

Approved for Reprint 30th March, 1965.

WESTERN AUSTRALIA.

COUNTRY AREAS WATER SUPPLY

11° and 12° Geo. VI., No. LXII.

No. 62 of 1947.¹

(Affected by Act No. 63 of 1947, section 2.)

[As amended by Acts:

No. 22 of 1950, assented to 29th November, 1950;

No. 41 of 1951,² assented to 20th December, 1951;

No. 73 of 1954,³ assented to 14th January, 1955;

No. 14 of 1957, assented to 30th September, 1957;

No. 56 of 1960, assented to 2nd December, 1960;

No. 66 of 1964, assented to 4th December, 1964,

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to make provision for the construction, maintenance and administration of reticulated supplies of water to country areas; to repeal the Goldfields Water Supply Act, 1902-1942, and for other incidental purposes.

[Assented to 10th January, 1948.]

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

1. This Act may be cited as the *Country Areas Water Supply Act, 1947-1964*, and shall come into operation on a date to be fixed by Proclamation.¹

Short title and commencement.—
Amended by No. 66 of 1964, s. 1.

2. This Act is divided into Parts, as follows:—
PART I.—ss. 3 to 7—PRELIMINARY.

Act divided into parts.—
No. 33 of 1902, s. 1.
No. 4 of 1904, s. 2.
No. 43 of 1909, s. 3.

PART II.—ss. 8 to 12—COUNTRY WATER AREAS, AND WATER RESERVES.

¹ Proclaimed to come into operation 1st January, 1948. See G.G. 24/12/1948.

² Proclaimed to come into operation 4th April, 1952. See G.G. 4/4/1952.

³ Proclaimed to come into operation 1st March, 1955. See G.G. 18/2/1955.

Amended by No. 66 of 1964, s. 2.

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PART III.—s. 13—WATER BOARDS.

PART IV.—ss. 14 to 25—CONSTRUCTION AND MAINTENANCE OF WATER WORKS.

PART V.—ss. 26 to 46—WATER SUPPLY.

*Division 1.—ss. 26 to 39—Supply and Distribution of Water.**Division 2.—ss. 40 to 46—Protection of Works and Prevention of Waste.*

PART VI.—ss. 46A to 69—WATER RATES.

*Division 1.—ss. 46A to 57—Rate Books.**Division 2.—ss. 58 to 62—Appeals.**Division 3.—ss. 63 to 69—Making of Rates.*

PART VII.—ss. 70 to 90—PAYMENT OF RATES AND FOR WATER SUPPLIED.

*Division 1.—ss. 70 to 83—General.**Division 2.—ss. 84 to 88—Power to Lease.**Division 3.—ss. 89 to 104—Power of Sale.*

PART VIII.—ss. 105 to 122—MISCELLANEOUS.

SCHEDULE.—ACTS REPEALED.

PART I.—PRELIMINARY.

This Act to be read in conjunction with Water Supply, Sewerage and Drainage Act, 1912.

3. This Act shall be read in conjunction with and as being subject to the Water Supply, Sewerage and Drainage Act, 1912 (No. 67 of 1912), and shall operate and have effect as if the provisions of this Act were incorporated in and formed part of the said Act.

Acts repealed.

4. The Acts specified in the Schedule to this Act are hereby repealed.

Interpretation.
No. 33 of 1902, s. 2.
No. 4 of 1904, s. 3.
No. 43 of 1909, s. 5.
Amended by
No. 14 of 1957, s. 2.
No. 56 of 1960, s. 2.
No. 66 of 1964, s. 3.

5. In this Act, unless the context requires otherwise—

“authorised” means authorised by the Minister;

“by-laws” means by-laws made by the Minister under this Act;

“catchment area” means all land over, through, or under which any water flows, runs or percolates directly or indirectly into any reservoir erected or used by the Minister in connection with any water works in a country water area;

“country water area” means any part of the State other than the Metropolitan Area for which part a scheme for a reticulated supply of water is prepared and which part is constituted a country water area under the provisions of this Act;

“Department” means the Department of Water Supply, Sewerage and Drainage established and constituted by the Water Supply Act;

“district” in relation to local authorities means a municipal district constituted under the Local Government Act, 1960, and includes any land (including privately owned subdivided land) which the Governor may declare by Proclamation to be deemed to be included in a district for purposes of this Act;

“farm land” means land within a country water area that is used, or primarily used, for agricultural, pastoral, grazing or dairying purposes or any combination of them; but does not include land that is used or primarily used for the purposes of a market garden, orchard, piggery or poultry farm or any combination of those purposes;

“fittings” means all pipes, meters and other apparatus used for or in connection with the supply of water;

“Goldfields Water Supply Act” means the Goldfields Water Supply Act, 1902-1942¹;

“holding” means, and shall be deemed to have meant on and after the day of the passing of this Act, namely, the tenth day of January, one thousand nine hundred and forty-eight, any piece or parcel of land which is held

Cr. No. 50 of
1911, s. 2.

- (a) in fee simple; or
- (b) on conditional purchase lease, pastoral lease, or otherwise under the Land Act, 1933, or any prior Act repealed by that Act or under any

¹ Repealed by section 4 of this Act.

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regulation made under, or repealed by, any prior Act, or by the Land Act, 1933;

and which is constituted, owned, or occupied as one property;

“land” includes messuages, lands, tenements and hereditaments of any tenure, and the houses, buildings and structures thereon;

“local authority” means the council of a municipal district;

“metropolitan area” means the Metropolitan Water, Sewerage and Drainage Area as constituted under and for the purposes of the Metropolitan Water Supply, Sewerage and Drainage Act, 1909-1941;¹

“Minister” means the Minister for Water Supply, Sewerage and Drainage in his corporate capacity as constituted by the Water Supply Act;

“occupier” means the person in actual occupation of land, or if there is no person in actual occupation, the person entitled to possession of the land;

“owner” means the person, other than His Majesty the King, who for the time being is entitled to receive the rent of land, whether on his own account or as trustee, attorney, or agent for any other person, or who would be entitled to receive the rent if the land were let or sublet at a rent;

“pipe” means a main, main-pipe, stop-cock, water-cock, syphon, plug, branch or other apparatus used for or in connection with the supply of water;

“rateable land” means all land that is rateable under the provisions of section forty-six A of this Act;

“ratepayer” means a person named in the books of the Minister as a person liable to pay rates;

¹ Now Metropolitan Water Supply, Sewerage and Drainage Act, 1909-1963.

“reservoir” means a reservoir, dam, tank, cistern or well;

“road” means a road, street, lane, thoroughfare, or other public highway, or a public passage, or place, or a public wharf, jetty or bridge, or any private road maintained by a public authority;

“stream” means a river, creek, brook, spring, aqueduct, conduit, tunnel, sluice, or other running water;

“water board” includes a water board constituted under the provisions of the Water Boards Act or this Act;

“Water Boards Act” means the Water Boards Act, 1904-1947;¹

“water course” means the bed of a river, creek or other channel in which water flows either ordinarily, intermittently or occasionally;

“water reserve” means a portion of the State which the Governor by Order in Council declares to be a water reserve for the purposes of this Act;

“Water Supply Act” means the Water Supply, Sewerage and Drainage Act, 1912;

“water works” includes all reservoirs, wells, bores, pumps, pumping stations and machinery, tanks, aqueducts, tunnels, buildings, engines, pipes or other works for the supply, storage and distribution of water, and all lands acquired, held or used by the Minister for the purposes of this Act in relation to water supply.

6. This Act shall apply and have effect in all parts of the State except that part which is comprised within the Metropolitan Area.

Extent of application of this Act

7. (1) Subject to Part III, of this Act, this Act shall be administered by the Minister through the Department.

Administration.
Amended by No. 22 of 1950, s. 3.

¹ Now Water Boards Act, 1904-1964.

Minister may
delegate
powers.

(2) The Minister may, in relation to any matters or class of matters, or in relation to the whole or any particular part of the State to which this Act applies, by writing signed by him, delegate all or any of his powers and functions under this Act or any by-law or regulation in force by virtue of this Act (except this power of delegation), so that the delegated powers or functions may be exercised by the delegate with respect to the matters or class of matters, or the whole or that part of the State, specified in the instrument of delegation.

(3) Every delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Minister.

(4) Where, by any of the provisions of this Act or any by-law or regulation in force by virtue of this Act, the exercise of any power or function by the Minister, or the operation of any provisions of the Act or of that by-law or regulation, is dependent on the opinion, belief, satisfaction or other state of mind of the Minister in relation to any matter, that power or function may be exercised by the person to whom that power or function has been delegated by the Minister, or that provision may operate, as the case may be, upon the opinion, belief, satisfaction or other state of mind of that person in relation to that matter.

(5) A delegate exercising power in pursuance of the provisions of this section shall have and enjoy in respect of that exercise all the immunities from personal liability as the Minister would have and enjoy if the Minister had exercised the power.

(6) Any delegation purporting to have been made by the Minister under this Act or any by-law or regulation in force by virtue of this Act prior to the coming into operation of the Country Areas Water Supply Act Amendment Act, 1950, shall have the same force as if made under the Country Areas Water Supply Act, 1947-1950.

PART II.—COUNTRY WATER AREAS, AND WATER RESERVES.

Heading amended by No. 66 of 1964, s. 4.

8. (1) For the purposes of this Act, the Governor may by Order in Council—

Governor may constitute country water areas. No. 33 of 1902, s. 20. No. 4 of 1904, s. 4. No. 43 of 1909, ss. 6 and 7. Amended by No. 66 of 1964, s. 5.

- (a) constitute any defined portion of the State to be a country water area under such name or designation as may be directed by the Order in Council;
- (b) alter or extend the boundaries of a country water area;
- (c) unite two or more country water areas;
- (d) divide a country water area and reconstitute the several parts thereof as new country water areas with or without the inclusion of part or parts of another country area or other country water areas, or any adjacent land;
- (e) include within a country water area any adjacent land;
- (f) alter the name of any country water area;
- (g) abolish a country water area.

(2) (a) Each portion of the State which immediately prior to the commencement of this Act constituted a water area within the meaning of that expression as used in the Goldfields Water Supply Act is, subject to amendment under subsection (1) of this section, hereby constituted a country water area.

(b) [*Deleted by No. 66 of 1964, s. 5.*]

9. (1) For the purposes of this Act, the Governor may, by Order in Council—

Governor may constitute catchment areas and water reserves. No. 4 of 1904, s. 36. No. 43 of 1909, s. 13.

- (a) constitute and define the boundaries of any catchment area or water reserve;
- (b) alter or extend the boundaries of a catchment area or water reserve;
- (c) unite two or more catchment areas or two or more water reserves;
- (d) abolish any catchment area or any water reserve.

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(2) Until the Governor shall otherwise order, every catchment area and every water reserve constituted under the Goldfields Water Supply Act for the purposes thereof and still so constituted at the commencement of this Act shall be and continue until amended under subsection (1) of this section a catchment area or a water reserve for the purposes of this Act.

Exemption and inclusion of land for rating purposes Repealed and section substituted by No. 66 of 1964, s. 6.

10. The Governor may, by Order in Council, declare any land in a country water area to be exempt from rates under this Act, and may, in like manner, declare any land that is exempt from rates to be rateable land, for the purposes of this Act.

Power to divert, intercept and store water. No. 43 of 1909, s. 14.

11. Notwithstanding anything to the contrary contained in the Rights in Water and Irrigation Act, 1914-1945,¹ or the Land Drainage Act, 1925-1941,² or in any other Act, the Minister may divert, intercept, and store all water coming from the streams, water courses and other sources within the boundaries of any catchment area or water reserve, and may take any water found on or under the land situated within any such catchment area or water reserve.

Minister may exercise powers of a local authority under the Health Act, 1911-1944.³ No. 4 of 1904, s. 37. No. 43 of 1909, s. 17.

12. For preventing the pollution of water within a catchment area or water reserve, the Minister shall have all the powers and authority of a local authority within the meaning of and under the Health Act, 1911-1944,³ including power to make and enforce by-laws under that Act, as if the catchment area or water reserve were a health district constituted under that Act, and the Minister were the local authority for such district under that Act.

PART III.—WATER BOARDS.

Water boards may be constituted for country water areas. No. 33 of 1902, s. 3. No. 4 of 1904, s. 6.

13. (1) Subject to subsection (2) of this section, the Governor may, by Order in Council, on the recommendation of the Minister—

- (a) constitute a water board for any country water area or any portion of a country water area;

¹ Now Rights in Water and Irrigation Act, 1914-1964.

² Now Land Drainage Act, 1925-1954.

³ Now Health Act, 1911-1964.

(b) dissolve any water board constituted under this section.

(2) Every water board constituted for a water area under and within the meaning of those respective expressions as used in the Water Boards Act and subsisting at the commencement of this Act, shall, when the whole or part of the water area is included in a country water area, be deemed a water board within the meaning of that expression as used in and for the purposes of this Act in all respects as if the board were constituted under this section for and in relation to so much of the water area as is included in the country water area.

(3) Every water board constituted or deemed to be constituted under this section may, subject to this Act, function and shall be responsible in all respects for and in relation to so much of the water area as is included in the country water area as if the board were a water board constituted under the Water Boards Act.

PART IV.—CONSTRUCTION AND MAINTENANCE
OF WORKS.

14. Subject to the provisions of this Act and of the Water Supply Act, the Minister shall have power to maintain, alter and repair, and with the approval of the Governor, to construct and extend waterworks in any country water area, and for such purpose shall have and may exercise, in addition to the powers conferred by this Act, the powers conferred by the Public Works Act, 1902-1945,¹ in relation to the construction of public works under that Act.

Minister may construct works.
No. 33 of 1902, s. 22.
No. 4 of 1904, s. 40.
No. 43 of 1909, s. 19.

15. Before undertaking the construction of any waterworks, except such reticulation works as the Governor may by notice in the *Government Gazette* exempt from the operation of this section and the next three following sections, the Minister shall—

Preliminaries to construction.
No. 4 of 1904, s. 41.
No. 43 of 1909, s. 20.
Amended by No. 66 of 1964, s. 7.

(a) cause to be prepared plans, sections, specifications, and an estimate of the cost of the proposed waterworks, together with a

¹ Now Public Works Act, 1902-1961.

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statement showing the net earnings estimated to be derived therefrom, and a statement showing the estimated rateable value of the land to be benefited by them and cause the same, or certified copies thereof to be deposited in the Department and in a convenient place in the country water area in which it is proposed to construct such waterworks; and

- (b) cause an advertisement to be published in the *Government Gazette*, and in one or more newspapers generally circulating in the country water area specifying—
- (i) a description of the proposed waterworks;
 - (ii) the localities in the country water area in which they will be constructed;
 - (iii) the purposes for which they are to be constructed and the parts of the country water area which are intended to be supplied with water; and
 - (iv) the times when and the places at which the plans, sections and specifications may be inspected.

Plans, etc.,
open to
inspection.
No. 4 of
1904, s. 42.
No. 43 of
1909, s. 21.

16. The plans, sections, specifications and estimates so deposited shall be open to inspection by any person interested at all reasonable times on payment of the prescribed fee.

Objections.
No. 4 of
1904, s. 44.
No. 43 of
1909, s. 22.

17. (1) Any local authority or person interested may object in writing to the construction of the proposed waterworks.

Cf. s. 15
ante.

(2) Every objection shall be lodged with the Minister within one month from the date of the publication of the advertisement in the *Government Gazette* pursuant to section fifteen of this Act.

18. If at the expiration of one month after publication of the advertisement pursuant to section fifteen of this Act the Minister is satisfied that—

Governor may authorise construction of works.
No. 4 of 1904, s. 45.
No. 43 of 1909, s. 23.

- (a) the provisions of this Act have been complied with;
- (b) the waterworks, if constructed in the manner proposed, will be for the public benefit; and
- (c) any objection lodged is not sufficient to warrant the approval of the proposed water works by the Governor being withheld,

he shall submit the plans, sections, specifications and estimates to the Governor for his approval; and, if they are approved, the Governor may forthwith, by Order in Council, empower the Minister to undertake the construction of the waterworks.

19. For the construction, extension, maintenance, repair, alteration or improvement of waterworks, the Minister and all persons acting with his authority may enter upon any land, and—

Powers of Minister in relation to construction of waterworks.
No. 33 of 1902, s. 23.
No. 4 of 1904, ss. 46 and 47.
No. 43 of 1909, s. 24.

- (a) make surveys, take levels and set out such parts of the land as they may think fit, and may dig or break up the soil of and trench and fence in the land, and remove or use any earth, stones, trees and other things taken therefrom;
- (b) sink or acquire wells, bores, or shafts, erect buildings, pumping stations and pumping machinery, and make, maintain, alter or discontinue reservoirs, drains, culverts, aqueducts, flumes or other waterworks upon any land taken under the authority of this Act;
- (c) construct, alter and maintain under any road and through, across or under any land aqueducts, flumes, pipes or other waterworks necessary for conveying water;

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- (d) construct, alter and maintain drains under any road and through, across or under any land;
- (e) open and break up the soil of any road or of any land and excavate and sink trenches for the purpose of laying down, making and constructing pipes and drains therein;
- (f) open, cleanse and repair the pipes and drains or alter the position or construction thereof;
- (g) do all such acts, matters and things as they may, from time to time, deem proper for making, repairing, completing or improving any waterworks to be made, done and provided for the purposes of this Act.

Provided that—

- (i) in the exercise of any powers conferred by this section the Minister and other persons acting with his authority shall do as little damage as may be, and shall make to every person interested compensation for any damage actually sustained by him through the exercise of those powers, and the compensation, if not agreed upon between the parties, shall be made in the manner provided in the Public Works Act, 1902-1945,¹ and
- (ii) no local authority shall be liable for the cost of maintenance of waterworks constructed on, through, over, under or adjacent to any road controlled by it and, without affecting any liability for payment of rates and charges as in this Act provided, and subject to the provisions of Division 2 of Part V. of this Act, no owner or occupier of land shall be liable for the maintenance or cost of maintenance of waterworks constructed on, through, over, under or adjacent to such land.

Cf. Pt. V.
Div. 2 post.

¹ Now Public Works Act, 1902-1961.

20. The Minister may take and acquire under and subject to the provisions of the Public Works Act, 1902-1945,¹ any land he may deem necessary, from time to time, for any of the purposes of this Act.

Acquisition of land.
No. 4 of 1904, s. 46 (2).
No. 43 of 1909, s. 25.

21. Before the Minister opens or breaks up the soil of any road under the control of a local authority, he shall give to the local authority at least seven days' notice in writing of his intention to do so:

Notice to be served on local authority before breaking up roads.
No. 4 of 1904, s. 48.
No. 43 of 1909, s. 26.

Provided that when, in the opinion of the Minister, the case is one of emergency, it shall suffice if notice is given to the local authority immediately before beginning the work.

22. Whenever in accordance with the next preceding section of this Act a notice is required to be given, a road shall not, except in cases of emergency, be opened or broken up, except under the superintendence of the local authority having control thereof:

Road not to be broken up except under superintendence of local authority.
No. 4 of 1904, s. 49.
No. 43 of 1909, s. 27.

Provided that if an officer of the local authority, after notice, fails to attend at the time fixed for the opening or breaking up of the road, or, if the local authority or its officer refuses or neglects to superintend the work, the Minister may carry out the work specified in the notice without the superintendence.

23. When the Minister opens or breaks up the soil or pavement of any road, he shall—

Roads broken up to be reinstated without delay.
No. 33 of 1902, s. 25.
No. 4 of 1904, s. 50.
No. 43 of 1909, s. 28.

- (a) with all convenient speed complete the work for which it is broken up and fill in the ground and reinstate and make good the road or pavement so opened or broken up; and

¹ Now Public Works Act, 1902-1961.

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- (b) while any portion of the road or pavement continues to be opened or broken up, cause that portion of the road or pavement to be fenced or guarded and a sufficient light to be kept there at night.

Local authorities to give particulars as to levels. No. 33 of 1902, s. 26. No. 4 of 1904, s. 51. No. 43 of 1909, s. 29. Amended by No. 14 of 1957, s. 3.

24. (1) Every local authority shall, when requested by the Minister, give particulars of any ascertained levels of any road in which it is proposed to lay any pipe or make any drain.

(2) The local authority shall give to the Minister at least forty-eight hours' notice in writing of its intention to alter the level of any road in which any pipe is laid down or any drain has been made.

(3) Thereupon the Minister may raise or lower any pipe or drain, and may raise or lower the fittings thereof, and the cost of doing so shall be a debt due by the local authority to the Minister.

(4) Any local authority failing to give the notice required by this section shall be guilty of an offence.

Penalty—Fifty pounds.

(5) If the levels of any road are not ascertained, the contour of the road shall be deemed the level for the purposes of this section.

Pipes, etc., to be altered when necessary. No. 43 of 1909, s. 30.

25. If the Minister, at any time, deems it necessary to raise, sink, or otherwise alter the situation of any pipes or electric lines or other works laid in, or under any road or land, he may, by notice in writing, require the person, to whom the pipes, lines or other works belong, to raise, sink or otherwise alter the situation of them in such manner and within such reasonable time as shall be specified in the notice, and the expense incurred in connection with the alterations shall be paid by the Minister; and if the notice shall not be complied with the Minister may make the alterations required.

PART V.—WATER SUPPLY.

Division 1.—Supply and Distribution of Water.

26. The Minister may make and levy water rates in the manner provided in this Act.

Water rates.
No. 33 of
1902, s. 27.

27. The Minister may, instead of or as well as making and levying a water rate, sell and supply water by measure, the quantity consumed being ascertained by a meter fixed on the land of the consumer, or by any other prescribed means.

Supply of
water by
measure.
No. 33 of
1902, s. 23

28. (1) Subject to the provisions of this Act and so far as is practicable, the Minister shall supply the owner or occupier of land rated under the Act with the quantity of water to which he is entitled in respect of the rates; and, on payment of the prescribed charge, with such further quantity as he may take by measure.

Supply to
rated land.
No. 33 of
1902, s. 23.
No. 4 of
1904, s. 55.
No. 43 of
1909, s. 35.
Cf. s. 39
post.

(2) If so requested by a majority of occupiers of holdings in any portion of a country water area in which the construction of a reticulated system is not complete, the Minister may, in his discretion, erect standpipes or other prescribed fittings from which occupiers may cart water to such holdings. The Minister may cause all land within a radius of three miles of a standpipe or other fitting to be rated according to the distance in a direct line of the land from the standpipe or fitting. The Minister, by agreement with the occupiers or any of them, may specify the quantities of water to be taken at any standpipe or fitting, and the conditions under which the water may be taken.

29. Subject as hereinafter provided, and to the provisions of subsection (2) of the next preceding section, the Minister, on receiving from the owner or occupier of any land rated under this Act a written request for a supply of water, shall as soon as conveniently may be, provide, lay down to the nearest point on the boundary of the land and fix the communication pipe and fittings necessary for complying with the request.

Request for
supply to
rated land.
No. 33 of
1902, s. 30.
No. 4 of
1904, s. 55.
No. 43 of
1909, s. 37.

Supply to
land not
rated.
No. 33 of
1902, s. 31.
No. 4 of
1904, s. 57.
No. 43 of
1909, s. 38.

30. (1) The owner or occupier of land within a country water area not rated under this Act may in writing request the Minister to supply water.

(2) In such case the Minister may, in his discretion, comply with the request and, on such terms as may be agreed upon, provide, lay down and fix all necessary pipes and fittings for supplying water to such land, or he may refuse the request.

Minister may
supply meter
and charge
by measure.
No. 33 of
1902, s. 32.
No. 4 of
1904, s. 58.
No. 43 of
1909, s. 39.

31. (1) The Minister may cause a meter to be attached to any pipe on land supplied with water under this Act.

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

(3) The Minister may levy the prescribed service charge for the use of the meter, and the cost of fixing, removing or replacing it and its fittings whenever in the opinion of the Minister necessary.

Record of
meter to be
prima facie
evidence of
water
supplied.
No. 33 of
1902, s. 33.
No. 4 of
1904, s. 59.
No. 43 of
1909, s. 40.
Cf. s. 76,
post.

32. Whenever a meter is used—

- (a) the quantity of water shown by the index or register shall be taken *prima facie* to be the quantity of water which has actually passed through the meter and been supplied; and
- (b) a certificate purporting to be signed by an officer of the Minister stating the quantities so shown shall in any proceedings in which the quantity of water is in question be *prima facie* evidence of the quantity of water supplied:

Provided that in case of a dispute a test shall be made in the prescribed manner by the Minister, and the costs thereof shall be borne by the party found to be in error.

33. (1) The Minister may discontinue in any manner the supply of water to any land—

- (a) if such land is unoccupied; or
- (b) when any rates or moneys due for water supplied or agreed to be supplied, or any charges for any meter or other fittings remain unpaid for thirty days after they become due; or
- (c) when any person refuses or neglects, after demand, to pay all rates and moneys due and payable by him to the Minister for water supplied to the land; or
- (d) if the occupier refuses to permit a meter to be attached to any pipe on his land; or
- (e) if the owner or occupier commits or permits any breach of any of the provisions of this Act or the by-laws thereunder.

Water supply may be discontinued in certain circumstances.
No. 33 of 1902, s. 34.
No. 4 of 1904, s. 60.
No. 43 of 1909, s. 41.

(2) Discontinuance of the supply of the water shall be a cumulative remedy for enforcing payment of water rates or other moneys due, and shall not relieve the owner or occupier from liability in respect thereof.

34. The Minister may, in his discretion, if requested by a majority of the occupiers, supply a group of dwelling houses by means of standpipes or other prescribed fittings, and the Minister shall be entitled to receive and recover water rates and moneys due for water supplied and any other charges levied under this Act from the owners and occupiers thereof in the same manner as if the supply of water had been distributed in each of the dwelling houses in the ordinary manner, or he may refuse the request.

Provision for supplying groups of houses.
No. 23 of 1902, s. 34A.
No. 4 of 1904, s. 61.
No. 43 of 1909, s. 42.

35. (1) The owner or occupier of land not situated within a country water area may request the Minister to supply water to the land.

Supply to persons outside country water area.
No. 4 of 1904, s. 62.
No. 43 of 1909, s. 43.

(2) In such case the Minister may comply with such request on such terms as he may think fit, and, if he complies, may construct all necessary works for supplying water to such land, or he may refuse the request.

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Provided that the nature, size and description of the waterworks, pipes and fittings for supplying the land with water shall be entirely in the discretion of the Minister.

Sec. 36
substituted
by No. 41 of
1951, s. 6.

36. When a fire district referred to in the next succeeding section, or the district of a local authority is wholly or partly in a country water area, the provisions of that section shall apply in respect of the fire district or district of the local authority.

Interpreta-
tion.
Sec. 37
substituted
by No. 41 of
1951, s. 6.

37. (1) In this section, unless the context requires otherwise—

“Fire Brigades Act” means the Fire Brigades Act, 1942-1951;¹

“Fire Brigades Board” means the Western Australian Fire Brigades Board constituted pursuant to the Fire Brigades Act;

“fire district” means a fire district constituted as such by or pursuant to the provisions of the Fire Brigades Act;

“fire hydrant” means a fire-plug or fixed pillar hydrant;

“proclaimed day” means the day fixed by Proclamation for the coming into operation of the Acts Amendment (Fire Brigades Board and Fire Hydrants) Act, 1951;²

“re-instatement” means the filling in of ground opened up and the re-instating and making good of the paving of any street broken up in the course of installing or abolishing a fire hydrant, or keeping a fire hydrant in effective order.

(2) Subject to the provisions of the succeeding subsections of this section, the Minister shall fix hydrants upon the main or other pipes within the area, or abolish fire hydrants.

¹ Now Fire Brigades Act, 1942-1964.

² Came into operation 4th April, 1952. See G.G. 4/4/52, p. 799.

(3) The Board may request the Minister to install or abolish a fire hydrant at such location in a fire district as the Board specifies.

(4) A local authority may request the Minister to install or abolish a fire hydrant at such location in the district of the local authority elsewhere than in a fire district as the local authority specifies.

(5) So soon after receiving the request as is reasonably practicable, the Minister shall comply with the request.

(6) The Minister shall keep all fire hydrants in the area in effective order.

(7) The Minister on installing, abolishing, or keeping a fire hydrant in effective order, shall render to the Board, where the fire hydrant is in a fire district, a statement of account of the cost to the Minister of the labour and materials incurred in doing so, except the cost of re-instatement, and shall render to the local authority in whose district the work is done a statement of account of the cost to the Minister of the labour and materials incurred in re-instatement.

(8) The Minister on installing, abolishing or keeping a fire hydrant in effective order, shall render to the local authority, where the fire hydrant is in the district of the local authority but elsewhere than in a fire district, a statement of the cost to the Minister of the labour and materials in doing so, including that of re-instatement.

(9) In the event of non-payment of the amount shown in a statement of account rendered pursuant to the provisions of the last two preceding sections, it shall be recoverable from the Board or the local authority to whom the statement is rendered at the suit of the Minister in a court of competent jurisdiction as a debt due.

(10) The property in fire hydrants, whether installed before, on, or after the proclaimed day, shall—

if the fire hydrant is in a fire district, whether constituted wholly or partly before, on, or after the proclaimed day, vest in the Board as owner;

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if the fire hydrant is in the district of a local authority but elsewhere than in a fire district, vest in the local authority as owner.

(11) The Minister shall on installing, abolishing or keeping a fire hydrant in effective order deposit the keys of the fire hydrant at such station as shall be specified—

by the Board where the fire hydrant is in a fire district; by the local authority where the fire hydrant is in the district of the local authority elsewhere than in a fire district.

(12) A person having the possession or control of the keys to a fire hydrant shall at the request of the Minister deliver them to such person at such times as the Minister specifies.

Minister may supply water by contract.
No. 33 of 1902, s. 33.

38. (1) The Minister may, with the approval of the Governor, contract with any company, person, firm, association of companies or other undertaking, hereinafter called the purchaser, for the sale of water by measure on such terms and conditions as to the Minister may seem fit.

(2) By the contract the Minister may exempt the purchaser and the occupiers of any land within the area defined in the contract from the payment of rates under this Act.

Minister not compellable to supply water.
No. 33 of 1902, s. 37.
No. 4 of 1904, s. 65.
No. 43 of 1909, s. 46.

39. The Minister is not compellable to supply or to continue to supply water to any person nor liable to penalty or damages for not supplying or continuing to supply water:

Provided that, in any case where water has been supplied to a person and the Minister fails to continue the supply at any time for a period longer than one month, the person shall be entitled to a rebate of the rates paid by him. The amount of the rebate shall bear to the total of the rate the same ratio as the number of days on which the supply was discontinued bears to a full year.

Division 2.—Protection of Works and Prevention of Waste.

40. Every person supplied with water under this Act shall keep all pipes and all fittings within or attached to his land and connected to the Minister's service or communication pipe or meter in good repair so as to prevent effectually the water from running to waste.

Duty to keep fittings in repair.
No. 33 of 1902, s. 40.
No. 4 of 1904, s. 66.
No. 43 of 1909, s. 47.

41. No person shall—

- (a) connect a pipe or other fitting through which water is or is intended to be supplied; or
- (b) disconnect a pipe or other fitting from any other pipe or other fitting through which water is or is intended to be supplied,

Fittings not to be connected or disconnected without notice.
No. 33 of 1902, s. 41.
No. 4 of 1904, s. 67.
No. 43 of 1909, s. 48.

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

42. (1) Any officer of the Minister may, at all reasonable times, enter upon any land to which water is supplied under this Act, and do all things necessary to ascertain—

Power to enter and examine whether water is wasted, etc.
No. 33 of 1902, s. 42.
No. 4 of 1904, s. 68.
No. 43 of 1909, s. 49.

- (a) what quantity of water has been consumed there;
- (b) whether there has been or is any waste, misuse, fouling or contamination of the water; and
- (c) whether all fittings with the materials and mode of arrangement thereof used or intended to be used are in accordance with the by-laws and in proper order and repair;

(2) When a fitting is not in accordance with the by-laws, or is out of order and repair—

- (a) the officer of the Minister may repair or remove it, and if necessary, substitute another in its stead, or may alter the mode of arrangement, as the case requires; and

- (b) any expense incurred by the Minister in doing so shall, on demand, be paid by the owner or occupier of the land, and if not paid on demand, may be recoverable by the Minister in the manner in which water rates may be recovered.

Protection of fittings.
No. 33 of 1902, s. 43.
No. 4 of 1904, s. 69.
No. 43 of 1909, s. 50.

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

(2) No pipe or fitting referred to in the next preceding subsection shall be subject to, or liable to be seized or taken in, execution by process of law, or under any distraint.

Power to enter on land and fix fittings.
No. 33 of 1902, s. 44.
No. 4 of 1904, s. 70.
No. 43 of 1909, s. 51.

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

(2) Any person so authorised may at all reasonable times enter upon land and examine and remove, repair, alter or replace all or any of the fittings aforesaid on the land.

Penalty for using unauthorised fittings.
No. 33 of 1902, s. 45.
No. 4 of 1904, s. 71.
No. 43 of 1909, s. 52.

45. (1) Any person who is supplied with water by the Minister and who—

- (a) for the purpose of taking water in a manner not authorised by this Act—

- (i) uses in, places upon or attaches to the land or permits or suffers to be so used, placed, or attached any fitting, instrument or thing not authorised by this Act or by the Minister; or
- (ii) alters, misuses, injures or removes any authorised fitting, except for the purpose of necessary repair;

- (b) causes or permits or suffers any pipe, receptacle, fitting or other apparatus used in connection with the supply of water to him by the Minister to be out of repair without repairing it within a reasonable time, or to be so used or contrived that the water supplied is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to allow the return of foul air or any noisome or impure matter into a pipe belonging to the Minister or connected with any such pipe;
- (c) not being authorised by the Minister—
- (i) wilfully or carelessly breaks, injures, opens or shuts or wilfully permits or suffers to be broken, injured, opened or shut any lock, sluice, cock, valve, meter, pipe or other authorised fitting or any work belonging to the Minister; or
- (ii) flushes or draws off water from any waterworks of the Minister; or
- (iii) does any other wilful act, or permits or suffers to be done any act whereby the water is wasted; or
- (iv) diverts water from any stream, water course or source of supply within any catchment area or water reserve or does any act whereby the stream may be diverted or diminished in quantity or injured in quality or purity;
- (d) uses or consumes or permits or suffers to be used or consumed any water belonging to the Minister contrary to the provisions of this Act or the by-laws thereunder,
- shall be guilty of an offence.

Failure to repair fittings.
No. 33 of 1902, s. 46.
No. 4 of 1904, s. 72.
No. 43 of 1909, s. 53.

Destroying valves, etc.
No. 33 of 1902, s. 47.
No. 4 of 1904, s. 73.
No. 43 of 1909, s. 54.

Penalty for diverting, or diminishing or injuring in quality, water.
No. 4 of 1904, s. 38.
No. 43 of 1909, s. 16.

Taking, etc. water in contravention of this Act.
No. 33 of 1902, s. 48.
No. 4 of 1904, s. 74.
No. 43 of 1909, s. 55.

Penalty—Fifty pounds.

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(2) On conviction for an offence under this section the person convicted shall, in addition to the penalty imposed, be liable to pay to the Minister—

- (a) the value of any water wasted, misused or unduly consumed; and
- (b) compensation in respect of any damage sustained by the Minister in consequence of injury done to his property; and
- (c) a sum not exceeding fifty pounds by way of exemplary damages.

(3) The Court, when convicting a person for an offence under this section, if requested by the Minister or his authorised officer, shall assess any amounts payable under subsection (2) of this section by the person convicted to the Minister and make an order for payment of the total amount assessed. The amount specified in the order shall be recoverable in the same manner as it would be recoverable if it were a fine:

Provided that nothing in this subsection shall prejudice or affect the right of the Minister to institute any civil action or proceeding for the recovery of damages in any other court of competent jurisdiction against the person convicted.

Recovery of
value of
water mis-
used, etc.
No. 33 of
1902, s. 114
No. 4 of
1904, s. 150.
No. 43 of
1909, s. 154.

(4) When any water supplied under this Act has been wasted, misused or unduly consumed, the Minister may recover the value thereof as a debt due to him by the person who wasted, misused or unduly consumed the water, and the remedy given by this section shall be additional to any other remedy which the Minister may have under this or any other Act or law, and shall not affect the liability to any penalty which the person has incurred.

Fraudulent
taking of
water.
No. 33 of
1902, s. 49.
No. 4 of
1904, s. 75.
No. 43 of
1909, s. 56.

46. (1) Any person who fraudulently takes or causes to be taken any water belonging to the Minister from a reservoir, main or pipe belonging to or vested in the Minister or from any pipe leading to or from any waterworks shall be guilty of an offence.

Penalty—Imprisonment with or without hard labour for two years.

(2) An offence under this section shall be tried and determined summarily by a stipendiary, police or resident magistrate.

No. 51 of
1944, s. 100.

PART VI.—WATER RATES.

Division 1.—Rate Books.

46A. All land shall, subject as hereinafter provided, be rateable land within the meaning of this Act, save and except—

Rateable
land.
Of. Act No.
82 of 1948,
s. 47.
Added by
No. 66 of
1964, s. 8.

- (a) land the property of the Crown and used for public purposes, or unoccupied;
- (b) land vested in or in the use and occupation of a local authority and not held or occupied by any tenant under the local authority;
- (c) land belonging to any religious body, and used or held exclusively as or for a place of public worship, a Sunday-school, a place of residence of a minister of religion, a convent, nunnery, or monastery, or by a religious brotherhood or sisterhood;
- (d) land used exclusively as a public hospital, benevolent asylum, orphanage, public school, private school (being the property of a religious body), public library, public museum, public art gallery, or mechanics' institute;
- (e) land used, occupied, or held exclusively for charitable purposes;
- (f) land vested in any board under the Parks and Reserves Act, 1895, or in trustees for agricultural or horticultural show purposes, or zoological or acclimatisation gardens or purposes, or for public resort and recreation;
- (g) land used or held as a cemetery; and
- (h) land declared by the Governor, under section ten of this Act, or by any Act declared, to be exempt from rates under this Act:

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Provided that no exempted land shall become liable to be rated by reason of such land being used for the purposes of any bazaar, or as a place of meeting for any religious, charitable, temperance, or benevolent object, or for a polling place at any parliamentary or other election.

Rate books.
No. 33 of
1902, s. 51.
No. 4 of
1904, s. 77.
No. 43 of
1909, s. 73.
Amended by
by No. 66 of
of 1964, s. 9.

47. Whenever the Minister determines to make and levy water rates he shall cause rate books to be kept for each country water area, in relation to which the water rates are to be made and levied, in the prescribed form and shall enter therein all rateable land in the area with the several particulars indicated on the form or otherwise prescribed, and in the appropriate column state, in the case of farm land, the area thereof, and in the case of land, not being farm land, the estimated net annual value thereof.

Estimated
net annual
value.
Repealed
and section
substituted
by No. 66 of
1964, s. 10.

48. The estimated net annual value referred to in section forty-seven of this Act may, at the option of the Minister, be—

- (a) the current net annual value adopted by the local authority in the district of which the land is situated; or
- (b) a sum equal to the estimated full fair, average amount of rent at which the land may reasonably be expected to let from year to year, on the assumption (if necessary to be made) that the letting is allowed by law, less a deduction of forty pounds per centum for all outgoings; or
- (c) an amount not exceeding six pounds per centum of the capital value of the land;

but, in estimating the net annual, or the unimproved capital, value of mines, no regard shall be had to the minerals therein or the mining machinery, whether fixed to the soil or not, or to buildings used exclusively for the housing of machinery.

49. Any person in occupation of any portion of the surface of a gold mining lease or mineral lease shall be deemed an occupier and be liable to be rated in respect of the occupation notwithstanding any want of title to occupy.

Rating of persons residing on mining leases.
No. 33 of 1902, s. 53.

50. (1) Every rate book shall be made up as early as may be in each financial year, and notice thereof shall be published forthwith in the *Government Gazette*, and in at least one newspaper circulating in the country water area concerned.

Rate book to be made up in each financial year and open to inspection.
No. 33 of 1902, s. 54

(2) For the purposes of this section and in relation to the rating transactions of the Minister the expression "financial year" means the financial year as prescribed in respect of a country water area from time to time by by-law made by the Minister under this Act.

No. 4 of 1904, s. 79.
No. 43 of 1909, s. 76.
Amended by No. 66 of 1964, s. 11.

(3) Where in respect of any country water area the Minister is of opinion at any time that the making and levying of a water rate for a part of a year only is expedient, the Minister may make and levy the water rate for that part of the year, but the water rate for that part of the year shall bear the same ratio to the rate for the whole year as the part of the year for which the water rate is made and levied bears to a whole year.

(4) The rate book shall at all reasonable times be open to inspection by any ratepayer.

51. Any person authorised in writing by the Minister may at all reasonable times inspect free of charge all valuations, lists and rate books of any local authority, relating to any land situate in the country water area and may take copies or extracts from them.

Minister may inspect rate books of local authorities.
No. 33 of 1902, s. 55.
No. 4 of 1904, s. 80.
No. 43 of 1909, s. 77.

52. All persons having the custody of the valuations, lists, or rate books referred to in the next preceding section shall, at all reasonable times and without any fee or charge afford to the Minister and all persons authorised by him free access to the same.

Access to be given.
No. 33 of 1902, s. 56.
No. 4 of 1904, s. 81.
No. 43 of 1909, s. 78.

Penalty for
not per-
mitting
inspection.
No. 33 of
1902, s. 57.
No. 4 of
1904, s. 82.
No. 43 of
1909, s. 79.

53. Every person who has the custody of a local authority's valuation list or rate book, which a person authorised by the Minister is entitled to inspect, and who neglects or refuses to permit the authorised person to inspect the same free of charge or to make or take copies of extracts therefrom, shall be guilty of an offence.

Penalty—Twenty pounds.

Rateable
value.
No. 23 of
1902, s. 58.
No. 4 of
1904, s. 83.
No. 43 of
1909, s. 81.
Amended by
No. 66 of
1964, s. 12.
Cf. s. 69 post.

54. The estimated net annual value set against rateable land in the rate books kept by the Minister under this Act shall, subject to section sixty-nine of this Act (relating to re-assessment of estimated net annual value) and to appeal as hereinafter provided, be the rateable value thereof from the beginning of the current year.

Rate book
may be
amended.
No. 33 of
1902, s. 59.
No. 4 of
1904, s. 84.
No. 43 of
1909, s. 82.

55. (1) The Minister may from time to time amend any rate book kept by him under this Act by adding the particulars of any land which shall have become rateable, or by inserting the particulars of any rateable land omitted, or by substituting for the name of any person erroneously inserted as the owner or occupier of land the name of the true owner or occupier, and by correcting any other error.

(2) The power to amend a rate book shall extend to the rate book for the current year and to the rate books for the five years next preceding the commencement of the current year.

Notice of
amendment
to be given.
No. 33 of
1902, s. 60.
No. 4 of
1904, s. 85.
No. 43 of
1909, s. 83.

56. Within fourteen days of any amendment of a rate book the Minister shall cause notice to be given to all persons affected by it, and those persons shall have the same right of appeal from the amendment as would have been the case had the amendment appeared in the rate book as made up.

57. The Minister may, instead of causing a new rate book to be made up in any year, use the rate book of the last or any previous year with such alterations and additions as appear necessary.

Minister may use previous year's rate book.
No. 33 of 1902, s. 61.
No. 4 of 1904, s. 86.
No. 43 of 1909, s. 84.

Division 2.—Appeals.

58. (1) Any ratepayer may appeal against the estimated net annual value of any land of which he is the owner or occupier included in a rate book, or any amendment thereof.

Grounds of appeal against assessment.
No. 33 of 1902, s. 62.
No. 4 of 1904, s. 87.
No. 43 of 1909, s. 85.
Amended by No. 66 of 1964, s. 13.

(2) In the case of an appeal concerning any holding to which the system of rating on the area applies, the grounds of appeal may include an objection that the area set out in the rate book is in excess of the actual area of the holding.

59. Appeals shall be made to the Minister, and from the decision of the Minister there may be a further appeal as hereinafter provided to the local court having jurisdiction within the country water area.

Appeals how made.
No. 33 of 1902, s. 63.
No. 4 of 1904, s. 88.
No. 43 of 1909, s. 86.

60. (1) Every appeal to the Minister shall be by notice in writing in the prescribed form setting out the grounds of appeal.

Appeals to the Minister.
No. 33 of 1902, s. 64.
No. 4 of 1904, s. 89.
No. 43 of 1909, s. 87.

(2) The notice of appeal shall be given to the Minister within one month after publication of notice of the making up of the rate book or of the receipt by the appellant of notice of an amendment thereof.

(3) No appeal shall be entertained unless the appellant deposits with the Minister one-half of the amount of the rates then due and payable in respect of the land affected.

(4) Notice of the day appointed by the Minister for the hearing of the appeal shall be given in the prescribed form to the appellant six days at least before the day of hearing.

Appeals to local court from decisions of Minister.
No. 33 of 1902, s. 65.
No. 4 of 1904, s. 90.
No. 43 of 1909, s. 88.

61. (1) Every appeal to a local court from the decision of the Minister shall be commenced by notice in the prescribed form, setting out the grounds of the appeal.

(2) The notice shall, within twenty-one days after the decision appealed from, be served on the Minister and the clerk of the local court.

(3) The appeal shall come on for hearing at the sitting of the local court next after twenty-one days from the service of the notice on the clerk of the local court.

Hearing of appeal.
No. 33 of 1902, s. 66.
No. 4 of 1904, s. 91.
No. 43 of 1909, s. 89.

62. (1) On hearing of all appeals, the rate book or a copy or extract therefrom certified by the Minister shall be produced; and the Minister, or the local court on appeal from the Minister, on the day of the hearing or at any adjournment thereof, may make such order as shall be just, and shall direct any alterations or additions occasioned by the order to be made in the rate book.

(2) On any appeal to a local court, the court may make such order as may seem just for the payment of the costs of the appeal by the Minister or the appellant, and may determine the amount of the costs; and payment of the costs may be enforced in the same manner as a judgment of the local court.

(3) The decision of the local court on any appeal shall be final.

Division 3.—Making of Rates.

Land subject to water rate.
Repealed and section substituted by No. 66 of 1964, s. 14.

63. The Minister may make and levy water rates in respect of all rateable land in a country water area, whether actually occupied or not, and although the land may not be actually supplied with water if,—

- (a) in the case of land not being farm land, the land is situated wholly or partly within one hundred yards of any main or other pipe from which the Minister is prepared to supply water; and

- (b) in the case of farm land, the land is situated wholly or partly within ten chains of a main or other pipe from which the Minister is prepared to supply water,

but a holding shall be rateable so far only as it extends to a distance not exceeding one mile and a half from the pipe.

63A. (1) For the purpose of making and levying the water rate and fixing the charges to be made for water supplied under this Act, the Minister may from time to time prescribe classes of purposes for which water may be used or primarily used by owners or occupiers of holdings or parts of holdings, and may by entry in the rate book classify holdings or parts of holdings for those purposes.

Minister may prescribe classes of purposes. Added by No. 66 of 1964, s. 15.

(2) The Minister may at any time and from time to time by notice in the *Gazette* vary or cancel any of the classes prescribed under subsection (1) of this section, and may in addition to those classes prescribe a class of vacant land and classify as such any unoccupied rateable land.

64. Water rates may be made and levied for each country water area and for different parts of an area and may be varied in respect of any holding or any part of a holding or in respect of any class prescribed pursuant to section sixty-three A of this Act.

Rates may be varied from area to area and within an area. Repealed and section substituted by No. 66 of 1964, s. 16.

65. (1) In the case of rateable land that is not farm land, the water rate shall not in any one year exceed—

- (a) on holdings or parts of holdings classified for the purposes of the class prescribed pursuant to section sixty-three A of this Act as domestic purposes, one shilling and sixpence in the pound; and

Amount of rate. No. 33 of 1902, s. 69. No. 4 of 1904, s. 93. No. 4 of 1919, s. 2. No. 43 of 1909, s. 94. Amended by No. 56 of 1960, s. 3. No. 66 of 1964, s. 17.

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- (b) on holdings or parts of holdings classified for the purposes of any class so prescribed other than as domestic purposes, two shillings in the pound,

of the estimated net annual value of the land; but where the water rate computed on the estimated net annual value of a holding, or as the case may be, part of a holding, would be an amount less than one pound, the Minister may fix the water rate to be charged at the amount of one pound.

(2) In the case of farm land a water rate shall not in any one year exceed two and two-fifths pence per acre of the area of the land rated or three per centum of the unimproved capital value of the land, whichever is the lesser, the unimproved capital value to be determined by the Minister on application by the owner.

Provided that—

- (a) where in respect of any holding of farm land the amount of the water rate assessed at the rate fixed and computed on the basis of the area of the holding would be less than two pounds, the Minister may fix the sum of two pounds as the amount of water rate to be charged against and be paid in respect of the holding;
- (b) where the owner of any holding of farm land has at his own expense before his holding has become rateable provided thereon a sufficient water supply for his own exclusive use and the Minister is satisfied that the water supply is adequate for all the purposes of the owner including domestic purposes, the Minister shall stipulate an amount of water rate to be charged against and paid in respect of the holding for a period of seven years next following the commencement of rating but so that the amount of water rate to be paid by the ratepayer shall be the same amount in each year of that period and shall not in any one year during that period be less

than a sum computed at the rate of three-pence per acre of the area of the holding or the sum of two pounds, whichever shall be the greater amount;

- (c) any owner or occupier may within one month from the service on him of a notice of assessment of the amount of water rate to be charged under the provisions of the last preceding paragraph appeal against that assessment and the appeal shall be made, heard and determined in the manner provided in Division 2 of this Part of this Act; and
- (d) where not less than sixty-six per centum of the owners of rateable land in any portion of the country water area, such portion comprising not less than twenty thousand acres of farm land, petition the Minister in writing, asking that the holdings comprised in such area shall not be rateable under this Act, and stating that the majority of those owners do not desire to be supplied with water under this Act on the ground that they have supplies of water previously provided upon their own holdings at their own expense sufficient for all their purposes, holdings in that portion of the country water area shall not be supplied with water and shall not be rateable under this Act.

66. (1) Whenever any water rate is ordered by the Minister to be made and levied within a country water area, the Minister shall, on a vacant page of the rate book to be left blank for the purpose, sign a memorandum of the order and cause notice thereof to be published in the *Government Gazette* and a newspaper usually circulating in the area in relation to which the water rate is ordered.

Manner of making rate.
No. 33 of 1902, s. 70.
No. 4 of 1904, s. 94.
No. 43 of 1909, s. 95.
Amended by No. 66 of 1964, s. 18.

(2) On the publication of the notice, the water rate shall, subject to section sixty-nine of this Act (relating to re-assessment of estimated net annual value), and to any by-law as to the time and mode of payment, become due and payable by the occupier or owner of the land rated as hereinafter provided.

Cf. s. 69 post.

Rate for unexpired portion of year in case of new pipe.
No. 4 of 1904, s. 95.
No. 43 of 1909, s. 96.
Amended by No. 66 of 1964, s. 19.

67. Whenever land within a country water area becomes rateable under this Act after notice of the making of the rate or rates for the area is published in the *Government Gazette*, a proportionate part of the water rate shall, upon the land becoming rateable, be payable in respect thereof for the unexpired portion of the financial year from the date of the notice, without any further notification in the *Government Gazette*.

Gazette evidence of striking of rate.
No. 33 of 1902, s. 71.
No. 4 of 1904, s. 96.
No. 43 of 1909, s. 97.

68. The production of a copy of the *Government Gazette* containing the notice of the making of a water rate shall be conclusive evidence in all courts of the due making and publication thereof.

Estimated net annual values may be restated during year.
Repealed and section substituted by No. 66 of 1964, s. 20.

69. (1) Where it appears to the Minister, during the currency of any year, that, by reason of improvements made to, or erected upon, rateable land, the estimated net annual value has become greater, or that, by reason of the destruction, damage or demolition of improvements made and standing upon rateable land, the estimated net annual value of the land has become less, than the estimated net annual value of that land stated in the rate book for that year, he may cause the estimated net annual value to be restated for, and in respect of, the then unexpired portion of the year and may, to the extent that the restatement justifies the making of an amendment and adjustment, amend and adjust, either by increase or reduction, as the case may require, the amount of the water rates payable on the land.

(2) For the purposes of section fifty-eight of this Act (relating to appeals), the restatement of the estimated net annual value of rateable land under this section is an amendment of the estimated net annual value.

PART VII.—PAYMENT OF RATES AND FOR WATER SUPPLIED.

Division 1.—General.

70. Water rates shall be payable within one month after notice of assessment in the prescribed form has been issued to the ratepayer.

Water rates when payable. No. 33 of 1902, s. 72. No. 4 of 1904, s. 97. No. 43 of 1909, s. 98.

71. (1) Payment for water supplied or agreed to be supplied by measure shall become due and shall be made at the time and in the manner prescribed.

Payment for water supplied by measure. No. 33 of 1902, s. 73.

(2) Without the consent of the Minister no person shall directly or indirectly—

No. 4 of 1904, s. 98.

(a) dispose of water to another person; or

No. 43 of 1909, s. 99.

(b) acquire water from another person

Disposing of and acquiring water without consent of Minister an offence.

whether or not for payment or reward or promise thereof.

Provided that this subsection shall not apply to any person, board or authority authorised to dispose of or acquire water pursuant to any Act or agreement with the Minister.

Penalty—One hundred pounds or imprisonment for three months with or without hard labour or both.

(3) An offence under this section shall be tried and determined summarily by a stipendiary, police or resident magistrate.

(4) No prosecution under this section shall be commenced without the written authority of the Minister.

72. Where water is supplied by measure to the owner or occupier of land rated under this Act, such owner or occupier shall pay for all water in excess of the prescribed quantity that he is entitled to receive in respect of the rate, but where no such

Payment for water when land rated. Repealed and section substituted by No. 66 of 1964, s. 21.

quantity is prescribed the owner or occupier shall pay for all water supplied to him by measure, and in either case the water shall be paid for at the prescribed price.

Recovery of rates.
No. 33 of 1902, s. 77.
No. 4 of 1904, s. 102.
No. 43 of 1909, s. 109.

73. If any person liable to pay money due for rates or for water supplied by measure under the provisions of this Act fails to pay it for the space of fourteen days after demand therefor in writing by the Minister or his authorised officer and notwithstanding any change of occupation or ownership, the Minister may recover the amount of money due from the occupier or owner for the time being of the land in respect of which the amount is due by complaint in a Court of Petty Sessions or by action in any other court of competent jurisdiction.

In action against owner proof of demand on occupier not necessary.
No. 33 of 1902, s. 78.
No. 4 of 1904, s. 103.

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

Persons liable to be resorted to in succession.
No. 33 of 1902, s. 79.
No. 4 of 1904, s. 104.
No. 43 of 1909, s. 106.

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

Rate books to be evidence.
No. 33 of 1902, s. 80.
No. 4 of 1904, s. 105.
No. 43 of 1909, s. 110.
Cf. s. 32 ante.

76. In any proceeding to levy and recover or consequent on the levying or recovering of the amount due in respect of any water rate, the rate book duly signed by the Minister and all entries made or purporting to be made therein or certified copies thereof or extracts therefrom shall be *prima facie* evidence of the contents of the book and of the due making of the rate and of the obligation of the person charged with the amount payable in respect of the rate to pay it without any evidence that the provisions of this Act have been complied with.

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

Recovery of rates paid by owner from occupier.
No. 33 of 1902, s. 81.
No. 4 of 1904, s. 106.
No. 43 of 1909, s. 103.

(2) When the occupier of land has paid any money for rates or water supplied, which money, as between the occupier and the owner, should have been paid by the owner, the occupier may deduct the amount so paid from any rent due or to become due to the owner, or may recover the amount from the owner by action in any court of competent jurisdiction.

Recovery of rates by occupier from owner.
No. 33 of 1902, s. 81.
No. 4 of 1904, s. 106.

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

Apportionment of rates between successive owners or occupiers.
No. 33 of 1902, s. 82.
No. 4 of 1904, s. 107.
No. 43 of 1909, s. 105.

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

(3) Notwithstanding subsection (1) or subsection (2) of this section, any water rate made in respect of the land and any money due for water supplied shall remain payable and the amount thereof may be recovered by the Minister from the owner or occupier for the time being without regard to any change in the occupation or ownership of the land.

(4) In case any holding or any land rated as one property has been divided between two or more owners or occupiers any water rates imposed in

respect of the period current when the division took place shall as between the respective owners or occupiers, or both, and for the purposes of this section, be deemed to be apportionable between the different portions of the holding or land on the basis of the respective values or areas, according to the method of assessment adopted, of those portions.

Payment of rates by mortgagee. No. 43 of 1909, s. 104.

79. If a mortgagee of rateable land pays any rates accrued thereon under this Act, the amount so paid by the mortgagee shall be deemed to be part of or added to the principal moneys advanced by him under the mortgage and shall be recoverable as such with interest accordingly.

Discount on rates for prompt payment. No. 43 of 1909, s. 108.

80. The Minister may, if the by-laws so prescribe, allow to any person, who is liable to pay any water rates and who pays the rates within two months after the commencement of the current rating year, such percentage by way of discount, not exceeding five pounds per centum of the amount of the rates, as may be prescribed by the by-laws or, until prescribed, as the Minister may from time to time determine.

How rates may be recovered. No. 43 of 1909, s. 109.

81. The amount payable in respect of any water rate or for water supplied under this Act or in respect of any other charges, shall be recoverable either by complaint or action, or by sale as herein-after mentioned, and that amount and the amount of all costs, charges and expenses of any proceedings to recover it shall, subject to the proviso to this section, constitute a charge and have priority to every security or claim, including rent, of any description against the estate, real and personal, of the person liable to make payment of the amount:

Provided that in respect of any charge, security or claim now or hereafter subsisting in favour of the Rural and Industries Bank of Western Australia, the priority shall not become effective until the amount shall be the subject of a judgment of any appropriate court in favour of the Minister.

82. If on the request of the Minister or any collector of water rates authorised by the Minister—

Refusal to give name of person liable.
No. 43 of 1909, s. 111.

- (a) the occupier of any land refuses or wilfully omits to disclose or wilfully mis-states to the Minister or the collector the name and address of the owner of the land or of the person receiving or authorised to receive the rents of the land; or
- (b) the person receiving or authorised to receive the rents of the land so refuses or wilfully omits to disclose or wilfully mis-states the name and address of the owner of the land; or
- (c) being the owner, refuses or wilfully omits to disclose or wilfully mis-states to the Minister or the collector his own name as such occupier,

he shall be guilty of an offence.

Penalty—Five pounds.

83. On any annexation to or extension of a country water area, all the provisions of this Part of this Act with respect to the making of any water rate made shall be deemed to have been complied with for the year then current in respect of all rateable land within the area so annexed or extended, and the Minister may, where necessary, cause an estimated net annual value to be stated in respect of any land within that area for the purpose of the water rate; but the amount of rates chargeable for the current year in respect of any land within that area shall be calculated for the portion of the year only from the date of the annexation or extension.

Application of this part to annexed areas.
No. 43 of 1909, s. 112.
Amended by No. 66 of 1964, s. 22.

Division 2.—Power to Lease.

84. (1) When in respect of any land rates accrued thereon under this Act or any Act hereby repealed or any moneys due for water supplied have, whether before or after or partly before and partly after the commencement of this Act been unpaid

Power to lease land on which arrears of rates are due.
No. 43 of 1909, s. 113.

for three years or longer, the Minister may, subject to the conditions hereinafter prescribed and notwithstanding anything to the contrary contained in the Transfer of Land Act, 1893-1946,¹ the Land Act, 1933-1946,² or the Mining Act, 1904-1937,³ and notwithstanding any change that may have taken place in the meantime in the ownership of the land—

- (a) take possession of the land;
- (b) hold the land as against any person interested therein, and
- (c) from time to time grant leases of the land.

(2) Land so taken possession of, held, or leased by the Minister shall continue to be rateable land.

Procedure.
No. 43 of
1909, s. 114.

85. (1) The Minister shall not take possession of any land as provided for in the next preceding section of this Act until the expiration of three months after a notice in the prescribed form has been given to every person in the State appearing on search in the Office of Titles or the Registry of Deeds or in the Department of Lands and Surveys or in the Mines Department, as the case may be, to have any estate or interest in the land.

(2) A copy of the notice shall also be affixed upon a conspicuous part of the land.

(3) On such taking possession of any land the Minister shall cause notice thereof in the prescribed form to be affixed upon a conspicuous part of the land.

(4) Every lease granted under the authority of the next preceding section of this Act shall—

- (a) be for such term, not exceeding seven years, as to the Minister seems fit;
- (b) reserve the best rent which in the opinion of the Minister can be reasonably obtained for the land, and
- (c) contain such other reservations and such exceptions, covenants and conditions as to the Minister seem fit.

¹ Now Transfer of Land Act, 1893-1959.

² Now Land Act, 1933-1963.

³ Now Mining Act, 1904-1964.

(5) Any lease granted by the Minister otherwise in accordance with the provisions of this Act shall be valid notwithstanding the non-compliance with any of the provisions of this section.

(6) The lessee shall be entitled during the term of the lease to possession of the land as against all persons interested therein.

(7) The Registrar of Titles, the Registrar of Deeds, the Under Secretary for Lands, or the Under Secretary for Mines, as the case may require, upon the production to him of any lease granted under the next preceding section of this Act shall register the same and, if necessary for that purpose, shall make such orders and publish such advertisements as are provided for in any Act in the case of dealings with land when the certificate of title, Crown lease or other instrument of title is lost or not produced.

86. (1) Upon demand made by any person, who but for the provisions of this Act, would be entitled to the possession of land, of which the Minister has granted a lease under the authority of section eighty-four of this Act, such demand being made within twenty-five years after the taking possession of the land by the Minister, and upon payment of all water rates and other moneys due in respect thereof or for water supplied, the Minister shall, within three months after payment thereof, execute under seal a release of the land from the amount of the rates or other moneys paid.

Release of
property
after
demand and
payment of
arrears.
No. 43 of
1909, s. 115.

(2) If the Minister makes default in executing the release the Supreme Court may at the suit of any person interested in that behalf order the Minister to execute it.

(3) Upon the execution of the release, the person, by whom or on whose behalf the release was obtained shall, subject to any lease theretofore granted by the Minister under the provisions of this Act, be entitled to the land and the possession thereof for the estate or interest, to which he would have been entitled if this Act had not been passed; and the tenant or lessee of the land under the lease shall attorn to that person accordingly.

Appropriation of rents received.
No. 43 of 1909, s. 116.

87. (1) All rent and other moneys payable under any lease granted by the Minister under the provisions of section eighty-four of this Act shall, until the execution of a release as hereinbefore mentioned or the expiration of twenty-five years from the taking of possession of the land leased by the Minister, whichever first happens, upon receipt thereof by the Minister be applicable—

Firstly—in defraying the expenses of and incidental to the giving of the notices required by section eighty-five of this Act, and the execution of the lease and the collection of the rents; and

Secondly—in payment to the Minister of all moneys due in respect of water rates or water supplied in relation to the land leased and in arrear and in payment of all water rates and other moneys from time to time accruing due under this Act on the land.

Residue.

(2) Any residue of the moneys shall belong to such person as would, when they respectively were received, have been entitled to receive the rents and profits of the land if this Act had not been passed.

Land when vested in the Minister.
No. 43 of 1909, s. 117.

88. Unless within twenty-five years after possession is taken of land under the authority of section eighty-four of this Act, some person entitled in that behalf demands a release under section eighty-six of this Act, the land and all accumulations of rent and other moneys received or recovered on account thereof shall vest absolutely in the Minister.

Division 3.—Power of Sale.

Land may be sold for arrears of rates, etc., remaining unpaid for five years.
No. 64 of 1946, s. 12 (2).
Cf. S.A. Local Government Act, 1934-1936, s. 268.

89. (1) When in respect of any land any water rates accrued thereon under this Act or any Act hereby repealed or any moneys due for water supplied have, whether before or after or partly before and partly after the commencement of this Act, remained unpaid for the term of five years or longer after becoming due and payable, the Minister shall, by virtue of this Act, have power, subject to the provisions hereinafter made, to sell and transfer and convey the land.

(2) The power of sale shall include power—

- (a) to sell the land or any part thereof either together or in lots by public auction, or by private contract subject to terms and conditions with respect to the payment of the purchase money, or any other matter, including power to fix a reserve;
- (b) to vary any contract of sale and to buy in at any auction;
- (c) to rescind any contract for sale and to resell without being answerable for any loss occasioned thereby;
- (d) to subdivide the land and make such streets and roads and grant such easements of right-of-way or drainage therein as the circumstances of the case may require and the Minister thinks fit, subject to all laws relating thereto:

Provided that the land shall not be sold by private contract until it has been first offered for sale by public auction.

90. (1) The Minister shall not exercise the power of sale conferred by this Division of this Part of this Act until notice requiring payment of all moneys owing and referred to in the next preceding section in respect of the land has been—

Conditions
for exercise
of power of
sale.
No. 64 of
1946, s. 12
(2).
S.A. Act
s. 269.

- (a) in the case of land under the Transfer of Land Act, 1893-1946,¹ served on the person registered as the proprietor in fee simple thereof by being delivered to him or by being sent in a registered letter posted to him at his address (if any) appearing in the register book;
- (b) in the case of land not under the Transfer of Land Act, 1893-1946,¹ served on the owner in fee simple thereof or on the person appearing by the last memorial relating to the land in the Office of the Registrar of Deeds to be seized of the fee simple thereof, by being delivered to him or by being sent in a registered letter posted to him at his address (if any) appearing in the memorial;

¹ Now Transfer of Land Act, 1893-1959.

Country Areas Water Supply.

- (c) served on every person appearing by the register book kept at the Land Titles Office or any memorial in the Office of the Registrar of Deeds to have any estate or interest in the land by being delivered to him or by being sent in a registered letter posted to him at his address (if any) appearing in the register book or memorial;
- (d) posted on the land for not less than one month; and
- (e) posted in a conspicuous place at the office of the Minister for not less than one month.

(2) If in the case of any person required by this section to be served, no sufficient address appears in the register book or memorial, notice requiring payment shall be served on that person by being advertised once in a newspaper circulating in the neighbourhood of the land, and once in the *Gazette*. It shall be competent to include in the notice reference to lands in the same locality and belonging to more than one owner.

Contents of
notice.
No. 64 of
1946, s. 12
(2).
S.A. Act,
s. 270.

91. Every notice requiring payment shall—

- (a) be in writing and be dated and signed by or on behalf of the Minister;
- (b) specify the total of the moneys owing and of which payment is required;
- (c) specify the land in respect of which the moneys are owing by a sufficient description of the land and the name of the registered proprietor in fee simple or the person seised of the fee simple thereof; and
- (d) include a statement that in default of payment of the moneys specified therein, the land will be offered for sale by public auction after the expiration of three months from the date of notice at a time appointed by the Minister.

92. The Minister shall appoint a time not less than three months and not more than twelve months from the service of the notices required by section ninety of this Act at which the land may be offered for sale by public auction unless the moneys owing be paid.

Fixing of time for sale by auction.
No. 64 of 1946, s. 12 (2).
S.A. Act, s. 271.
Cf. s. 90 ante.

93. (1) The sale shall be advertised—

- (a) twice at least in a newspaper circulating in the neighbourhood of the land;
- (b) once at least in the *Gazette*;
- (c) by posting and keeping posted a copy of the advertisement in a conspicuous place at the office of the Minister for not less than twenty-one days;
- (d) by delivering a memorial of the advertisement to the Registrar of Titles, Registrar of Deeds, or other person having the custody or control of any register or public record relating to the land, who, on payment of the prescribed fee, shall register the memorial and endorse or note a reference to it on the title or land register of every piece of land comprised in the memorial;
- (e) by any other means which, in the circumstances, the Minister regards as reasonable and proper.

Advertisement for sale.
No. 64 of 1946, s. 12 (2).
S.A. Act, s. 272.

(2) The advertisement shall contain a sufficient description of the land and any improvements thereon.

(3) In the advertisement it shall be competent to include reference to lands within the same locality and belonging to more than one owner.

94. Up to the time of the actual sale of any land for non-payment of moneys payable and referred to in section eighty-nine of this Act, any person having any estate or interest in the land may pay all the moneys then payable, and the costs then incurred, and thereupon the proceedings shall be

Right to pay rates.
No. 64 of 1946, s. 12 (2).
S.A. Act s. 272.
Cf. s. 89 ante.

stayed, and the Minister shall deliver to the Registrar of Titles, Registrar of Deeds or other person having the custody or control of any register or public record relating to the land for noting on the title or land register, a certificate signed by or on behalf of the Minister certifying that the moneys and costs have been paid, and the title or land register shall be noted accordingly by the proper officer, whereupon the land shall cease to be bound.

Power to transfer or convey land. No. 64 of 1946, s. 12 (2). S.A. Act, s. 274. Former W.A. Act, s. 280.

95. The Minister, in exercising the power of sale conferred by this Division of this Part of this Act, shall have power by proper transfer (where the land is under the Transfer of Land Act, 1893-1946,¹ and subject to registration under that Act), and by proper deed or transfer (where the land is not under the Transfer of Land Act, 1893-1946¹), to transfer or convey an indefeasible estate in fee simple, or (if such land has not been alienated from the Crown in fee simple) all the estate and interest therein of every person (other than the Crown), but all the estate and interest which any such person is entitled or able to transfer, assign, convey or dispose of therein, and the estate of the purchaser shall be subject to the exceptions, conditions and powers (if any) in force and contained in the grant or Crown lease or conditional purchase lease of the land, and to any public rights of way and to any other easements acquired by enjoyment or user or subsisting over and upon or affecting the land, and to any charge imposed by a law of the Commonwealth, and to any rates and taxes imposed or to be imposed on or in respect of the land after the date of the sale, and to any mortgage in favour of the Rural and Industries Bank of Western Australia but free from other encumbrances and charges.

Statutory declaration. No. 64 of 1946, s. 12 (2). S.A. Act, s. 275.

96. A transfer or conveyance expressed to be in exercise of the power of sale conferred by this Division of this Part of this Act shall, if accompanied by a statutory declaration by the Minister or person authorised by him on his behalf that the provisions of this Division have been complied with, be accepted

¹ Now Transfer of Land Act, 1893-1959.

by the Registrar of Titles, the Registrar of Deeds, the Under Secretary for Lands or other person having the custody or control of any register or public record relating to the land, as sufficient evidence that the power of sale has been properly exercised.

97. (1) The transfer or conveyance shall be in the proper form prescribed by the Act or law governing the registration of transfers or conveyances of the land, and shall be executed by the Minister or person authorised by him on his behalf.

Functions of Minister and Registrar relating to transfer or conveyance.

(2) The transfer or conveyance shall be forwarded to the Registrar of Titles, Registrar of Deeds, Under Secretary for Lands, or other person having the custody or control of the public record relating to the land, for registration, and shall be accompanied by the prescribed registration fees.

(3) Where the land sold is under the Transfer of Land Act, 1893-1946,¹ the Registrar of Titles, upon production to him of the transfer and declaration, shall register the transfer, and notwithstanding any provision of that Act to the contrary, production of the certificate of title shall not be required, but, for the purposes of registration, the Registrar may, if he thinks fit, make such orders and publish such advertisements as are provided for in the case of dealings with land when the certificate of title is lost or not produced.

(4) Where any transfer or conveyance is expressed to be in exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised or improper or irregular exercise of the power shall, subject to this Act, have his remedy in damages against the Minister, but shall have no other remedy in damages or for compensation against the Crown or the assurance fund established under the Transfer of Land Act, 1893-1946.¹

Cf. s. 117 post.

¹ Now Transfer of Land Act, 1893-1959.

Combination
of all lands
of same
owner.
No. 64 of
1946, s. 12
(2).
S.A. Act,
s. 278.
Cr. s. 89
ante.

98. If moneys referred to in section eighty-nine of this Act are owing for the period of five years in respect of more than one piece of land in the name of the same owner, all the moneys and all the land may be referred to in one notice requiring payment and in one advertisement of sale.

Application
of purchase
money.
Cr. Ibid.,
s. 279.
W.A. 279.
Amended by
No. 66 of
1964, s. 23.

99. The money arising from the sale and received by the Minister shall, notwithstanding the disability of any person or any statute of limitations, be held by the Minister to be applied as follows:—

Firstly—In payment of the costs, charges and expenses properly incurred by the Minister as incidental to the sale or attempted sale or otherwise.

Secondly—In payment of all moneys owing and referred to in section eighty-nine of this Act.

Thirdly—In payment of all unpaid moneys owing for rates and taxes and any costs or other moneys due to or imposed by the Crown in right of the State or any department, agency, instrumentality or branch of His Majesty's Government of the State including the agency department of the Rural and Industries Bank of Western Australia in respect of the land at the time of the sale:

Provided that where the moneys remaining after the payments provided for in the next two preceding paragraphs have been made are not sufficient for the payment in full of all of the items mentioned and provided for in this paragraph, such moneys as shall remain shall be distributed between the Crown, the department, the agency, the instrumentality and the branch *pro rata* with the amounts of their claims respectively, unless the Governor or the Minister controlling the department, agency, instrumentality or branch, as the

case may require, shall consent to the Crown or the department, agency, instrumentality or branch which the Minister controls being excluded wholly or partly from the *pro rata* distribution.

Fourthly—In payment of all unpaid rates due or imposed by the local authority, in whose district the land is situated, under the Act, by which it is constituted, or under the Health Act, 1911-1944:¹

Provided that, when land is sold under this Act and the land is situated, in the districts of two or more local authorities, the Governor may determine for the purpose of this paragraph the proportionate part of the whole of the purchase price which shall be allocated to that part of the land situated in each district.

Fifthly—In payment of all vendor's costs and expenses of and in connection with conferring upon the purchaser a clear title to the land.

Sixthly—In or towards the discharge of all or any other mortgages, encumbrances, whether registered or not, according to their respective priorities, so far as the same can be ascertained by the Minister.

Seventhly—In payment of the residue of the money within twelve months after the receipt thereof to the person who would, but for the proceedings for sale, be entitled to the land, or if there be several persons who would be so entitled, then to those persons in the proportions in which they would be respectively so entitled:

Provided that, if any person is entitled to an estate in reversion or remainder in the land, the money may be paid into the Supreme Court under section ninety-nine of the Trustees Act, 1962, and thereafter the money so paid into Court shall be subject to the provisions of that Act so far as the

¹ Now Health Act, 1911-1964.

same are applicable; but any petition, claim, suit or action for or in respect of that money shall be presented within six years after payment into the Supreme Court, and after the expiration of that period, the money then in the Supreme Court to the credit of the particular trust concerned shall, if there be no petition, claim, suit or action pending, or any order of the Supreme Court to the contrary, be paid into and form part of the general revenue of the State.

Receipt a discharge.
Ibid s. 280.
No. 64 of 1946, s. 12 (2).
S.A. Act, s. 280.
Cf. s. 89 ante.

100. The receipt of or on behalf of the Minister in writing shall be a sufficient discharge for any money paid on the exercise of the power of sale conferred by this Division of this Part of this Act, and a person paying the money shall not be concerned to inquire whether any money referred to in section eighty-nine of this Act remains due to the Minister in respect of the land sold.

Power to sell after advertisement lapses if sale not made within a year.
Cf. former W.A., s. 277.
No. 64 of 1946, s. 12 (2).
Cf. s. 93 ante.

101. If the land is not sold, and, in the case of land under the Transfer of Land Act, 1893-1946,¹ a transfer thereof is not registered within twelve months of the date of the delivery to the Registrar of Titles of a memorial of the advertisement referred to in section ninety-three of this Act then, subject to the next succeeding section of this Act, the advertisement and all subsequent proceedings under this Division of this Part of this Act shall no longer be in force, and shall cease to bind the land.

Power to transfer land to Crown.
Ibid., s. 281A.

102. If land is offered for sale by auction pursuant to this Division of this Part of this Act, but no bid is made for the land at the auction and the land is unsold within the period of twelve months mentioned in the last preceding section, and has been alienated from the Crown in fee simple, the Minister, with the consent of the Governor, shall have power by transfer (where the land is under the Transfer of Land Act, 1893-1946¹) and by deed (where the land is not under the Transfer of Land Act, 1893-1946¹) to transfer or convey an estate in fee simple to His Majesty:

¹ Now Transfer of Land Act, 1893-1959.

Provided that the Governor shall not consent, unless he is satisfied that there is no reasonable prospect of selling the land pursuant to this Division of this Part of this Act within a reasonable time.

(2) Where the land is under the Transfer of Land Act, 1893-1946,¹ the transfer shall be executed in proper form under the hand of the Minister or a person authorised by him on his behalf and registered under that Act, and where the land is not under that Act, the conveyance shall be executed in like manner and registered under the Registration of Deeds Act, 1856.

(3) Upon the transfer or conveyance being lodged with him, or the conveyance being registered, the Registrar of Titles, or Registrar of Deeds, as the case may be, shall make any entry in the register book or other book of the Office of Titles or the Office of the Registrar of Deeds, which may be necessary or proper to evidence that the land is vested in His Majesty, and thereupon and notwithstanding the provisions of the Transfer of Land Act, 1893-1946,¹ the land shall be deemed to be, and may be dealt with as, Crown lands free from any mortgage, lease, tenancy, encumbrance, charge or reservation of any kind.

If the land is under the Transfer of Land Act, 1893-1946,¹ the Registrar of Titles shall cancel any certificate of title relating to the land by indorsing thereon "Cancelled, the within land having been acquired by the Crown and removed from the operation of the Transfer of Land Act, 1893-1946," and the land shall, for the purposes of that Act, and until again alienated from the Crown, be dealt with and regarded in all respects as if it had never been alienated from the Crown.

If the land is not under the Transfer of Land Act, 1893-1946,¹ the Registrar of Deeds may require the Minister to deposit with him a plan or map of the land as if an application had been made to bring the land under the Transfer of Land Act, 1893-1946.¹

¹ Now Transfer of Land Act, 1893-1959.

(4) No stamp duty nor fee of any kind shall be payable upon any transfer or conveyance referred to in this section upon lodging or registering it in the Office of Titles or the Office of the Registrar of Deeds.

(5) A transfer or conveyance expressed to be in exercise of the power conferred by this section—

(a) shall, if accompanied by a statutory declaration of the Minister or person authorised by him on his behalf that the provisions of this Division of this Part of this Act have been properly complied with, be accepted by the Registrar of Titles or the Registrar of Deeds, as the case may be, as sufficient evidence that the power has been so exercised;

(b) shall not be impeachable on the ground that no case had arisen to authorise the exercise of the power, or that proper notice was not given, or that the power was otherwise improperly or irregularly exercised, but any person damnified by an unauthorised or irregular exercise of the power shall, subject to this Act, have his remedy in damages against the Minister, but shall have no other remedy in damages or for compensation against the Crown or the assurance fund established under the Transfer of Land Act, 1893-1946.¹

Cf. s. 117
post.

Discharge of
liability on
sale of land.
Ibid., s. 282.
No. 64 of
1946, s. 12
(2).
S.A. Act,
s. 282.

103. Any sale of land by the Minister pursuant to this Division of this Part of this Act, or any transfer or conveyance made pursuant to the next preceding section of this Act, shall discharge the land and all owners and occupiers thereof, and all previous owners and occupiers thereof, from any liability to the Minister for moneys referred to in section eighty-nine of this Act and then due to the Minister or other moneys then due to the Minister for any purpose which, at the time of the sale or the transfer or the conveyance, were a charge upon the land, or which were otherwise recoverable by the Minister in respect of the land, whether pursuant to this Act or any other Act.

¹ Now Transfer of Land Act, 1893-1959.

104. Subject to the next preceding section of this Act, the powers conferred by this Division of this Part of this Act shall not affect any other remedy of the Minister for the recovery of money due under this Act for rates of water supplied.

Saving provision.
S.A. Act,
s. 283.

PART VIII.—BY-LAWS AND REGULATIONS.

105. (1) The Minister may subject to this Act and in particular to subsection (2) of this section make by-laws with respect to the following matters, that is to say:—

Minister may make by-laws.
No. 33 of 1902, ss. 105, 106.
No. 4 of 1904, ss. 141, 142, 143.
No. 43 of 1909, ss. 146, 147, 148.
Amended by No. 66 of 1964, s. 24.

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| (i) The general conduct of his business and proceedings and the control, supervision, guidance duties of his officers and servants. | Regulating business duties of officers. |
| (ii) For the prevention of the pollution of water within any water reserve or catchment area. | Water reserves. |
| (iii) The due management and use of the waterworks and other property of the Minister and of any water under his jurisdiction or authority. | Managing waterworks. |
| (iv) The construction, maintenance, cleansing and repair of the waterworks and other property of the Minister. | Construction and use of waterworks. |
| (v) Protecting the water and the waterworks and other property of the Minister from trespass and injury. | Protecting water and works. |
| (vi) Protecting and preventing and remedying the waste, misuse, undue consumption, fouling or contamination of water contained in or supplied from the waterworks and otherwise under the control of the Minister. | Preventing waste, etc. |
| (vii) Regulating the purposes for which any pipes or drains shall be used or applied. | The use of pipes, etc. |

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| Rates. | (viii) | Making, levying and collecting water rates. |
| Quantity of water. | (ix) | Prescribing the quantity of water which a consumer may take in respect of any water rates paid for any given period. |
| Purposes and classes of purposes. | (x) | Prescribing the purposes and classes of purposes for which water may be used or primarily used under this Act, classifying holdings and parts of holdings for those purposes, and varying or cancelling any such classes. |
| Scale of charges for water supplied by measure. | (xi) | Prescribing scales of charges for water supplied by measure and the minimum quantity of water to be charged for and any other charges in relation to the supply of water, and providing for the assessment, levying and collection of such charges. |
| Specifying purposes. | (xii) | Specifying the purposes for which and the persons or classes of persons to whom water may be supplied under agreement, and the general and special terms and conditions upon which water shall be so supplied. |
| Prescribing quantity for specified purposes. | (xiii) | Prescribing the quantity of water a consumer may take or consume for any specified purposes, and the price to be paid for water supplied or used for any specified purposes. |
| Fixing of levels of water. | (xiv) | Fixing the level beyond which water supplied from the waterworks of the Minister may not be allowed to rise at any particular place within a country water area. |
| Repair of fittings. | (xv) | Compelling persons using water supplied by the Minister to keep their pipes and fittings in proper repair. |
| Prohibiting alteration of fittings. | (xvi) | Prohibiting any alteration of or interference with any meter, pipes or fittings without the consent of or notice to the Minister. |
| Enabling Minister to repair fittings at cost of consumer. | (xvii) | Enabling the Minister to repair pipes and fittings so as to prevent waste of water and to recover the cost of the repairs from the owner or occupier of the land. |

- (xviii) Prohibiting any mode of arrangement and the use of any fittings which may, in the opinion of the Minister, cause or tend to cause waste, misuse, undue consumption, fouling or contamination of water. Arrange-
ment of
fittings.
- (xix) The inspection of all pipes, fittings and meters. Inspection.
- (xx) Regulating the examination and licensing of persons to perform work in connection with meters, pipes and fittings; the cancellation of licenses, and prohibiting any other than licensed persons from fixing, altering or repairing meters, pipes or fittings connected with the waterworks of the Minister. Licensing
plumbers.
- (xxi) Prescribing fees or charges for or in respect of licenses. Fees.
- (xxii) Providing service charges to be paid in lieu of water rates by persons supplied with water. Service
charges.
- (xxiii) Prescribing forms to be used for the purposes of this Act. Forms.
- (xxiv) And for any other matters relating to the administration of this Act and the exercise of the powers vested in the Minister which the Governor may by proclamation declare to be matters in relation to which the Minister may make by-laws under this section. Generally.

(2) In the event of any by-law made by the Minister under this section being inconsistent with or repugnant to any regulation made by the Governor under the next succeeding section of this Act the regulation shall prevail, and to the extent of such inconsistency or repugnancy the by-law shall be invalid.

106. The Governor may make regulations in relation to any of the matters in relation to which the Minister may make by-laws under the next preceding section of this Act and in addition in Regulations.

relation to any other matters with respect to which it is necessary or expedient to make regulations for the due and effectual administration of this Act.

Penalties for breach of by-laws and regulations.
No. 33 of 1902, s. 106.
No. 4 of 1904, s. 142.
No. 43 of 1909, s. 147.

107. Every by-law, and every regulation—

- (a) may impose a penalty not exceeding twenty pounds for a breach of the by-law or of the regulation, as the case may be, and in the case of a continuing breach, a further penalty not exceeding five pounds for each day or part of a day during which the offence continues after notice thereof has been given by or on behalf of the Minister to the person committing the breach; and
- (b) may provide that in addition to the penalty any expense, loss or damage incurred by the Minister in consequence of such breach of such by-law or such regulation shall be paid by the person committing the breach and recoverable in the same manner as compensation may be recovered under section forty-five subsection (3) of this Act.

Cr. s. 45 (3) ante.

PART IX.—MISCELLANEOUS.

Notice when name of owner or occupier is unknown.
No. 33 of 1902, s. 109 (3).
No. 4 of 1904, s. 145 (3).
No. 43 of 1909, s. 150 (3).

108. When a notice or demand under this Act is required to be given or made to any owner or occupier whose name or address is unknown to the Minister, it shall not be necessary to name the owner or occupier and the notice or demand may be served by placing it on some conspicuous part of the land of the owner or occupier and by publishing it three times at intervals of not less than a week between any two publications in a newspaper usually circulating in the locality in which the land is situated.

Notices binding on persons claiming under owner or occupier.
No. 33 of 1902, s. 110.
No. 4 of 1904, s. 146.
No. 43 of 1909, s. 151.

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

110. Every order, summons, notice or other document requiring authentication by the Minister may be sufficiently authenticated without the common seal, if signed by the Minister, or a person authorised to do so by him.

Notices may be authenticated by signature of Minister or authorised person.
No. 33 of 1902, s. 111.
No. 4 of 1904, s. 147.
No. 43 of 1909, s. 152.

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

Saving of civil remedy.
No. 33 of 1902, s. 113.
No. 4 of 1904, s. 149.
No. 43 of 1909, s. 153.

112. Every person who obstructs the Minister or any person employed by the Minister in the performance of any act or thing which either of them respectively is authorised or required to do in the execution of this Act or any regulation or by-law made thereunder shall be guilty of an offence. Penalty—Twenty pounds.

Obstructing Minister or officers in performance of duty.
No. 33 of 1902, s. 115.
No. 4 of 1904, s. 151.
No. 43 of 1909, s. 156.

113. (1) Any person, who has charge of any waterworks, acquired, held or used by the Minister, and who refuses, on lawful demand to give up peaceable and quiet possession of them to any person entitled to possession under the provisions of this Act, shall be guilty of an offence.

Penalty for refusing to give up possession of works.
No. 4 of 1904, s. 152.
No. 43 of 1909, s. 157.

Penalty—Two hundred pounds or imprisonment with or without hard labour for twelve months.

(2) An offence under this section shall be tried and determined summarily by a stipendiary, police or resident magistrate.

114. Any officer of the Minister may without warrant apprehend any person found committing an offence against this Act or any regulation or by-law thereunder if the offender refuses to give his name and address.

Offender may be arrested.
No. 33 of 1902, s. 116.
No. 4 of 1904, s. 153.
No. 43 of 1909, s. 158.

Summary proceedings for offences and recovery of penalties.
No. 33 of 1902, s. 117.
No. 4 of 1904, s. 154.
No. 43 of 1909, s. 159.
Cr. ss. 46, 71 and 99 ante.

115. Subject to the provisions of sections forty-six, seventy-one and ninety-nine of this Act, all proceedings for any offence against this Act or the regulations or by-laws made thereunder may be taken and all penalties and forfeitures incurred under this Act or the said regulations or by-laws may be recovered summarily before justices in the manner provided by the Justices Act, 1902-1942,¹ on the complaint of the Minister or any officer or servant of the Minister made within two years of the commission of the offence.

Minister may be represented by officer.
No. 33 of 1902, s. 119.
No. 4 of 1904, s. 156.
No. 43 of 1909, s. 161.

116. In any proceedings in a local court or before justices sitting in petty sessions any authorised officer of the Minister may represent the Minister in all respects as if he were the party concerned.

117. [Section 117 repealed by No. 73 of 1954, ss. 5 and 8.]

Books of Land Titles and other offices may be searched without fee.
No. 33 of 1902, s. 121.
No. 4 of 1904, s. 158.
No. 43 of 1909, s. 163.

118. Any person appointed under the hand of the Minister may for the purpose of this Act search the public registers of the office of Land Titles and Registry of Deeds or any office of the Department of Lands and Surveys or the Mines Department without payment of any fee.

Property of Minister not to be taxed.
No. 33 of 1902, s. 122.
No. 4 of 1904, s. 159.
No. 43 of 1909, s. 164.

119. All lands and waterworks vested in or under the management and control of the Minister shall be exempt from any rate tax or imposition which any local authority might but for this section lawfully impose and levy.

Proof of ownership or occupancy.
No. 33 of 1902, s. 123.
No. 4 of 1904, s. 160.
No. 43 of 1909, s. 165.

120. In any legal proceedings under this Act—

(1) in addition to any other method of proof available—

(a) evidence that the person proceeded against is rated as owner or occupier of any land; or

¹ Now Justices Act, 1902-1964.

(b) evidence by certificate in writing of—

- (i) the Registrar of Titles or any assistant or deputy registrar, that any person's name appears in any registered book kept under the Transfer of Land Act, 1893-1944,¹ as proprietor of any land; or
- (ii) the Registrar of Deeds or his deputy, that any person appears from any memorial of registration of any deed conveyance or other instrument to be the owner of any land; or
- (iii) the Under Secretary for Lands, that any person is registered in the Department of Lands and Surveys as the owner, occupier or lessee of any land; or
- (iv) the Under Secretary for Mines, that any person is registered in the Mines Department as the lessee or holder of any gold mining lease, mineral lease or other mining tenement; or
- (v) the Surveyor General, that any plan or reproduction of a plan represents part of the State—

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

- (2) judicial notice shall be taken of the signatures and appointments of persons for the time being appointed to or acting in and discharging the duties of the offices referred to in the next preceding subsection.

¹ Now Transfer of Land Act, 1893-1959.

Certificate of
Minister
evidence of
certain
facts.
Cr. No. 23 of
1904, s. 6.

121. A certificate under the hand of the Minister that any specified land, reservoir, dam, drain, channel, pipe or other work or portion thereof is included in any waterworks constructed prior or subsequent to the commencement of this Act shall for all purposes and in all courts be sufficient evidence of the fact as stated in the certificate.

Power to
suspend
certain pro-
visions of
local gov-
ernment
Acts.
No. 43 of
1909, s. 166.

122. The Governor may, by order in Council, from time to time, wholly or in part, suspend the operation of the provisions of any local government Act, relating to water supply.

s. 4.

SCHEDULE.

| Title. | Number. |
|---|-----------------------|
| Goldfields Water Supply Act, 1902 | 2 Edward VII., No. 33 |
| Goldfields Water Supply Act Amend- ment Act, 1911 | No. 50 of 1911 |
| Goldfields Water Supply Act Amend- ment Act, 1925 | No. 15 of 1925. |
| Goldfields Water Supply Act Amend- ment Act, 1942 | No. 20 of 1942 |