

WESTERN AUSTRALIA

RIGHTS IN WATER AND
IRRIGATION ACT 1914

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NOTES

WESTERN AUSTRALIA

RIGHTS IN WATER AND IRRIGATION ACT 1914

AN ACT relating to Rights in Natural Waters, to make provision for the Conservation and Utilization of Water for Industrial Irrigation, the Prevention of the Pollution of Waters, the Control of the Disposal of Waste and Industrial Effluent, and for the Construction, Maintenance, and Management of Irrigation Works, and for other purposes.

[Long title amended by No. 48 of 1974 s. 3.]

PART I—PRELIMINARY

[Part I substituted by No. 119 of 1984 s. 3.]

Short title

1. This Act may be cited as the *Rights in Water and Irrigation Act 1914*.

[Section 1: See note under Part heading.]

Interpretation

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

“artesian well” means a well, including all associated works, from which water flows, or has flowed, naturally to the surface;

“Authority” means the body corporate known as the Water Authority of Western Australia established pursuant to the *Water Authority Act 1984*;

“bed” with reference to any water-course, lake, lagoon, swamp or marsh means the land over which normally flows, or which is normally covered by, the water thereof, whether permanently or intermittently; but does not include land from time to time temporarily covered by the flood waters of such water-course, lake, lagoon, swamp or marsh, and abutting on or adjacent to such bed;

“Crown land” means land vested in Her Majesty which is not for the time being dedicated to any public purpose, or subject to any grant, lease, licence, contract, or engagement made by or on behalf of Her Majesty;

“District” means an Irrigation District or “irrigation district” constituted under this Act;

“former Minister” means a Minister administering this Act before, pursuant to the *Water Authority Act 1984*, the Authority became charged with the administration of functions under this Act, whether in his capacity as a Minister of the Crown or as (pursuant to section 2 of the *Water Supply, Sewerage, and Drainage Act 1912* as read with this Act) a body corporate;

“irrigable” as applied to land means land for the time being declared or deemed to have been declared under section 40 (1a) to be irrigable land for the purposes of this Act and of such situation as to be capable of being irrigated from works or proposed works;

“irrigation” means any method of causing water from a water-course or works to flow upon and spread over land for the purpose of cultivation of any kind or of tillage or improvement of pasture, or of applying water to the surface of land for the like purpose;

“Lake, lagoon, swamp or marsh” means a natural collection of water whether permanent or temporary, that is not part of a water-course;

“non-artesian well” means a well, including all associated works, from which water does not flow, and has not flowed, naturally to the surface, but has to be raised, or has been raised, by pumping or other artificial means;

“spring” means a spring of water naturally rising to and flowing over the surface of land;

“water-course” means a river, stream, or creek in which water flows in a natural channel, whether permanently or intermittently and includes any natural collection of water into, through, or out of which, any such river, stream, or creek so flows;

(2) Terms not otherwise assigned a meaning under subsection (1) but referred to in section 3 of the *Water Authority Act 1984* as having a meaning assigned for the purposes of a relevant Act have that meaning in and for the purposes of this Act.

[Section 2: See note under Part heading. S. 2 amended by No. 25 of 1985 s. 275.]

PART II—ADMINISTRATION

[Part II substituted by No. 119 of 1984 s. 3.]

Authority to administer Act

3. (1) Subject to the Minister, the general administration of this Act shall be under the control of the Authority.

[(2) and (3) repealed.]

[Section 3: See note under Part heading. S. 3 amended by No. 25 of 1985 s. 276.]

Commissioners

4. (1) The Governor shall, from time to time, appoint 3 or more persons, who may be officers of the Public Service, as Commissioners to advise the Minister and the Authority upon matters relating to the administration of this Act, and any other Act in force for the time being relating to irrigation or land drainage.

(2) The Governor may, from time to time, appoint any officer of the Public Service to act, for such time as the Governor thinks fit, as the deputy of a Commissioner during his absence or illness, or for other sufficient cause.

(3) Any person appointed a Commissioner shall hold such office at the will of the Governor.

[Section 4: See note under Part heading. S. 4 amended by No. 25 of 1985 s. 277.]

[5. Section 5 repealed by No. 25 of 1985 s. 278.]

PART III—CONTROL OF WATERS

[Part III substituted by No. 119 of 1984 s. 3.]

Division 1—Certain surface waters

[Division 1: See note under Part heading.]

Application of Division

6. (1) This Division does not apply to or in relation to—

- (a) the water flowing from any spring the water of which rises to the surface on land that has been granted or demised by the Crown until it has passed beyond the boundaries of the land belonging to the owner or occupier of the land on which the water so rises; or
- (b) the water in any lake, lagoon, swamp, or marsh the bed of which is on land that has been granted or demised by the Crown and is wholly within the boundaries of the land belonging to the owner or occupier of the land on which it is situate.

(2) Subject to subsection (1) and any proclamation under subsection (3), this Division applies to and in relation to every water-course, lake, lagoon, swamp, or marsh that is for the time being situated within the boundaries of a District but not otherwise.

(3) Subject to subsection (4), the Governor may, on the recommendation of the Minister, at any time and from time to time by proclamation declare that this Division—

- (a) shall; or
- (b) shall not,

apply to and have effect in relation to any water-course, lake, lagoon, swamp, or marsh specified in the proclamation or situated in a portion of the State so specified and any such proclamation shall have effect according to its tenor.

(4) A proclamation under subsection (3) shall not be made unless, at least 30 days before the proclamation is made, notice of the proposed proclamation has been given to each interested local authority for the purpose of enabling it to make such objections or representations as it sees fit.

(5) For the purposes of subsection (4), where a water-course, lake, lagoon, swamp, or marsh runs through, is contiguous to, or is situated wholly or partly in, the district of a local authority that local authority is, in relation to a proposed proclamation under that subsection affecting that water-course, lake, lagoon, swamp or marsh, an interested local authority.

[Section 6: See note under Part heading.]

Saving

7. A proclamation made under section 27 (5) as enacted before the coming into operation of section 3 of the *Rights in Water and Irrigation Amendment Act 1984*¹ and in force immediately before the coming into operation of that section shall—

- (a) in the case of a proclamation under paragraph (a) or (b) thereof, be deemed to have been made under section 6 (3) (a);
- (b) in the case of a proclamation under paragraph (c) thereof, be deemed to have been made under section 6 (3) (b),

and a reference in any such proclamation to this Part shall be read as a reference to this Division.

[Section 7: See note under Part heading.]

Natural waters vest in the Crown

8. (1) The right to the use and flow and to the control of the water at any time in any water-course, lake, lagoon, swamp, marsh or spring shall, subject to this Act and until appropriated under this or any other Act, vest in the Crown.

(2) This section shall not operate so as to prevent any person from draining any land, or making any dam or tank upon any land, of which he is the owner or occupier if the flow of water in any water-course or the amount of water in any lake, lagoon, swamp or marsh is not thereby sensibly diminished.

Riparian right defined

9. (1) Subject to this section, the owner or occupier of any land alienated from the Crown through or contiguous to which runs any water-course, or contiguous to which, or partly within which, is situate any lake, lagoon, swamp or marsh, has the right, as such owner or occupier, to take water in that water-course, lake, lagoon, swamp or marsh, free of charge—

- (a) for the domestic and ordinary use of himself and of his family and servants; and
- (b) for watering cattle or other stock,

and every owner of land alienated from the Crown before the relevant day has a further right to take such water for the irrigation of a garden not exceeding 2 hectares in extent, being part of that land and used in connection with a dwelling.

(2) For the purposes of this section—

- (a) “the relevant day”, in relation to land through or contiguous to which runs a water-course, or contiguous to which or partly within which is situate a lake, lagoon, swamp or marsh, means—
 - (i) where this Division applies to and has effect in relation to the water-course, lake, lagoon, swamp or marsh by reason of a proclamation under section 6 (3), the day on which that proclamation was published;
 - (ii) in any case, the day when this Act came into operation; and
- (b) land that, on the relevant day, was or is in process of alienation shall be deemed to have been alienated before that day.

(3) Where any public works of water supply constructed before or after the commencement of this Act wholly or partially supplies or augments the volume of water in any water-course, lake, lagoon, swamp or marsh, the right conferred by subsection (1) on an owner or occupier to take water in that water-course, lake, lagoon, swamp or marsh is subject to the limitations set out in subsection (4) and shall be exercised only in accordance with that subsection and the regulations.

(4) After the construction of any public works of water supply a person is not entitled by subsection (1) to take any more of the water of the water-course, lake, lagoon, swamp or marsh concerned than—

- (a) 14 kilolitres per day for domestic and ordinary use and for watering cattle or other stock, in respect of every kilometre of frontage measured by the general course to such water-course, or to such lake, lagoon, swamp or marsh, and 8 500 cubic metres per annum for the irrigation of a garden not exceeding 2 hectares in extent, being part of the land adjoining the bed thereof, and used in connection with a dwelling; or
- (b) the amount of water that would be available to him and to which he would be so entitled but for the existence of such works,

whichever is the lesser.

[Section 9: See note under Part heading.]

Other rights to water

10. (1) Any person may take water for domestic and ordinary use, and for watering cattle or other stock from any water-course, lake, lagoon, swamp or marsh, vested in the Crown and to which there is access by a public road or reserve.

(2) No right to take and divert water from any water-course, lake, lagoon, swamp or marsh for use on any land adjacent to the bed thereof shall be acquired by any owner of such land, and no right to the

permanent diversion or to the exclusive use of such water shall be acquired by any person, by length of use or otherwise, except under this or any other Act.

[Section 10: See note under Part Heading.]

Other diversions to be licensed

11. A person who, not being authorized by section 9 or 10 or any other Act to do so, diverts or takes any water from any water-course, lake, lagoon, swamp or marsh or causes, suffers, or permits any of those things to be done except pursuant to a licence issued for that purpose under section 12 or 13 commits an offence and is liable to a fine not exceeding \$2 000 and, where the offence continues after conviction, \$200 for each day that the offence so continues.

[Section 11: See note under Part heading.]

Certain riparian owners may apply for special licences to divert and use water

12. (1) Where—

- (a) a proclamation is made, or deemed to have been made, under section 6 (3) (a) in respect of a water-course, lake, lagoon, swamp, or marsh; and
- (b) before the relevant day, the owner or occupier, or each of successive owners or occupiers, of land alienated from the Crown before the relevant day has permanently diverted, or at intervals during every year exclusively taken and used, the water of the water-course, lake, lagoon, swamp, or marsh for any purpose or use other than—
 - (i) the domestic and ordinary use of himself and of his family and servants;
 - (ii) the watering of cattle or other stock; or
 - (iii) the irrigation of a garden not exceeding 2 hectares in extent, being part of that land and used in connection with a dwelling,

the owner or occupier of the land may, within 12 months after the relevant day, apply to the Authority for a special licence authorizing the continuation of such diversion, taking, or use for a period of 10 years after the relevant day.

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

- (a) “the relevant day”, in relation to a water-course, lake, lagoon, swamp or marsh referred to in that subsection, means the day on which the proclamation mentioned in that subsection was published; and

(b) land that, on the relevant day, was or is in process of alienation shall be deemed to have been alienated before that day.

(3) An application under subsection (1) shall be in the prescribed form duly completed and signed by the applicant or by his agent duly empowered in writing.

(4) The Authority shall cause notice of every application under subsection (1) to be published in the *Gazette*, and in at least one issue of a newspaper circulating generally in the neighbourhood of the land, and shall direct copies of the notice to be served on such persons as he thinks fit, and shall appoint a time, not more than 6 months from the date of the notice or of the first of such advertisements, within which objections to the application may be received.

(5) Where an owner or occupier of land makes an application under subsection (1), an owner or occupier of any other land that is—

(a) within 4.8 kilometres of that land;
and

(b) contiguous to the water-course, lake, lagoon, swamp, or marsh to which the application relates,

may make an objection to the application being granted, by writing addressed to the Authority and setting out the grounds of the objection.

(6) The Authority after such inquiry into the subject matter of the application and of any objections thereto as the Authority thinks proper to direct may refuse the application or may grant the application either wholly or in part.

(7) Where the Authority grants the application it shall issue to the applicant a special licence in respect of the land and user of the water specified in the application or of so much of such land and water as the Authority thinks fit.

(8) A special licence under this section shall be subject to such special conditions and provisions, if any, as the Authority determines and to the provisions of this Act and, notwithstanding that it is expressed to be for a period of 10 years, may be determined or modified at any time in the event or manner prescribed by this section.

(9) The holder of a special licence under this section may divert, take, and use water to the extent and in respect of the land and in the manner specified in the licence.

(10) If at any time during the currency of a special licence under this section it is proved to the satisfaction of the Authority that the licensee has failed to observe and perform the conditions and provisions subject to which the licence was issued and held, or that it is expedient, in the interests of the public, that the licence should be determined or modified, the Authority may give the licensee notice in writing by registered post that the Authority intends, after the expiration of one month from the date of such notice, to determine or to modify the licence.

(11) Unless the licensee, before the expiration of the month fixed under subsection (10), shows to the Authority sufficient cause why the licence should not be determined or modified the Authority may make an order determining or modifying the licence.

(12) If an order under subsection (11) is made in the interests of the public the Authority may, with the approval of the Minister, recommend to the Governor payment to the licensee by way of compensation of such amount out of the Consolidated Revenue Fund as to the Authority seems equitable, and if the Governor approves of such recommendation effect shall be given thereto accordingly.

[Section 12: See note under Part heading. S. 12 amended by No. 25 of 1985 ss. 279 and 280; No. 110 of 1985 s. 120.]

Licences, other than special licences

13. (1) The Authority may grant to any owner or occupier of land a licence, subject to such terms, limitations and conditions, if any, as may be specified or referred to therein or as may be prescribed for the purposes of this section, to take, use, or dispose of water from any water-course, lake, lagoon, swamp or marsh, and may from time to time thereafter renew any licence so granted.

(2) Subject to subsection (3) a licence granted under this section shall have effect for such period as may be specified therein.

(3) Subject to section 14, the Authority, at any time during the currency of a licence granted under this section, by notice in writing served on the licensee, may—

- (a) vary the period for which the licence is to have effect;
- (b) vary or add to the terms, limitations, or conditions imposed in relation to a licence; or
- (c) in the case of a licence which is not subject to any terms, limitations, or conditions, provide that it shall be subject to such terms, limitations or reasonable conditions as are specified in the notice.

[Section 13: See note under Part heading. S. 13 amended by No. 25 of 1985 s. 279.]

Appeals

14. (1) A person who is aggrieved by the refusal of his application for a licence or the holder of a licence who is aggrieved by any term, limitation, condition, or provision imposed in relation to a licence granted or renewed under section 12 or 13 may, within 30 days after written notice of the decision appealed against is received, give to the Minister notice of his wish to be heard.

(2) Where the Minister receives a notice under subsection (1), the Minister shall cause an inquiry to be conducted by such person or persons as he shall appoint and the person aggrieved has the right to be heard at that inquiry; and the Minister shall thereafter give such decision as he thinks fit and effect shall be given thereto.

[Section 14: See note under Part heading.]

The *alveus* of waters not alienated

15. (1) Subject to subsection (4), where a water-course, lake, lagoon, swamp or marsh forms the boundary or part of the boundary of a parcel of land that has at any time been alienated by the Crown, the bed thereof shall, for the purposes of this Act, be deemed to have remained the property of the Crown, and not to have passed with the land so alienated.

(2) Subject to subsection (4), where a water-course, lake, lagoon, swamp or marsh forms the boundary, or part of the boundary of a parcel of land that is alienated by the Crown, the bed thereof shall, notwithstanding such alienation, remain the property of the Crown, and shall not pass with the land so alienated.

(3) Subsections (1) and (2) apply notwithstanding that one and the same person has been or is the owner of the lands adjacent to both banks.

(4) This section does not apply to—

- (a) the bed of a natural collection of water into and out of which flows a river, stream, or creek to the extent that it exceeds in width the width of the river, stream, or creek at its inlet to or outlet from that natural collection of water; or
- (b) the bed of a natural collection of water, whether or not it is part of a water-course, to the extent that it is cultivated, either wholly or in part, at any time during the year, or is capable of being drained and cultivated.

[Section 15: See note under Part heading.]

Owner of land adjacent to water-course to have certain rights

16. (1) Notwithstanding anything in section 15—

- (a) the owner or occupier for the time being of any land adjacent to any water-course, lake, lagoon, swamp, or marsh, the bed whereof is by this Act declared to have remained the property of the Crown, shall have the like access to the portion of the bed to which that land is adjacent, and the like use of that portion as if this Act had not passed unless such portion has been actually appropriated by or is under the sanction of the Crown for any of the purposes of this Act; and

- (b) such owner or occupier may have and pursue against any person trespassing upon that portion of the land any remedy for trespass which he might have had and pursued if this Act had not been passed, and as if that person were a trespasser upon land in the possession of such owner or occupier.

(2) The Authority may, with the approval of the Minister, in the name and on behalf of the Crown, grant to the owner or occupier of any land adjacent to any water-course, lake, lagoon, swamp, or marsh the bed whereof is by this Act declared to have remained the property of the Crown, permission subject to such conditions as the Authority may think fit to carry out works at the expense of that owner or occupier for the protection of that land from damage by erosion or flooding, if in the opinion of the Authority such works will not injuriously affect the bed or unduly obstruct the water-course, lake, lagoon, swamp or marsh.

(3) This section shall not be taken to restrict the right of the Crown to pursue any remedy against any person trespassing upon such bed nor shall this section entitle an owner or occupier to have or pursue any remedy for trespass against the Crown, the Authority, or a former Minister, or any person acting under the authority of the Crown, the Authority, or a former Minister.

(4) A person exercising in respect of a bed a right of access or use conferred by subsection (1) does not by reason thereof trespass upon such bed.

[Section 16: See note under Part heading. S. 16 amended by No. 25 of 1985 ss. 279 and 281; No. 110 of 1985 s. 121.]

Interference prohibited

17. (1) Where, whether before or after the coming into operation of this Act, land was or is granted or demised by the Crown, a person shall not, except as authorized by or under this or any other Act, obstruct, destroy, or interfere with any water-course, race, or drain flowing through or over the land, or any dam or reservoir, or the bed of any disused water-course, race, or drain, that is on the land.

(2) Subsection (1) applies notwithstanding that although the water-course, race, or drain flowed through or over the land, or the dam or reservoir, or the bed of a disused water-course, race, or drain, was on the land at the time of the grant or demise of the land, an appropriate reservation or exception was not included in the Crown grant or lease.

(3) A person shall not, except as authorized by or under this or any other Act, obstruct, destroy or interfere with the waters, bed or banks of any water-course flowing through or over, or lake, lagoon, swamp or marsh situate wholly or partly on, land that has not been granted or demised by the Crown.

(4) Any person who obstructs, destroys, or interferes with anything contrary to subsection (1) or (3) is guilty of an offence against this section; and any person who, being the occupier of any land granted or demised as mentioned in subsection (1), continues or fails to remove any such obstruction or interference is guilty of an offence against this section on every day during which such obstruction or interference is continued or not removed after notice in writing to discontinue or to remove the same has been given by or on behalf of the Authority to such occupier.

(5) A prosecution for an offence against this section may be commenced at any time within 2 years after the offence was committed and not afterwards.

(6) The Authority may, by notice in writing, direct any person who has been convicted of an offence against this section to carry out such works and take such other measures as the Authority specifies in the notice for the purpose of restoring the bed or banks of the water-course, race, drain, lake, lagoon, swamp or marsh or minimizing the effect of the obstruction or destruction thereof or interference therewith.

(7) Where a direction contained in a notice given under subsection (6) has not been complied with and the time allowed by the notice for compliance has expired the Authority may cause such works to be carried out and measures to be taken as the Authority considers appropriate for achieving the purposes of the notice, and the Authority may recover the expenses thereby reasonably incurred as a debt due from the person to whom the notice was given.

[Section 17: See note under Part heading. S. 17 amended by No. 25 of 1985 s. 279; No. 110 of 1985 s. 122.]

Obstruction of flow

18. Any person who conveys or discharges, or causes or permits to be conveyed or discharged any sludge, mud, earth, gravel, or other matter likely to obstruct the flow of the current, into any water-course, is guilty of an offence against this Act.

[Section 18: See note under Part heading.]

Division 2—Other surface waters

[Division 2: See note under Part heading.]

Application of Division

19. (1) Subject to subsection (2), this Division applies to and has effect in relation to every water-course, lake, lagoon, swamp, or marsh to and in relation to which Division 1 does not apply.

(2) This Division does not apply to or in relation to—

- (a) the water flowing from any spring the water of which rises to the surface on land that has been granted or demised by the Crown until it has passed beyond the boundaries of the land belonging to the owner or occupier of the land on which the water so rises; or
- (b) the water in any lake, lagoon, swamp, or marsh the bed of which is on land that has been granted or demised by the Crown and is wholly within the boundaries of the land belonging to the owner or occupier of the land on which it is situate.

Riparian right defined

20. (1) The owner or occupier of any land alienated from the Crown through or contiguous to which runs any water-course, or contiguous to which, or partly within which, is situate any lake, lagoon, swamp or marsh, has the right, as such owner or occupier, to take water in that water-course, lake, lagoon, swamp or marsh, free of charge—

- (a) for the domestic and ordinary use of himself and of his family and servants;
- (b) for watering cattle or other stock;
and
- (c) to the extent that the flow of water in the water-course or the amount of water in the lake, lagoon, swamp or marsh, as the case may be, is not thereby sensibly diminished, for any other purpose,

and every owner of land alienated from the Crown before the commencement of this Act has a further right to take such water for the irrigation of a garden not exceeding 2 hectares in extent, being part of that land and used in connection with a dwelling.

(2) For the purposes of this section, land in process of alienation at the commencement of this Act shall be deemed to have been alienated before the commencement of this Act.

[Section 20: See note under Part heading.]

Other rights to water

21. (1) Any person may take water—

- (a) for domestic and ordinary use;
- (b) for watering cattle or other stock;
and
- (c) to the extent that the flow of water in the water-course or the amount of water in the lake, lagoon, swamp or marsh, as the case may be, is not thereby sensibly diminished, for any other purpose,

from any water-course, lake, lagoon, swamp or marsh that is vested in the Crown and to which there is access by a public road or reserve.

(2) No right to take and divert water from any water-course, lake, lagoon, swamp or marsh for use on any land adjacent to the bed thereof shall be acquired by any owner of such land, and no right to the permanent diversion or to the exclusive use of such water shall be acquired by any person, by length of use or otherwise, except under this or any other Act.

[Section 21: See note under Part heading.]

Directions

22. (1) The Authority may, where the Authority is of the opinion that—

(a) any person—

- (i) having a right under section 20 or 21 to take water in a water-course, lake, lagoon, swamp, or marsh, has diverted, taken, or used such water for a purpose or to an extent not authorized by this Division; or
- (ii) not having a right under section 20 or 21 to take water in a water-course, lake, lagoon, swamp, or marsh, has diverted, taken, or used such water; and

(b) the unauthorized diversion, taking, or use—

- (i) resulted in or contributed to the interference with the enjoyment by any other person of a right conferred by this Division, or any damage or injury to the land of any other person; or
- (ii) should not, in the public interest, be permitted to continue,

by notice in writing give directions to the person who has so diverted, taken, or used the water defining, where applicable, the purposes for which, or the extent to which, water may be diverted, taken, or used by that person in the exercise of those rights and specifying the extent, if any, to which, the manner in which, and the conditions upon which, that person may divert, take, or use such water otherwise than in the exercise of those rights.

(2) A direction given by the Authority under subsection (1) may be varied or cancelled by the Authority by subsequent notice in writing.

(3) A direction given under subsection (1) shall not permit the diversion, taking, or use of water otherwise than in the exercise of a right under section 20 or 21 unless the Authority is satisfied that such diversion, taking, or use will not result in or contribute to any interference, damage, or injury of the kind referred to in subsection (1) (b) (i).

(4) Where by notice under subsection (1) or (2) the Authority gives to a person a direction or varies a direction previously given and, after the expiry of 30 days from the giving of the notice, the person to whom the notice was given diverts, takes, or uses water contrary to the direction so given or the direction as so varied that person commits an offence and is liable to a fine not exceeding \$500; and if the offence of which he is convicted is continued after the conviction he commits a further offence and is liable to a further fine not exceeding \$50 for every day on which the offence is so continued.

[Section 22: See note under Part heading. S. 22 amended by No. 25 of 1985 ss. 279 and 282.]

Appeals

23. (1) A person to whom a notice is given under section 22 or any other person who is aggrieved by a direction contained in a notice given under section 22 (1) or such a direction as varied may, within 30 days after he is given notice of the direction or variation or, where he is not the person to whom the notice is given, within 30 days after he has knowledge of the direction or variation, give to the Minister notice that he wishes to be heard.

(2) Where the Minister receives a notice under subsection (1), the Minister shall cause an inquiry to be conducted by such person or persons as he shall appoint and the person aggrieved has the right to be heard at that inquiry; and the Minister shall thereafter give such decision as he thinks fit and effect shall be given thereto.

(3) Every person appointed by the Minister under subsection (2) shall be chosen from amongst persons who are either a magistrate as defined by the *Justices Act 1902*, or who, due to their qualifications and experience, are otherwise suitable to conduct the inquiry.

[Section 23: See note under Part heading.]

Saving of civil remedy

24. Nothing contained in, or done under, this Division affects any remedy to which a person would otherwise be entitled in civil proceedings except that a person shall not be liable to be proceeded against in respect of any diversion, taking, or use of water that is permitted by a direction under section 22.

[Section 24: See note under Part heading.]

Offences

25. (1) A person shall not, except as authorized by or under this or any other Act, obstruct, destroy, or interfere with the waters, bed, or banks of any water-course flowing through or over, or lake, lagoon, swamp or marsh situate wholly or partly on, land that has not been granted or demised by the Crown.

(2) Any person who obstructs, destroys, or interferes with anything contrary to subsection (1) is guilty of an offence against this section.

(3) A prosecution for an offence against this section may be commenced at any time within 2 years after the offence was committed and not afterwards.

(4) The Authority may, by notice in writing, direct any person who has been convicted of an offence against this section to carry out such works and take such other measures as the Authority specifies in the notice for the purpose of restoring the bed or banks of the water-course, lake, lagoon, swamp or marsh or minimizing the effect of the obstruction or destruction thereof or interference therewith.

(5) Where a direction contained in a notice given under subsection (4) has not been complied with and the time allowed by the notice for compliance has expired the Authority may cause such works to be carried out and measures to be taken as the Authority considers appropriate for achieving the purposes of the notice, and the Authority may recover the expenses thereby reasonably incurred as a debt due from the person to whom the notice was given.

[Section 25: See note under Part heading. S. 25 amended by No. 25 of 1985 ss. 279 and 283.]

Division 3—Underground waters

[Division 3: See note under Part heading.]

Rights to underground waters vest in the Crown

26. The right to the use and flow and to the control of the water at any time in any underground source of supply shall, subject to this Act and until appropriated under this or any other Act, vest in the Crown.

[Section 26: See note under Part heading.]

Artesian wells to be licensed

26A. (1) A person shall not, except pursuant to a licence issued for that purpose under section 26D, commence, construct, enlarge, deepen, alter, or draw water from any artesian well or cause, suffer, or permit any of those things to be done.

(2) A person who—

- (a) being an owner or occupier of land, contravenes or fails to comply with subsection (1); or
- (b) being a person engaged for the purpose of carrying out any work mentioned in subsection (1), commences or carries out any such work that is not authorized by a licence issued under section 26D,

commits an offence and is liable to a fine not exceeding \$2 000 and, where the offence continues after conviction, \$200 for each day that the offence so continues.

[Section 26A: See note under Part heading.]

Non-artesian wells in certain areas to be licensed

26B. (1) The Governor may by proclamation declare any part of the State named or defined in the proclamation, to be a proclaimed area for the purposes of this section; and may, by subsequent proclamation, vary or cancel any such proclamation.

(2) Section 42 of the *Interpretation Act 1984*, applies to any proclamation made under subsection (1) as though the proclamation were a regulation.

(3) Subject to subsection (4) and section 26C, a person shall not, except pursuant to a licence issued for that purpose under section 26D, commence, construct, enlarge, deepen, alter or draw water from any non-artesian well that is situate in a proclaimed area, or cause, suffer or permit any of those things to be done.

(4) Where any work required by this section to be the subject of a licence has, on the day of the publication of a proclamation made under subsection (1) declaring the part of the State in which the well is situate to be a proclaimed area, been commenced and is not completed, the occupier of the land on which the work was commenced shall, within 2 months after that day, apply for a licence under section 26D for that work.

(5) Subject to section 26C, where an existing non-artesian well is, by operation of a proclamation made under this section, brought into a proclaimed area, the occupier of the land upon which the well is situate shall, within 2 months after the day of the publication of the proclamation, apply for a licence under section 26D to draw water from that well.

(6) A person who—

- (a) being an owner or occupier of land, contravenes or fails to comply with this section; or

- (b) being a person engaged for the purpose of carrying out any work mentioned in subsection (3), commences or carries out any such work that is not authorized by a licence issued under section 26D,

commits an offence and is liable to a fine not exceeding \$2 000 and, where the offence continues after conviction, \$200 for each day that the offence so continues.

[Section 26B: See note under Part heading.]

Exemptions

26C. (1) In this section “proclaimed area” has the same meaning as it has in section 26B.

(2) The Governor may, by Order in Council published in the *Gazette*, declare that sections 26B (3) to 26B (6) do not apply in relation to a non-artesian well situated, or to be situated, in a proclaimed area or part thereof specified in the Order if that well is used or to be used for the drawing of water for—

- (a) the domestic and ordinary use of the owner or occupier of the land on which the well is, or is to be, situated and of their respective families and servants;
- (b) the watering of cattle or other stock; or
- (c) any one or more of the purposes mentioned in paragraph (a) or (b),

but no other purpose and an Order published under this subsection shall have effect according to its tenor.

(3) The Governor may, by a subsequent Order in Council published in the *Gazette*, vary or cancel an Order under subsection (2).

(4) Where an Order published under subsection (3) varies or cancels a previous Order so published—

- (a) a person does not contravene section 26B (3) or (6) by reason of the doing, within 2 months after the publication of the Order effecting the variation or cancellation, of anything that would not have contravened that provision had the previous Order not been so varied or cancelled;
- (b) in relation to work that, but for the variation or cancellation of the previous Order, would, by reason of that Order, not have been required under section 26B to be the subject of a licence, section 26B (4) applies as if the day on which the Order effecting the variation or cancellation was published were the day on which a proclamation were made under section 26B (1) declaring the part of the State concerned to be a proclaimed area; and
- (c) in relation to a non-artesian well from which, but for the variation or cancellation of the previous Order, a person would, by reason of that Order, not have been prevented from drawing

water, section 26B (5) applies as if the day on which the Order effecting the variation or cancellation was published were the day on which a proclamation were made under section 26B (1) bringing the well into a proclaimed area.

[Section 26C: See note under Part heading.]

Application for and issue of licences

26D. (1) Every application for a licence for the commencement or construction of an artesian well or a non-artesian well or for the enlargement, deepening or altering of, or the drawing of water from, an existing well shall be made to the Authority in the prescribed form and shall be accompanied by the prescribed plans and specifications, together with a statement of the purposes for which it is proposed to use the water.

(2) The Authority may—

- (a) issue a licence to the applicant subject to such terms, limitations and conditions as the Authority thinks fit;
- (b) before granting a licence, require such alterations to be made in, or in connection with, the work or the plans and specifications as the Authority thinks fit; or
- (c) refuse a licence.

(3) A licence shall be deemed to be held by, and shall operate for the benefit of, the lawful owner and the occupier, for the time being, of the land whereon the well is sunk or is proposed to be sunk.

(4) An applicant for a licence who is aggrieved by any decision of the Authority made under this section may, within 30 days after receiving advice of the decision, give notice to the Minister of his wish to be heard, before the decision is implemented.

(5) Where the Minister receives a notice such as is mentioned in subsection (4), the Minister shall cause an inquiry to be conducted by such persons as he shall appoint including at least one person nominated by the person aggrieved, and the person aggrieved has the right to be heard at any such inquiry; and the Minister shall thereafter give such decision as he thinks fit and effect shall be given thereto.

[Section 26D: See note under Part heading. S. 26D amended by No. 25 of 1985 s. 284.]

Information on non-artesian wells

26E. (1) Where after the coming into operation of section 3 of the *Rights in Water and Irrigation Amendment Act 1984*¹ a non-artesian well is constructed or deepened, the person who carries out the work shall, within 1 month after completing the construction of or deepening of the

well, furnish, in the prescribed form, to the Authority or to such other person as the Authority may direct such information in respect of the well as is prescribed.

Penalty: \$500.

(2) The Authority may, by notice published in the *Gazette*, exempt persons from the requirement of complying with subsection (1) in respect of wells in any part of the State and may, by subsequent notice so published, vary or cancel any such notice.

[Section 26E: See note under Part heading. S. 26E amended by No. 25 of 1985 s. 279.]

Penalty for alterations in licensed well or contravention of licence

26F. (1) During the currency of a licence issued under section 26D no alterations shall be made in or in connection with the well, nor shall the water from the well be used for purposes other than those authorized by the licence but works necessary for the maintenance of the well in good order or occasioned by any unforeseen emergency may be carried out if written notice of all such works is given to the Authority within 7 days after the same are commenced.

(2) Any person who contravenes this section, or contravenes or fails to carry out any condition of the licence, shall be liable to a penalty not exceeding \$2 000 and a further penalty of \$200 for each day during which the offence continues after conviction; and, in addition to the imposition of the said penalty, the Authority may cancel the licence given in respect of the well in regard to which the offence was committed; and a person shall not thereafter do, or cause, suffer or permit to be done, any thing that was authorized by the licence to be done.

(3) The holder of any such licence may, during the currency thereof, apply for an amended licence allowing alterations in the well; and every such application shall be dealt with as is herein provided in respect of applications for a licence in the first instance.

[Section 26F: See note under Part heading. S. 26F amended by No. 25 of 1985 s. 279.]

Powers of Authority in case of improper use of water

26G. (1) If the Authority is of the opinion that water drawn from any artesian well or from a non-artesian well in relation to which section 26B (3) applies, whenever constructed—

- (a) is being improperly used;
- (b) is being wasted, whether by reason of neglect, failure to effect repairs or alterations reasonably necessary for the proper maintenance of the well or any other cause;

- (c) is having harmful effect; or
- (d) is not being used to the best advantage,

the Authority may, after giving 30 days' notice of the intention in that regard, direct the closing or partial closing of the well or direct such other steps (including any reasonable repairs and alterations) to be taken as the Authority thinks necessary to prevent the continuance of any of the things mentioned in paragraph (a), (b), (c) or (d).

(2) The Authority may, for the purpose of regulating the quantity of water to be drawn from any artesian or non-artesian underground water source, from time to time give directions as to the amount of water that may be drawn, and the rate of draw, for any artesian well or non-artesian well that draws water from that underground source.

(3) A person who fails to comply with a direction given pursuant to this section commits an offence.

Penalty: \$500 and, where the offence is a continuing one, \$50 for each day that the offence continues after the direction is given.

(4) Where a person is convicted of an offence against this section, the Authority may cancel any licence given in respect of the well in regard to which the offence was committed; and a person shall not thereafter do, or cause, suffer or permit to be done anything that was authorized by a licence so cancelled to be done.

[Section 26G: See note under Part heading. S. 26G amended by No. 25 of 1985 ss. 279 and 285.]

Division 4—Miscellaneous

[Division 4: See note under Part heading.]

Right of entry to the Crown

26H. (1) Subject to subsection (1a), the Authority, any officer of the Authority or any person authorized by the Authority, may in the exercise of the right of the Crown, to the control of the waters in water-courses, lakes, lagoons, swamps, marshes or underground sources or for any other purpose required by this Act, enter upon any land and inspect that land and any dam, well, or other works thereon or therein and take such measures as may be necessary or convenient, whether in general or to meet particular cases, to carry out the objects and purposes of this Act and their duties thereunder including measures for the conservation and regulation of such water and for its preservation from pollution, and for the protection of the bed over or within which it flows or is contained, and for removing any obstruction from such bed, and for clearing and deepening and straightening and otherwise altering the channel of any such water-course, and may intervene summarily to prevent the undue, excessive, or illegal diversion, drawing, use, or pollution of such water or interference with such bed.

(1a) The Authority shall comply with the provisions of Part VI of the *Water Authority Act 1984* in relation to any entry under subsection (1).

(2) Any person who obstructs, impedes or interferes with the Authority or any person acting in the exercise of an authorization conferred under subsection (1) by the Authority, in entering upon any land or in taking any measures under subsection (1), is guilty of an offence against this Act.

[Section 26H: See note under Part heading. S. 26H amended by No. 25 of 1985 s. 286.]

Authority entitled to institute proceedings

26J. (1) the Authority shall be entitled, in the name and on behalf of the Crown, to institute and maintain by any officer of the Authority authorized for that purpose by the Authority any proceeding in any court whether such proceeding be for any civil remedy or for the recovery or enforcement of any penalty against any person for illegally diverting or taking or for polluting the water of any water-course, lake, lagoon, swamp, marsh or underground water source, or for unlawfully interfering with the bed thereof.

(2) In such proceedings it shall not be necessary for the Authority to show that either the Crown or the Authority or any person has sustained damage by such illegal diversion or taking or pollution of water or unlawful interference with such bed; nor that the Crown or the Authority is a riparian owner or otherwise entitled to the use or to the protection of the water-course, lake, lagoon, swamp, marsh or underground water source from which water is illegally diverted or taken, or the water of which is polluted, or the bed of which is unlawfully interfered with; but the Authority shall be entitled to judgment in the Authority's favour if it be proved that the water has been illegally diverted or taken or polluted, or that the bed has been unlawfully interfered with; and the Authority shall, in the discretion of the court, be entitled to the costs and expenses of the proceedings against the person by whom the court in its discretion shall order such costs and expenses to be paid.

[Section 26J: See note under Part heading. S. 26J amended by No. 25 of 1985 ss. 279 and 287.]

Regulations

27. (1) Without prejudice to the generality of that power, the power conferred by section 37 of the *Water Authority Act 1984* to make regulations may be exercised to make regulations prescribing all matters that

are required or permitted by this Part to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this part and, in particular as to—

- (a) the establishment and functions of advisory committees for the purpose of assisting the Authority in the administration of this Part;
 - (b) the issue of, the conditions and provisions applicable to, and the privileges and obligations under, special licences, the consideration of objections thereto, and the operation, modification, or termination thereof, pursuant to section 12;
 - (c) the issue of, and the privileges and obligations under, licences pursuant to section 13 and generally as to such licences;
 - (d) the exercise of rights affected by section 9 (3) and (4);
 - (e) well licences, and artesian and non-artesian wells subject to licensing;
 - (f) the furnishing of information as to wells;
 - (g) the forms to be used and the fees payable in respect of applications and the grant, variation and renewal of licences;
 - (h) the conduct and determination of inquiries and appeals under this Part;
- and
- (i) generally, the implementation of the licensing schemes provided for in this Part.

[(2) repealed.]

[Section 27: See note under Part heading. S. 27 amended by No. 25 of 1985 ss. 279 and 288.]

PART IIIA—WASTE AND EFFLUENT

[Heading inserted by No. 48 of 1974 s. 6.]

Control of pollution

27A. (1) Subject to subsection (2), a person shall be guilty of an offence if he causes or knowingly permits—

- (a) any poisonous, noxious or polluting matter to be discharged or deposited on or in any land or water which he knows or ought reasonably to know will lead, or be likely to lead, to the impairment of the physical, chemical or biological condition of the waters in any water-course, lake, lagoon, swamp, marsh, or underground water source, or will tend (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper

flow of those waters in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of the consequences of such pollution; or

- (b) any industrial effluent, waste or other matter from any mine, treatment plant, processing establishment, or factory, other than one that is of a class exempted for the purposes of this paragraph by the regulations, whether that effluent, waste or other matter is treated or otherwise, to be discharged or deposited so as to run or otherwise enter into the waters in any water-course, lake, lagoon, swamp, marsh or underground water source.

(2) A person shall not be guilty of an offence by virtue of subsection (1) if—

- (a) the discharge or deposit is authorized by a disposal licence issued for the purpose under this Part and is in accordance with the conditions, if any, to which the licence is subject;
- (aa) the discharge or deposit is in the course of the use of a place for the time being set apart for that purpose under section 119 of the *Health Act 1911* and such use is in accordance with such requirements, if any, as are imposed under that Act; or
- (b) the discharge or deposit is caused or permitted in an emergency in order to avoid danger to the public and, as soon as reasonably practicable after it occurs, particulars of the discharge or deposit are furnished to the Authority or to such officer of the Authority the Authority may direct.

(3) A person guilty of an offence under this section shall be liable to a fine not exceeding \$2 000, and where the offence is a continuing offence an additional fine not exceeding \$200 for each day on which the offence continues after service by the Authority on the offender of written notice of the offence.

(4) Where a person has been convicted of an offence against subsection (1) (a) or (b) and the Authority is of the opinion that the discharge or deposit that is the subject of the offence will, or will be likely to, have any of the effects mentioned in subsection (1) (a), the Authority may, by notice in writing, direct the person who has been convicted of the offence to take such measures in relation to—

- (a) the matter the subject of the offence; or
- (b) any waters affected by the commission of the offence,

as the Authority specifies in the notice for the purpose of removing the matter discharged or deposited, restoring the quality of any waters adversely affected, or otherwise minimizing the adverse effects resulting from the commission of the offence.

(5) Where a direction contained in a notice given under subsection (4) has not been complied with and the time allowed by the notice for compliance has expired the Authority may cause such measures to be

taken as the Authority considers appropriate for achieving the purposes of the notice, and the Authority may recover the expenses thereby reasonably incurred as a debt due from the person to whom the notice was given.

[Section 27A inserted by No. 48 of 1974 s. 7; amended by No. 119 of 1984 ss. 4 and 19; No. 25 of 1985 ss. 289 and 290.]

Control of certain methods of disposal

27AA. (1) Where any person causes or knowingly permits any matter to be discharged or deposited on or in any land or water, or proposes so to do, and the Authority is of the opinion that there is a real possibility that such discharge or deposit may, by reason of the poisonous, noxious, or polluting nature of the matter, lead to the impairment of the physical, chemical or biological condition of waters referred to in section 27A (1) (a) notwithstanding measures that may be taken to prevent the discharge or deposit of the matter from leading to such impairment, the Authority may give to that person notice in writing informing him that any such discharge or deposit caused or permitted by that person after such time as the Authority specifies in the notice will constitute an offence against section 27A unless it is authorized by, and in accordance with the conditions of, a disposal licence issued for the purpose under this Part or is otherwise authorized by subsection (2) of that section.

(2) Subject to subsection (3), a person to whom a notice has been given under subsection (1) is, for the purposes of section 27A (1), deemed to know that any discharge or deposit to which the notice applies is likely to lead to the impairment of the physical, chemical or biological condition of the waters as referred to in section 27A (1) (a), whether or not that person is aggrieved by the giving of the notice.

(3) The Authority may, by notice in writing, vary or cancel any notice under subsection (1) and a notice so varied shall have effect accordingly.

[Section 27AA inserted by No. 119 of 1984 s. 5; amended by No. 25 of 1985 s. 289.]

Application for a disposal licence

27B. (1) An application for a disposal licence authorizing the discharge or deposit of any matter shall be made to the Authority in the prescribed manner and shall state—

- (a) the place and time at which it is proposed to make the discharge or deposit to which the application relates;
- (b) the nature and composition of the matter proposed to be discharged or deposited, and the maximum temperature of it; and
- (c) the maximum quantity of the matter which it is proposed to discharge or deposit on any one day, or the highest rate at which it is proposed to discharge or deposit it.

(2) An application for a licence authorizing discharges or deposits at 2 or more places or times may be treated as separate applications for licences in respect of each of those places or times.

(3) The Authority may—

- (a) grant a disposal licence either unconditionally or subject to conditions; or
- (b) refuse to grant a licence,

and if, within the period of 30 days beginning with the date when an application for a disposal licence is received, or within such longer period as the Authority may by notice in writing to the applicant allow, the Authority has neither granted or refused to grant a disposal licence the application shall be deemed to have been refused.

[Section 27B inserted by No. 48 of 1974 s. 8; amended by No. 25 of 1985 s. 289.]

Principles to be considered by Authority in determining application for a disposal licence

27C. (1) The Authority shall determine any application for a disposal licence authorizing the discharge or deposit of any matter having regard to all the circumstances of the case and in particular to the type of industry, the quantity, composition and temperature of the matter to be discharged or deposited, the conditions and usage of the waters, the ability of the waters to absorb the matter without detriment or deterioration, and the number of similar or other types of matter already being discharged in the waters.

(2) In considering any application, the Authority shall have regard to broad principles, and generally any matter which it is proposed to discharge into the waters shall not contain—

- (a) sewage unless treated to a standard approved by the Authority;
- (b) acidity or alkalinity outside the range of a pH value between pH5 and pH9;
- (c) poisons; or
- (d) any substance which is likely—
 - (i) to contribute to the formation of sludge or other deposit;
 - (ii) to contribute to the formation of scum, fat, oil, grease or floating material;
 - (iii) to contribute to the formation of objectionable odours or discoloration;
 - (iv) to be injurious to marine or animal or human life; or
 - (v) to deplete excessively the oxygen content of the waters.

[Section 27C inserted by No. 48 of 1974 s. 9; amended by No. 25 of 1985 s. 289.]

Disposal licence may be subject to conditions

27D. (1) The conditions subject to which the Authority may grant a disposal licence authorizing the discharge or deposit of any matter shall be such reasonable conditions as the Authority thinks fit.

(2) Without prejudice to the generality of subsection (1), the conditions to which a disposal licence may be made subject include reasonable conditions—

- (a) as to places and times at which the discharge or deposit to which the licence relates may be made;
- (b) as to the nature, composition, temperature, volume and rate of the discharge or deposit;
- (c) as to the provision of facilities for taking samples of the matter discharge or deposited;
- (ca) as to the provision and maintenance of monitoring equipment in such positions as the Authority considers appropriate for monitoring—
 - (i) the effect on any surface or underground waters of any discharge or deposit pursuant to a disposal licence; or
 - (ii) the effectiveness of any measures taken to prevent matter discharged or deposited pursuant to a disposal licence from impairing the physical, chemical, or biological condition of waters referred to in section 27A (1) (a), and the keeping of records and furnishing to the Authority of returns of information obtained by means of that equipment;
- (d) as to the provision, maintenance and testing of meters for measuring the volume and rate of the discharge or deposit, and apparatus for determining the nature, composition and temperature of any discharge or deposit;
- (e) as to the keeping of records of the nature, composition, temperature, volume and rate of the discharge or deposit and in particular of records of the readings of meters and other recording apparatus provided in accordance with any other condition relating to that licence; and
- (f) as to the making of returns and the furnishing of other information to the Authority in relation to any discharge or deposit, and any such condition may be of general or limited application according to place, time, or circumstance.

[Section 27D inserted by No. 48 of 1974 s. 10; amended by No. 119 of 1984 s. 6; No. 25 of 1985 s. 289.]

Revocation, alteration and duration of disposal licences

27E. (1) Subject to the provisions of this section, at any time during the currency of a disposal licence the Authority, by notice in writing served on the licensee, may—

- (a) revoke the licence;
- (b) vary or add to the conditions of a licence; or
- (c) in the case of an unconditional licence, provide that it shall be subject to reasonable conditions specified in the notice.

(2) Where a licensee is convicted of failing to comply with any condition to which the licence was made subject, the court may by order cancel that licence.

(3) Subject to the provisions of this section, a disposal licence shall take effect for the period specified therein.

(4) A disposal licence in relation to industrial effluent or waste may specify a period during which no notice under subsection (1) is to be served in respect of that licence without the written consent of the licensee, and that period shall be a reasonable period of not less than 2 years beginning with the day on which the licence takes effect.

(5) Notwithstanding the provisions of subsection (4) a notice under subsection (1) may be served if in the opinion of the Authority it is necessary in the public interest in consequence of a change of circumstance (which may include a change in the information available as to the discharge or deposit to which the notice relates or as to the interaction with other matter) which could not reasonably have been foreseen at the time the licence was granted.

[Section 27E inserted by No. 48 of 1974 s. 11; amended by No. 25 of 1985 s. 289.]

Appeals to Minister

27F. (1) A person who is aggrieved—

- (aa) by the terms of a direction contained in a notice given under section 27A (4);
- (ab) by a decision of the Authority to give a notice under section 27AA;
- (a) by the refusal of the Authority to grant a disposal licence;
- (b) by a condition imposed by the Authority in relation to a disposal licence; or
- (c) by the revocation of a disposal licence,

may, within 30 days after the notice of the Authority's decision is received, give notice to the Minister of his wish to be heard.

(2) Where the Minister receives a notice under subsection (1), the Minister shall cause an enquiry to be conducted by such person or persons as he shall appoint and the person aggrieved shall be heard at that enquiry; and the Minister shall thereafter give such decision as he thinks fit.

[Section 27F inserted by No. 48 of 1974 s. 12; amended by No. 119 of 1984 s. 7; No. 25 of 1985 s. 291.]

Application of this Part

27G. (1) The provisions of this Part shall apply to and have effect in relation to every river, stream, water-course, lagoon, lake, swamp, marsh, or underground water throughout the State except that—

- (a) where the exercise of the powers conferred by this Part would be inconsistent with the provisions of any Agreement to which the State is a party and which, or the execution of which, is or has been ratified or approved by an Act, the Governor may, by Order in Council published in the *Gazette*, declare that any or all of the provisions of this Part shall not apply according to the Order in respect of any or all of the places, premises, acts or things to which that Agreement relates, and effect shall be given to any such declaration;
- (b) the Governor, on the recommendation of the Minister, may from time to time by proclamation declare that certain waters and land subject to the provisions of any other Act shall be excluded from the provisions of this Part; and
- (c) the Governor, on the recommendation of the Minister, may from time to time by proclamation declare that certain portions of the waters in a specified area, or certain types of waters, shall be excluded from the provisions of this Part.

(2) An Order in Council or a proclamation made under subsection (1) may be varied or revoked in like manner.

[Section 27G inserted by No. 48 of 1974 s. 13 (as amended by No. 100 of 1976 s. 3.); amended by No. 119 of 1984 s. 8.]

Regulations and fees

27H. (1) Without prejudice to the generality of that power, the power conferred by section 37 of the *Water Authority Act 1984* to make regulations may be exercised to make regulations as to the issue of disposal licences, the rights and obligations of licensees thereunder, the fees to be paid in respect thereof, and such other regulations as the Governor shall deem necessary or advisable to give effect to this Part.

(2) A regulation made under this section may discriminate according to different premises, trades, industries, processes or otherwise and may provide for differing fees to be payable, or for the remission of fees that would otherwise be payable, according to prescribed factors.

[Section 27H inserted by No. 48 of 1974 s. 13 (as amended by No. 100 of 1976 s. 3); amended by No. 25 of 1985 s. 292.]

PART IV—IRRIGATION DISTRICTS

Constitution of Irrigation Districts

28. (1) The Governor may, on the recommendation of the Minister by Order in Council—

- (a) Constitute any defined part of the State an Irrigation District for the purposes of this Act;
- (b) Specify the boundaries of such District;
- (c) Assign a name to such District;
- (d) State the particulars of the scheme of local works for the service of such District;
- (e) State the estimated cost of such scheme;
- (f) State the quantities of water assigned to such District and the sources from which, the seasons at which, and the conditions under and subject to which they are to be received.

(2) Any such Order in Council may contain such provisions not inconsistent with this Act as according to the facts and circumstances of each case the Governor may think fit.

(3) Every such Irrigation District, save as in this Act otherwise provided, shall be entitled to and shall receive the quantities of water assigned thereto by the Order in Council constituting such District, or by any subsequent order varying or amending such order, from the sources, at the seasons, and under and subject to the conditions set forth in such order, or such varying or amending order.

[Section 28 amended by No. 119 of 1984 s. 9.]

Governor may alter boundaries of Districts

29. The Governor may, at any time, on the recommendation of the Minister by Order in Council, do any of the following things:—

- (a) Unite any 2 or more Districts so as to form one District;
- (b) Subdivide any District and constitute thereout 2 or more Districts;
- (c) Excise any portion of a District;
- (d) Add any portion excised from a District to any other District;

- (e) Extend any District by the addition thereto of any land that has not theretofore formed part of a District;
- (f) Apportion, settle, adjust, and determine the extent of the respective interests and obligations of the several parties in regard to any property, income, assets, rights, or liabilities in any case of the union or subdivision of Districts or of excision from or addition to any District;
- (g) Repeal, vary, or amend any of the provisions of any previous order relating to any District;
- (h) Divide any District into sub-areas;
- (i) Define the boundaries of any sub-area;
- (j) Alter the boundaries of any sub-area;
- (k) Abolish a sub-area.

[*Section 29 amended by No. 9 of 1949 s. 3; No. 119 of 1984 s. 10.*]

PART V—IRRIGATION BOARDS

Dissolution of Boards

30. The Governor may, by Order in Council dissolve any Irrigation Board heretofore constituted pursuant to this section as in force prior to the coming into operation of section 293 of the *Acts Amendment and Repeal (Water Authorities) Act 1985*¹.

[*Section 30 substituted by No. 25 of 1985 s. 293.*]

[**31., 32.** *Sections 31 and 32 repealed by No. 25 of 1985 s. 294.*]

PART VI—THE CONSTRUCTION AND MAINTENANCE OF WORKS

Works

33. Subject to this Act, the *Water Authority Act 1984*, and, where required by those Acts, to the approval of the Minister, the Authority may construct and maintain irrigation works within any irrigation district.

[*Section 33 substituted by No. 25 of 1985 s. 295.*]

[**34.** *Section 34 repealed by No. 25 of 1985 s. 296.*]

No action maintainable for injury to riparian rights or for flooding

35. Notwithstanding anything in this Act or the *Water Authority Act 1984* contained, from and after the passing of this Act no action, suit, claim, or proceeding whatsoever shall be maintainable against the Crown or the Authority, or against any officer of the Authority, or contractor under the Crown or the Authority, except as hereinafter provided, for or in respect of any of the following matters:—

- (a) Any injury, loss, or damage caused by any violation or infringement of any right to or easements over any water constantly or intermittently flowing in or through any place whatsoever;
- (b) Any injury, loss, or damage to property caused by flooding or by water in any way sent on to such property.

[*Section 35 amended by No. 25 of 1985 s. 297.*]

Compensation

36. Subject to the provisions of this Act and of the *Water Authority Act 1984* compensation shall be made in respect of any injury to any rights to or easements over any water constantly or intermittently flowing or by flooding as aforesaid if notice in writing stating the nature and extent of the injury complained of has been furnished to the Authority within one year after the alleged injury has occurred of which such notice is given, and after giving such notice the person claiming compensation proceeds without unreasonable delay to obtain such compensation in the manner hereinafter provided.

[*Section 36 amended by No. 25 of 1985 s. 298.*]

Disputes as to compensation

37. Where any claim is made by any person in respect of any such injury and such person and the Authority do not agree on the questions raised by such claim, the questions whether any, and, if so, what compensation shall be made to such person shall be determined by arbitration under the provisions of the *Commercial Arbitration Act 1985*.

[*Section 37 amended by No. 25 of 1985 s. 299; No. 109 of 1985 s. 3.*]

Principals in awarding compensation

38. In determining whether any and what compensation is to be made under this Part, the arbitrator shall in each case have regard to and is hereby empowered and directed to apply the following principles:—

- (a) No compensation shall be awarded save in respect of some item set forth in the notice in writing stating the nature and extent of the injury complained of furnished to the Authority as hereinbefore provided.

- (b) No compensation shall be awarded for any diminution or deterioration of the supply of water to which any person may be entitled unless in the opinion of the arbitrator such diminution or deterioration is such as to deprive the claimant of a supply of water previously legally enjoyed by him and which supply was sufficient for domestic purposes, or for watering cattle or other stock, and the irrigation of a garden not exceeding 2 hectares in extent; and unless in the opinion of the arbitrator such diminution or deterioration is the direct and will be the permanent result of the completed works.
- (c) No compensation shall be made for the taking or diverting of any water which the Authority is empowered by or under this Act to take or divert, either permanently or temporarily, from any river, creek, stream or water-course, lake, lagoon, swamp or marsh.
- (d) There shall be considered, in reduction of all claims for compensation for injury, whether (by reason of the execution of any works by the Authority against which any claim is made) any and, if so, what enhancement in value of any property of the claimant wherever situate has been directly or indirectly caused, and whether any and, if so, what immediate or proximate benefit has been gained by or become available to such claimant by reason of the construction or use of such works or of any other works by the Authority under this Act or the *Water Authority Act 1984*; and a deduction shall be made accordingly from the amount which but for this provision would have been paid or payable as compensation.
- (e) The measure of damages shall in all cases be the direct pecuniary injury to the claimant by the loss of something of substantial benefit accrued or accruing, and shall not include remote, indirect, or speculative damages.
- (f) In any case where the injury complained of may appear to be of a permanent or continuing character or likely to be repeated, a sum may be awarded which the Court may declare to be a compensation for all injury, loss, or damage sustained in respect of the matter complained of to the date of the making of the award, and also for all future injury, loss, or damage in respect of the same matter; and after such award no further compensation shall be made in respect of any such future injury, loss, or damage.

PART VII—THE SUPPLY OF WATER, RATES AND CHARGES

[*Heading amended by No. 25 of 1985 s. 301.*]

Appropriation of water for irrigation

39. After providing for the requirements of riparian rights as defined in Part III, the remainder of the available water supply may be appropriated by the Authority for irrigation.

[*Section 39 amended by No. 25 of 1985 s. 302.*]

Unlawful taking of water an offence

39A. If any person shall take water from any water supply, which in accordance with section 39 the Authority has appropriated for irrigation, in any quantity or in any manner or by any means not authorized or not permitted by this Act or to which he is not entitled he shall be guilty of an offence.

Penalty—\$1 000 or imprisonment for 12 months.

[*Section 39A inserted by No. 3 of 1945 s. 3; amended by No. 113 of 1965 s. 8; No. 119 of 1984 s. 19; No. 25 of 1985 s. 302.*]

Rateable land

39B. The provisions of section 46A of the *Country Areas Water Supply Act 1947* apply with such modifications as are necessary, to determine rateable land for the purposes of this Act.

[*Section 39B inserted by No. 25 of 1985 s. 304.*]

Rating records

39C. (1) The Authority shall, for the purposes of this Act, compile rating records under section 69A of the *Water Authority Act 1984* and shall enter therein all rateable land which is irrigable land.

[(2) *repealed.*]

(3) Where in respect of any irrigation district the Authority is of opinion at any time that the making and levying of an irrigation rate for a part of a year only is expedient, the Authority may make and levy the irrigation rate for that part of the year, but the irrigation 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 irrigation rate is made and levied bears to a whole year.

[*Section 39C inserted by No. 25 of 1985 s. 304; amended by No. 110 of 1985 s. 124.*]

Rating records may be amended

39D. (1) The Authority may from time to time amend any rating records kept by the Authority under this Act by adding the particulars of any land which shall have become rateable, or by inserting the particulars of any rateable land which is irrigable 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 the rating records shall extend to the rating records for the current year and to the rating records for the 5 years preceding the commencement of the current year.

(3) Within 14 days of any amendment of the rating records the Authority shall cause notice to be given to all persons affected by it, and those persons shall have the same rights of objection and appeal from the amendment as would have been the case had the amendment appeared in the rating records as made up.

[Section 39D inserted by No. 25 of 1985 s. 304; amended by No. 110 of 1985 ss. 123 and 125.]

Objection to entry in rating records

39E. (1) Any person who is dissatisfied with any entry in the rating records, and who stands rated on the basis of that entry, may serve upon the Authority a written objection to that entry.

(2) An objection to an entry in the rating records shall—

- (a) be served within 42 days after the issue of the relevant assessment;
- (b) describe the relevant land so as to identify it;
- (c) identify the entry objected to; and
- (d) set out fully and in detail the grounds of objection.

(3) The grounds upon which an objection may be made include—

- (a) that the land rated is not irrigable; and
- (b) in the case of any land to which the system of rating on the area applies, that the area set out in the rating records is in excess of the actual area of the land.

(4) The Authority may, for reasonable cause shown by a person entitled to make an objection, extend the time for service of the objection for such period as the Authority considers reasonable in the circumstances.

(5) The Authority shall, with all reasonable despatch, consider any objection and may either disallow it or allow it, wholly or in part.

(6) The Authority shall promptly serve upon the person by whom the objection was made written notice of the Authority's decision on the objection and a brief statement of the Authority's reasons for that decision.

(7) If the Authority decides to allow an objection, wholly or in part, the Authority shall advise the person by whom the objection was made of any consequent amendment of the relevant entry in the rating records; and if the Authority decides to disallow an objection, wholly or in part, the Authority shall advise the person of the time within which and the manner in which an appeal against the decision may be made.

[Section 39E inserted by No. 25 of 1985 s. 304; amended by No. 110 of 1985 ss. 123 and 126.]

Appeal against decision of Authority on objection

39F. (1) Any person who is dissatisfied with the decision of the Authority on an objection by that person may, within 42 days (or such further period as the Authority shall, for reasonable cause shown by the person, allow) after service of notice of the decision of the Authority, serve on the Authority a notice requiring that the Authority treat the objection as an appeal against the relevant entry in the rating records.

(2) Upon receipt of such notice the Authority shall promptly refer the objection to a Land Valuation Tribunal under the *Land Valuation Tribunals Act 1978* as an appeal.

[Section 39F inserted by No. 25 of 1985 s. 304; amended by No. 110 of 1985 s. 127.]

Appeal against refusal to extend time for objection on appeal

39G. (1) A person who is dissatisfied with a decision of the Authority to refuse to extend the time for service of an objection against an entry in the rating records or for service of a notice requiring the Authority to treat an objection to an entry in the rating records as an appeal against that entry may serve on the Authority a notice requiring the Authority to refer such decision to a Land Valuation Tribunal under the *Land Valuation Tribunals Act 1978* as an appeal.

(2) Upon receipt of such notice the Authority shall promptly refer the decision to such a Tribunal as an appeal.

[Section 39G inserted by No. 25 of 1985 s. 304; amended by No. 110 of 1985 s. 123.]

Objection or appeal not to affect liability to pay rates

39H. The making of an objection or an appeal shall not affect the liability of the ratepayer to pay any rates assessed under this Act pending determination of the objection or the appeal.

[Section 39H inserted by No. 25 of 1985 s. 304.]

Authority to amend rating records and assessment consequent on objections

39I. (1) The authority shall make any amendment of an entry in the rating records which shall be necessary in consequence of the allowance, wholly or in part, of an objection or an appeal under this Act.

(2) The Authority shall issue a notice of an amended assessment of rates under this Act when, in consequence of the allowance, wholly or in part, of an objection or appeal under this Act, amendment of an assessment is necessary.

[Section 39I inserted by No. 25 of 1985 s. 304; amended by No. 110 of 1985 s. 123.]

Irrigation rates

40. (1) Subject to subsection (1c) the Authority may, from time to time make and levy rates, to be called irrigation rates, upon all rateable land which is irrigable land situated within any irrigation district; but such rate shall not exceed in any year such amount as may in the opinion of the Authority be necessary, due regard being had to the other revenues of the Authority, to provide, in relation to that irrigation district, the interest on the cost of works, funds for the maintenance of provision and reserve accounts, the interest on and contributions to the sinking fund for the redemption of loans, and for the maintenance, management, and control of the works in that district, and to defray the expenses of the administration of this Act apportioned to that district.

Provided that land shall not be rateable until works are constructed from which the Authority is prepared to supply water to such land.

(1a) The Authority may declare land to be irrigable land for the purposes of this Act and any land that was immediately before—

(a) section 11 of the *Rights in Water and Irrigation Amendment Act 1984* came into operation¹, certified by the Commissioners appointed under this Act as in force before that section came into operation; or

(b) Part IX of the *Acts Amendment and Repeal (Water Authorities) Act 1985* came into operation¹, certified by the Minister,

to be suitable for irrigation is deemed to have been declared by the Authority under this subsection to be irrigable land, but the Authority may declare that any land declared or deemed to have been declared to be irrigable land shall cease to be irrigable land for the purposes of this Act and any such declaration shall have effect according to its tenor.

(1b) In making a declaration under subsection (1a) the Authority may have regard to the suitability of the land for irrigation, the proximity of the boundaries of the land to works or proposed works from which water could be supplied to the land, the availability of water for irrigation in the District, and such other factors as the Authority considers relevant.

(1c) Recommendations as to the manner in which rates are proposed by the Authority to be made applicable pursuant to this section shall be set out in a resolution of the Board of the Authority and submitted to the Minister for approval, and on the Minister approving the resolution the Authority shall, pursuant to section 40B, cause a notice of the effect of the resolution to be published.

[(2) and (3) repealed.]

(3a) Irrigation rates under this Act may be based on a system of rating on the area or on such other system of rating as is approved by the Minister.

[(4) repealed.]

[Section 40 amended by No. 94 of 1972 s. 4 (as amended), s. 4 (1); No. 76 of 1978 s. 138; No. 119 of 1984 s. 11; No. 25 of 1985 s. 305.]

Amount of rate

40A (1) The Authority, subject to the approval of the Minister, may make and levy a minimum irrigation rate of the prescribed amount for an irrigation district upon any rateable land which is irrigable land notwithstanding that if imposed under other provisions of this Act the rate payable in respect of that land would be less.

(2) The Minister may from time to time by notice in the *Government Gazette*—

(a) determine by reference either to—

(i) a specified amount; or

(ii) a percentage of the previous year's irrigation rate,

the maximum amount of the irrigation rate for an irrigation district to be paid in respect of any irrigable land; and

(b) vary or revoke any notice published pursuant to paragraph (a),

and where the irrigation rate computed would be an amount in excess of that for the time being determined by the Minister pursuant to this subsection, then the irrigation rate for that irrigation district shall be fixed at the amount so determined.

[Section 40A inserted by No. 25 of 1985 s. 306.]

Manner of making rate

40B. (1) When a resolution of the Board of the Authority is approved by the Minister pursuant to section 40(1c), the Authority may order an irrigation rate in accordance with that resolution to be made and levied within an irrigation district and notice of the irrigation rate and a summary of the effect of the resolution approved by the Minister shall be published in the *Government Gazette* and a newspaper circulating in the irrigation district in relation to which the irrigation rate is ordered.

(2) On the publication of the notice pursuant to subsection (1) the irrigation rate as particularized in that notice shall become due and payable by the owner or occupier of the land rated as hereinafter provided.

(3) The production of a copy of the *Government Gazette* containing a notice published pursuant to this section as to the making of rates shall in all courts be conclusive evidence of the making of those rates and its publication.

[Section 40B inserted by No. 25 of 1985 s. 306; amended by No. 110 of 1985 s. 128.]

Payment of rates and for water supplied

40C. Subject to section 42AA, the provisions of Part VII of the *Country Areas Water Supply Act 1947*, other than those of sections 72, 72A and 80 of that Act, apply, with such modifications as are necessary, to—

- (a) irrigation rates made and levied under this Act;
- (b) charges due for water supplied pursuant to this Act; and
- (c) prescribed charges imposed under this Act.

[Section 40C inserted by No. 25 of 1985 s. 306; amended by No. 110 of 1985 s. 129.]

Supply of water for irrigation

41. (1) A ratepayer shall, as far as is practicable, and subject to the provisions of this Act, be entitled to receive from the Authority such quantity of water, if any, for irrigation of the land rated as may be determined from time to time by the Authority.

(2) Notice of a determination of the Authority under subsection (1) shall be published in a newspaper circulating in the irrigation district to which the determination relates.

(3) Water supplied by the Authority under subsection (1) shall be supplied at such times, in such quantities, at such charges and on such conditions as may be prescribed by by-law.

[Section 41 substituted by No. 110 of 1985 s. 130.]

Persons entitled to water for irrigation

42. (1) Subject to this Act the owners or occupiers of rateable lands in the Irrigation District shall alone be entitled to the supply of water for irrigation purposes:

Provided that the Authority may, in its discretion, supply water for such purposes within or beyond the boundaries of an irrigation district, to other persons, upon such terms, at such charges, and with such guarantees and securities for payment, and generally upon such conditions, as the Authority thinks proper and that subject to the provisions of this Act and the by-laws and payment of the prescribed charges, the Authority may, in its discretion, supply to a ratepayer for the purposes of irrigation, water in excess of that to which he is entitled in respect of rates pursuant to the provisions of the last preceding section.

(2) The Authority may, in its discretion, supply water for domestic purposes, or for the watering of stock, or for any other purpose approved by the Governor, on such terms and conditions as may be prescribed.

[Section 42 amended by No. 18 of 1951 s. 5; No. 119 of 1984 s. 13; No. 25 of 1985 ss. 303 and 308.]

Discounts and additional charges

42AA. (1) A person who is liable to pay money due for irrigation rates, for water supplied or for prescribed charges—

- (a) may, if payment in full of the total amount due is made within such period or by such date as is prescribed for the purpose, be allowed a discount of such a kind as is prescribed;
- (b) may pay the amount due by instalments to the extent and in the manner provided for in the by-laws, but a person who chooses to pay by instalments an amount due may be required also to pay such interest or additional charges as are prescribed; and
- (c) shall, subject to paragraph (b), if he does not pay the money in full within the period or by the date when payment is due, be liable to pay such interest or penalties as are prescribed.

(2) Any additional charge, interest or penalty imposed under this section in respect of moneys due for irrigation rates, for water supplied by measure or for prescribed charges shall be payable and recoverable as though it were an irrigation rate lawfully levied by the Authority.

(3) The Authority is authorized at discretion to waive or reduce any additional charge or interest imposed in relation to the payment of an account where the Authority is satisfied that there is proper cause so to do.

[Section 42AA inserted by No. 119 of 1984 s. 14; amended by No. 25 of 1985 s. 310; No. 110 of 1985 s. 131.]

Rates and charges

42AB. Where any rates, moneys due for water supplied or prescribed charges made by the Authority have remained unpaid for the period prescribed by the by-laws in relation thereto after they became due and payable the amount then unpaid shall thereafter bear interest at the rate and in the manner prescribed in the by-laws and such interest may be recovered in the same manner as rates are recoverable.

[Section 42AB inserted by No. 110 of 1985 s. 132.]

Installation of measuring instruments

42A. (1) The Authority may cause a measuring instrument to be installed on any land to which it supplies water pursuant to the provisions of this Act.

(2) Where a measuring instrument is so installed the owner or occupier of the land shall not, without the Authority's consent, receive water on to the land unless it is measured by the measuring instrument except when, in the opinion of the Authority, the measuring instrument is not functioning properly in which case the owner or occupier of the land shall not receive water on to the land otherwise than as prescribed.

[Section 42A inserted by No. 18 of 1951 s. 6; amended by No. 25 of 1985 ss. 303 and 309.]

Ascertainment of quantity of water supplied

42B. The Authority may prescribe the manner in which may be ascertained the quantity of water supplied to a consumer whether by means of a measuring instrument or otherwise, and a certificate purporting to be signed by an officer of the Authority stating the quantity so ascertained, shall in any proceedings in which the quantity of water is in question, be *prima facie* evidence of the quantity of water supplied.

[Section 42B inserted by No. 18 of 1951 s. 6; amended by No. 25 of 1985 s. 303.]

Where supply of water insufficient, Authority to supply proportionally

43. If at any time the supply of water at the disposal of the Authority is insufficient, in the opinion of the Authority, to afford to all consumers the supplies which they are respectively entitled to receive, the Authority may deliver to such consumers such amount of water as is then at the disposal of the Authority in quantities proportional to the quantities which such consumers would, if sufficient water had been available, have respectively been entitled to receive.

[Section 43 amended by No. 25 of 1985 s. 303.]

Governor may regulate order of supply in cases of deficiency

44. In the event of the water available to the Authority for supply falling short of the quantity necessary to supply water in sufficient quantity to be of practical service to all consumers the Governor may, whenever and as often as he is satisfied of the actual or approaching insufficiency of such supply, from time to time make, alter, and repeal Orders in Council regulating the order of priority in which and the quantities with which the various consumers shall be entitled to be supplied.

[Section 44 amended by No. 25 of 1985 s. 303.]

Supply of water not compulsory

45. Notwithstanding anything contained in this Act or in the *Water Authority Act 1984* or in any agreement it shall not be compulsory on the Authority to supply or to continue to supply any water to any person whomsoever, and the Authority shall not be liable to any penalty or damages for not supplying water to any person if the want of such supply arises from drought or any other cause or accident.

[Part VIII repealed by No. 25 of 1985 s. 312.]

[Part IX repealed by No. 25 of 1985 s. 313.]

PART X—BY-LAWS**Board may make by-laws**

59. (1) Without prejudice to the generality of that power, the power conferred by section 34 of the *Water Authority Act 1984* to make by-laws may be exercised for the purposes of this Act with respect to the following matters, that is to say:—

[Paragraphs (1), (2), (3) and (4) deleted.]

(5) The making and levying of rates.

[*Paragraph (6) deleted.*]

- (6a) Prescribing scales of charges for water supplied, and the minimum quantity of water to be charged for.
- (7) The imposing, payment, and collection of charges for water supplied, and determining the time at which they are payable, and whether in advance or otherwise, and the minimum quantity of water to be charged for:
- (7a) Prescribing fees payable for the issue upon request of statements as to moneys due or paid for rates or for water supplied under this Act, prescribing fees for the reading of measuring instruments upon request, and making provision as to the recovery of such fees.
- (7b) Prescribing discounts, additional charges, interest and penalties payable in respect of payments for irrigation rates and charges for water supplied.
- (8) 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.

[*Paragraph (9) deleted.*]

- (10) The control in the public interest of the flow of artesian bores.
- (11) Prescribing forms, and adapting the forms prescribed by the *Country Areas Water Supply Act 1947*, to the purposes of this Act.

[*Subsections (2) and (3) repealed.*]

[*Section 59 amended by No. 18 of 1951 s. 7; No. 98 of 1978 s. 36; No. 119 of 1984 s. 15; No. 25 of 1985 s. 314; No. 110 of 1985 s. 133.*]

[**60.** *Section 60 repealed by No. 25 of 1985 s. 315.*]

[**61.** *Section 61 repealed by No. 18 of 1951 s. 8.*]

PART XI—GENERAL PROVISIONS

Land may be acquired and leased for cultivation

62. (1) The Minister may, with the approval of the Governor, acquire any land within any District for the purposes of this Act, including closer settlement—

- (a) By agreement with the owner; or
- (b) By compulsory process.

Provided that land actually under irrigation shall not be acquired by compulsory process, except so far as the land may be required for the construction of works.

(2) If the Governor approves of any such land being acquired by compulsory process, the Minister may, by notification published in the *Gazette*, declare that such land has been acquired accordingly.

(3) Upon publication of the notification in the *Gazette*, the land described therein shall, by force of this Act—

- (a) Be vested in the Crown; and
- (b) Be freed and discharged from all trusts, obligations, estates, interests, contracts, licences, rates, and assessments.

(4) If a copy of the notification in the *Gazette*, certified under the hand of the Minister, is lodged with the Registrar of Titles, or the Registrar of Deeds, as the case may be, he shall register the certified copy of the notification in the register, in the manner as nearly as may be in which dealings with land are registered (but production of the Certificate of Title shall not be required), and shall deal with and give effect to the notification as if it were an instrument of transfer or a conveyance of the land to the Crown.

(5) Forthwith, after the publication of the notification in the *Gazette*, the Minister shall cause a copy of the notification to be served upon the owner and the occupier (if any) of the land, either personally or by registered letter posted to his last known place of abode:

Provided that if the owner cannot, after diligent inquiry, be found, a copy of the notification shall be affixed upon some conspicuous part of the land.

(6) Upon the publication of the notification in the *Gazette*, the estate and interest of every person in the land specified in the notification shall be taken to have been converted into a claim against the Minister for compensation.

(7) Every claim for compensation, if disputed, shall be determined by the Compensation Court under and subject to the provisions of the *Public Works Act 1902* or any Act amending the same.

(8) In determining the amount of compensation regard shall be had solely to the following matters:—

- (a) The probable and reasonable price at which such land, with any improvements thereon, or the estate or interest of the claimant therein, might have been expected to sell at the date the land was taken.
- (b) The damage (if any) sustained by the claimant by reason of the severance of such land from the other adjoining land of such claimant, or by reason of such other lands being injuriously affected by the taking.

- (c) The Court may award such amount as the Court deems proper, not exceeding 10 per centum on the amount ascertained under the provisions of this section for compulsory taking.
- (d) Where the land taken produces any rent or profits the amount thereof received by the Minister, less the reasonable cost of collection from the day the land was taken to the date of the award, shall be added to the compensation payable, or, at the option of the Minister, interest shall be paid on the amount of compensation for the same period, at the rate of 6 per centum per annum:

Provided that unless the land is rated under this Act the value shall be assessed without reference to any increase in value arising from any works constructed or to be constructed under this Act.

(9) The Governor may dedicate any land of the Crown to the purposes of this Act, including closer settlement; and the capital value of such land, so dedicated, shall be charged by the Department of Land Administration² against the Authority.

(10) Upon any land so acquired for or dedicated to the purposes of this Act as aforesaid, the Authority may expend any money appropriated by Parliament for the purpose, on clearing and other works necessary to make such land fit for cultivation, and in subdividing the same.

(11) The Authority may, subject to the regulations, grant leases in perpetuity of any land dedicated or acquired as aforesaid, at an annual rent based on the unimproved capital value of the demised land (subject to re-appraisal at prescribed periods), and the value of the improvements thereon made before the commencement of the lease, and subject to such reservations, covenants, conditions, and provisions as are for the time being prescribed.

(12) The Governor may make regulations for the purposes of this section.

[Section 62 amended by No. 113 of 1965 s. 8; No. 119 of 1984 s. 16; No. 25 of 1985 s. 317.]

Authority may undertake work to render land fit for irrigation

63. The Authority may, at the request of the owner or occupier of any land within a district, undertake and carry out any work upon such land that may be necessary to render the land or any portion thereof fit for irrigation, upon the repayment by such owner or occupier to the Authority of the moneys expended with interest being secured to the satisfaction of the Authority.

[Section 63 amended by No. 25 of 1985 s. 318.]

Water supply to railways

64. Nothing in this Act shall take away or prejudicially affect any rights in water lawfully acquired or enjoyed before or after the commencement of this Act for the purposes of supplying water to or in connection with any railway constructed under the authority of a special Act; and, subject only to riparian rights under this Act, water may be lawfully taken for such purposes.

[**65.** *Section 65 repealed by No. 25 of 1985 s. 319.*]

Service of notices and demands

66. (1) Any notice or demand required by this Act to be given to or made upon any person may be served—

- (a) by delivering the same to such person;
- (b) by leaving the same at his usual or last known place of abode;
- (c) by forwarding the same by post in a prepaid letter addressed to such person at his usual or last known place of abode.

(2) A notice or demand forwarded by post shall be deemed to have been given or made, and to have been received at the time when, by ordinary course of post, the letter would be delivered.

(3) When a notice of demand under this Act is required to be given or made to any owner or occupier whose name or address is unknown to the Authority, it shall not be necessary to name such owner or occupier, and such notice or demand may be served by placing it on some conspicuous part of the land of such owner or occupier, and by publishing it 3 times, at intervals of not less than a week between any 2 publications in a newspaper usually circulating in the district.

(4) A notice or demand may be served on a corporation, or incorporated company, or the members of a partnership, by being delivered, left, or posted in a prepaid letter; the notice or demand being addressed in each case to the corporation, company, or partnership at the registered office or principal place of business thereof in the State.

[*Section 66 amended by No. 119 of 1984 s. 17; No. 25 of 1985 ss. 316 and 320.*]

Notices binding on persons claiming under owner or occupier

67. 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.

[**68.** *Section 68 repealed by No. 25 of 1985 s. 321.*]

Saving of civil remedy

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

[Section 69 amended by No. 25 of 1985 s. 316.]

Obstructing authorized persons in performance of duty

70. Every person who obstructs the Authority, any officer of the Authority or any person authorized by the Authority in the performance of any act or thing which the Authority, that officer or that person is authorized or required to do in the execution of this Act or any by-law made for the purposes of this Act, shall be liable to a penalty not exceeding \$1 000.

[Section 70 amended by No. 113 of 1965 s. 8; No. 98 of 1978 s. 37; No. 119 of 1984 s. 19; No. 25 of 1985 s. 322.]

Penalty for refusing to give up possession of works

71. Any person having charge of any works vested in or under the control of the Authority, who refuses, on lawful demand, to give up peaceable and quiet possession of the same to any person entitled to possession under the provisions of this Act, shall be guilty of an offence and shall be liable to a penalty not exceeding \$2 000 and to be imprisoned for any period not exceeding 6 months.

[Section 71 amended by No. 113 of 1965 s. 8; No. 119 of 1984 s. 19; No. 25 of 1985 s. 316.]

General penalty

72. Any person committing an offence against this Act shall, if no other penalty is imposed, be liable to a penalty not exceeding \$2 000.

[Section 72 amended by No. 113 of 1965 s. 8; No. 119 of 1984 s. 19.]

Offender may be arrested

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

[Section 73 amended by No. 25 of 1985 ss. 316 and 323.]

Recovery of penalties and forfeitures

74. All penalties and forfeitures incurred under this Act or any by-law made for the purposes of this Act may be recovered summarily before any 2 or more Justices of the Peace in the manner provided by the *Justices Act 1902*.

[Section 74 amended by No. 25 of 1985 s. 324.]

Any officer of the Authority may represent the Authority

75. In any proceedings in any Local Court or Court of Petty Sessions, or before any justice, any officer of the Authority may represent the Authority in all respects as if he were the party concerned.

[Section 75 amended by No. 25 of 1985 ss. 316 and 325.]

[**76., 77., 78.** Sections 76, 77 and 78 repealed by No. 25 of 1985 s. 326.]

Proof of ownership or occupancy

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

- (1) Evidence that the person proceeded against is rated as owner or occupier of any land; or
- (2) Evidence by the certificate, in writing, of—
 - (a) the Registrar of Deeds 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;
 - (b) The Registrar of Titles, or any assistant or deputy registrar, that any person's name appears in any register book kept under the *Transfer of Land Act 1893*, or the *Transfer of Land Act Amendment Act 1909*, as proprietor of any land; or
 - (c) The Permanent Head of the Department of Land Administration² or the Permanent Head of the Department of Mines, that any person is registered in the Department of Land Administration² or of Mines as the occupier or lessee of any land—

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

[Section 79 amended by No. 25 of 1985 s. 327.]

Proof of works

79A. A certificate under the hand of the Managing Director of the Authority that any specified dam, drain, channel, pipe or other work is included as portion thereof, in any works within the meaning of this Act (whether such works were constructed prior or subsequent to the commencement of this section) shall, for all purposes and in all courts be sufficient evidence of the fact as stated in such certificate.

[Section 79A inserted by No. 3 of 1945 s. 4; amended by No. 25 of 1985 s. 328.]

Review of Commissioners' role

80. (1) The Minister shall carry out a review of the operations of the Commissioners appointed under section 4 as soon as practicable after 1 January 1991 and every fifth anniversary of that date and in the course of such review the Minister shall consider and have regard to—

- (a) the effectiveness of the Commissioners;
- (b) the need for the continuation of the functions of the Commissioners; and
- (c) such other matters as appear to him to be relevant.

(2) The Minister shall prepare a report based on his review under subsection (1) and shall, as soon as practicable after its preparation, cause the report to be laid before each House or Parliament.

[Section 80 inserted by No. 110 of 1985 s. 134.]

NOTES

¹ This reprint is a compilation as at 23 October 1986³ of the *Rights in Water and Irrigation Act 1914*⁴ and includes all amendments effected by the other Acts referred to in the following Table.⁵

Table of Acts

Act	Number and year	Assent	Commencement	Miscellaneous
<i>Rights in Water and Irrigation Act 1914</i>	19 of 1914	22 September 1914	22 September 1914	
<i>Ministers' Titles Act 1925</i>	8 of 1925	24 September 1925	24 September 1925	

Act	Number and year	Assent	Commencement	Miscellaneous
<i>Limitation Act 1935</i>	35 of 1935	7 January 1936	The relevant amendments, as set out in the Second Schedule, took effect on 1 March 1955 (see <i>Gazette</i> 18 February 1955 p. 343).	The Second Schedule was added by the <i>Limitation Act Amendment Act 1954</i> (No. 73 of 1954).
<i>Rights in Water and Irrigation Act Amendment Act 1939</i>	16 of 1939	22 November 1939	22 November 1939	
<i>Rights in Water and Irrigation Act Amendment Act 1941</i>	32 of 1941	16 December 1941	16 December 1941	
<i>Rights in Water and Irrigation Act Amendment Act 1945</i>	3 of 1945	18 October 1945	18 October 1945	
<i>Rights in Water and Irrigation Act Amendment Act 1949</i>	9 of 1949	14 September 1949	14 September 1949	
<i>Rights in Water and Irrigation Act Amendment Act 1951</i>	18 of 1951	26 November 1951	26 November 1951	
<i>Rights in Water and Irrigation Act Amendment Act 1962</i>	70 of 1962	30 November 1962	1 March 1963 (see <i>Gazette</i> 1 March 1963 p. 748)	
<i>Rights in Water and Irrigation Act Amendment Act 1964</i>	31 of 1964	4 November 1964	4 November 1964	
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see s. 2 (2)) Balance on assent	
<i>Rights in Water and Irrigation Act Amendment Act 1971</i>	46 of 1971	10 December 1971	10 December 1971	
<i>Metric Conversion Act 1972</i>	94 of 1972	4 December 1972	The relevant amendments as set out in the Second Schedule, took effect on 1 May 1974 (see <i>Gazette</i> 26 April 1974 p. 1393)	The Second Schedule was added by the <i>Metric Conversion Act Amendment Act 1973</i> (No. 19 of 1973)
<i>Rights in Water and Irrigation Act Amendment Act 1974</i>	48 of 1974	26 November 1974	18 February 1977 (see <i>Gazette</i> 18 February 1977 p. 468)	As amended by the <i>Rights in Water and Irrigation Act Amendment Act 1976</i> (No. 100 of 1976)
<i>Acts Amendment and Repeal (Valuation of Land) Act 1978, Part XII</i>	76 of 1978	20 October 1978	1 July 1979 (see s. 2 and <i>Gazette</i> 11 May 1979 p. 1211)	
<i>Rights in Water and Irrigation Act Amendment Act 1978 sections 1, 2, 8, 9, 14, 36 and 37³</i>	98 of 1978	17 November 1978	19 January 1979 (see <i>Gazette</i> 19 January 1979 p. 114)	Sections 4, 5, 6, 7, 10, 11, 12 and 13 repealed by the <i>Rights in Water and Irrigation Act Amendment Act 1984</i> (No. 119 of 1984)

Act	Number and year	Assent	Commencement	Miscellaneous
<i>Act Amendment (Statutory Designations) and Validation Act 1981, Schedule</i>	63 of 1981	13 October 1981	13 October 1981	
<i>Rights in Water and Irrigation Amendment Act 1984</i>	119 of 1984	27 December 1984	15 February 1985 (see <i>Gazette</i> 15 February 1985 p. 574)	
<i>Acts Amendment and Repeal (Water Authorities) Act 1985, Part IX</i>	25 of 1985	6 May 1985	1 July 1985 (see <i>Gazette</i> 7 June 1985 p. 1931)	
<i>Commercial Arbitration Act 1985, section 3</i>	109 of 1985	7 January 1986	1 April 1986 (see <i>Gazette</i> 28 February 1986 p. 605)	
<i>Acts Amendment (Water Authorities) Act 1985, Part VIII</i>	110 of 1985	17 December 1985	Sections 119 to 129 and s. 131 to 134, other than s. 133 (a): 14 March 1986; balance 1 July 1986 (see <i>Gazette</i> 14 March 1986 p. 726)	

². Under the *Reprints Act 1984* section 7 (3) (h) this title was substituted for "Department of Land".

³. As at 23 October 1986 sections 3 and 15 to 35 of the *Rights in Water and Irrigation Act Amendment Act 1978* (No. 98 of 1978) were not in operation.

⁴. Marginal notes in the *Rights in Water and Irrigation Act 1914* referring to earlier Western Australian legislation and to legislation of other jurisdictions have been omitted from this reprint.

⁵. The *Rights in Water and Irrigation Act 1914* is affected by the *Justices Act Amendment Act 1932*, *Soil and Land Conservation Act 1945*, *Country Areas Water Supply Act 1947*, *Pensioners (Rates Rebates and Deferments) Act 1966* and *State Energy Commission Act 1979*.