so as to allow water other than wastewater to enter the works, unless the licensee has approved of that.
- (2) An owner or occupier of land in respect of which a sewerage service is provided by a licensee must ensure that each fitting, fixture or pipe connected to the sewerage works by a particular property sewer connection is not used if it or the property sewer connection is blocked or the sewerage works are blocked.
- Penalty: a fine of \$5 000.
- Daily penalty: a fine of \$250.
- (3) For the purposes of subsection (1), an owner or occupier of land is responsible for a fitting, fixture or pipe if —
- (a) a water supply or sewerage service is provided in respect of the land; and
  - (b) the fitting, fixture or pipe is connected to the water supply or sewerage works of the licensee; and
  - (c) the fitting, fixture or pipe is not owned by the licensee; and
  - (d) in the case of an occupier of the land — the occupier has a right to use the fitting, fixture or pipe and, for the purposes of subsection (1)(a), a duty under the occupancy to maintain it.

- (4) Despite subsection (3), an owner or occupier of land is not responsible for a property connection to the extent to which the licensee is obliged to maintain the connection, or some of the connection, under the licensee's licence or an agreement with the owner.
- (5) The regulations may provide for standards of maintenance for the purposes of subsection (1)(a) and that a person who complies with an applicable standard is to be taken to have complied with the person's obligation under subsection (1)(a).
- (6) It is a defence to a charge of an offence under subsection (2) to prove that the owner or occupier did not know, and could not reasonably have known, that the property sewer connection was or the sewerage works were blocked.
- (7) If the licensee or the Minister is satisfied that an owner or occupier of land has contravened or is contravening subsection (1) or (2) and that the contravention is likely to cause or allow the waste of water, a nuisance, a health hazard, water other than wastewater to enter the water service works of the licensee or otherwise interfere with or adversely affect those works, the licensee or the Minister may give the person a notice (a **compliance notice**) requiring the person, within a specified time and in a specified manner, to do one or more of the following —
  - (a) to clean, maintain, repair, replace or disconnect the fitting, fixture or pipe;
  - (b) to cease to use the fitting, fixture or pipe;
  - (c) to do any works necessary to remedy the contravention.
- (8) A person given a compliance notice must comply with it.  
Penalty: a fine of \$10 000.  
Daily penalty: a fine of \$500.



### **Division 5 — Water supply services**

**93. Approval required before connecting to water supply**

- (1) A person must not connect, or permit the connection of, a water supply outlet on land to —
- (a) the water supply works of a licensee; or
  - (b) a property water supply connection (whether on that or other land) connected to the water supply works of a licensee,

except in accordance with the approval of the licensee.

Penalty: a fine of \$25 000.

Daily penalty: a fine of \$1 000.

- (2) A licensee may approve of the connection of a water supply outlet described in subsection (1) even though the connection has already been made.
- (3) A person who has failed to comply with subsection (1) is liable, in addition to any penalty imposed under that subsection, to pay the licensee an amount equal to the fees and charges relating to the connection that the person would have had to pay if the person had applied for approval for the connection and the licensee had approved of the connection.

**94. No connection of additional water supply without approval**

- (1) An owner or occupier of land in respect of which a water supply service is provided by a licensee must not connect a supply of water to —
- (a) the property water supply connection; or
  - (b) anything connected to the property water supply connection,

except in accordance with the approval of the licensee.

Penalty: a fine of \$10 000.

- (2) In considering whether to approve of the connection of a supply of water under subsection (1), and any conditions to which the approval will be subject, the licensee may take into account the risk of contamination of the water supply, the effectiveness of the licensee's water supply system and any other relevant matter, but may not take into account commercial considerations.

**95. Disconnection or reduction in rate of flow etc.**

- (1) A licensee may cut off, reduce the rate of flow of or refuse to connect a supply of water to land if —
- (a) the land is unoccupied; or
  - (b) water service charges (including interest on overdue amounts) due to the licensee for a water service provided in respect of the land remain unpaid for 30 days after they become due; or
  - (c) the occupier (or the owner if there is no occupier) of the land refuses to permit a meter to be installed as part of providing the water supply service to the land; or
  - (d) the owner of the land requests that the licensee do so; or
  - (e) another provision of this Act authorises the licensee to do so.
- (2) A licensee may reduce the rate of flow of a supply of water to land if satisfied that it is necessary to do so to prevent the waste of water on or associated with the land.
- (3) Despite any other provision of this Act, a licensee cannot cut off the supply of water to an occupied dwelling unless the occupier agrees to that.
- (4) A licensee's capacity to cut off or reduce the rate of flow of a supply of water under this Act is subject to any restrictions on that capacity in the terms and conditions of the licence authorising the provision of the water supply service.

- (5) Persons authorised by the licensee for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of subsection (1).
- (6) Cutting off or reducing the rate of flow of a supply of water to land does not prevent —
  - (a) the licensee from taking action to recover unpaid charges (including interest on overdue amounts); or
  - (b) the taking of proceedings in respect of a contravention of a provision of this Act.
- (7) If a licensee has cut off or reduced the rate of flow of a supply of water to land, the licensee may, before restoring the supply of water to the land —
  - (a) require payment of unpaid water service charges (including interest on overdue amounts) and any prescribed fees in relation to cutting off or reducing the rate of flow of the supply of water or restoring the supply, or rate of flow, of water; or
  - (b) require arrangements satisfactory to the licensee to be made for the payment of the charges, interest and fees referred to in paragraph (a).

**96. Fire hydrants**

- (1) If —
  - (a) a licensee provides water supply reticulation works; or
  - (b) a licensee enters into an agreement for the provision of water supply reticulation works,

the licensee must install, or require the installation of, fire hydrants attached to those works in accordance with the requirements of FESA <sup>2</sup>, or the relevant local government, as to location and type of hydrant (according to whose district the works are provided in).
- (2) For the purposes of this section, an area is a district of FESA <sup>2</sup> if it meets the description in subsection (3) and an area is a district

of a local government if it meets the description in subsection (4).

- (3) If —
- (a) water supply services are provided in an area; and
  - (b) the area is in a fire district,

FESA<sup>2</sup> may request the licensee to install, remove, repair or maintain a fire hydrant in the area.

- (4) If —
- (a) water supply services are provided in an area; and
  - (b) the area is in the district of a particular local government; and
  - (c) the area is not in a fire district,

the local government may request the licensee to install, remove, repair or maintain a fire hydrant in the area.

- (5) The licensee must comply with requests under subsections (3) and (4), to the extent practicable and within a reasonable time.
- (6) An agreement between a licensee and FESA<sup>2</sup> or a local government about the provision and maintenance of fire hydrants in an area may displace the application of subsection (5) in relation to that area.
- (7) A licensee may recover the reasonable costs and expenses of installing, removing, repairing or maintaining a fire hydrant in accordance with the regulations, which (without limiting that) may —
- (a) limit what may be recovered as costs and expenses;
  - (b) provide for the costs and expenses to be recovered from FESA<sup>2</sup> or a local government (according to whose district the fire hydrant is in);
  - (c) provide for the recovery of the costs and expenses in a court of competent jurisdiction.

- (8) Subsection (7) does not prevent the costs and expenses from being recovered indirectly via statutory water service charges.

**97. Taking water from fire hydrants**

- (1) A local government, or a person authorised by the local government, may take water from a fire hydrant in the district of the local government free of charge for the purpose of extinguishing a fire and for prescribed purposes.
- (2) Water may be taken from a fire hydrant, in accordance with this Act, even though the water is not to be used for a purpose relating to extinguishing fires.

**Division 6 — Sewerage services**

**Subdivision 1 — Sewer connections**

**98. Minister may require connection to sewerage works**

- (1) The Minister may, by written notice, require an owner of land to make an application for approval to connect a wastewater inlet on the land to the sewerage works of a licensee if satisfied that —
- (a) the inlet is reasonably capable of being connected to those works (which includes that the works run within, at or near a boundary of the land); and
  - (b) it is in the public interest to require the owner to make the connection.
- (2) The connection is at the owner's expense.
- (3) If —
- (a) the owner fails to comply with the notice under subsection (1) within 3 months after the day on which the notice was given; or

- (b) the application is approved and the owner fails to make the connection within 3 months after the day on which the application was approved,

the Minister may, by written notice, require the licensee to make the connection.

- (4) Persons authorised by the licensee for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of giving effect to the notice under subsection (3).
- (5) If, in the course of making the connection, the licensee places water service works on land, or provides water service works that are a part of land, and those works would be works of the owner of the land if the owner had placed or provided those works, those works cease to be works of the licensee once they are completed.
- (6) The Minister must pay the reasonable costs and expenses of the licensee of complying with the notice under subsection (3).
- (7) The Minister may recover an amount not exceeding the amount paid under subsection (6) from the owner, and may seek an order for the recovery of the amount in a court of competent jurisdiction.

**99. Approval required before connecting to sewer**

- (1) A person must not connect, or permit the connection of, a wastewater inlet on land to —
- (a) the sewerage works of a licensee; or
- (b) a property sewer connection (whether on that or other land) connected to the sewerage works of a licensee,

except in accordance with the approval of the licensee.

Penalty: a fine of \$50 000.

Daily penalty: a fine of \$2 000.

- (2) A licensee may approve of the connection of a wastewater inlet described in subsection (1) even though the connection has already been made.
- (3) A person who has failed to comply with subsection (1) is liable, in addition to any penalty imposed under that subsection, to pay the licensee an amount equal to the fees and charges relating to the connection that the person would have had to pay if the person had applied for approval for the connection and the licensee had approved of the connection.

**100. Common sewer connections**

- (1) In this section —  
*common property sewer connection* means a property sewer connection that connects wastewater inlets on different properties to the sewerage works of a licensee;  
*property* means a lot as defined in the *Planning and Development Act 2005* section 4(1).
- (2) The regulations may deal with the sharing of the obligations associated with common property sewer connections between the owners of the properties concerned, including liability to fees and charges.
- (3) Regulations made for the purposes of subsection (2) may modify the effect of the provisions of this Division, Division 4 and regulations made for the purposes of section 124.

**Subdivision 2 — Discharge of trade waste**

**101. Terms used**

- (1) In this Subdivision —  
*occupier*, of land, does not include an owner of land;  
*trade waste* means, subject to subsection (2), wastewater other than wastewater of the kind and volume ordinarily discharged from an ordinary dwelling used solely or primarily as the dwelling of the occupants.

- (2) The regulations may provide that wastewater of a prescribed kind is or is not trade waste.

**102. Discharge of trade waste without or contrary to licensee's approval**

- (1) A person must not discharge, or permit the discharge of, trade waste into a wastewater inlet connected to the sewerage works of a licensee except in accordance with this section.

Penalty: a fine of \$50 000.

Daily penalty: a fine of \$2 000.

- (2) The owner of the land on which the inlet is located may discharge, or permit the discharge of, trade waste into the inlet in accordance with the approval of the licensee.
- (3) An occupier of the land, or a portion of the land, on which the inlet is located may discharge trade waste into the inlet in accordance with the approval of the licensee, given either to the owner or to the occupier.
- (4) An approval, given to an owner of land, under which an occupier of the land, or a portion of the land, discharges trade waste need not name the occupier.
- (5) The regulations may prescribe circumstances in which, and classes of persons to which, subsection (1) does not apply.

**103. Approval of licensee**

- (1) The conditions to which the approval of a licensee may be subject include conditions dealing with the following —
- (a) the quality and quantity of trade waste to be discharged;
  - (b) the rate and timing of discharge;
  - (c) the doing of works and the installation of fittings and fixtures before trade waste can be discharged;
  - (d) the maintenance and monitoring of fittings, fixtures and pipes;



- (e) the monitoring of, and reporting in relation to, trade waste discharged;
  - (f) the inspection of fittings and fixtures by employees of the licensee or other persons and the taking of samples;
  - (g) rights of entry;
  - (h) interruptions to service;
  - (i) indemnities against loss arising from discharge;
  - (j) the responsibilities as between the owner of the land and any occupier of the land.
- (2) An approval may be transferrable in accordance with its terms.
- (3) An approval may be amended or revoked.
- (4) The grounds for amending or revoking an approval are not limited to those in section 104.

**104. Discharge of trade waste not in accordance with approval**

- (1) If —
- (a) trade waste is discharged into a wastewater inlet connected to the sewerage works of a licensee; and
  - (b) the licensee is satisfied that the discharge is not in accordance with section 102,
- the licensee may do one or more of the things set out in subsection (2).
- (2) The licensee may —
- (a) give a notice (a *compliance notice*) to the owner or an occupier of the land on which the inlet is located;
  - (b) amend the terms and conditions of an approval relevant to the discharge, including so that the discharge of trade waste into the inlet is no longer covered by the approval;
  - (c) revoke an approval relevant to the discharge;

- (d) seek an order under section 127 for the recovery of the water service charges that the owner of the land ought to have paid for the discharge (including interest on overdue amounts) from the person who discharged the trade waste or the owner (who may be the same person).
- (3) For the purposes of subsection (2)(d), in the case of a person other than the owner discharging the trade waste —
  - (a) if the person is not liable for water service charges in relation to the discharge of trade waste — section 127(3) applies as if the person were liable; and
  - (b) the court cannot issue an order requiring the owner of the land to pay the water service charges unless satisfied that it is fair and reasonable to do so in the particular circumstances of the case.

**105. Failure to maintain fittings, fixtures and pipes**

- (1) This section applies in relation to a property sewer connection through which trade waste is discharged into the sewerage works of a licensee.
- (2) If the licensee is satisfied that —
  - (a) a fitting, fixture or pipe —
    - (i) that is part of or connected to the property sewer connection, has not been appropriately maintained; or
    - (ii) that is required to be installed under the approval of the licensee to discharge trade waste, has not been installed or appropriately installed;and
  - (b) the failure is likely to —
    - (i) cause or allow a nuisance or a health hazard; or
    - (ii) cause or allow wastewater to escape the property sewer connection; or

- (iii) interfere with or adversely affect the property sewer connection or the licensee's sewerage works,

the licensee may give a notice (a *compliance notice*) to the owner or an occupier of the land on which the inlet is located.

**106. Compliance notices**

- (1) A compliance notice may be given to more than one person in respect of a particular discharge or wastewater inlet.
- (2) The licensee must specify in a compliance notice —
  - (a) in what way the person given the notice has failed to comply with section 104 or 105, including in what way the discharge or the fitting, fixture or pipe is not in accordance with the licensee's approval; and
  - (b) what the person given the notice must do to comply with the notice; and
  - (c) the time within which the person must comply with the notice.
- (3) For the purposes of subsection (2)(b), a person may be required to —
  - (a) cease to use a fitting, fixture or pipe; or
  - (b) clean, maintain, repair, install, replace or disconnect a fitting, fixture or pipe; or
  - (c) do other works to remedy the failure to comply with section 104 or 105; or
  - (d) institute or modify a maintenance, monitoring or reporting programme, as specified by the licensee.
- (4) A person given a compliance notice must comply with it.

Penalty: a fine of \$10 000.

Daily penalty: a fine of \$500.

**107. Regulations relating to discharge of trade waste**

Without limiting section 222, regulations made for the purposes of this Subdivision may do the following —

- (a) deal with licensees giving approval for the purposes of this Subdivision, including by providing that a licensee cannot give an approval unless satisfied that a specified standard in relation to discharge or processing of trade waste can be met;
- (b) regulate licensees' capacity to give a compliance notice to an owner of land in circumstances where an occupier of the land discharged the trade waste;
- (c) regulate licensees' capacity to amend or revoke an approval;
- (d) in relation to changes in the ownership of land —
  - (i) provide for the ongoing effect of an approval as an interim measure until an approval is given to the new owner; and
  - (ii) provide for the ongoing effect of agreements about the discharge of trade waste; and
  - (iii) provide for the ongoing effect of compliance notices given to the owner or occupier of the land prior to the change in ownership.

**Division 7 — Drainage services**

**108. Term used: drainage assets**

In this Division —

***drainage assets*** include drains, wetlands, swales, infiltration devices, devices for litter, sediment or water quality management, floodgates, pumping stations, culverts, and other similar works and natural features.

**109. Controlled drainage assets**

- (1) The Water Resources Minister may, by instrument in writing, declare that a drainage asset is controlled by a licensee, for the purposes of this Act, if satisfied that —
  - (a) the asset is necessary for the drainage services provided or to be provided by the licensee; and
  - (b) the drainage to be provided by the asset is in accordance with any relevant water resources management plan (however described) made under a written law; and
  - (c) it would be in the public interest to do so.
- (2) That a drainage asset is declared to be controlled by a licensee does not affect —
  - (a) the rights a person has, or might obtain, to drain water from the land; or
  - (b) a right to take water that a person has because of owning or occupying land adjoining the asset.
- (3) The Minister may amend or revoke a declaration if satisfied that to do so is —
  - (a) in accordance with any relevant water resources management plan (however described) made under a written law; and
  - (b) in the public interest.
- (4) Before making, amending or revoking a declaration that a drainage asset is controlled by a licensee, the Minister must —
  - (a) give each owner of land on which the asset is located written notice that the Minister proposes to make, amend or revoke the declaration; and
  - (b) consult with the Minister responsible for the administration of the *Environmental Protection Act 1986*; and

- (c) if the land on which the asset is located is CALM Act land — consult with the Minister responsible for the administration of the *Conservation and Land Management Act 1984*.
- (5) The notice must set out the period within which the owner may object to the proposed declaration, amendment or revocation, which must be at least 30 days after the day on which the notice is given.
- (6) The Minister must take into account any objection received within that period.
- (7) A failure to comply with subsection (4) does not affect the validity of a declaration, amendment or revocation if the Minister has substantially complied with the subsection.
- (8) Notice of a declaration, or of the amendment or revocation of one, must be published in the *Gazette*, but a failure to publish the notice does not affect the validity of the declaration.
- (9) In subsection (4)(c) —  
**CALM Act land** means —
  - (a) land referred to in the *Conservation and Land Management Act 1984* s. 5(1); and
  - (b) land managed by the CEO (as defined in that Act) under an order or agreement under that Act.

**110. Minister may require connection to drainage works**

- (1) The Minister may, by written notice, require an owner of land, to make an application for approval to connect a drainage asset on the land to the drainage works of a licensee if satisfied that —
  - (a) the drainage asset is reasonably capable of being connected to those works (which includes that the works run within, at or near a boundary of the land); and

- (b) the drainage to be provided by making the connection is in accordance with any relevant water resources management plan (however described) made under a written law; and
  - (c) it is in the public interest to require the owner to make the connection.
- (2) The connection is at the owner's expense.
- (3) If—
  - (a) the owner fails to comply with the notice under subsection (1) within 3 months, or any longer period determined by the Minister; or
  - (b) the application is approved and the owner fails to make the connection within 3 months, or any longer period determined by the Minister,the Minister may, by written notice, require the licensee to make the connection.
- (4) Persons authorised by the licensee for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of giving effect to the notice given to the licensee under subsection (3).
- (5) If, in the course of making the connection, the licensee places water service works on land, or provides water service works that are a part of land, and those works would be works of the owner of the land if the owner had placed or provided those works, those works cease to be works of the licensee once they are completed.
- (6) The Minister must pay the reasonable costs and expenses of the licensee of complying with the notice under subsection (3).
- (7) The Minister may recover an amount not exceeding the amount paid under subsection (6) from the owner, and may seek an order for the recovery of the amount in a court of competent jurisdiction.

**111. Approval required before connecting to drainage works**

- (1) A person must not connect a drainage asset on land to, or disconnect a drainage asset on land from, the drainage works of a licensee except in accordance with the approval of the licensee.

Penalty: a fine of \$25 000.

Daily penalty: a fine of \$1 000.

- (2) This section does not apply to the connection of a drainage asset described in subsection (1) if the asset is connected indirectly to the works.
- (3) A licensee may approve of a connection of a drainage asset described in subsection (1) even though the connection has already been made.

**112. Requirement to maintain or modify drainage assets, etc.**

- (1) An owner of land must ensure that —
- (a) each drainage asset and fitting, on the land, that is connected (whether directly or indirectly) to the drainage works of a licensee; and
  - (b) each property drainage connection,

is maintained so that it continues to function in the way it was intended to function or is maintained as approved by the licensee.

Penalty: a fine of \$5 000.

Daily penalty: a fine of \$250.

- (2) Subsection (1) does not apply to water service works of the licensee.
- (3) The Minister may give an owner of land a notice requiring the owner to modify a property drainage connection on the land that connects a drainage asset on the land to the drainage works of a licensee if satisfied that the modification is —



- (a) in accordance with any relevant water resources management plan (however described) made under a written law; or
  - (b) necessary for the effective operation of the property drainage connection or of the drainage works of the licensee; or
  - (c) in the public interest.
- (4) The owner may apply to the State Administrative Tribunal for a review of the decision to give the notice.
- (5) If the owner —
- (a) does not make an application under subsection (4) and fails to comply with the notice within 3 months, or any longer period determined by the Minister; or
  - (b) after an application under subsection (4) is finally determined — is required to modify the property drainage connection and fails to comply with that requirement within 3 months, or any longer period determined by the Minister,
- the Minister may, by written notice, require the licensee to modify the property drainage connection.
- (6) Persons authorised by the licensee for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of giving effect to the notice given to the licensee under subsection (5).
- (7) If, in the course of modifying the property drainage connection, the licensee places water service works on land, or provides water service works that are a part of land, and those works would be works of the owner of the land if the owner had placed or provided those works, those works cease to be works of the licensee once they are completed.
- (8) The Minister must pay the reasonable costs and expenses of the licensee of complying with the notice under subsection (5).

- (9) The Minister may recover an amount not exceeding the amount paid under subsection (8) from the owner, and may seek an order for the recovery of the amount in a court of competent jurisdiction.

**113. Relationship of this Division to certain other Acts**

The Minister cannot require a licensee or an owner of land to make a connection or modify a drainage asset, under this Division, if to do so would be inconsistent with the *Conservation and Land Management Act 1984*, the *Rights in Water and Irrigation Act 1914*, the *Soil and Land Conservation Act 1945* or the *Waterways Conservation Act 1976*.

**Division 8 — Enforcement**

**Subdivision 1 — Entry for compliance purposes**

**114. Term used: compliance purposes**

In this Subdivision —

*compliance purposes* means the purposes of —

- (a) investigating whether the obligations of a person (other than a licensee) under this Part are being or have been complied with; and
- (b) obtaining evidence of a failure to comply with those obligations.

**115. Entry for compliance purposes**

A compliance officer may, for compliance purposes, enter a place, in accordance with Part 8 —

- (a) to which he or she reasonably suspects a water service is provided by a licensee; or
- (b) at which he or she reasonably suspects water service works of a licensee are located.

**116. General powers for compliance purposes**

- (1) Upon entry to a place for compliance purposes, a compliance officer may do one or more of the following —
- (a) require a person who appears to have the control or management of the place to give reasonable access to it and other reasonable assistance;
  - (b) inspect or examine the place;
  - (c) direct a person to produce any document that is or may be relevant to the inspection;
  - (d) inspect any document produced, make copies of it or take extracts from it, and remove it for as long as is reasonably necessary to make copies or extracts;
  - (e) direct a person to answer questions;
  - (f) inspect the water service works and plumbing at the place and anything associated with the works or plumbing, including by —
    - (i) carrying out or supervising reasonable tests on the works, plumbing or associated things, including making excavations; and
    - (ii) taking photographs of or making other recordings of the works, plumbing or associated things, and surrounds; and
    - (iii) taking or removing for analysis or examination samples of any thing relating to the works, plumbing or associated things;
  - (g) seize a thing that is relevant to an offence under this Part if that is necessary for one of the following purposes —
    - (i) to prevent it from being concealed, disturbed or lost;
    - (ii) to preserve its evidentiary value;
    - (iii) to do a forensic examination on it;
    - (iv) to prevent it from being used in the commission of another offence.

- (2) A compliance officer is, in that capacity, to be taken to be a public officer for the purposes of the *Criminal Investigation Act 2006* Parts 6 and 13, as if —
  - (a) the compliance officer were appointed to an office prescribed under section 9(1) of that Act; and
  - (b) Parts 6 and 13 of that Act were prescribed in respect of that office.
- (3) For the purposes of subsection (2), the *Criminal Investigation Act 2006* Part 13 applies as if the power to seize a thing under subsection (1)(g) were a power to seize the thing under the *Criminal Investigation Act 2006*.

**117. Offences**

- (1) A person who does not comply with a direction given by a compliance officer under this Division commits an offence.
- (2) A person who obstructs a compliance officer, or a person assisting the officer, in the exercise of a power under this Part commits an offence.
- (3) A person who, having been directed under this Division by a compliance officer to answer a question or to give the officer a document, gives the officer information that the person knows is false or misleading in a material particular commits an offence.
- (4) It is a defence to a charge under this section to prove that the person charged had a reasonable excuse.  
Penalty: a fine of \$7 500.

**Subdivision 2 — Compliance notices**

**118. Application of Subdivision**

Sections 120, 121 and 122 apply to all compliance notices given under this Part or under the regulations.

**119. Compliance notices**

- (1) If a licensee or the Minister is satisfied that a person is failing or has failed to comply with section 82(6) or (7), 88(1), 89(1) or (2), 91(1), 93(1), 94(1), 99(1), 111(1) or 112(1), the licensee or the Minister may give a notice (a *compliance notice*) to —
  - (a) the person; or
  - (b) if the licensee or the Minister cannot be satisfied as to the identity of the person who is failing or has failed to comply — the owner of the land on, or in respect of which, the failure to comply is taking or has taken place.
- (2) The licensee or Minister must specify in a compliance notice —
  - (a) the provision that the licensee or the Minister is satisfied is not being or has not been complied with; and
  - (b) where relevant, the provisions of an approval, direction or other authority that the licensee or the Minister is satisfied are not being, or have not been, complied with; and
  - (c) what the person given the notice must do to remedy the failure to comply; and
  - (d) the time within which the person given the notice must comply with the notice.
- (3) Without limiting subsection (2)(c), the things that a person may be required to do include —
  - (a) in the case of a contravention of section 82(6) or (7) — demolish, remove or alter the building; or
  - (b) in the case of a contravention of section 94(1), 99(1) or 111(1) — disconnect the connection.

**120. Giving compliance notices**

- (1) If land is unoccupied and it is not practicable to give a compliance notice to the owner of the land, the compliance notice may be given by fixing a copy of the notice to a

conspicuous part of the land and displaying it there for at least the time within which the notice must be complied with.

- (2) If a compliance notice is given to a person other than the owner of the land on, or in respect of which, the failure to comply is taking or has taken place, the licensee or Minister must, if practicable, give a copy of it to the owner of the land.
- (3) A compliance notice may be amended or revoked.

**121. Licensee or Minister may remedy failure to comply**

- (1) If a compliance notice is not complied with, the licensee or Minister may remedy the failure that gave rise to the giving of the compliance notice, to the extent necessary to prevent the waste of water, a nuisance, a health hazard or interference with, or adverse effects on, the water service works of the licensee.
- (2) Persons authorised by the licensee or the CEO for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of subsection (1).
- (3) If, in the course of remedying the failure that gave rise to the giving of the compliance notice, the licensee places water service works on land, or provides water service works that are a part of land, and those works would be works of the owner of the land if the owner had placed or provided those works, those works cease to be works of the licensee once they are completed.
- (4) Without limiting subsections (1) and (2), the things that may be done include the following —
  - (a) in the case of a failure to comply with section 82(6) or (7) — demolishing, removing or altering the building;
  - (b) in the case of a failure to comply with section 90(1) or (2) — demolishing, removing or altering buildings, plant, walls, fences or other obstructions, replacing excavated material and removing fill;

- (c) in the case of a failure to comply with section 92(1) or (2) or a compliance notice given under section 105 — repairing, replacing or disconnecting fittings, fixtures or pipes;
  - (d) in the case of a failure to comply with section 92(1) or (2), 94(1), 99(1) or 111(1) or a compliance notice given under section 104 or 105 — disconnecting the connection of a wastewater inlet, water supply or drainage asset.
- (5) A licensee's capacity to disconnect the connection of a wastewater inlet or a water supply under this section is subject to —
- (a) any restrictions on that capacity in the terms and conditions of the licence authorising the provision of the service; and
  - (b) in the case of a disconnection of a water supply — section 95(3); and
  - (c) in the case of a disconnection of a wastewater inlet — not preventing any other person from discharging wastewater into the sewerage works of the licensee through the property sewer connection that connects the inlet to those works, other than via the inlet.
- (6) The licensee or the Minister (whichever incurred the costs) may recover the reasonable costs and expenses of remedying the failure that gave rise to the giving of the compliance notice from —
- (a) a person that the licensee or the Minister is satisfied is responsible for the failure; or
  - (b) in the case of a compliance notice given to the owner of land under section 119(1)(b) — the owner,
- and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.

- (7) The court cannot issue an order unless satisfied that —
- (a) the person was responsible for the failure; or
  - (b) in the case of a compliance notice given to the owner of land under section 119(1)(b) — it was not unjust for the owner to have been given the compliance notice.

**122. Review of decisions relating to giving compliance notices**

- (1) A person listed in the Table as a person affected by a decision listed in the Table may apply to the State Administrative Tribunal for a review of the decision.

**Table**

<b>Decision of licensee or Minister</b>	<b>Persons affected</b>
to give a compliance notice	<ul style="list-style-type: none"><li>• the person given the notice</li><li>• the owner of the land</li><li>• an occupier of the land</li></ul>
as to what the person given a compliance notice must do to comply with it	<ul style="list-style-type: none"><li>• the person given the notice</li><li>• the owner of the land</li><li>• an occupier of the land</li></ul>
as to the time within which the person given a compliance notice must comply with it	<ul style="list-style-type: none"><li>• the person given the notice</li><li>• the owner of the land</li><li>• an occupier of the land</li></ul>



<b>Decision of licensee or Minister</b>	<b>Persons affected</b>
to take an action under section 121(1)	<ul style="list-style-type: none"> <li>• the person given the notice</li> <li>• the owner of the land</li> <li>• an occupier of the land</li> <li>• in the case of a decision to disconnect the connection of a wastewater inlet, water supply or drainage asset — a person who uses the inlet, supply or asset</li> </ul>
to lodge a memorial under section 128 in relation to the costs and expenses referred to in section 121(6)	<ul style="list-style-type: none"> <li>• a person adversely affected by the decision</li> </ul>

- (2) If a person makes an application under subsection (1), the licensee or the Minister cannot take, or continue to take, an action under section 121(1) until the application has been finally dealt with by the State Administrative Tribunal, unless —
- (a) the State Administrative Tribunal orders otherwise; or
  - (b) the licensee or the Minister is satisfied that it is necessary to take action to prevent a discharge of wastewater into the water service works of the licensee that is likely to interfere with or adversely affect those works; or
  - (c) the licensee or the Minister is satisfied that a dangerous situation exists and that urgent action is needed in order to assess, reduce, eliminate or avert a risk to persons, property or the environment.

**Division 9 — Fees and charges for water services**

**123. Licensees may impose fees and charges for water services**

- (1) A licensee may impose and collect, in relation to the provision of a water service authorised by a licence —
  - (a) charges for the provision of the service; and
  - (b) charges for things done, or goods and services provided, as part of or incidental to the provision of the service; and
  - (c) fees, provided for in the regulations, for things done under this Act.
- (2) The charges are to be determined by the licensee in accordance with prudent commercial principles and may allow for the making of a profit and the depreciation of assets.
- (3) Subsection (2) does not prevent the conditions on a licensee's licence, a code of practice or the regulations from limiting what charges a licensee may impose, how the charges are to be determined, the amounts of the charges or the circumstances in which charges may be imposed.

**124. Regulations may provide for water service charges**

- (1) The regulations may deal with the imposition, determination, payment and recovery of water service charges.
- (2) The regulations may —
  - (a) provide for statutory water service charges by reference to one or more of the following —
    - (i) the quantity of water or wastewater concerned;
    - (ii) the quality of water or wastewater concerned;
    - (iii) the gross rental value, unimproved value or area of the land in respect of which a water service is provided;
    - (iv) the type of land in respect of which a water service is provided;

- (v) the type of water service provided;
- (vi) any other basis;
- (b) provide that specified statutory water service charges apply in respect of land on the basis that the relevant water service is provided in respect of the land;
- (c) without limiting paragraph (b), provide that specified statutory water service charges apply in respect of land despite relevant water service works not being connected to an inlet or outlet on land if —
  - (i) it is practicable for an inlet or outlet on the land to be connected to those works (which includes that the works run within, at or near a boundary of the land); or
  - (ii) the land benefits from the service; or
  - (iii) the land contributes to the need for the service;
- (d) provide that a person who is not otherwise liable to pay a specified statutory water service charge is liable to pay the charge, to the extent specified, if the extent to which the person has used the service is measured or can be determined;
- (e) deal with the valuation of land and the effect of changes in the valuation of land on statutory water service charges;
- (f) despite statutory water service charges already having been prescribed for a period for the provision of a water service, provide for additional statutory water service charges for the period for the provision of the water service to the extent necessary to take account of unforeseen circumstances that have arisen;
- (g) for statutory water service charges that relate to a period —
  - (i) provide for adjustments to be made to the charges, or for rebates or refunds to be given, if a

change in circumstances relevant to determining the charges occurs during the period; and

- (ii) provide for pro rata charges;
- (h) provide for apportionment of statutory water service charges —
  - (i) between multiple owners of land; or
  - (ii) on a change in ownership of the land or other relevant change in circumstances,and, for that purpose, provide that an owner who is not otherwise liable to pay the charges is liable to pay those charges, to the extent specified;
- (i) provide for additional charges to be payable —
  - (i) according to the method or manner of payment of statutory water service charges; or
  - (ii) for special payment arrangements for statutory water service charges;
- (j) provide for payments of statutory water service charges to be made in advance (other than for quality/quantity charges) and for deposits to be made in advance of the provision of the service;
- (k) provide for the payment and recovery of statutory water service charges to be subject to agreements between the licensee and a person liable to the charges, including agreements that are binding on an owner of land under section 76;
- (l) regulate amounts licensees charge for —
  - (i) the provision of water services; or
  - (ii) things done, or goods and services provided, as part of or incidental to the provision of a water service,

to the extent to which those amounts are not otherwise regulated under this Act;

- (m) provide for objections to assessments of water service charges, including by limiting the grounds for objections;
  - (n) provide for penalties for late payment or underpayment of charges, interest to be payable on overdue charges and for the recovery of overdue amounts;
  - (o) provide for land to be exempt from water service charges;
  - (p) provide for a licensee to require a person to give the licensee information necessary for determining what statutory water service charges apply for the provision of a water service by the licensee to the person;
  - (q) require that licensees keep specified records as the basis upon which all or specified water service charges are to be determined, and deal with all matters relating to —
    - (i) the maintenance and amendment of the records, including the amendment of the records up to 5 years after the end of the period to which they relate; and
    - (ii) the determination or redetermination of charges on the basis of the records or of changes to the records; and
    - (iii) the evidential value of the records and information taken from them.
- (3) The regulations may provide for statutory water service charges for a period that commences before the regulations come into operation, but not so as to affect the amount of any charge that has already become payable before the regulations come into operation.
- (4) Regulations made for the purposes of this section have effect subject to the *Strata Titles Act 1985* Part IV Division 5.

**125. Supplying groups of dwellings**

- (1) If a licensee provides a water supply, sewerage or drainage service to 2 or more dwellings on land by a single property connection, the licensee may apportion the fees and charges for the service (including quality/quantity charges) between the owners or occupiers of the dwellings, and the owners or occupiers become liable to those fees and charges accordingly.
- (2) A licensee cannot apportion fees and charges under subsection (1) to the extent inconsistent with any agreement about the provision of the water supply, sewerage or drainage service to one or more of the dwellings, or the *Strata Titles Act 1985* section 66.

**126. Water service charges payable despite change in ownership of land or liability to prosecution**

- (1) Despite any change in the ownership of land, statutory water service charges and alternative water service charges (referred to in section 75(2)(c)), including interest on overdue amounts, remain payable and are recoverable from the owner of the land for the time being while the charges remain unpaid.
- (2) If a person —
  - (a) takes water from the water service works of a licensee or a conduit connected to those works, other than in accordance with this Act; or
  - (b) discharges water or wastewater into the water service works of a licensee or a conduit connected to those works, other than in accordance with this Act,

the liability to pay water service charges in respect of the water or wastewater taken or discharged (including interest on overdue amounts) is not affected by the fact that the taking or discharge was unlawful, and the payment of the charges does not affect the liability of a person to be prosecuted as a result of the taking or discharge.

**127. Order for payment of water service charges**

- (1) If —
- (a) a person —
    - (i) takes water from the water service works of a licensee or a conduit connected to those works, other than in accordance with this Act; or
    - (ii) discharges water or wastewater into the water service works of a licensee or a conduit connected to those works, other than in accordance with this Act;
- and
- (b) the person is not otherwise liable to water service charges for the water or wastewater taken or discharged,
- the licensee may recover from the person an amount not exceeding the amount that the person would have had to pay (including interest on overdue amounts) if water service charges had applied to the taking of the water or the discharge of the water or wastewater by the person.
- (2) The licensee may seek an order for the recovery of the amount referred to in subsection (1) in a court of competent jurisdiction.
- (3) For the purposes of subsection (2), the court may determine which water service charges are most likely to have applied to the taking of the water or the discharge of the water or wastewater by the person if the person had taken the water or discharged the water or wastewater in accordance with this Act.
- (4) The court may grant the order whether or not the person has been convicted of an offence relating to the taking of the water or the discharge of the water or wastewater.

### **Division 10 — General provisions**

#### **128. Prohibition on dealings in land**

(1) In this section —

*alternative water service charge* means an alternative water service charge referred to in section 75(2)(c) and includes interest on overdue amounts;

*infrastructure contribution* has the meaning given in section 85 and includes interest on overdue amounts;

*Registrar* means the Registrar of Titles or Registrar of Deeds and Transfers, according to which of them is responsible for registering a memorial referred to in this section;

*statutory water service charge* includes interest on overdue amounts.

(2) If the payment of —

- (a) a statutory water service charge, or an alternative water service charge, that applies in respect of land is in arrears; or
- (b) an infrastructure contribution has been deferred under regulations made for the purposes of section 83(10) or is in arrears; or
- (c) the reasonable cost and expenses of a licensee referred to in section 84(5) or 121(6) is in arrears,

the licensee may lodge a memorial to that effect with the Registrar who, on payment of the prescribed fee (if any), may register the memorial and make appropriate endorsements on the title and records relating to that land.

(3) Until the memorial is withdrawn, the Registrar must not register, without the written consent of the licensee, an instrument affecting the land that is lodged for registration after the memorial is lodged.

(4) If the charge or contribution has been paid, the licensee must lodge a withdrawal of memorial with the Registrar who, on



payment of the prescribed fee (if any), must record the withdrawal of memorial on the title and records relating to the land.

- (5) A memorial or withdrawal of memorial must be in a form approved by the Registrar.

**129. Reading meters etc. and routine inspection and maintenance**

- (1) In this section —

*occupier*, of a place, includes any person who appears to have the control or management of the place;

*routine inspection* includes obtaining information for completing or confirming the charging records of the licensee (that is, the records that form the basis upon which the licensee determines water service charges);

*routine maintenance* includes cleaning and minor repairs and replacements but does not include construction, material alteration, significant excavation or any other activity that would have an adverse effect on the place.

- (2) A person authorised by a licensee for the purposes of this subsection may enter, at all reasonable times, a place without consent, notice or warrant for the purpose of reading a meter connected to the water service works of the licensee.
- (3) A person authorised by a licensee for the purposes of this subsection may —
- (a) enter, at all reasonable times, a place without consent, notice or warrant for the purpose of routine inspection or maintenance of water service works of the licensee; and
  - (b) enter a dwelling, in accordance with Part 8, for the purpose of routine inspection or maintenance of water service works of the licensee.
- (4) The powers of entry in subsections (2) and (3)(a) extend to the area associated with a dwelling but not to the dwelling itself.

- (5) If routine inspection or maintenance is likely to cause disruption to the occupants of a place, at least 48 hours' notice of the proposed entry is required to be given to the occupier of the place, unless the occupier agrees otherwise.
- (6) Upon entry to a place for the purpose of routine inspection or maintenance of water service works, an authorised person may, to the extent necessary —
- (a) inspect or examine the place; and
  - (b) inspect the water service works and plumbing at the place and things associated with the works or plumbing, including by —
    - (i) carrying out or supervising reasonable tests on the works, plumbing or associated things; and
    - (ii) taking photographs of or making other recordings of the works, plumbing, associated things and surrounds; and
    - (iii) taking or removing for analysis or examination samples of any thing relating to the works, plumbing or associated things;
- and
- (c) carry out routine maintenance on the water service works at the place.

**130. Dangerous situations**

- (1) If a person authorised by a licensee for the purposes of this subsection is satisfied that —
- (a) a dangerous situation exists; and
  - (b) the dangerous situation relates to the water service works of the licensee; and
  - (c) urgent action is needed in order to assess, reduce, eliminate or avert a risk to persons, property or the environment,

the authorised person may take that action or authorise other persons to take that action on his or her behalf.

- (2) An authorised person (including a person authorised by such a person under subsection (1)) may —
- (a) enter a place, without consent, notice or warrant; and
  - (b) prevent persons other than those permitted by the authorised person from entering the area where the dangerous situation exists; and
  - (c) direct a person to leave or not to enter the area where the dangerous situation exists; and
  - (d) take any other action that is necessary and incidental.
- (3) A person who does not comply with a direction given under subsection (2)(c) commits an offence.  
Penalty: a fine of \$7 500.
- (4) Even though notice of entry is not required under subsection (2)(a), notice of an entry must be given if practicable to the occupier (or the owner in the absence of an occupier) of any place affected.
- (5) In subsection (4) —  
**occupier**, of a place, includes any person who appears to have the control or management of the place.
- (6) In any proceedings relating to an entry made or an action taken under this section, the entry or action or both are to be presumed to have been necessary and reasonable unless there is evidence that the entry or action was not made or taken in good faith.

**131. Approval of licensee subject to conditions**

- (1) An approval of a licensee referred to in this Part may be subject to conditions.
- (2) An approval is of no effect while a condition is not being complied with.

## **Part 6 — Powers in relation to water service works**

### **Division 1 — Preliminary**

#### **132. Terms used**

(1) In this Part —

*exempt works* means the water service works described in section 135;

*general works* means the water service works described in section 134;

*major works* means the water service works described in section 133;

*proposal* means a proposal by a licensee to provide major works or general works.

(2) A reference in —

(a) this Part to the licensee, in relation to water service works, is a reference to the licensee that provides, or is to provide, those works; and

(b) section 135, 138, 139 or 141 to a licensee includes a reference to the Minister or the Authority as the case requires.

#### **133. Major works**

Major works are the provision of —

(a) dams;

(b) reservoirs;

(c) water storage tanks that when constructed will have a capacity greater than 10 ML;

(d) groundwater schemes consisting of bores that when constructed will have a nominal capacity greater than 10 ML per day;

- (e) irrigation schemes (but not including any irrigation channel within an existing scheme);
- (f) wastewater treatment plants that when constructed will have a nominal capacity greater than 2 ML per day;
- (g) water treatment plants that when constructed will have a nominal capacity greater than 10 ML per day;
- (h) any other kind of water service works prescribed for the purposes of this section.

**134. General works**

General works are the provision of—

- (a) trunk and distribution water mains, pumping stations, pumping mains, control and metering stations, main and branch sewers, main drains, irrigation channels and compensating basins;
- (b) water and sewerage reticulation mains, other than reticulation mains on land provided at the request of the owner of the land;
- (c) groundwater schemes consisting of bores that when constructed will have a nominal capacity of, or less than, 10 ML per day;
- (d) wastewater treatment plants that when constructed will have a nominal capacity of, or less than, 2 ML per day;
- (e) water treatment plants that when constructed will have a nominal capacity of, or less than, 10 ML per day;
- (f) chemical dosing plants;
- (g) water storage tanks that when constructed will have a capacity of, or less than, 10 ML;
- (h) any irrigation channel within an existing irrigation scheme;
- (i) any other kind of water service works prescribed for the purposes of this section.

**135. Exempt works**

- (1) Exempt works are —
  - (a) the provision or undertaking of works that are not major or general works;
  - (b) the maintenance or repair of existing water service works;
  - (c) the reinstatement or replacement of existing works;
  - (d) the making of alterations, extensions or additions to major or general works that will not materially alter the nature, scope or capacity of the works;
  - (e) the making of alterations, extensions or additions to general works on —
    - (i) land owned by the licensee; or
    - (ii) a reserve under the *Land Administration Act 1997*, the care, control and management of which is placed with the licensee under that Act;
  - (f) the provision of any other kind of water service works prescribed for the purposes of this section.
- (2) Water service works may be prescribed for the purposes of subsection (1)(f) despite those works forming part of, or being related to, major works or general works, in which case, they cease to be major works or general works.

**Division 2 — Provision of water service works**

**136. Powers in respect of water service works**

- (1) A licensee may provide —
  - (a) water service works that in the opinion of the licensee are necessary for the provision of the water services authorised by a licence held by the licensee (which includes the water service works specified in the licence for the purposes of section 11(3)); and

- (b) water service works that are requested by, and provided wholly or partly at the expense of, another person if those works are of a kind that are related to the provision of the water services authorised by a licence held by the licensee.
- (2) A licensee may do all things necessary or expedient for —
  - (a) the provision of water service works of that kind; and
  - (b) the maintenance, operation, alteration, replacement, discontinuance or removal of water service works of the licensee.

**137. Exemption of water service works from certain planning laws**

- (1) A licensee, in providing water service works of the kind described in section 136(1), is to be treated as if it were an agent of the Crown for the purposes of the *Planning and Development Act 2005* section 6 and, for those purposes, those works are to be regarded as being public works.
- (2) If there is a dispute between a licensee and a local government with respect to a planning matter relating to water service works of the kind described in section 136(1), the parties to the dispute are to refer it to the Minister.
- (3) The Minister may, after consulting the Planning Minister, make a decision on the dispute and that decision is final and binding on the parties.

**138. Surveys and testing work**

- (1) A licensee may carry out a survey of land and may —
  - (a) set up on the land survey equipment, including survey pegs, marks or poles, and may alter, remove, inspect or repair that equipment; and
  - (b) dig or bore into the land to determine the nature of the soil; and

- (c) set out on the land the lines of any proposed water service works; and
  - (d) do all things necessary —
    - (i) for carrying out the survey; or
    - (ii) for any alteration, removal or inspection relating to the survey.
- (2) A licensee may do all things necessary —
- (a) for carrying out testing work on land and in respect of waters; and
  - (b) for altering, removing, inspecting, reinstating and repairing testing work.
- (3) In subsection (2) —
- testing work** —
- (a) means work that, in the opinion of the licensee, is necessary for general investigation for water supply purposes; and
  - (b) includes, without limiting paragraph (a), carrying out tests, gaugings and borings, constructing gauging weirs, sinking shafts, digging trenches and other incidental work, and things used for or in connection with that work.

**139. Ancillary works powers**

- (1) The works powers conferred by this Act include power to carry out general or specific investigations, tests, borings, explorations and other surface or underground studies —
- (a) to ascertain the existence, nature and extent of water resources as defined in the *Rights in Water and Irrigation Act 1914* section 2(1); and
  - (b) to formulate schemes for the provision, extension or alteration of water services; and
  - (c) to determine the feasibility and requirements of water service works or proposed water service works.



- (2) For the purposes of exercising a works power conferred by this Act, a licensee may —
- (a) drain, pump, excavate or otherwise remove any water, soil or obstruction; or
  - (b) remove or use any earth, rock, trees and other things taken from any land; or
  - (c) take water, soil or other samples; or
  - (d) acquire, provide or remove buildings, pumps and other structures or plant; or
  - (e) open, or alter the position of, any pipe, sewer, drain, channel, tunnel, wire or other fitting or apparatus in, on or under any place; or
  - (f) remove, or make a gate in, or erect, any fence.
- (3) Before exercising a power referred to in subsection (2)(f), a licensee must take all reasonable steps to notify the owner and the occupier of the land on which, or on the boundary of which, the fence is, or is to be, erected.
- (4) This section applies in relation to a works power unless the contrary intention appears or the context otherwise requires.

**140. Entry for provision of works etc.**

- (1) A person authorised by a licensee for the purposes of this Part may —
- (a) enter a place, in accordance with Part 8, for the purposes of this Division; or
  - (b) enter a place, without notice, for the purpose of carrying out work that the owner or occupier of the place has requested the licensee carry out and that necessarily requires the entry to be made.
- (2) However, if the work (under or for the purposes of the provision of this Act in respect of which entry is to be made) is likely to cause disruption to the occupants of the place, at least 48 hours’

notice of the proposed entry is required to be given to the occupier of the place, unless the occupier agrees otherwise.

**141. Special provisions applicable to road works**

- (1) A person authorised by a licensee for the purposes of this Part may enter a road and there exercise a works power of the licensee without consent, notice or warrant unless the exercise of the power —
- (a) involves opening or breaking up the surface of the road; or
  - (b) would cause a major obstruction of the road or disruption of traffic,

in which case, the licensee must give at least 48 hours' notice to the public authority having the control or management of the road.

- (2) The regulations may make provision in relation to water service works in a road, including in relation to —
- (a) the rights and liabilities as between a public authority having the control and management of a road and a licensee when the road's level, width or surface is to be altered or when the position or alignment of water service works in the road is to be altered; and
  - (b) licensees undertaking water service works in roads.

**Division 3 — Major works, requirements for public notification and Ministerial authorisation**

**142. Prerequisites to provision of major works**

It is a prerequisite to the provision by a licensee of water service works, that are major works, that —

- (a) the licensee has complied with sections 143 and 144 in relation to the proposed major works; and
- (b) the Minister has authorised the provision of the major works under this Division; and

- (c) the licensee has given any notice required by section 148.

**143. Licensee to prepare plans and publish and give notice of major works**

- (1) Before a licensee submits a proposal for the provision of the major works to the Minister under section 146, the licensee must comply with subsections (2) and (3).
- (2) The licensee must —
  - (a) prepare plans of the area to be affected by the proposed major works and details of those works; and
  - (b) publish the plans and details on the licensee’s website, and amend them if the proposal is amended; and
  - (c) in addition to the requirement in paragraph (b) — publish and make available for inspection the plans and details in accordance with the regulations.
- (3) The licensee must, within 5 days of publishing the plans and details on the licensee’s website, give a notice setting out the matters referred to in subsection (4) to —
  - (a) the owner and the occupier of any land —
    - (i) that is to be entered for the purposes of the proposed major works; or
    - (ii) that is, or the use of which is, in the opinion of the licensee, likely to be adversely affected by those works;and
  - (b) any local government —
    - (i) in the district of which the proposed major works are to be provided; or
    - (ii) that, in the opinion of the licensee, has a material interest in the proposal or the services to be provided by those works;and

- (c) the Western Australian Planning Commission, if the area to be affected by the proposed works is in, or partly in, an area covered by a region planning scheme (as defined in the *Planning and Development Act 2005* section 4(1)).
- (4) For the purposes of subsection (3), the matters are —
  - (a) a description of those works; and
  - (b) the area where those works are to be located; and
  - (c) the purposes for which those works are required; and
  - (d) the times when, and the places at which, the plans and details may be inspected; and
  - (e) information as to how, where and by when an objection to or submission in relation to the proposal may be lodged.

**144. Objections and submissions**

- (1) Any person may, in writing, object to or make a submission in relation to the provision of the proposed major works.
- (2) An objection or submission must be lodged with the licensee —
  - (a) within 35 days after the day on which the licensee published the plans and details relating to the proposed major works on the licensee’s website under section 143(2); or
  - (b) if a direction is given under section 147(1)(a) — within 30 days after the day on which the direction has been complied with.
- (3) The licensee must have regard to an objection or submission lodged within the relevant period.

**145. Licensee may amend proposal**

- (1) The licensee may amend a proposal by making alterations to the plans or details referred to in section 143(2).

- (2) If the licensee makes alterations to those plans or details, the licensee must give written notice of the alterations to any person that, in the opinion of the licensee, is likely to be adversely affected by those alterations.

**146. Submission of proposal to Minister**

- (1) A licensee may seek the Minister's authorisation of the provision of major works if —
- (a) no objection or submission has been lodged within the relevant period under section 144(2); or
  - (b) for each objection or submission lodged within the relevant period, one of the following applies —
    - (i) the objection or submission is not material to the proposal;
    - (ii) the objection or submission has been dealt with by amending the proposal;
    - (iii) it is not in the public interest to deal with the objection or submission by amending the proposal;
    - (iv) the objection or submission has been withdrawn.
- (2) The licensee may seek the Minister's authorisation by —
- (a) submitting the proposal to the Minister; and
  - (b) providing the Minister with any plans, description, specifications, estimates or other information that the Minister requires in relation to the proposal; and
  - (c) giving a report to the Minister setting out —
    - (i) if the proposal has been amended — the manner in which it has been amended and the persons given notice of the relevant alterations under section 145(2); and
    - (ii) any objection or submission that has not been dealt with by that proposal and has not been withdrawn; and

- (iii) any recommendations relating to the proposal that the licensee considers appropriate to make; and
- (iv) any comments on the proposal from the Western Australian Planning Commission.

**147. Powers of Minister in respect of proposal**

- (1) The Minister may —
  - (a) direct that further notices in relation to the proposed major works be given under section 143(3); or
  - (b) authorise the provision of the proposed major works; or
  - (c) decline to authorise the provision of the proposed major works.
- (2) The Minister must have regard to a proposal and report submitted to the Minister, including any recommendations in the report.
- (3) A licensee must comply with a direction given by the Minister under subsection (1).
- (4) If the Minister issues a direction under subsection (1)(a), sections 144 and 145 apply, and the licensee must resubmit the proposal in accordance with section 146 before the Minister can consider the proposal under this section.

**148. Certain objectors and submitters to be notified of authorisation**

If —

- (a) the Minister authorises the provision of proposed major works; and
- (b) the authorisation was given without any amendment having been made to deal, wholly or in part, with a person's objection or submission,

the licensee must give notice in writing of the authorisation to that person.

**149. Certain alterations, extensions and additions to major works**

- (1) This section applies if a licensee proposes to carry out an alteration, extension or addition to any major works that will materially alter the nature, scope or capacity of the works and the works are on —
  - (a) land owned by the licensee; or
  - (b) a reserve under the *Land Administration Act 1997*, the care, control and management of which is placed with the licensee under that Act.
- (2) The licensee may seek the Minister's authorisation of the proposal to carry out the alteration, extension or addition by notifying the Minister, and providing the Minister with any plans, description, specifications, estimates or other information that the Minister requires in relation to the proposal.
- (3) The Minister may —
  - (a) authorise the proposed alteration, extension or addition under this section, in which case, section 142(a) and (c) do not apply in relation to the alteration, extension or addition; or
  - (b) decline to authorise the proposed alteration, extension or addition under this section.
- (4) In considering a proposal under this section, the Minister may have regard to any earlier proposal relating to the same or similar works and any earlier objections or submissions received by the licensee relating to that proposal.

**Division 4 — General works, requirements for public notification and, in certain cases, for Ministerial authorisation**

**150. Prerequisites to provision of general works**

- (1) It is a prerequisite to the provision by a licensee of water service works, that are general works, that —
  - (a) the licensee has complied with sections 151 and 152 in relation to the proposed general works; and

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- (b) either —
  - (i) there is no relevant objection or submission to be taken into account; or
  - (ii) the Minister has authorised the provision of the general works under this Division.
- (2) For the purposes of subsection (1)(b)(i) there is no relevant objection or submission to be taken into account if the licensee is satisfied that —
  - (a) no objection or submission has been lodged by the date specified in the notice given under section 151(2); or
  - (b) for each objection or submission lodged by that date, one of the following applies —
    - (i) the objection or submission is not material to the proposal;
    - (ii) the objection or submission has been dealt with by amending the proposal under section 153(1);
    - (iii) the objection or submission has been withdrawn.

**151. Licensee to prepare plans and give notice of general works**

- (1) A licensee proposing to provide general works must —
  - (a) prepare plans and details of the proposed general works; and
  - (b) publish and make available for inspection the plans and details in accordance with the regulations.
- (2) The licensee must give a notice setting out the matters referred to in subsection (3) to —
  - (a) the owner and the occupier of any land —
    - (i) that is to be entered for the purposes of the proposed general works; or
    - (ii) that is, or the use of which is, in the opinion of the licensee, likely to be adversely affected by those works;and



- (b) any local government —
    - (i) in the district of which the proposed general works are to be located; or
    - (ii) that, in the opinion of the licensee, has a material interest in the proposal or the services to be provided by those works;and
  - (c) the Western Australian Planning Commission, if the area to be affected by the proposed works is in, or partly in, an area covered by a region planning scheme (as defined in the *Planning and Development Act 2005* section 4(1)).
- (3) For the purposes of subsection (2), the matters are —
- (a) a description of those works; and
  - (b) the area where those works are to be located; and
  - (c) the purposes for which those works are required; and
  - (d) the times when, and the places at which, the plans and details may be inspected; and
  - (e) information as to how and where an objection to or submission in relation to the proposal may be lodged; and
  - (f) the date by which any objections to or submissions in relation to the proposal are to be received by the licensee, which must be at least 21 days after the day on which the notice is given, unless all persons given a notice agree otherwise.

**152. Objections and submissions**

- (1) Any person or local government required to be given a notice under section 151(2) may, in writing, object to or make a submission in relation to the provision of the proposed general works.

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- (2) An objection or submission must be lodged with the licensee by the date specified in the notice.
- (3) The licensee must have regard to an objection or submission lodged by that date.

**153. Licensee may amend proposal**

- (1) The licensee may amend the proposal by making alterations to the plans or details referred to in section 151.
- (2) An alteration may not be made under subsection (1) that results in the works ceasing to be general works and becoming major works.
- (3) If the licensee makes alterations to those plans or details, the licensee must give written notice of the alterations to any person that, in the opinion of the licensee, is likely to be adversely affected by those alterations.

**154. Submission of proposal to Minister**

A licensee may seek the Minister's authorisation of the provision of general works by —

- (a) submitting the proposal to the Minister; and
- (b) providing the Minister with any plans, description, specifications, estimates or other information that the Minister requires in relation to the proposal; and
- (c) giving the Minister a report setting out —
  - (i) if the proposal has been amended under section 153(1) — the manner in which it has been amended; and
  - (ii) any objection or submission that has not been dealt with by the proposal and has not been withdrawn; and
  - (iii) any recommendations relating to the proposal that the licensee considers appropriate to make; and

- (iv) any comments on the proposal from the Western Australian Planning Commission.

**155. Powers of Minister in respect of proposal**

- (1) The Minister may —
- (a) authorise the provision of the proposed general works;  
or
  - (b) decline to authorise the provision of the proposed general works.
- (2) The Minister must have regard to a proposal and report submitted to the Minister under section 154, including any recommendation in the report.

**Division 5 — Exempt works**

**156. No prerequisites under this Part**

A licensee may provide exempt works without any requirement for giving or publishing notice of those works or obtaining the authorisation of the Minister.

**Division 6 — Deviation and modification**

**157. Term used: water service works**

In this Division —

*water service works* means major works and general works.

**158. Plans may indicate possible deviation from line of works**

- (1) If, in the opinion of the licensee, a deviation from the proposed line of water service works may be necessary, the licensee may indicate in the plans prepared for the purposes of section 143 or 151 (the *works plans*) a limit within which the line of those works as provided may deviate to accommodate changes in location not generally inconsistent with the proposal.

- (2) Section 142 or 150 (whichever is relevant) is to be taken to have been complied with in relation to the provision of water service works as varied by such a deviation.

**159. General power to deviate by up to 20 m**

- (1) This section applies whether or not there is indicated on the works plans a limit within which the line of water service works may deviate.
- (2) The licensee, in providing those works, may deviate not more than 20 m from the location indicated on the works plans —
- (a) if the change involved in the deviation is of a nature not generally inconsistent with the proposal; and
  - (b) for proposed water service works to be provided on land that is not unallocated Crown land or a road — if the deviation is agreed to by the owner and the occupier of the affected land.
- (3) Section 142 or 150 (whichever is relevant) is to be taken to have been complied with in relation to the provision of water service works as varied by such a deviation.
- (4) The capacity to deviate under this section is independent of the capacity to deviate under section 158, and is not cumulative on that capacity.
- (5) In subsection (2)(b) —
- unallocated Crown land* has the meaning given in the *Land Administration Act 1997* section 3(1).

**160. Modification by agreement with owner and occupier**

- (1) The licensee, when providing water service works, may —
- (a) deviate from any plan or description of, or proposal for, those works; and

- (b) make any modification to the plan, description or proposal that is required by the circumstances,

if the deviation or modification is agreed to in writing by the owner and the occupier of the affected land.

- (2) Section 142 or 150 (whichever is relevant) is to be taken to have been complied with in relation to the provision of water service works as varied by such a deviation or modification.

**161. When Minister may authorise deviation or modification**

- (1) This section applies in relation to a deviation from or a modification to proposed water service works if the Minister is satisfied that the deviation or modification —
  - (a) is not generally inconsistent with the proposal; and
  - (b) is necessary in the public interest; and
  - (c) does not adversely affect the interests of any person who is the owner or the occupier of land where the water service works are to be located.
- (2) If this section applies in relation to a deviation or modification, the Minister may authorise the provision of the works as varied by the deviation or modification.
- (3) If the Minister authorises the provision of the works as varied by the deviation or modification, section 142 or 150 (whichever is relevant) is to be taken to have been complied with in relation to the provision of water service works as varied by the deviation or modification.

**Division 7 — Property in water service works**

**162. Property in water service works and things placed on land**

- (1) Any water service works or other similar things that a licensee places on land in the exercise or purported exercise of a works power —
  - (a) are to be taken to have been lawfully so placed; and

- (b) even if the licensee is not the owner of the land, remain the property of the licensee unless the licensee has agreed otherwise,

and in particular, but subject to paragraph (b), they —

- (c) do not become a part of the land, regardless of whether they are of the nature of a fixture; and
  - (d) are capable of being transferred separately from the land; and
  - (e) may be maintained, repaired, altered, demolished or destroyed by, or with the authority of, the licensee; and
  - (f) may be removed by, or with the authority of, the licensee.
- (2) If water service works on land are transferred to a licensee, those works are to be taken, for the purposes of this Act, to have been placed on the land by the licensee in the exercise of a works power.

**163. Powers of licensee in respect of water service works that are part of land**

- (1) Water service works that have been provided by a licensee in the exercise or purported exercise of a works power and that are a part of land —
  - (a) are to be taken to have been lawfully so provided; and
  - (b) may be maintained, repaired, altered, demolished or destroyed by, or with the authority of, the licensee unless the licensee has agreed otherwise.
- (2) The rights in relation to water service works referred to in subsection (1)(b) may be transferred to another licensee.
- (3) If rights in relation to water service works referred to in subsection (1)(b) are transferred to a licensee, those works are to be taken, for the purposes of this Act, to have been provided by the licensee in the exercise of a works power.

## **Part 7 — Powers in relation to interests in land**

### **164. Terms used**

In this Part —

*interest*, in land, has the meaning given in the *Land Administration Act 1997* section 151(1);

*Land Administration Minister* means Minister as defined in the *Land Administration Act 1997* section 3(1);

*public work* has the meaning given in the *Public Works Act 1902* section 2.

### **165. Power of public authority to grant certain interests**

(1) In this section —

*relevant interest* means a lease, easement, licence or other authority necessary or expedient to enable a licensee to provide, operate or maintain water service works.

(2) A public authority may grant to a licensee, on the terms and conditions agreed between them, a relevant interest in respect of land held by the public authority in fee simple.

### **166. Taking of interest in land for purposes of licensee**

(1) For the purpose of enabling a licensee —

- (a) to provide a water service authorised by a licence held by the licensee; or
- (b) to provide, operate or maintain water service works specified in the licence,

an interest in land may be taken under the *Land Administration Act 1997* Part 9 as if for a public work and, for the purposes of Parts 9 and 10 of that Act, the licensee is to be taken to be the acquiring authority.

(2) The power conferred by subsection (1) can only be exercised on the recommendation of the Minister administering this Act.

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- (3) Before exercising the powers in the *Land Administration Act 1997* section 175(2), the Minister referred to in that provision must consult with the licensee.
- (4) If, in the opinion of the Minister administering this Act, an interest in land is appropriate to a licensee's needs in respect of —
- (a) major works or general works (within the meaning given in section 132(1)); or
  - (b) any other works of a kind prescribed for the purposes of this subsection,
- the Minister must advise the licensee of that opinion.
- (5) On being advised under subsection (4), the licensee is required to acquire that interest —
- (a) by agreement; or
  - (b) if that is not practicable — by initiating the taking of the interest under the *Land Administration Act 1997* Part 9, which may be taken as if for a public work and, for the purposes of Parts 9 and 10 of that Act, the licensee is to be taken to be the acquiring authority.
- (6) Any costs and expenses incurred in the taking of an interest under this section —
- (a) are to be paid by the licensee; and
  - (b) to the extent to which the State has incurred those expenses — may be recovered by the State from the licensee in a court of competent jurisdiction.

**167. Vesting of interest**

Despite anything in the *Land Administration Act 1997* Part 9, on the taking of an interest in land in accordance with section 166, the interest vests in the licensee for the purpose of enabling the licensee to provide the water services, or provide, operate or maintain the water service works, for which the interest was taken.



**168. Easements in gross**

An easement may be taken in accordance with section 166 without there being a dominant tenement, and there may be made appurtenant or annexed to any such easement another easement or the benefit of a restriction as to the user of the land.

**169. Subdivision of land — planning approval**

A licensee may, under the *Planning and Development Act 2005* section 135, submit to the Western Australian Planning Commission plans of a subdivision of land acquired or to be acquired by the licensee despite the licensee not being the owner of the land, and approval under that Act may be given for the subdivision.

**170. Sale of land**

A licensee must not sell an interest in land if the purchaser would hold a parcel of land that did not comply with minimum lot size and zoning requirements under the *Planning and Development Act 2005*, unless the Planning Minister permits the licensee to do so.

## **Part 8 — Entry for performance of functions**

### **Division 1 — Preliminary**

#### **171. Terms used**

(1) In this Part —

***authorised person*** means —

- (a) a person authorised by the Authority for the purposes of a provision of Part 2; or
- (b) an inspector; or
- (c) a person authorised by a licensee or the CEO for the purposes of a provision of Part 5 (including a person authorised by such a person under section 130(1)); or
- (d) a compliance officer; or
- (e) a person authorised by a licensee for the purposes of Part 6; or
- (f) an individual acting on behalf of an authorised person (who may or may not be an individual) referred to in paragraph (a), (c) or (e);

***authorising authority*** means —

- (a) in relation to a person acting in his or her capacity as a person authorised by the Authority for the purposes of a provision of Part 2 — the Authority; and
- (b) in relation to a person acting in his or her capacity as a person authorised by a licensee or the CEO for the purposes of a provision of Part 5 — the licensee or the CEO (whichever is relevant); and
- (c) in relation to a person acting in his or her capacity as a person authorised by a licensee for the purposes of Part 6 — the licensee;

***designating authority*** means —

- (a) in relation to a person acting in his or her capacity as an inspector designated by the Authority or the CEO under

section 210(1) or (2) — the Authority or the CEO  
(whichever is relevant); and

- (b) in relation to a person acting in his or her capacity as a compliance officer designated by a licensee or the CEO under section 210(3) or (4) — the licensee or the CEO (whichever is relevant);

*informed consent* has the meaning given by subsection (2);

*occupier*, of a place, includes any person who appears to have the control or management of the place.

- (2) For the purposes of this Part, a person gives informed consent to entry to a place if the person consents after being informed by the authorised person —
  - (a) of the power of entry that the authorised person wants to exercise in respect of the place; and
  - (b) of the reason why the authorised person wants to exercise the power; and
  - (c) that the person can refuse to consent to the authorised person entering the place.

**172. Application of this Part**

This Part applies to and in relation to an authorised person and any entry to a place that the person may make under a provision of this Act, except to the extent to which this Part is inconsistent with the provision under which the entry is to be made.

**Division 2 — Entry for performance of functions**

**173. Entry with consent or under notice or warrant**

- (1) If an authorised person may enter a place, including a dwelling, under a provision of this Act, the person may do so —
  - (a) with the informed consent of the owner or the occupier of the place; or

- (b) if at least 48 hours' notice of the proposed entry has been given to the owner or occupier of the place, unless entry is opposed; or
  - (c) under a warrant issued under section 188.
- (2) If an inspector or a compliance officer may enter a place under a provision of this Act, the person may do so without consent, notice or warrant if the person reasonably suspects that an offence under this Act is being, or has been, committed at the place.
- (3) The place referred to in subsection (2) includes an area associated with a dwelling, but not the dwelling itself.
- (4) In relation to entry to a place for the purposes of doing works the following apply —
  - (a) if the proposed works are likely to cause disruption to the occupants of the place — 48 hours' notice of the proposed entry is required to be given to the occupier of the place, unless the occupier agrees otherwise;
  - (b) if the proposed works are likely to adversely affect the place — 48 hours' notice of the proposed entry is required to be given to the owner of the place, unless the owner agrees otherwise.

**174. Notice of entry**

- (1) Notice of a proposed entry must be in writing and must set out the purpose of the entry, including (if applicable) any work proposed to be carried out.
- (2) Successive entries for the purpose specified in a notice of proposed entry are taken to be entries covered by the notice.
- (3) Even though, in a particular instance, an authorised person may enter a place under this Act without having to give notice of proposed entry, the authorised person must, when practicable and when it will not compromise the reason for entry, give notice of proposed entry to the occupier of the place.

- (4) If a place is unoccupied and it is not practicable to give notice of proposed entry to the owner of the place, notice of proposed entry may be given by fixing a copy of the notice to a conspicuous part of the place and displaying it for at least 48 hours before the power of entry is exercised.
- (5) If an authorised person enters a place under this Act, other than under section 129(2) —
  - (a) without the consent of the occupier of the place; and
  - (b) without notice of intended entry having been given or without an entry warrant,

the authorised person must, as soon as is practicable, give notice of the entry, its purposes and any further entry relating to the first entry, to the occupier (or the owner if there is no occupier) of the place.

- (6) For the purposes of subsection (5), an authorised person may, if it is not practicable to give notice to the occupier or owner of the place, leave a copy of the notice at the place for the occupier or owner.

**175. Rights of occupier of dwelling**

- (1) This section applies to and in relation to entry to a dwelling, including where entry is to be made or is made under section 177.
- (2) If the occupier is present when it is proposed to enter the dwelling, before the entry is made —
  - (a) each authorised person concerned must identify himself or herself to the occupier; and
  - (b) each inspector or compliance officer must produce his or her certificate of authority; and
  - (c) an authorised person must inform the occupier that it is intended to enter the dwelling; and
  - (d) if the dwelling is to be entered under a warrant issued under section 188 — an authorised person must give a copy of the warrant to the occupier; and

- (e) if the dwelling is to be entered otherwise than under a warrant — an authorised person must —
  - (i) inform the occupier of the reason, and the authority, for the entry; and
  - (ii) give the occupier an opportunity to give informed consent to the dwelling being entered.
- (3) A provision of subsection (2) does not apply in respect of an authorised person if the person reasonably suspects that to comply with the provision would —
  - (a) endanger any person; or
  - (b) jeopardise the purpose of the proposed entry or the effectiveness of the exercise of any power in relation to the entry.
- (4) If subsection (2) is not complied with before a dwelling is entered, then as soon as practicable after the dwelling is entered, that subsection must be complied with to the extent to which it is relevant.
- (5) If a dwelling that is entered by one or more authorised persons is unoccupied, an authorised person must leave the following in a prominent position in the dwelling before leaving the dwelling —
  - (a) a notice stating —
    - (i) the authorised person's full name and official title and the name of the authorising or designating authority; and
    - (ii) that the dwelling has been entered;
  - (b) if the entry was under a warrant — a copy of the warrant completed in accordance with section 190(5);
  - (c) if the entry was otherwise than under a warrant — a notice stating the reason, and the authority, for the entry.
- (6) The copy of a warrant given under subsection (2) or (4) or left under subsection (5) must omit the name of the judicial officer who issued it.

**176. When authorised person must leave etc.**

- (1) If an authorised person has entered a place with or without consent, any owner or occupier of the place may withdraw or refuse consent to enter, and in that case the authorised person must leave the premises as soon as is practicable after being notified of the withdrawal or refusal.

Penalty: a fine of \$1 000.

- (2) Subsection (1) does not apply in relation to entry under a warrant.

- (3) An inspector or compliance officer performing or proposing to perform a function under this Act must produce his or her certificate of authority if asked to do so and the inspector or compliance officer must not perform, or continue to perform, the function if he or she is unable to do so.

Penalty: a fine of \$1 000.

- (4) If an authorised person (other than an inspector or compliance officer) enters or proposes to enter a place and takes or proposes to take an action (for the purposes of a provision of this Act in respect of which entry is or is to be made), an owner or occupier of the place may request the authorised person to produce evidence that the person is —

- (a) authorised by an authorising authority for the purposes of the provision; or
- (b) acting on behalf of an authorised person who is authorised by an authorising authority for the purposes of the provision,

and the person must leave the place if he or she is unable to do so unless the owner or occupier agrees otherwise.

Penalty: a fine of \$1 000.

**177. Power to enter includes power to enter other places**

- (1) If a place is one of 2 or more premises in one building, then, in order to enter the place, an authorised person may enter, but not

exercise any power in respect of, any part of the building that the occupiers of the premises use exclusively but in common with each other.

- (2) If subsection (1) does not apply and an authorised person reasonably suspects that in order to enter a place it is necessary to enter another place, the person may enter, but not exercise any power in respect of, the other place.

**178. Entry with vehicles and equipment**

An authorised person exercising a power of entry may do so with such vehicles, machinery and equipment as the person considers to be necessary or expedient —

- (a) for the purpose of the entry; and  
(b) for any purpose for which the entry is made.

**179. Assistance to exercise powers**

- (1) An authorised person intending to exercise a power of entry and take an action (for the purposes of the provision of this Act in respect of which entry is to be made) may authorise as many other persons as are reasonably necessary in the circumstances to assist in the exercise of the power and the taking of the action.
- (2) A person who is assisting an authorised person to exercise such a power and take any action must, in doing so, comply with any reasonable directions of the authorised person.

Penalty: a fine of \$1 000.

**180. Use of force**

- (1) When exercising a power of entry and taking an action (for the purposes of the provision of this Act in respect of which entry is made), an authorised person may use any force against any thing that it is reasonably necessary to use in the circumstances to make the entry or take the action.



- (2) If under subsection (1) an authorised person uses force, the force may be such as causes damage to the property of another person.

**181. Actions of authorised persons and others**

An authorised person exercising a power of entry and taking an action (for the purposes of the provision of this Act in respect of which entry is made) or a person who is assisting such an authorised person must, so far as is practicable, comply with any reasonable request of the owner or occupier concerned intended to limit interference with the lawful activities of the owner or occupier.

Penalty: a fine of \$1 000.

**182. Injunction in support of power of entry**

If —

- (a) an authorised person intends to or has attempted to exercise a power of entry or take an action (for the purposes of the provision of this Act in respect of which entry is made); and
- (b) the circumstances are such that the authorised person is prevented from exercising the power of entry or taking the action; and
- (c) a warrant to enter under Division 3 is not appropriate in the circumstances,

the authorising or designating authority of the authorised person may apply to the Supreme Court or the District Court for an injunction —

- (d) restraining a person from doing a thing that would prevent the authorised person from exercising the power of entry or taking the action; or
- (e) enjoining a person to do a thing that would enable the authorised person to exercise the power of entry or take the action.

**183. Complaints about exercise of powers**

- (1) If an authorised person, or a person who is assisting such an authorised person, fails to comply with a requirement of section 129, 130 or 140 or of this Part in relation to an entry or the taking of an action, the owner or occupier of the place in respect of which the entry was made or the action taken may make a complaint about that to —
  - (a) in the case where the person derived their authority from a licensee — the water services ombudsman under Part 4; or
  - (b) in any other case — the Commissioner under the *Parliamentary Commissioner Act 1971*.
- (2) Subsection (1) does not limit any other remedy the owner or occupier may have.

**Division 3 — Warrants to enter**

**184. Term used: remote communication**

In this Division —

***remote communication*** means any way of communicating at a distance including by telephone, fax, email or radio.

**185. Application for warrant**

- (1) For the purposes of section 173(1)(c), an authorised person may, in accordance with this Division, apply to a justice for a warrant authorising the person to enter a place.
- (2) An authorised person may apply for a warrant authorising the person to enter a place even if the person has power to enter the place under section 129, 130 or 140.
- (3) In this section, an authorised person does not include a person referred to in paragraph (f) of the definition of ***authorised person*** in section 171(1).

**186. Contents of application**

An application for a warrant to enter must —

- (a) state the applicant's full name and official title; and
- (b) set out the grounds for seeking the warrant; and
- (c) describe the place that is to be entered; and
- (d) state whether entry is opposed or has been refused or prevented or cannot otherwise be obtained; and
- (e) state, to the best of the applicant's knowledge, whether an application under this Division for a warrant to enter the place has been made to any other justice within the previous 72 hours and, if so, whether a warrant was issued or not; and
- (f) include any other information that is prescribed.

**187. How application to be made**

- (1) An application for a warrant to enter must be made in person before a justice unless —
  - (a) the warrant is needed urgently; and
  - (b) the applicant reasonably suspects that a justice is not available within a reasonable distance of the applicant,in which case —
  - (c) it may be made to the justice by remote communication; and
  - (d) the justice must not grant it unless satisfied about the matters in paragraphs (a) and (b).
- (2) The application must be made in writing unless —
  - (a) the application is made by remote communication; and
  - (b) it is not practicable to send the justice written material,in which case —
  - (c) it may be made orally; and

- (d) the justice must make a written record of the application and any information given in support of it.
- (3) The application must be made on oath unless —
  - (a) the application is made by remote communication; and
  - (b) it is not practicable for the justice to administer an oath to the applicant,in which case —
  - (c) it may be made in an unsworn form; and
  - (d) if the justice issues a warrant, the applicant must as soon as is practicable send the justice an affidavit verifying the application and any information given in support of it.
- (4) If a justice issues a warrant on an application made by remote communication, the justice must, if practicable, send a copy of the original warrant to the applicant by remote communication, but otherwise —
  - (a) the justice must send the applicant by remote communication any information that must be set out in the warrant; and
  - (b) the applicant must complete a form of warrant with the information received and give the justice a copy of the form as soon as is practicable after doing so; and
  - (c) the justice must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the applicant.
- (5) The copy of the original warrant sent or the form of the warrant completed (whichever is relevant) under subsection (4) has the same force and effect as the original warrant.
- (6) If an applicant contravenes subsection (3)(d) or (4)(b), any evidence obtained under the warrant is not admissible in proceedings in a court.

- (7) A reference in this section to making an application includes a reference to giving information in support of the application.

**188. Issue of warrant**

- (1) On an application for a warrant to enter, the justice may issue the warrant if satisfied that entry is required for the purposes of the provision of this Act in respect of which entry is sought but —
- (a) entry has been refused or opposed or prevented; or
  - (b) entry cannot be obtained; or
  - (c) notice of proposed entry cannot be given to the occupier (or the owner if there is no occupier) of the place without frustrating the purpose of the entry, without unnecessary difficulty or without unreasonably delaying entry.
- (2) The justice is to cause a note to be made (on the warrant or otherwise) of the matters of fact on which the justice has relied to justify the issue of the warrant.
- (3) If a justice refuses to issue a warrant, the justice must record on the application the fact of, the date and time of, and the reasons for, the refusal.

**189. Contents of warrant**

A warrant must be in the prescribed form and contain the following information —

- (a) the applicant's full name and official title;
- (b) the place that may be entered under the warrant;
- (c) the function or functions that may be performed on entry under the warrant;
- (d) the period, not exceeding 12 months, during which it may be executed;
- (e) the name of the justice who issued it;
- (f) the date and time when it was issued.

**190. Execution of warrant**

- (1) In this section, and in this Part where the context requires —  
**authorised person** includes a person authorised under subsection (3).
- (2) A warrant issued under section 188 permits an authorised person during the period specified under section 189(d) to enter, and make successive entries into, the place described in the warrant for the purpose of performing any function that is specified in the warrant.
- (3) A warrant may be executed by the authorised person to whom it was issued or by another person authorised for that purpose by the authorising or designating authority of the authorised person.
- (4) Unless required to give a copy of the warrant, an authorised person executing a warrant must produce the warrant for inspection by the occupier of the place concerned —
  - (a) on entry (if practicable); and
  - (b) if requested to do so.
- (5) On completing the execution of a warrant the authorised person in charge of executing it must record the following matters on it —
  - (a) the person's full name and official title;
  - (b) the date and time when the warrant was executed;
  - (c) any other matter that is prescribed.

## **Part 9 — Legal proceedings**

### **Division 1 — Legal proceedings**

#### **191. Prosecutions — who may commence**

- (1) Proceedings for an offence under this Act may be commenced by the CEO or a person authorised to do so by the CEO.
- (2) Subsection (1) limits the *Criminal Procedure Act 2004* section 20 except in relation to proceedings for an offence committed by a person authorised or designated under this Act by the CEO.

#### **192. Time for bringing prosecutions**

- (1) Proceedings for an offence under this Act may be commenced within 5 years after the date on which the offence is alleged to have been committed.
- (2) Despite subsection (1), if a prosecution notice alleging an offence under this Act specifies the day on which evidence of the alleged offence first came to the attention of a person authorised to institute the proceedings under section 191 —
  - (a) the prosecution may be commenced within 5 years after that day; and
  - (b) the prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.
- (3) For the purposes of subsection (2), the day specified in the prosecution notice as the day on which evidence first came to the attention of a person authorised to institute proceedings is, in the absence of evidence to the contrary, to be presumed to be that day.

#### **193. Continuing offences — daily penalties**

- (1) In addition to a penalty specified for an offence under this Act, if a daily penalty is specified for the offence a person convicted

of the offence is liable to a daily penalty, not exceeding the amount specified, for each day or part of a day during which the offence continued —

- (a) after a compliance notice, or other written notice of the alleged offence, has been given to the offender; or
  - (b) in the case of an offence of not complying with a compliance notice — after the time within which the person given the notice must comply with it (which includes that time as extended as a consequence of any review or appeal).
- (2) For the purposes of the *Interpretation Act 1984* section 71, in relation to an offence committed under this Act, the penalty for each separate and further offence committed by a person is —
- (a) for an individual, a fine of \$1 000; and
  - (b) for a body corporate, a fine of \$5 000.

**194. Injunctions to ensure compliance with this Act**

- (1) In this section —
- offence provision*** means a provision of this Act, contravention of which may constitute an offence under this Act.
- (2) The CEO or the Authority may apply to the Supreme Court or the District Court for an injunction restraining a person —
- (a) from doing something that would, or would be likely to, contravene an offence provision; or
  - (b) from aiding, abetting, counselling or procuring the contravention of an offence provision; or
  - (c) from conspiring with others to contravene or bring about the contravention of an offence provision; or
  - (d) from attempting to do anything referred to in paragraph (a), (b) or (c).



- (3) The CEO or the Authority may apply to the Supreme Court or the District Court to enjoin a person to do something where the person's omission to do it contravenes or would contravene an offence provision.
- (4) A licensee may apply for an injunction under subsection (2) or (3) if —
  - (a) the injunction is sought in relation to a contravention of an offence provision of Part 5 and in relation to the water service works of the licensee or a water service provided by the licensee; and
  - (b) the injunction is not sought against another licensee.
- (5) The court may grant an injunction whether or not the person has previously contravened the provision, or would, if the injunction is not granted, be likely to contravene or to continue to contravene the provision.
- (6) An interim injunction may be granted before final determination of an application under subsection (2).
- (7) The court is not to require, as a condition of granting an interim injunction, that the CEO or the Authority give an undertaking as to damages or costs.
- (8) Proceedings against a person for an offence under this Act are not affected by —
  - (a) the making of an application for an injunction in relation to the commission of the offence; or
  - (b) the grant of or refusal to grant an injunction; or
  - (c) the rescission, variation or expiry of an injunction.

**195. Court's power to make ancillary orders on conviction**

- (1) If a court convicts a person of an offence under this Act, the court may do any or all of the following —
  - (a) order the offender to notify persons specified in the order, or persons in a class of persons specified in the

- order, of the commission of the offence and the conviction of the offender;
- (b) if the offender is a person or public authority required under a written law to make an annual report — order the offender to include in the report notice of the commission of the offence and the conviction of the offender;
  - (c) order the offender to take measures specified in the order, within the time specified in the order —
    - (i) to prevent, control, abate or mitigate damage caused by the commission of the offence; or
    - (ii) to prevent any continuation or repetition of the offence;
  - (d) order the offender to pay a licensee, a public authority or another person the costs reasonably incurred by the licensee, authority or person in —
    - (i) preventing, controlling, abating or mitigating any waste of water, nuisance, health hazard or harm to the environment caused by the commission of the offence; or
    - (ii) making good any environmental damage caused by the commission of the offence; or
    - (iii) preventing or mitigating loss of or damage to property by reason of the commission of the offence;
  - (e) order the offender to pay a licensee, a public authority or another person an amount for compensation for the loss of or damage to property by reason of the commission of the offence;
  - (f) make any other order the court thinks appropriate in the circumstances.
- (2) The court may make an order under this section at the time of sentencing the offender or on application at a later time.

- (3) An order under this section —
  - (a) is in addition to any other penalty that may be imposed on the person convicted; and
  - (b) may be in addition to any compensation order made under the *Sentencing Act 1995* Part 16; and
  - (c) does not affect any civil remedy a person may have against the person convicted.
- (4) However, subsection (3) does not mean that a court cannot take into account any amount of compensation a person has already received in relation to the costs, damage or loss incurred.

### **Division 2 — Liability of certain persons**

#### **196. Liability of officers of body corporate**

- (1) In this section —

*officer*, of a body corporate, has the same meaning as officer of a corporation has in the *Corporations Act 2001* (Commonwealth) section 9 but does not include an employee of the body corporate unless the employee is concerned in the management of the body corporate.
- (2) If a body corporate is charged with an offence under this Act, each person who was an officer of the body corporate at the time of the alleged offence may also be charged with the offence.
- (3) If a body corporate and an officer of the body corporate are charged as permitted by subsection (2) and the body corporate is found guilty of the offence, the officer is to be taken to have also committed the offence, subject to the defence in subsection (6).
- (4) If a body corporate commits an offence under this Act, then, although the body corporate is not charged with the offence, each person who was an officer of the body corporate at the

time the offence was committed may be charged with the offence.

- (5) If an officer is charged as permitted by subsection (4) and it is proved that the body corporate committed the offence, the officer is to be taken to have also committed the offence, subject to the defence in subsection (6).
- (6) If an officer is charged under this section with an offence it is a defence to prove that —
  - (a) the offence was committed without the officer's consent or connivance; and
  - (b) the officer took all the measures to prevent the commission of the offence that the officer could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.

**197. Liability of principal for acts of agent**

- (1) If a person (the *agent*) acting, otherwise than as an employee, for or on behalf of another person (the *principal*) is charged with an offence under this Act, the principal may also be charged with the offence.
- (2) If an agent and a principal are charged as permitted by subsection (1) and the agent is found guilty of the offence, the principal is to be taken to have also committed the offence, subject to the defence in subsection (5).
- (3) If a person (the *agent*) acting, otherwise than as an employee, for or on behalf of another person (the *principal*) commits an offence under this Act, then, although the agent is not charged with the offence, the principal may be charged with the offence.
- (4) If a principal is charged as permitted by subsection (3) and it is proved that the agent committed the offence, the principal is to be taken to have committed the offence, subject to the defence in subsection (5).

- (5) If a principal is charged under this section with an offence it is a defence to prove that —
- (a) the offence was committed without the principal's consent or connivance; and
  - (b) the principal took all the measures to prevent the commission of the offence that the principal could reasonably be expected to have taken having regard to all the circumstances.

**198. Liability of employer for offences of employee**

- (1) If a person (the *employee*) employed by another person (the *employer*) is charged as an employee with an offence under this Act, the employer may also be charged with the offence whether or not the employee acted without the employer's authority or contrary to the employer's orders or instructions.
- (2) If an employee and an employer are charged as permitted by subsection (1) and the employee is convicted of the offence, the employer is to be taken to have also committed the offence, subject to the defence in subsection (5).
- (3) If a person (the *employee*) employed by another person (the *employer*) commits an offence under this Act as an employee, then, although the employee is not charged with the offence, the employer may be charged with the offence whether or not the employee acted without the employer's authority or contrary to the employer's orders or instructions.
- (4) If an employer is charged as permitted by subsection (3) and it is proved that the employee committed the offence, the employer is to be taken to have committed the offence, subject to the defence in subsection (5).
- (5) If an employer is charged under this section with an offence it is a defence to prove that —
- (a) the offence was committed without the employer's consent or connivance; and

- (b) the employer took all the measures to prevent the commission of the offence that the employer could reasonably be expected to have taken having regard to all the circumstances.

**199. Conduct on behalf of bodies corporate and principals**

- (1) In this section —  
*engaging in conduct* includes failing or refusing to engage in conduct;  
*state of mind* of a person includes —
  - (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to and in relation to proceedings for an offence against this Act.
- (3) If it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show —
  - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) that the director, employee or agent had the relevant state of mind.
- (4) Conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken to have been engaged in also by the body corporate, unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

- (5) If it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show —
- (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) that the employee or agent had the relevant state of mind.
- (6) Conduct engaged in on behalf of a person other than a body corporate (the *principal*) by an employee or agent of the person within the scope of his or her actual or apparent authority is to be taken to have been engaged in also by the principal, unless the principal establishes that the principal took reasonable precautions and exercised due diligence to avoid the conduct.

### **Division 3 — Evidentiary provisions**

#### **200. Evidence of certain things relating to contraventions**

- (1) This section applies to civil and criminal proceedings under this Act against a person in relation to a contravention of a provision of this Act, contravention of which may constitute an offence under this Act.
- (2) If, in the proceedings, it is proved that, at the time that the contravention is alleged to have occurred, an act or thing was done on land that constitutes, or is part of, the contravention, it is to be presumed, in the absence of evidence to the contrary, that the occupier of the land at the time, or a person acting on the occupier's behalf, did the act or thing.
- (3) If, in the proceedings, it is proved that a particular state of affairs existed at a particular time on land in relation to which the contravention is alleged to have occurred, it is to be presumed, in the absence of evidence to the contrary, that the occupier of the land at the time, or a person acting on the occupier's behalf, brought about that state of affairs.

**201. Evidence of authorisation and enforcement matters**

- (1) In this section —  
*authorisation* includes a licence, designation or approval under this Act.
- (2) In proceedings for an offence under this Act, an allegation in the prosecution notice of any of the following matters is, in the absence of evidence to the contrary, to be taken to have been proved —
- (a) that the prosecutor is authorised to commence the prosecution;
  - (b) that at a specified time a specified person was an inspector or a compliance officer or a person assisting an inspector or compliance officer under section 179;
  - (c) that at a specified time a specified person was or was not authorised to do a specified thing under an authorisation;
  - (d) that at a specified time a specified person was or was not the holder of an authorisation;
  - (e) that at a specified time a specified person was or was not the subject of an authorisation or exemption;
  - (f) that at a specified time an authorisation or exemption was cancelled, suspended or for any other reason of no effect;
  - (g) that at a specified time an authorisation or exemption was subject to any specified condition;
  - (h) that at a specified time a person held a specified office or had a specified status;
  - (i) that at a specified time a prescribed fee had not been paid.
- (3) In proceedings for an offence under this Act a notice, authorisation or exemption under this Act, including the conditions applying to any such thing, may be proved by tendering a copy of it certified by the CEO to be a true copy of the original.



**202. Evidence of scientific matters**

- (1) In this section —
- analysis* means an examination, assay or test relevant to determining the quality or composition of water or any other substance or thing;
- approved analyst* means an analyst, or an analyst in a class of analyst, approved by the CEO to carry out analysis for the purposes of this Act or specified provisions of this Act.
- (2) In any proceedings for an offence under this Act, a report by an approved analyst is, in the absence of evidence to the contrary, proof of —
- (a) the results of the analysis; and
  - (b) the matters stated in the report; and
  - (c) the fact that the approved method, if any, for carrying out the analysis has been followed by the analyst in making the analysis.
- (3) In any proceedings for an offence under this Act, a report by an approved analyst that contains a statement that the sample was taken for the purposes of this Act is, in the absence of evidence to the contrary, proof of the fact that —
- (a) the sample was taken in the approved manner, if any; and
  - (b) the sample was taken from the material identified in the report as the material sampled.
- (4) Where in any proceedings brought under this Act proof is given of the contents of any sample analysed for the purposes of this Act and that the sample was taken in accordance with the regulations, the sample is to be taken to be representative of the material sampled.

**203. Documentary and signed evidence**

- (1) In this section —

**authorisation** includes a licence, designation or approval under this Act.

- (2) In proceedings for an offence under this Act —
- (a) a copy of a code, standard or other document that has been adopted or applied under this Act, purporting to be signed by the CEO certifying that the copy is a true copy as at a specified date or during a specified period, is evidence of the contents of the code, standard or other document as at that date or during that period; and
  - (b) a copy of an authorisation, order, direction, notice, map or plan under this Act, purporting to be signed by the CEO certifying that the copy is a true copy, is evidence of that authorisation, order, direction, notice, map or plan; and
  - (c) a document purporting to be signed by the CEO certifying that at a specified time or during a specified period —
    - (i) there was or was not in force an authorisation, order, direction or notice in relation to a specified person or specified land; or
    - (ii) that an authorisation, order, direction or notice was or was not subject to specified conditions,is evidence of the matters contained in the document; and
  - (d) a document purporting to be signed by the CEO certifying —
    - (i) as to the receipt or otherwise of any notice, application or payment; or
    - (ii) that any amount of fees, charges or other money is payable to the State under this Act by a specified person and has not been paid at the date of the certificate,is evidence of the matters contained in the document.

- (3) In the absence of evidence to the contrary, it is to be presumed that a document purporting to be signed by the Minister, the CEO or an inspector or compliance officer was signed by a person who at the time was the Minister, the CEO or an inspector or compliance officer (whichever is relevant).
- (4) In the absence of evidence to the contrary, it is to be presumed that a document purporting to be signed by a delegate of the Minister or the CEO was signed by a person who at the time was such a delegate and was authorised to sign it.

**204. Evidence of ownership or occupancy**

- (1) In proceedings under this Act, in addition to other methods of proof available —
  - (a) evidence that the person proceeded against is subject to water service charges as the owner of land; or
  - (b) evidence by the certificate of —
    - (i) the Registrar of Titles or an Assistant Registrar of Titles, that a person's name appears in the Register under the *Transfer of Land Act 1893* as proprietor of any land; or
    - (ii) the Registrar of Deeds and Transfers or an assistant registrar of deeds and transfers, that a person appears from a memorial of registration of a deed, conveyance or other instrument to be the owner of land; or
    - (iii) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Mining Act 1978*, that a person is registered in that department as the owner or occupier of land,

is, in the absence of evidence to the contrary, proof that the person is the owner or occupier (whichever is relevant) of the land.

- (2) All courts and all persons having by law, or by consent of parties, authority to hear, receive and examine evidence, must, for the purposes of this Act, take judicial notice of the signature attached to a certificate referred to in subsection (1)(b).

**205. Evidence of documents and service**

- (1) In proceedings under this Act in which a document given to a party has to be proved —
- (a) the document may be proved by the production of a copy of the original document, certified by a person authorised to give the original as a true copy of the original; and
  - (b) the giving of the document may be proved by the certification of the person authorised to give the original document that the original was given on the date specified in the certificate.
- (2) The validity of any document or of its due service is not affected by any error, misdescription or irregularity which does not mislead or which is not likely to mislead.

**206. Provisions are in addition to *Evidence Act 1906***

This Division is in addition to, and does not affect the operation of, the *Evidence Act 1906*.

## **Part 10 — Administration**

### **Division 1 — The Economic Regulation Authority**

#### **207. Functions of Authority**

The functions of the Authority under this Act are —

- (a) to administer the licensing scheme provided for in Part 2; and
- (b) to monitor and report to the Minister on the operation of that licensing scheme and on compliance by licensees with their licences; and
- (c) to monitor and report to the Minister on —
  - (i) the performance of the water services industry and of the participants in that industry; and
  - (ii) the performance of providers of water services, and, for the purposes of such monitoring, to consult with interested groups and persons; and
- (d) to inform the Minister about any material failure by a licensee to meet operational standards or other requirements of its licence or licences; and
- (e) to inform the Minister about any material failure by a water service provider to comply with section 5; and
- (f) to monitor compliance with decisions and directions of the water services ombudsman under an approved scheme; and
- (g) the other functions conferred on the Authority under this Act.

#### **208. Authority's capacity to authorise or designate persons**

- (1) In this section —

***public sector employee*** means an employee as defined in the *Public Sector Management Act 1994* section 3(1);

*staff member* has the meaning given in the *Economic Regulation Authority Act 2003* section 3.

- (2) When authorising a person, or designating a person as an inspector, for the purposes of a provision of Part 2, the Authority may authorise or designate a person who need not be a staff member of the Authority or a public sector employee.

## **Division 2 — Inspectors and compliance officers**

### **209. Terms used**

In this Division —

*contractor*, in relation to a licensee, means a person with whom the licensee has entered into a contract for services that relate to the provision of water services by the licensee;

*designating authority* means the Authority, the CEO or a licensee.

### **210. Designation of inspectors and compliance officers**

- (1) The Authority may, in writing, designate an individual as an inspector for the purposes of one or more specified provisions of Part 2 to the extent to which the provisions relate to functions of the Authority.
- (2) The CEO may, in writing, designate an employee of the Department as an inspector for the purposes of one or more specified provisions of Part 2 to the extent to which the provisions relate to functions of the Minister.
- (3) A licensee may, in writing, designate an employee of the licensee, a contractor (who is an individual) or an employee of a contractor as a compliance officer for the purposes of one or more specified provisions of Part 5.
- (4) The CEO may, in writing, designate an individual as a compliance officer for the purposes of one or more specified provisions of Part 5.

- (5) If a designating authority designates a person as an inspector or a compliance officer, the designating authority must give the person a certificate of authority that sets out or includes —
- (a) a recent passport-size photograph of the person; and
  - (b) the person's name; and
  - (c) a statement to the effect that the person is an inspector or compliance officer for the purposes of this Act; and
  - (d) the provisions under which the inspector or compliance officer may exercise powers; and
  - (e) any limitations or restrictions that apply to the exercise of the powers of the inspector or compliance officer; and
  - (f) the expiry date of the certificate.
- (6) In any proceedings under this Act, a certificate of authority purporting to be issued by a designating authority under this section is evidence of the designation of the person as an inspector or compliance officer unless evidence is given to the contrary.

**211. Limitations on scope of authority of inspectors and compliance officers**

- (1) A compliance officer designated by a licensee cannot, in that capacity, exercise a power under Part 5 unless the purpose for which the power is to be exercised relates to —
- (a) the water service works of the licensee or the provision of water services by the licensee; or
  - (b) the contravention, or possible contravention, of a provision of Part 5 in its application in relation to the water service works of the licensee or the provision of water services by the licensee.
- (2) The regulations may also limit or otherwise deal with the scope of the functions of an inspector or compliance officer.

### **Division 3 — General matters**

#### **212. Delegation by Minister**

- (1) The Minister may delegate to —
  - (a) the CEO; or
  - (b) another officer of the Department; or
  - (c) another Minister; or
  - (d) the employing authority of another department or organisation; or
  - (e) an officer of another department or an employee of an organisation; or
  - (f) any other person or body (whether incorporated or not),any power or duty of the Minister under another provision of this Act.
- (2) The delegation must be in writing signed by the Minister.
- (3) A person to whom a power or duty is delegated under subsection (1)(b), (e) or (f) cannot delegate that power or duty.
- (4) A delegation under subsection (1)(c) may expressly authorise the other Minister to further delegate the power or duty but only to an officer or employee of a department or organisation administered by the other Minister.
- (5) A delegation under subsection (1)(a) or (d) may expressly authorise the delegate to further delegate the power or duty but only to an officer or employee of the department or organisation.
- (6) A person exercising or performing a power or duty that has been delegated to the person under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.





- (6) A person or body exercising or performing a power or duty that has been delegated to the person or body under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of —
- (a) the CEO to perform a function through an officer or agent; or
  - (b) an employing authority to whom a power or duty is delegated under this section from exercising that power or performing that duty through an officer or agent.
- (8) In this section, **employing authority** and **organisation** each have the meaning given to them in the *Public Sector Management Act 1994* section 3(1).

**214. Information sharing**

- (1) In this section —
- authorised officer** means an officer designated under subsection (2);
- guidelines** means guidelines issued under subsection (7);
- information sharing agency** means any of the following —
- (a) the Department;
  - (b) the department principally assisting in the administration of the *Conservation and Land Management Act 1984*;
  - (c) the department principally assisting in the administration of the *Environmental Protection Act 1986*;
  - (d) the department principally assisting in the administration of the *Government Agreements Act 1979*;
  - (e) the department principally assisting in the administration of the *Health (Miscellaneous Provisions) Act 1911*;
  - (f) the department principally assisting in the administration of the *Mining Act 1978*;

- (g) the department principally assisting in the administration of the *Waterways Conservation Act 1976*;
- (h) a water corporation;
- (i) the Authority;
- (j) a public authority, or an agency or instrumentality of the Commonwealth, prescribed for the purposes of this definition;

***officer***, in relation to an information sharing agency, means an officer or employee in or of the agency;

***privileged*** means privileged because of legal professional privilege or public interest privilege;

***relevant information*** means information relevant to the administration or enforcement of this Act, other than privileged information.

- (2) The CEO may designate an officer of the Department as an authorised officer for the purposes of this section.
- (3) An officer of the Department may, in accordance with the guidelines, disclose relevant information to —
  - (a) another officer of the Department; or
  - (b) an officer of another information sharing agency.
- (4) An authorised officer may, in accordance with the guidelines, request a public authority that holds relevant information to disclose the information to the authorised officer.
- (5) Information may be disclosed under subsection (3), or in compliance with a request under subsection (4), despite any law of the State relating to secrecy or confidentiality.
- (6) If information is disclosed, in good faith, under subsection (3), or in compliance with a request under subsection (4) —
  - (a) no civil or criminal liability is incurred in respect of the disclosure; and

- (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
  - (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.
- (7) The CEO must issue guidelines as to the disclosure of information under subsection (3) and the requesting of information under subsection (4).
- (8) The regulations may include provisions about —
- (a) receiving and storing information disclosed for the purposes of this Act; and
  - (b) restricting access to such information.

[\[Section 214 amended by No. 19 of 2016 s. 101.\]](#)

**215. Confidentiality of information**

- (1) In this section —
- confidential information*** means information that has not been made public and that —
- (a) is by its nature confidential; or
  - (b) was specified to be confidential by the person who supplied it; or
  - (c) is known by the person using or disclosing it to be confidential.
- (2) A person who misuses confidential information obtained by reason of any function that person has, or at any time had, in the administration of this Act commits an offence.
- Penalty: a fine of \$12 000 and imprisonment for one year.
- (3) A person misuses confidential information if it is, directly or indirectly, recorded, used or disclosed to another person, other than —
- (a) in the course of duty; or

- (b) under this Act or any other written law; or
  - (c) with the written permission of the CEO; or
  - (d) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence; or
  - (e) for the purposes of any other legal proceedings arising out of the administration of this Act; or
  - (f) with the consent of the person or persons to whom the information relates; or
  - (g) in prescribed circumstances.
- (4) This section is not to be taken to prevent the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (5) If information is lawfully disclosed under this section, this section does not prevent the further disclosure of the information, or the recording or use of the information, for the purpose for which the disclosure was made.

## Part 11 — Miscellaneous

**216. Relationship of this Act to *Rights in Water and Irrigation Act 1914* and *Health (Miscellaneous Provisions) Act 1911***

- (1) The performance by the Minister, the Authority or a licensee of a function conferred or imposed under this Act is subject to the provisions of the *Rights in Water and Irrigation Act 1914* and such a function, or the conferral or imposition of such a function, does not have effect, for the purposes of that Act, as a right or an authorisation under this Act.
- (2) If a local government is authorised by a licence to provide a water service, the provisions of the *Health (Miscellaneous Provisions) Act 1911* Part IV do not apply to the local government in relation to the provision of the water service except to the extent to which they are additional to and not inconsistent with the provisions of this Act.

*[Section 216 amended by No. 19 of 2016 s. 101.]*

**217. Licences not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth)**

If a licence is transferable by the licensee as described in the definition of *licence* in the *Personal Property Securities Act 2009* (Commonwealth) section 10, the licence is declared not to be personal property for the purposes of that Act.

**218. Liability of certain persons for damage caused in exercise of powers**

- (1) In this section —  
*responsible person* means the Minister, the Authority, the CEO or a licensee.
- (2) In the exercise or purported exercise of a power under this Act, a responsible person is to ensure, to the extent practicable, that —
  - (a) the free use of any place is not obstructed; and

- (b) as little harm or inconvenience is caused and as little damage is done as is possible.
- (3) If any physical damage is done to any place or other thing in the exercise or purported exercise of a works power or a power of entry, by or on behalf of a responsible person, the responsible person must —
  - (a) ensure that the damage is made good, to the extent that it is practicable to do so; and
  - (b) to the extent that it is not practicable to do so, pay compensation to the person suffering loss from the damage.
- (4) Any dispute as to the manner of making good the physical damage, or as to the amount of any compensation paid or payable, may be referred to the State Administrative Tribunal and dealt with as if it had come before the Tribunal under the *Land Administration Act 1997* Part 10.

**219. Immunity from liability for certain official actions**

- (1) In this section —  
*official* means —
  - (a) the Minister; or
  - (b) the CEO; or
  - (c) an inspector designated by the CEO; or
  - (d) a compliance officer; or
  - (e) a person employed in the Department.
- (2) An action in tort does not lie against an official for anything that the official has done in that capacity, in good faith, in the performance or purported performance of a function under this Act.
- (3) Subsection (2) does not apply to the exercise or purported exercise of a works power.

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- (4) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (2).
- (5) For the purposes of subsection (2), the reference to an official includes a reference to a person authorised by an official under section 179 if the person assists in the exercise of the power and takes the action referred to in section 179(1) in accordance with section 179(2).
- (6) The protection given by subsection (2) applies even though a thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (7) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

**220.      Limitation of liability for certain actions**

- (1) In this section —  
*authorised person* means —
  - (a) a person authorised by the Authority for the purposes of a provision of Part 2; or
  - (b) a person authorised by a licensee or the CEO for the purposes of a provision of Part 5; or
  - (c) a person authorised by a licensee for the purposes of Part 6; or
  - (d) an individual acting on behalf of an authorised person (who may or may not be an individual) referred to in paragraph (a), (b) or (c).
- (2) None of the following, the State, the Minister, the Authority, a licensee, an authorised person, are liable for any losses, damage or injury resulting from —
  - (a) the placing of water service works or other similar things on land; or
  - (b) the provision of water service works that are a part of land; or



- (c) the exercise or purported exercise of a power under this Act,  
unless —
  - (d) the damage is of the kind referred to in section 218; or
  - (e) the person placing or providing the works or things was negligent in the placing or provision of them; or
  - (f) the person exercising or purporting to exercise the power was negligent in the exercise or purported exercise of the power; or
  - (g) the liability arises under the *Land Administration Act 1997* Part 10.
- (3) None of the following persons are liable for any losses, damage or injury resulting from the installation, removal, repair or maintenance of a fire hydrant unless the person was acting in bad faith —
  - (a) a licensee;
  - (b) a person authorised by a licensee for the purposes of Part 5 or 6;
  - (c) an individual acting on behalf of a person (who may or may not be an individual) referred to in paragraph (b).
- (4) Subsections (2) and (3) do not apply in relation to any rights or liabilities arising under a contract.
- (5) For the purposes of this section, references to an authorised person include references to a person authorised by an authorised person under section 179 if the person assists in the exercise of the power and takes the action referred to in section 179(1) in accordance with section 179(2).
- (6) In this section —
  - (a) a reference to losses, damage or injury includes a reference to loss of enjoyment or amenity value and to a change in the aesthetic environment; and

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- (b) a reference to liability resulting from taking an action includes a reference to liability resulting from a failure to take that action.
- (7) The limitation of liability provided by this section applies even though a thing done as described in this section may have been capable of being done whether or not this Act had been enacted.

**221. Infringement notices and the *Criminal Procedure Act 2004***

- (1) If this Act is a prescribed Act for the purposes of the *Criminal Procedure Act 2004* Part 2, this section applies in relation to the issuing of an infringement notice under that Part in relation to an alleged offence under this Act that relates to restricting the use of water or that is prescribed for the purposes of this section.
- (2) The person on whom the notice is served may, within 28 days after the date of the notice, inform an authorised officer specified in the notice that the person is not the person responsible for the commission of the alleged offence and give the officer —
  - (a) the name and address of the person responsible for the commission of the alleged offence; or
  - (b) information showing that the person could not be reasonably expected to know who is responsible for the commission of the alleged offence.
- (3) If the person on whom the notice is served complies with subsection (2), an approved officer must decide whether or not to withdraw the notice under the *Criminal Procedure Act 2004* section 15.
- (4) If the notice is not withdrawn, the approved officer must advise the person of the decision.
- (5) If the notice is withdrawn, an authorised officer may, under the *Criminal Procedure Act 2004* Part 2, issue an infringement notice in relation to the alleged offence to another person,

within 21 days after the day on which the person on whom the original notice was served complies with subsection (2).

- (6) The *Criminal Procedure Act 2004* Part 2 is modified to the extent necessary to give effect to this section.
- (7) If a term is given a meaning in the *Criminal Procedure Act 2004* Part 2, it has the same meaning in this section.

**222. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) The regulations may —
  - (a) provide for the imposition, determination and payment of fees under this Act, including, without limiting the *Interpretation Act 1984* sections 43, 45 and 45A, the following —
    - (i) the time at which, or the periods for or during which, fees are to be paid;
    - (ii) the structure of fees;
    - (iii) the basis on which a fee is to be calculated;
    - (iv) interest on unpaid fees;
    - (v) penalties for late payment or underpayment of fees;
    - (vi) recovery of fees;
    - (vii) refunding of fees;
  - (b) without limiting paragraph (a), for a licence, approval or exemption granted under this Act (an **authorisation**) —
    - (i) prescribe fees that are payable before or when the authorisation is granted, issued or given and fees that are payable at specified intervals or in

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- specified circumstances during the currency of the authorisation; and
- (ii) provide for the authorisation to cease to have effect if a fee is not paid in accordance with the regulations;
  - (c) in respect of fees and charges, deal with exemptions, discounts, rebates and concessions to be made available to customers;
  - (d) provide for the protection of, and access to, water service works of licensees;
  - (e) provide for the prevention or remedying of the waste, misuse, undue consumption, fouling or contamination of water;
  - (f) provide for notice of plumbing work (as defined in the *Plumbers Licensing Act 1995* section 59I) to be given to licensees;
  - (g) prohibit, impose restrictions on or otherwise regulate the use of water, including by authorising the making of orders by the Minister that impose water use restrictions provided for in the regulations;
  - (h) provide for the estimation or calculation of the quantity or quality of water or wastewater if the quantity or quality cannot be, or was not, measured or measured properly;
  - (i) deal with applications for and relating to licences, exemptions, approvals and declarations under this Act;
  - (j) deal with giving notices and other instruments and documents under this Act;
  - (k) provide for appeals from, or the review of, decisions under this Act, including by providing for applications to be made to the State Administrative Tribunal for the review of such decisions;
  - (l) in relation to specified provision of the regulations, provide for licensees to be able to give a compliance

notice to a person in relation to a failure to comply with such provisions, and, for that purpose, the regulations may make the same or similar provision as is made by section 119;

- (m) declare a provision of this Act to be a Corporations legislation displacement provision for the purposes of the *Corporations Act 2001* (Commonwealth) section 5G (either generally or specifically in relation to a provision to which Part 1.1A of that Act applies);
- (n) declare a matter dealt with, provided for, done or occurring under this Act or the regulations to be an excluded matter for the purposes of the *Corporations Act 2001* (Commonwealth) section 5F in relation to —
  - (i) the whole of the Corporations legislation to which the *Corporations Act 2001* (Commonwealth) Part 1.1A applies; or
  - (ii) a specified provision of that legislation; or
  - (iii) that legislation other than a specified provision; or
  - (iv) that legislation other than to a specified extent;
- (o) declare a matter dealt with, provided for, done or occurring under this Act or the regulations to be an excluded matter for the purposes of the *Personal Property Securities Act 2009* (Commonwealth) section 259 in relation to —
  - (i) the whole of that Act (which, for the purposes of this paragraph, includes instruments made under that Act); or
  - (ii) a specified provision of that Act; or
  - (iii) that Act other than a specified provision; or
  - (iv) that Act other than to a specified extent;
- (p) provide that contravention of a provision of the regulations is an offence;

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- (q) provide, in relation to bodies corporate, for an offence to be punishable on conviction by the imposition of a fine not exceeding \$10 000 and, if the contravention is of a continuing nature, a daily penalty not exceeding \$2 000;
  - (r) provide, in relation to individuals, for an offence to be punishable on conviction by the imposition of a fine not exceeding \$5 000;
  - (s) provide for the imposition of a minimum fine for an offence;
  - (t) relate the level of a fine to —
    - (i) the circumstances or extent of the offence; or
    - (ii) whether the offender has committed previous offences and, if so, the number of previous offences that the offender has committed.
- (3) The regulations may adopt the text of any published document specified in the regulations —
- (a) as that text exists at a particular date; or
  - (b) as that text may from time to time be amended.
- (4) The text may be adopted —
- (a) wholly or in part; and
  - (b) as modified by the regulations.
- (5) The adoption may be direct (by reference made in the regulations), or indirect (by reference made in any text that is itself directly or indirectly adopted).
- (6) The adoption of text is of no effect unless —
- (a) the adopted text; and
  - (b) the amendments to the text or the text as amended (if relevant),

can at all reasonable times be inspected or purchased by the public.

**223. Notes in the text**

A note included in this Act is explanatory and is not part of this Act.

**224. Review of Act**

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after every 5<sup>th</sup> anniversary of its commencement, and in the course of that review the Minister must consider and have regard to —
  - (a) the adequacy of the penalties imposed under this Act;  
and
  - (b) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister must prepare a report based on the review carried out under subsection (1) and, as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

**225. Transitional provisions**

Schedule 1 sets out transitional provisions.

## Schedule 1 — Transitional provisions

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### Division 1 — Transitional provisions for the commencement of this Act

#### Subdivision 1 — Preliminary

**1. Terms used**

In this Schedule —

*commencement day* means the day on which this Act comes into operation<sup>1</sup>;

*new provision* means a provision of this Act;

*old provision* means an enactment repealed by a relevant provision of the *Water Services Legislation Amendment and Repeal Act 2012* or amended by a relevant provision of that Act in such a way that it no longer has effect in relation to a matter covered by or under a provision of this Act;

*relevant provision*, of the *Water Services Legislation Amendment and Repeal Act 2012*, means a provision of that Act except of Part 7 or 10.

**2. New provisions that correspond to old provisions**

A new provision corresponds to an old provision in relation to a matter or thing if the new provision deals with the matter or thing in the same, or substantially the same, way as the old provision deals with the matter or thing.

**3. Relationship of this Division to *Water Corporations Act 1995* Schedule 5 Division 1**

The operation of a provision of this Division in relation to a matter is displaced to the extent to which a provision of the *Water Corporations Act 1995* Schedule 5 Division 1 deals with the matter.



**Subdivision 2 — Application of *Interpretation Act 1984***

**4. Application of *Interpretation Act 1984***

- (1) The provisions of the *Interpretation Act 1984* about the repeal of enactments and the substitution of other enactments for those so repealed apply as if the old provisions were repealed by this Act and, for that purpose, a reference to the commencement of the repealing law is to be taken to be a reference to the commencement of this Act.
- (2) Despite subclause (1), the *Interpretation Act 1984* sections 36(d) (to the extent to which it applies to subsidiary legislation) and 38 do not apply in relation to the old provisions.
- (3) This Division does not limit the operation of the *Interpretation Act 1984* except to the extent provided for by this clause.
- (4) The provisions of Subdivisions 3 and 4 and of the regulations made for the purposes of this Division prevail over the provisions of the *Interpretation Act 1984* to the extent of any inconsistency.

**Subdivision 3 — General provisions**

**5. Continuing effect of licences, exemptions, directions, determinations, notices etc.**

- (1) A licence, exemption, permit or permission (however described) granted under an old provision and in force immediately before commencement day becomes, on commencement day, if there is a new provision that corresponds to the old provision in relation to that thing, a licence, exemption or approval granted under the new provision.
- (2) A direction, determination or notice (however described) given under an old provision and in force immediately before commencement day becomes, on commencement day, if there is a new provision that corresponds to the old provision in relation to that thing, a direction, determination or notice given under the new provision.
- (3) On and from commencement day, the terms and conditions of the licence, exemption, permit, permission, direction, determination or notice, are, subject to this Act, the same as the terms and conditions in effect immediately before commencement day.

**6. Completion of things commenced before commencement day**

Anything commenced by a person under or for the purposes of an old provision before commencement day may, if there is a new provision that corresponds to the old provision in relation to that thing, be continued by the person on and after commencement day under the new provision.

**7. Continuing effect of things done before commencement day**

- (1) This clause applies to an act, matter or thing done or omitted to be done under or for the purposes of an old provision before commencement day by a person, to the extent to which that act, matter or thing has any force or significance on and after commencement day.
- (2) The act, matter or thing is, if there is a new provision that corresponds to the old provision in relation to that act, matter or thing, to be taken, on and after commencement day, to have been done or omitted by the person under or for the purposes of the new provision.

**8. References to repealed Acts and old provisions**

- (1) In this clause —  
*repealed Act* means an Act repealed by the *Water Services Legislation Amendment and Repeal Act 2012*.
- (2) Unless the context otherwise requires, a reference in a written law or other document or instrument to a repealed Act includes a reference to this Act.
- (3) Unless the context otherwise requires, a reference in a written law or other document or instrument to an old provision includes, if there is a new provision that corresponds to the old provision in relation to a matter or thing, a reference to the new provision.

**9. Relationship of this Subdivision to other transitional provisions**

The provisions of Subdivision 4 and of the regulations made for the purposes of this Division prevail over the provisions of this Subdivision to the extent of any inconsistency.

**Subdivision 4 — Specific provisions**

**10. Licences and exemptions**

- (1) An operating licence granted under the *Water Services Licensing Act 1995* and in force immediately before commencement day becomes, on commencement day, a licence under section 11 (of this Act) as if granted by the Authority and, subject to this Act, is held on the same terms and conditions as those applicable immediately before commencement day.
- (2) An exemption granted under the *Water Services Licensing Act 1995* and in force immediately before commencement day becomes, on commencement day, an exemption under section 7 (of this Act) as if granted by the Minister and, subject to this Act, applies on the same terms and conditions as those applicable immediately before commencement day.

**11. Initial code of conduct under section 27**

- (1) The Minister, instead of the Authority, must make the initial code of conduct under section 27 and is not required to consult the consultative committee referred to in section 28 in doing so.
- (2) Section 27 and the *Interpretation Act 1984* section 25 in its application to that section are modified to the extent necessary to enable effect to be given to subclause (1).
- (3) A code of conduct made in accordance with this clause is to be taken, for the purposes of this Act, to be a code of conduct made by the Authority under section 27.

**12. Initial water services ombudsman scheme**

- (1) The Minister, instead of the Authority, must —
  - (a) approve the initial water services ombudsman scheme under section 65; and
  - (b) give the initial approval required for the purposes of section 66(2)(i).
- (2) The provisions of —
  - (a) Part 4 Division 2; and

- (b) the *Interpretation Act 1984* section 25 in its application to the provisions mentioned in paragraph (a),

are modified to the extent necessary to enable effect to be given to subclause (1).

- (3) A scheme approved in accordance with this section is to be taken, for the purposes of Part 4, to be a scheme approved by the Authority under Division 2 of that Part.

**13. Water service works of licensees**

- (1) Water service works or other similar things that, immediately before commencement day, were the property of a licensee —
- (a) become, on commencement day, water service works of the licensee; and
  - (b) are to be taken, on and from commencement day —
    - (i) for the purposes of section 162 — to have been placed on land by the licensee in the exercise of a works power; or
    - (ii) for the purposes of section 163 — to have been provided by the licensee in the exercise of a works power.
- (2) Subclause (1)(b)(i) applies to the works or things except to the extent to which the works or things are a part of land, in which case, subclause (1)(b)(ii) applies.
- (3) For the purposes of subclause (1), water service works and other similar things that were the property of a licensee include (without limiting that expression) works or things —
- (a) that were property of the licensee under the *Water Agencies (Powers) Act 1984* section 84 (including under that section as applied by the *Water Services Licensing Act 1995* section 45 or the *Kambalda Water and Wastewater Facilities (Transfer to Water Corporation) Act 2004* section 10) or under the *Water Boards Act 1904* section 39; or
  - (b) that were vested in the licensee under the *Water Agencies (Powers) Act 1984* section 85, the *Water Boards Act 1904* section 36 or 65A, the *Country Towns Sewerage Act 1948* section 11 or the *Land Drainage Act 1925* section 9.

- (4) Subclause (1) applies to fire hydrants on Crown land or in a road that, immediately before commencement day, were attached to the water service works of a licensee, as if those fire hydrants were property of the licensee at that time.
- (5) This clause applies to water service works or other similar things that, immediately before commencement day, were the property of a person who held those works or things for a licensee under an agreement that ensures that the licensee can operate and maintain the works to the extent necessary for the licensee to comply with the licensee's obligations under the licence and this Act, as if —
  - (a) the references to a licensee were references to that person; and
  - (b) subclause (1)(a) were omitted.

**14. Drainage works of the Water Corporation**

- (1) This clause applies to —
  - (a) main drains and main drainage works that the Water Corporation had the control and management of under the *Metropolitan Water Authority Act 1982* section 100 immediately before commencement day; and
  - (b) drainage works that, immediately before commencement day, were the property of the Water Corporation under the *Water Agencies (Powers) Act 1984* section 84 and that are shown on plans identified in regulations made for the purposes of this paragraph.
- (2) The drains and works —
  - (a) become, on commencement day, water service works of the Water Corporation; and
  - (b) are to be taken, on and from commencement day —
    - (i) for the purposes of section 162 — to have been placed on land by the Water Corporation in the exercise of a works power; or
    - (ii) for the purposes of section 163 — to have been provided by the Water Corporation in the exercise of a works power.

- (3) Subclause (2)(b)(i) applies to the drains and works except to the extent to which the works or things are a part of land, in which case, subclause (2)(b)(ii) applies.

**15. Relationship of this Subdivision to transitional regulations**

The provisions of the regulations made for the purposes of this Division prevail over the provisions of this Subdivision to the extent of any inconsistency.

**Subdivision 5 — Transitional regulations**

**16. Transitional regulations**

- (1) The regulations may —
- (a) deal with all matters of a savings or transitional nature arising as a result of the enactment of this Act and of the *Water Services Legislation Amendment and Repeal Act 2012* (except Part 7); and
  - (b) clarify or vary the provisions of this Division; and
  - (c) amend or repeal subsidiary legislation consequentially on the enactment of this Act and of the *Water Services Legislation Amendment and Repeal Act 2012* (except Part 7); and
  - (d) deal with all matters of a savings or transitional nature arising as a result of subsidiary legislation made under or for the purposes of an old provision ceasing to have effect because there is no power to make that subsidiary legislation under this Act.
- (2) Regulations made for the purposes of this clause may —
- (a) provide for the transfer of water service works, or rights in relation to water service works, to a licensee who, immediately before commencement day, used those works in the provision of a water service; and
  - (b) deal with the same sorts of matters as those that may be dealt with by regulations made for the purposes of section 38; and
  - (c) be expressed to have effect despite another written law; and
  - (d) provide that a specified provision of a written law does not apply, or applies with specified modifications, to or in relation to a matter.

- (3) The power in this clause to amend subsidiary legislation made under another Act does not prevent that legislation from being amended under that Act.
- (4) If regulations made for the purposes of this clause provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* (but not earlier than commencement day), the regulations have effect according to their terms.
- (5) If the regulations contain a provision referred to in subclause (4), the provision does not operate so as to —
  - (a) affect in a manner prejudicial to any person (other than the State, a public authority or a local government), the rights of that person existing before the day of publication of those regulations; or
  - (b) impose liabilities on any person (other than the State, a public authority or a local government) in respect of anything done or omitted to be done before the day of publication of those regulations.
- (6) Regulations made for the purposes of this clause in relation to a matter referred to in subclause (2) must be made within such period as is reasonably and practicably necessary to deal with the savings and transitional matters that arise as a result of the enactment of this Act and of the *Water Services Legislation Amendment and Repeal Act 2012*.

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## Notes

- <sup>1</sup> This is a compilation of the *Water Services Act 2012*. ~~The~~ 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 ~~that Act and~~ any reprint <sup>1a</sup>.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Water Services Act 2012</i>	24 of 2012	3 Sep 2012	s. 1 and 2: 3 Sep 2012 (see s. 2(a)); Act other than s. 1, 2, 68 and Pt. 4 Div. 4: 18 Nov 2013 (see s. 2(b) and <i>Gazette</i> 14 Nov 2013 p. 5027); s. 68 and Pt. 4 Div. 4: 1 Jan 2014 (see s. 2(b) and <i>Gazette</i> 14 Nov 2013 p. 5027)
<b>Reprint 1: The <i>Water Services Act 2012</i> as at 17 Jan 2014</b>			
<i>Public Health (Consequential Provisions) Act 2016</i> s 101	<a href="#">19 of 2016</a>	<a href="#">25 Jul 2016</a>	<a href="#">24 Jan 2017 (see s. 2(1)(c) and <i>Gazette</i> 10 Jan 2017 p. 165)</a>

- <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

Short title	Number and year	Assent	Commencement
<i>Public Health (Consequential Provisions) Act 2016</i> s <del>101</del> and Pt. 5 Div. 27 <sup>3</sup>	19 of 2016	25 Jul 2016	<del>s. 101: 24 Jan 2017 (see s. 2(1)(c) and <i>Gazette</i> 10 Jan 2017 p. 165);</del> <del>Pt. 5 Div. 27: to</del> be proclaimed (see s. 2(1)(c))

- <sup>2</sup> The short title of the *Fire and Emergency Services Authority of Western Australia Act 1998* was changed to the *Fire and Emergency Services Act 1998* by the *Fire and Emergency Services Legislation Amendment Act 2012* s. 5.



The Fire and Emergency Services Authority (FESA) was abolished by the *Fire and Emergency Services Legislation Amendment Act 2012* s. 43.

<sup>3</sup> On the date as at which this compilation was prepared, the *Public Health (Consequential Provisions) Act 2016* ~~s. 101 and~~ Pt. 5 Div. 27 had not come into operation. ~~They read~~It reads as follows:

~~101. Various references to “Health Act 1911” amended~~

~~(1) This section amends the Acts listed in the Table.~~

~~(2) In the provisions listed in the Table delete “Health Act 1911” (each occurrence) and insert:~~

~~Health (Miscellaneous Provisions) Act 1911~~

**Table**

<del>Water Services Act 2012</del>	<del>s. 33(2), 214(1) def. of <i>information sharing agency</i> par. (e) and 216(2)</del>
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~~Note: In the *Water Services Act 2012* the heading to amended section 216 is to read:~~

~~Relationship of this Act to Rights in Water and Irrigation Act 1914 and Health (Miscellaneous Provisions) Act 1911~~

**Part 5 — Other Acts amended**

**Division 27 — *Water Services Act 2012* amended**

**338. Act amended**

This Division amends the *Water Services Act 2012*.

**339. Section 33 amended**

In section 33(2) delete “*Health (Miscellaneous Provisions) Act 1911*” and insert:

*Public Health Act 2016*

**340. Section 214 amended**

In section 214(1) in the definition of *information sharing agency* paragraph (e) delete “*Health (Miscellaneous Provisions) Act 1911*;” and insert:

*Public Health Act 2016*;

**341. Section 216 amended**

In section 216(2) delete “*Health (Miscellaneous Provisions) Act 1911 Part IV*” and insert:

*Public Health Act 2016*

Note: The heading to amended section 216 is to read:

**Relationship of this Act to *Rights in Water and Irrigation Act 1914* and *Public Health Act 2016***