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at 1 March 1996

WESTERN AUSTRALIA

WATERWAYS CONSERVATION ACT 1976

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WESTERN AUSTRALIA

WATERWAYS CONSERVATION ACT 1976

AN ACT to make provision for the conservation and management of certain waters and of the associated land and environment, for the establishment of a Rivers and Estuaries Council and certain Management Authorities, to repeal the *Swan River Conservation Act 1958*, and for incidental and other purposes.

[*Long title amended by No. 73 of 1995 s.165.*]

Short title

1. This Act may be cited as the *Waterways Conservation Act 1976*¹.

Commencement

2. The provisions of this Act shall come into operation on such date or dates as is or are, respectively, fixed by proclamation¹.

Interpretation

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

“associated land” means land comprised within the boundaries of a management area as defined pursuant to section 10;

“Commission” means the Water and Rivers Commission established by section 4 of the *Water and Rivers Commission Act 1995*;

“committee” means a committee of the Commission or a committee of a Management Authority, as the context requires;

“Council” means the Rivers and Estuaries Council established by section 11;

“discharge”, in relation to waste or any other matter, includes causing or permitting it to be, or failing to prevent it from being, emitted, discharged, deposited or allowed to escape on or into the waters or associated land;

“function” means powers and duties, and includes rights, benefits and obligations;

“honorary warden” means a person appointed to that office pursuant to section 62;

“industrial” includes any producing, manufacturing, or processing operation;

“inspector” means a person appointed to that office pursuant to section 61, and where the context permits includes a person exercising the powers of an inspector pursuant to subsection (5) of that section;

“local government authority” means the council of a municipality, constituted pursuant to the *Local Government Act 1960*, or the commissioner appointed in respect of a municipality pursuant to section 31 of that Act;

“Management Authority” or **“Authority”** means the body constituted by that name in relation to a management area pursuant to section 10 and section 14;

“management area” means an area of the State declared to be a management area for the purposes of this Act pursuant to section 10;

“management programme” means a programme of operations prepared pursuant to section 35;

“pollution” means any direct or indirect alteration of the environment to its detriment or degradation, and includes any effluent, litter, refuse, sewage, or waste, or any other matter or thing, of whatever kind and in whatever form, that impairs or is likely to impair the environment;

“public authority” includes a Minister of the Crown acting in his official capacity, a State Government department, a State instrumentality or agency, and any other person or body, whether corporate or not, who or which, under the authority of any Act, administers or carries on for the benefit of the State, or any district or part of the State, a social service or public utility;

“section” means section of this Act;

“sewage” means any and all waste substance, liquid or solid, which is associated with human habitation, or which contains or may be contaminated with human or animal excrement, offal or feculant matter;

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“standard” includes standards specifying the components, form and temperature of any matter, and prohibiting, restricting or controlling the discharge of any matter not complying therewith;

“the Environmental Protection Authority” means the body of that name continued in existence by the *Environmental Protection Act 1986* or any body substituted therefor by any Act;

“the former Board” means the Swan River Conservation Board constituted pursuant to the *Swan River Conservation Act 1958*;

“waste” includes any and all waste substance, liquid or solid or gaseous, rubbish, refuse, garbage and materials used or produced in or by any industrial process, mining or quarrying, agriculture, commerce or any other trade or industrial undertaking or activity, sewage, household waste, effluent and other matter which causes or is likely to cause pollution, and any matter or thing prescribed to be waste for the purposes of this Act;

“waters” means the rivers, inlets and estuaries to which this Act applies; and for the purposes of the exercise of the power to obtain information as to pollution and the discharge of waste includes the tidal waters or parts of the sea adjacent to any river, inlet or estuary; and

“working plan” means a plan prepared pursuant to section 35 for the purposes of a management programme.

(2) Where a meaning is assigned to any term by this section cognate expressions used in this Act, unless a contrary or other intention appears, have a corresponding meaning.

(3) For the purposes of the definition of “waters” in subsection (1) of this section any artificial canal, canal system, lake, lagoon, harbour or embayment connected to a river, inlet or estuary that is in a management area shall be deemed to form part of that river, inlet or estuary if it is —

- (a) within the associated land comprised in that management area; and
- (b) for the time being declared by the Order in Council defining that management area to form part of that river, inlet or estuary.

[Section 3 amended by No. 97 of 1982 s.2; No. 77 of 1987 s.36; No. 73 of 1995 s.166.]

Repeal and transitional provisions

4. (1) The *Swan River Conservation Act 1958*, is hereby repealed.

[(2) repealed]

(3) Without limiting the operation of the *Interpretation Act 1918*, until provision is made under this Act in relation to the matters formerly vested in or under the control or management of the former Board the regulations, Orders in Council, proclamations, notices, permits, approvals, consents or authorizations made or given under the *Swan River Conservation Act 1958*, shall in so far as they are not inconsistent with this Act apply to persons, acts, circumstances and things under this Act as if they were made under this Act.

[Section 4 amended by No. 21 of 1988 s.24; No. 73 of 1995 s.167.]

Construction of this Act

5. (1) In this section a reference to the provisions of an Act includes a reference to the provisions of any regulation, by-law, Order in Council, proclamation, declaration or notice, made, given or promulgated under the provisions of that Act, and in the case of the *Environment Protection Act 1986* includes a reference to the provisions of an environmental protection policy approved under section 31 of that Act.

(2) Where the provisions of this Act are in conflict with the provisions of —

- (a) the *Bush Fires Act 1954*;
- (b) the *Health Act 1911*;
- (c) subject to section 6, the *Land Act 1933*;
- (d) any Act for the time being providing for the conservation of wildlife or indigenous flora;
- (e) any Act relating to the powers of a Port Authority established under the provisions of an Act within the area of competence of that Port Authority, in so far as such powers relate to matters affecting navigation or the conduct and management of the port; or
- (f) the *Environmental Protection Act 1986*,

or where the exercise of a power conferred by or under this Act would be inconsistent with the exercise of a power conferred by any such provisions, the provision of this Act shall be deemed not to apply in so far as it so conflicts and any such inconsistent power conferred by or under this Act shall, to the extent of the inconsistency, not be exercised so as to limit or restrict the exercise of the power conferred by or under that other Act.

(3) In so far as the provisions of this Act are in conflict with the powers conferred on a local government authority by the *Local Government Act 1960*, or any other Act —

- (a) where the matter in question is a matter which in the opinion of the Commission relates entirely to the waters comprised within a management area for the time being defined pursuant to subsection (1) of section 10 or any waters to which section 31 or section 32 applies, the provisions of this Act shall prevail;
- (b) where the matter in question relates to associated land or land to which section 31 or section 32 applies and the Commission agrees with the local government authority that it is not likely to affect such waters, the provisions of this Act shall be deemed not to apply; and
- (c) where the matter in question is a matter which in the opinion of the Commission may indirectly affect such waters, the local government authority shall consult with the Commission and in the event of any dispute thereon the provisions of section 15 shall apply,

and regulations made under this Act may make provision as to the types of matter that are to be taken as falling within the categories referred to in this subsection and as to the manner in which and the circumstances where such matters shall be brought to the notice of the Commission.

(4) Nothing in this Act shall be construed as operating to prevent the grant of any right, tenement, lease, licence, permit or other interest under or pursuant to —

- (a) the *Mining Act 1904*³;
- (b) the *Petroleum Act 1967*; or
- (c) the *Petroleum (Submerged Lands) Act 1967*,

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or any Act repealing or substituted for any such Act, but the provisions of this Act may have effect in relation to any works carried out in consequence of that grant.

(5) Subject to the provisions of this section, this Act shall be construed so as to apply to any power and notwithstanding any right, however arising and whether conferred before or after the coming into operation of this Act, vested in any person, body or authority in relation to the waters and land to which this Act applies.

[Section 5 amended by No. 77 of 1986 s.37.]

Crown bound

6. This Act binds the Crown.

Saving of rights at law

7. Nothing in this Act in any way affects any right any person has at law to restrict or prevent pollution or to obtain damages.

Exemptions

8. (1) The Commission may, by a notice in writing from time to time provide that any requirement of this Act does not apply in respect of —

- (a) any waters or land specified in the notice;
- (b) any premises, act or thing specified in the notice;
- (c) all premises, acts or things comprised in a class thereof so specified or situated in an area so specified;
or

(d) all or any premises, acts or things in the circumstances so specified.

(2) The Commission may make any exemption granted under this section subject to such circumstances or conditions or both as it may so specify, and an exemption granted under subsection (1) of this section has effect according to its tenor.

(3) When the circumstances and conditions subject to which an exemption has been granted under this section cease to exist or are breached, the exemption ceases to operate.

Application

9. (1) The powers of the Commission apply to the waters and associated land comprised within the respective management areas for the time being defined pursuant to subsection (1) of section 10, and to land or water to which section 31 or section 32 applies, but not elsewhere.

(1a) The powers of the Commission do not apply in respect of the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*.

(2) The powers of a Management Authority apply to the waters and associated land comprised in the management area for the time being defined pursuant to subsection (1) of section 10, and to any land or water to which section 31 or section 32 applies, which is placed under the control and management of that Authority, but not elsewhere.

(3) Where any structure infringes the airspace over any such waters or associated land the powers of the Commission and the relevant Authority shall be deemed to apply to the whole of that structure.

[Section 9 amended by No. 21 of 1988 s.25.]

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Management areas

10. (1) On the recommendation of the Environmental Protection Authority the Governor may by Order in Council published in the *Gazette* —

- (a) declare any area of the State containing one or more rivers, inlets or estuaries to be a management area for the purposes of this Act, assign a name to the area, constitute a Management Authority for the area, define the boundaries of the waters and associated land comprised in the area, declare any artificial canal, canal system, lake, lagoon, harbour or embayment connected to a river, inlet or estuary that is in the area to form part of that river, inlet or estuary and place the area under the control and management of the Authority so constituted;
- (b) amend any previous Order in Council made under this Act in relation to any area; or
- (c) dissolve a Management Authority, or declare that the provisions of this Act shall cease to apply to any waters or land.

(2) Subject to this Act, a Management Authority shall be constituted for each management area but where an area is, for any reason, for the time being not under the control and management of an Authority the Commission may control and manage the area until an Authority for the area is constituted or reconstituted and whilst so doing shall be deemed to be the Management Authority for the area.

(3) The boundaries of a management area shall be defined by reference to a map showing, where practicable using geographical features, the extent of the waters and land affected in such a way as to enable those boundaries to be readily established.

(4) No land shall be included within the area to which the powers of the Commission or an Authority are to apply unless, in the opinion of the Commission, the inclusion of that land is necessary in order satisfactorily to achieve the control needed for the conservation and management of the waters by reason of the contour of that land or its use, proximity or other relevant circumstance.

(5) An Order in Council made under subsection (1) of this section defining or altering the boundaries of the waters and associated land to which the powers of the Commission or an Authority apply or are to apply, shall be laid before each House of Parliament within the 6 sitting days of such House next following the date of publication in the *Gazette*, and the provisions of section 36 of the *Interpretation Act 1918*, shall apply to any such Order in Council as if it had been a regulation.

(6) This section does not apply in respect of the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*.

[Section 10 amended by No. 97 of 1982 s.3; No. 21 of 1988 s.26; No. 73 of 1995 s.168.]

Rivers and Estuaries Council

11. (1) There is to be a body called the Rivers and Estuaries Council.

(2) The Council is to consist of —

- (a) a member of the board of management of the Commission appointed by the Commission;
- (b) the chief executive officer for the time being of the Commission;
- (c) the chairman for the time being of the Swan River Trust under the *Swan River Trust Act 1988*;

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- (d) the chairman for the time being of each Management Authority; and
 - (e) not more than 2 other persons appointed by the Commission.
- (3) The person appointed under subsection (2) (a) is to be the chairperson of the Council.
- (4) The Commission may determine —
- (a) the term of appointment of a member of the Council appointed under subsection (2) (a) and (e) (“**appointed member**”);
 - (b) the provisions that are to govern —
 - (i) the removal and resignation of appointed members; and
 - (ii) the attendance at meetings of representatives of *ex officio* members who are unable to attend.
- (5) The Schedule has effect in respect of proceedings at Council meetings.
- (6) The Minister may determine that an appointed member of the Council is to receive remuneration or an allowance and, if the Minister so determines, he or she is to fix the remuneration or allowance on the recommendation of the Minister for Public Sector Management.
- (7) The Commission is to provide the Council with such support services as it may reasonably require.

[Section 11 inserted by No. 73 of 1995 s.169.]

Functions of the Council

11A. (1) The functions of the Council are to provide advice to the Commission on —

- (a) the performance of the Commission's functions under this Act;
- (b) any other matter relating to the operation of this Act that is referred to it by the Commission.

(2) The Council may, with the approval of the Commission, obtain assistance and advice from any person to enable it to provide advice under subsection (1).

[Section 11A inserted by No. 73 of 1995 s.169.]

Administration of this Act

12. Subject to the Minister, this Act shall be administered generally by the Commission and, in relation to their respective management areas, it shall be the duty of the Management Authorities so to administer the provisions of this Act as to ensure that they are efficiently carried into effect in and in relation to the several management areas.

[13. Repealed by No. 73 of 1995 s.170.]

Management Authorities

14. *[(1) repealed]*

(2) A Management Authority shall consist of a Chairman and not less than 5 nor more than 11 other members each of whom shall be appointed by the Governor pursuant to an instrument in writing setting out the terms upon which the person is to hold and vacate office.

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(2a) Of the members of a Management Authority other than the Chairman, one shall be appointed by the Governor to be the Deputy Chairman of that Authority and a person so appointed —

- (a) shall preside at any meeting of that Authority at which he, but not the Chairman, is present; and
- (b) in the event of the absence of the Chairman of that Management Authority from any meeting of the Council, shall be entitled to attend that meeting and act in the office of the Chairman of the Management Authority and, when so attending, has all the powers, functions and duties of a member of the Council.

(3) The membership of a Management Authority shall so far as is practicable be selected from amongst persons resident in the local community to which the Authority relates or who are representative of local government authorities or officers of departments of the Public Service of the State having responsibility for and knowledge of local affairs.

(4) Of the Membership of the Management Authority constituted for —

[(a) *deleted*]

- (b) the Peel Inlet and the Harvey Estuary, and the Leschenault Estuary, respectively, 3 shall in each case be persons selected by the Minister for recommendation by him to the Governor, chosen by the Minister from amongst such persons as are nominated to the Minister by the several local government authorities which have, in the opinion of the Minister, a direct interest in the area to which the powers of each of those respective Management Authorities are to apply.

(5) Notification of the appointment of the chairman and of the other members of a Management Authority by the Governor shall be published in the *Gazette*.

(6) The chairperson of the board of the Commission, or a person acting with his written authority, has power to attend any meeting of a Management Authority and may speak to any matter without notice, but is not entitled to vote.

(7) A Management Authority shall make available to the Commission the records of its proceedings, and all documents relating to its functions under this Act, and shall advise and inform the Commission with respect to any matter referred to it by the Commission.

(8) The provisions of the Schedule to this Act shall have effect with respect to the proceedings of a Management Authority.

(9) A Management Authority shall, on payment of the prescribed fee, supply to any person a map or diagram (which may be produced from aerial photography) showing the boundaries of the area to which the powers of the Authority apply.

[Section 14 amended by No. 16 of 1980 s.3; No. 21 of 1988 s.28; No. 73 of 1995 s.171.]

Disputes

15. (1) Any question, difference or dispute arising or about to arise between the Commission or a Management Authority and any public authority with respect to the exercise of any rights, powers or authorities or the discharge of any duties by either or both of them may be finally and conclusively determined by the Governor.

(2) Any question, difference or dispute arising or about to arise between the Commission and any Management Authority

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with respect to the exercise of any rights, powers, or authorities or the discharge of any duties by either or both of them may be finally and conclusively determined by the Minister.

Tenure of Office

16. A person appointed by the Governor to the office of chairman or other member of an Authority —

- (a) shall hold office for the period specified in the instrument by which he is appointed unless his appointment is sooner terminated by the Governor or —
 - (i) a resignation from that office signed by him is accepted by the Governor;
 - (ii) he is disqualified in accordance with the provisions of this Act; or
 - (iii) he is absent, except with leave duly granted by the Minister, from 3 consecutive meetings of the Authority; and
- (b) is eligible, unless disqualified otherwise, for reappointment as a member of the Authority notwithstanding that he has previously held office as a member.

Disqualifications

17. If a member of an Authority —

- (a) is a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration Act 1990*;

- (b) is an undischarged bankrupt or person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (c) is convicted of an indictable offence; or
- (d) has his appointment terminated by the Governor for inability, inefficiency or misbehaviour,

his office becomes vacant and he is not eligible for re-appointment.

[Section 17 amended by No. 24 of 1990 s.123.]

Remuneration of Authority members

18. (1) Subject to subsection (3) of this section, members of an Authority or any committee of an Authority shall be paid such remuneration and allowances as the Governor, on the recommendation of the Minister, determines, and where a person who holds or acts in the office of chairman of an Authority thereby exercises functions as a member of the Council he may be remunerated accordingly.

(2) The Minister shall not make a recommendation to the Governor as to the remuneration and allowances to be paid —

- (a) to a member; or
- (b) to a person appointed a member of a committee of an Authority,

who is a person to whom Part 3 of the *Public Sector Management Act 1994*, applies except with the prior approval, in writing, of the Minister for Public Sector Management.

(3) If a person who would be eligible to receive remuneration or allowances under this Act is or becomes a member of, or a candidate for election to, the Parliament of the Commonwealth,

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he shall not be paid remuneration or allowances under this section but shall, subject to the approval of the Governor, be reimbursed such expenses as he reasonably incurs by reason of his attendance at meetings or of his engagement pursuant to this Act on the official business of the Council or an Authority.

[Section 18 amended by No. 78 of 1984 s.22; No. 32 of 1994 s.19; No. 73 of 1995 s.172.]

Deputies and acting members

19. (1) The Governor may, in respect of each member of an Authority, appoint a person representative of the same interests as that member to be his deputy and while taking the place of a member his deputy has all the powers and entitlements of the member under this Act.

(2) Where —

- (a) both a member and the deputy of that member are absent or temporarily incapable of fulfilling the duties of a member; or
- (b) the office of a member is vacant and is not taken by a deputy or filled in accordance with this Act; or
- (c) there is for any reason in relation to a Management Authority no person available to hold or act in the office of member of the Council,

the Minister may appoint a person to act in the place of that member during that absence or incapacity, or until the vacancy is filled, as the case requires, and any person so appointed has, while his appointment subsists, all the powers, functions and duties of a member.

(3) Any reference in this Act to a member shall be construed as including a reference to —

- (a) a deputy acting in the office of that member; and

- (b) a person appointed by the Minister to act in the place of a member during any absence, temporary incapacity or casual vacancy.

(4) Where a member of an Authority ceases to hold office before the expiration of the period of his appointment, the person who was at that time the deputy of that member is, until the office of member is filled by the appointment of another member or until the expiration of 3 months from the date the member ceased to hold office, whichever is the lesser time, entitled to attend any meeting of the Authority and, when so attending, has all the powers, functions and duties of an Authority member.

[*Section 19 amended by No. 73 of 1995 s.173.*]

Application of *Public Sector Management Act 1994*

20. Acceptance of or acting in the office of member of the Council or an Authority by any person does not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to that member, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in that office.

[*Section 20 amended by No. 32 of 1994 s.19; No. 73 of 1995 s.174.*]

Committees

21. (1) A Management Authority may, from time to time, appoint a committee or committees to investigate and advise on any aspect of its functions or to carry out such of those functions, other than the power of delegation, as may, with such approval as is required by section 22, have been delegated to that committee.

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(2) The delegation to a committee of any power or duty does not relieve the Authority of the responsibility for the actions or decisions of that committee.

(3) A committee may consist of such persons as the Authority determines, whether members of the Authority or persons who are not such members, but so that in every case not less than one person on the committee shall be a member of the appointing body.

(4) Each committee appointed shall report on its activities at such times as may be directed.

(5) The provisions of the Schedule to this Act shall have effect with respect to the proceedings of any committee.

[Section 21 amended by No. 73 of 1995 s.175.]

Delegation

22. (1) The Commission may, unless the Minister otherwise directs, delegate to a Management Authority any of the duties or powers of the Commission in relation to the area placed under the control and management of that Authority.

[(2) repealed]

(3) A Management Authority may, with the approval of the Commission, delegate to a public authority, or any officer or employee of a public authority, or to any other person or body specified in the instrument of delegation any power exercisable by that Authority.

(4) The power of delegation conferred by this section does not authorize a person or body to whom or which a duty or power has been delegated to delegate that duty or power to any other person or body, except that a power (not being itself a power to delegate) which is delegated by the Commission to an Authority

may with the approval of the Commission be delegated by that Authority in accordance with the provisions of this section.

(5) The exercise of the power to delegate conferred by this section shall be evidenced by an instrument in writing.

(6) A delegation under this section —

- (a) may be varied or revoked in like manner;
- (b) does not prevent the performance of the duty or the exercise of the power by the delegating body; and
- (c) shall be implemented in accordance with the instrument of delegation.

(7) Where the exercise of a power in relation to a matter is dependent upon the opinion, belief or state of mind of the body in which that power is vested by this Act and that power is delegated pursuant to this section, the power may be exercised upon the opinion, belief, or state of mind of the delegate.

(8) A person or Authority purporting to exercise a power pursuant to a delegation conferred under the provisions of this section is presumed to do so in accordance with the terms of the delegation in the absence of proof to the contrary, but shall if requested so to do produce evidence of the terms of the delegation to any person in relation to whom it is proposed to exercise the power.

[Section 22 amended by No. 73 of 1995 s.176.]

Duty of the Commission

23. (1) The Commission shall have the general duty of conserving the rivers, inlets, and estuaries to which the powers of the Commission apply and of advising the Environmental Protection Authority thereon.

- (2) It shall be the duty of the Commission —
- (a) to preserve or enhance the quality of the environment and amenities of the waters and of the associated land to which the powers of the Commission apply;
 - (b) to control and wherever practicable to prevent any act or omission which causes or is capable of causing pollution of those waters or that land;
 - (c) to provide advice and disseminate knowledge on the conservation and good management of rivers, inlets, and estuaries and of lands associated therewith;
 - (d) in so far as that is practicable, to act in concert with, consult and make arrangements and agreement with relevant local government authorities, residents and other persons affected by the operation of this Act;
 - (da) to provide services to the Swan River Trust as required by section 31 (1) of the *Swan River Trust Act 1988*;
 - (e) generally, to provide administrative and co-ordinating services for the purposes of this Act and so to conserve and manage those waters and the associated land and to administer this Act as to attain the objects of this Act.

(3) The Commission shall, as soon as practicable after the receipt of the request, report to the Minister on any matter on which a report is requested by him.

[*Section 23 amended by No. 21 of 1988 s.29.*]

Functions of the Commission

24. (1) In the performance of its functions the Commission shall be subject to the Minister, and shall give effect to any

direction, whether general or specific, which the Minister may give as to those functions.

(2) In the performance of its functions the Commission shall comply with any lawful direction given as to those functions by the Environmental Protection Authority.

(2a) In the performance of its functions the Commission is to have regard to any advice given to it by the Council.

(3) Upon the direction of the Minister the Commission shall consult with, and have regard to the representations of —

- (a) the Management Authority for any area constituted under this Act;
- (b) the local government authority for the area in question;
- (c) any other statutory body or instrumentality of the Crown exercising functions in relation to the area concerned which appears to the Minister, the Environmental Protection Authority, or the Commission to be likely to be affected by the exercise of the powers of the Commission; and
- (d) other bodies representing persons interested in the use of the waters and land in question,

as to the manner in which the Commission is to perform its functions.

(4) In performing its functions the Commission shall have regard to —

- (a) the interests of navigation, fisheries, agriculture, water supply, recreation and leisure-time occupation for the benefit of the public, the natural beauty and amenity of the area, and the preservation of public rights of access; and

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- (b) the rights acquired by persons, whether as owners or occupiers, in relation to boat houses, jetties and other structures then in being, being rights the exercise of which is not likely to impair the environment.

(5) The Commission has the duties imposed and the powers conferred by this Act.

[Section 24 amended by No. 73 of 1995 s.177.]

Powers of the Commission

25. (1) The Commission has all such powers, rights and privileges as may be reasonably necessary to enable it to carry out its duties.

(2) Without limiting the generality of the provisions of this section, the Commission may —

- (a) maintain and manage either alone or jointly with other persons or any public authority all areas, whether comprising water or land or both, to which for the time being the powers of the Commission apply including the carrying out of works for the purposes of improving and maintaining the condition of the waters and associated land;
- (b) carry out, or cause to be carried out, river training, dredging, reclamation, and structural works;
- (c) carry out policies, or formulate and implement schemes for coordinated action by owners and occupiers of land, and agencies and instrumentalities of the Crown and public authorities having the control of land adjacent to or associated with any part of the waters to which the powers of the Commission apply, directed to the abatement or prevention of pollution

including the control by licensing or prohibition in accordance with regulations made under this Act —

(i) of the discharge of effluent or the disposal of waste; and

(ii) of dredging,

likely to lead to the impairment of the condition or flow of the waters or to an aggravation of pollution due to other causes or the consequences of such pollution;

- (d) cooperate with and make representations to the Environmental Protection Authority, planning and local government authorities and others with a view to the attainment of the objects of this Act;
- (e) establish and develop criteria for the assessment of the extent of environmental change or pollution;
- (f) specify standards and criteria, and the methods of sampling and testing to be used for any purpose;
- (g) conduct or promote relevant research, or enter into projects for research or the collation of information jointly with others, in consultation with the Environmental Protection Authority;
- (h) publish reports and provide information for the purpose of increasing public awareness of the problems and remedies that exist in relation to environmental pollution as it relates to waters and associated land;
- (i) undertake investigations, inspections and prosecutions for the purposes of this Act;

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- (j) carry out, or cause to be carried out, works for the preservation or enhancement of amenities or facilities for recreation;
- (k) control, subject to the provisions of the regulations, the excision or reclamation of any waters or associated land;
- (l) take and enforce covenants as to the conservation of the land and waters to which the powers of the Commission apply to the like extent as if the Commission were possessed of adjacent land for the benefit of which the covenant is to enure;
- (m) borrow moneys for the purposes and in accordance with the provisions of this Act, and give security therefor;
- (n) carry out such other functions as are conferred on or imposed on the Commission by any other Act or law; and
- (o) subject to the directions of the Minister and in consultation with the Environmental Protection Authority generally promote, encourage, coordinate and carry out short term and long term planning and projects in the management and conservation of rivers, inlets and estuaries.

Duty of a Management Authority

26. (1) It shall be the general duty of a Management Authority, subject to the Minister and to the Commission, to conserve and manage the area of the waters and associated land placed under its control, to advise the Minister, the Environmental Protection Authority and the Commission on matters of local interest related thereto, and to administer this Act within that area.

(2) A Management Authority shall carry out any duty delegated to the Authority by the Commission in relation to its area.

(3) A Management Authority shall have responsibility for the initial preparation and constant review of the proposals for any management programme related to its area, and where a management programme or a working plan formulated pursuant to a management programme is in force the Authority shall not act in a manner inconsistent therewith.

(4) In the preparation and review of management programmes a Management Authority shall furnish and from time to time update a financial estimate commensurate with the current proposals, and where finance is provided pursuant to this Act shall be responsible for the management and allocation of the monies within the area and for the purposes of the performance of its functions.

Functions of a Management Authority

27. (1) In the performance of its functions a Management Authority shall be subject to the Minister, and shall give effect to any direction, whether general or specific, which the Minister may give as to those functions.

(2) A Management Authority may advise the Minister independently of the Commission where that Authority is at variance on any matter with the Commission, and may communicate directly with the Minister on any matter.

(3) With the necessary modifications, the provisions of subsection (2), subsection (3), subsection (4), and subsection (5) of section 24 apply to an Authority as they apply to the Commission.

Powers of a Management Authority

28. (1) Subject to the provisions of this Act, a Management Authority may perform any duty and exercise any power in, and in relation to, the area of the waters and associated land placed under its control that is necessary or expedient for carrying out a duty delegated to that Authority by the Commission or otherwise imposed or conferred on that Authority pursuant to this Act.

(2) In relation to its area a Management Authority may advise and make recommendations to —

- (a) the Minister;
- (b) the Environmental Protection Authority;
- (ba) the Council;
- (c) the Commission; or
- (d) any public authority or other person,

on matters relating to the efficient carrying into effect of the provisions of this Act and in particular as to any relevant management programme or working plan.

(3) Without limiting the generality of the provisions of this section, a Management Authority in, or in relation to, its area may —

- (a) arrange with local government and other public authorities for the carrying out of works, and finance such works or reimburse the authority concerned within the limitations of the financial programme of the Commission;
- (b) establish facilities, including jetties, boat ramps, change rooms, toilets, recreation areas and barbecue sites, and carry out or cause to be carried out the requisite works;

- (c) control and manage the waters, and formulate and implement schemes, (which may include licensing provisions), either alone or jointly with others directed to the conservation of those waters;
- (d) control and manage the associated land generally, having particular regard to the foreshore, including the formulation and implementation of schemes directed to the abatement, control and prevention of litter and other forms of pollution; and
- (e) make and enforce by-laws pursuant to this Act.

[Section 28 amended by No. 73 of 1995 s.178.]

Suspension of an Authority, and effect of dissolution and reconstitution

29. (1) Subject to subsection (2) of this section the Governor on the recommendation of the Minister may by notice published in the *Gazette* suspend the functions and powers of a Management Authority for such time as he thinks necessary if it appears to the Minister after consultation with the Commission that the Authority —

- (a) is not performing the duties imposed upon it by this Act;
- (b) is exceeding the powers conferred upon it by this Act;
or
- (c) is acting in a manner which is contrary to policies and procedures formulated under this Act and which is detrimental to the achievement of the objects of this Act.

(2) The Minister shall not make a recommendation pursuant to subsection (1) of this section without first giving the Authority concerned notice in writing of his intention to do so and affording

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that Authority reasonable opportunity to show cause why he should not do so.

- (3) The Minister may —
- (a) at any time after the suspension of the functions and powers of an Authority pursuant to subsection (1) of this section, remove that suspension by notice published in the *Gazette*;
 - (b) at any time after the dissolution of an Authority pursuant to subsection (1) of section 10, recommend to the Governor that the Authority be reconstituted.

Continuity of administration

30. Where an Authority is suspended or dissolved, or is reconstituted, whether or not the management area is to be, or was, for any period of time administered by the Commission, the Governor may by notice in the *Gazette* make transitional provisions for the continuity of the administration of the area and the devolution of the relevant rights, obligations and liabilities, and effect shall be given to any such provisions without further or other assurance.

[Section 30 amended by No. 73 of 1995 s.179.]

Agreements as to private land

31. (1) The Commission or a Management Authority may enter into and give effect to agreements with the owner, lessee or licensee of any area of land (including land from time to time or at all times covered by water) for the control or management of that land under the provisions of this Act.

(2) No agreement under this section shall be entered into unless the owner, and any person occupying the land with the consent of the owner, has given approval in writing to the agreement.

Reserves may be placed under the control of the Commission

32. (1) Subject to the provisions of section 31 of the *Land Act 1933*, the Governor may, by Order in Council published in the *Gazette*, place under the control and management of the Commission any land reserved under the provisions of section 29 of that Act.

(2) In relation to any land which is the subject of an Order in Council made under subsection (1) of this section the Governor may by that Order provide —

- (a) that the land shall be so controlled and managed subject to specified conditions, restrictions or limitations; and
- (b) that any power conferred upon the Commission by this Act may be exercised by the local government authority, or some other person or body therein named, on behalf of or under the direction of the Commission, (but no such provision shall prevent the Commission from exercising the power),

and the Governor may by a subsequent Order in Council vary or cancel that Order.

Local Government Authority consultations, and initiatives

33. (1) Whenever directed by the Minister so to do in relation to any matter, the Commission or a Management Authority shall refer the matter in question to every local government authority the district of which in the opinion of the Minister may be affected for any information and advice the local government authority may be able to offer, shall have regard to the views of the local government authority and shall notify the local government authority of the general nature of any report, advice or recommendation which the Commission or that Authority may then intend to submit to the Minister.

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(2) A local government authority which is aggrieved by any report, advice or recommendation to be submitted to the Minister under this Act, may so advise the Minister, and the Minister shall have regard to the views of the local government authority but shall not be bound to act in accordance with those views.

(3) A local government authority may make representations to the Commission or the relevant Management Authority in relation to any management area or other area placed under the control or management of an Authority, and may request the Commission or that Management Authority to initiate action in respect of land which in the opinion of the local government authority should be dealt with under the provisions of this Act.

Agreements for joint action

34. (1) The Commission or a Management Authority may, from time to time, enter into and give effect to agreements providing for co-ordinated measures to be taken jointly with other persons or bodies relating to any matter in respect of which they are authorized to exercise powers under this Act.

(2) A local government authority may enter into such an agreement pursuant to the provisions of section 328 of the *Local Government Act 1960*, as though the Commission or that Authority were the municipal council having the care, control and management of the work or service in question.

Management programmes

35. (1) The Commission, in consultation with the relevant Management Authority and with the appropriate local government and other public authorities, may cause to be prepared a detailed documented programme of the operations that are to be undertaken pursuant to this Act on or in relation to —

- (a) waters and associated land placed under the control of the Commission or that Authority; and

- (b) waters and land the subject of an agreement made by the owner, lessee or licensee thereof with the Commission or that Authority pursuant to section 31,

during the period to which the programme relates.

(2) Regulations made under this Act may provide that no person shall, without the approval of the Commission or relevant Management Authority, cause or permit any development to take place, or any interference or disturbance of the physical environment to occur, in relation to specified waters and associated land the subject of a management programme.

(3) Notwithstanding the provisions of section 5, where a local government authority by resolution adopts the proposals, or any of them, from time to time contained in a management programme the provisions of any regulations or by-laws which are thereafter made under this Act with the approval of that local government authority as regards those waters and land under this section shall be binding on the local government authority in so far as they are reasonably necessary for the implementation of the proposals so adopted.

(4) Proposals to establish a management programme for the first time when prepared in relation to any area shall be brought to the notice of persons likely to be affected by being published in a newspaper circulating in the locality and in such other manner as the Minister may direct, but that programme shall not take effect until the Minister, by notice in the *Gazette* and in that newspaper, indicates that the representations made as to those proposals have been considered and fixes a date as that on which the programme is to commence.

(5) A management programme shall be kept under constant review and may subsequently be amended from time to time with the approval of the Minister, but where the Minister so directs any proposal for amendment shall be brought to the notice of persons likely to be affected before taking effect.

(6) The Commission and the relevant Management Authority shall maintain a copy of the management programme as from time to time in force available for inspection by members of the public at reasonable hours without charge.

(7) The method of making representations regarding the proposals for a management programme shall be as prescribed, and the regulations may provide for the conduct of a public inquiry if the Minister so thinks fit.

(8) A management programme may include a working plan to be carried out for the improvement, development and maintenance of the waters and associated land, the prevention and control of fires, the public utilisation of the area, the study, care and restoration of the natural environment, the conservation of indigenous flora and fauna and such other matters as the Management Authority and the Commission recommend and the Minister approves.

(9) The Commission may, with the approval of the Minister, arrange with any public authority for the carrying out on behalf of the Commission or Management Authority, and whether or not under the direction of the Commission or that Authority, of any work specified in a working plan formulated pursuant to a management programme.

Town planning referrals

36. (1) The Commission may from time to time request a town planning authority, that is to say —

- (a) the Minister of the Crown administering the *Town Planning and Development Act 1928*, or any Act amending or in substitution for that Act;
- (b) the Western Australian Planning Commission established under the *Western Australian Planning Commission Act 1985*;

- [(c) *deleted*]
- (d) a Responsible authority within the meaning given to that expression by the *Town Planning and Development Act 1928*; or
- (e) any other body prescribed for the purposes of this section,

to submit to the Commission particulars of —

- (f) each application or proposal for the exercise of a power to approve —
 - (i) a town planning scheme;
 - (ii) an interim development order;
 - (iii) the subdivision or amalgamation of any lot or lots;
 - (iv) the development of any land;
 - (v) the change of use of any land adjacent to any river, inlet or estuary; or
- (g) such type or class only of those applications and proposals as the Commission specifies in the request,

which relates to land in a management area, and the person or body so requested shall thereupon cause the request made by the Commission to be complied with.

(2) Where particulars of an application or proposal referred to in subsection (1) of this section are submitted to the Commission pursuant to that subsection —

- (a) the Commission shall consider the matters so submitted to it and may for that purpose consult with the town planning authority; and

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(b) the Commission shall furnish the town planning authority with its recommendations in writing as to whether the application or proposal ought to be carried into effect and whether or to what extent the Commission considers that the application or proposal ought to be modified, and the reasons on which the Commission's recommendations are based.

(3) The Commission may at any time after it has furnished its recommendations to the town planning authority under subsection (2) of this section, publish in any manner which it considers appropriate the terms of those recommendations.

(4) In considering any request or proposal referred to it under subsection (1) of this section, and in making its recommendations and generally exercising its powers under subsection (2) of this section, the Commission shall, in particular, have regard to the terms of any relevant management programme for the area.

(5) Unless and until the town planning authority has received and considered the recommendations of the Commission under this section, it shall not exercise any power of the kind referred to in subsection (1) of this section in relation to any such land.

[Section 36 amended by No. 84 of 1994 s.46.]

Ministerial referrals

37. (1) Where it comes to the notice of a Minister of the Crown that a proposed development, project, industry, or other thing, may have a detrimental effect on the waters or land to which the powers of the Commission apply he shall so advise the Commission and shall thereafter in relation to that matter furnish to the Commission and the relevant Management Authority all such aid, information and facilities as are practicable, and the Commission shall report to the Minister on the matter when and as often as the Minister requires.

(2) The Commission may from time to time request any Minister of the Crown to submit to the Commission particulars relating to any application or proposal for the exercise of a power which could result in the waters or associated land in any management area or area to which section 31 or section 32 applies being detrimentally affected and that Minister shall thereupon cause the request made by the Commission to be complied with.

Public referrals

38. (1) Any person or body may refer in writing to the Commission any matter which gives rise to concern as a possible cause of pollution affecting any river, inlet or estuary to which the powers of the Commission apply.

(2) Where any matter is referred to the Commission under subsection (1) of this section the Commission shall consider the matter and may report and make recommendations thereon to any Minister of the Crown to whose administration the matter relates.

Staff

39. [(1) *repealed*]

(2) A Management Authority may, with the consent of the Commission and on such terms as may be agreed, make use of the services of any officer or employee of the Commission.

(3) For the purposes of this Act, a Management Authority may, with the consent of the Minister of the Crown having responsibility for the administration of the Act relating to a department of the Public Service of the State or an instrumentality or agency of the Crown, make use of the services of any officer of that department, instrumentality or agency, upon such terms as may be agreed with the Minister and approved by the employing authority, within the meaning of the *Public Sector Management Act 1994*, of that officer.

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[(4) *repealed*]

(5) Subject to the provisions of this Act and the approval of the Commission, a Management Authority may engage —

- (a) officers and employees under contract of service; or
- (b) professional, technical or other assistance under contract for works or services,

as may be necessary to carry out effectively the administration of this Act and may enter into arrangements with any person or body with respect to the conduct of any investigation, project, study or research or for the carrying out of any work necessary or desirable for that purpose.

(6) Subject to any relevant award or industrial agreement under the *Industrial Arbitration Act 1912*⁴, the terms and conditions of appointment and employment of officers and employees of an Authority engaged pursuant to subsection (5) of this section, including the salary payable, shall be such terms and conditions as the Commission, after consultation with the Minister for Public Sector Management determines but where the Commission considers that a person is, or is to be, employed in similar circumstances to an employment in the Public Service the terms and conditions under this Act shall be similar to those applicable in the Public Service to those circumstances.

(7) A person engaged under the provisions of subsection (5) of this section is not a person appointed under Part 3 of the *Public Sector Management Act 1994*.

[*Section 39 amended by No. 32 of 1994 s.19; No. 1 of 1995 s.35; No. 73 of 1995 s.180.*]

[**40, 41.** *Repealed by No. 73 of 1995 s.181.*]

Funds of the Management Authorities

42. (1) The funds available to a Management Authority for the purpose of enabling it to exercise its functions under this Act are —

- (a) moneys received from the Commission, which may be appropriated by the Commission to specific purposes; and
- (b) moneys received by that Authority by way of fees, charges, or otherwise under the authority of this Act;

and all such moneys shall be expended for the purposes of this Act and not otherwise.

(2) Whenever so required by the Commission a Management Authority shall cause to be prepared a written statement showing —

- (a) the amount which the Authority estimates will be required to meet the expenses of and incidental to the administration of this Act in relation to that management area in the period or for the project specified in that request;
- (b) the amount which the Authority has or is likely to have on its own account to meet those expenses, or in respect of which it can make provision; and
- (c) the amount of the balance for which no other provision has been made.

(3) A Management Authority shall furnish the Commission from time to time on demand with details of its financial affairs and make available to the Commission all books and accounts maintained by the Authority and all documents relating thereto.

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Application of *Financial Administration and Audit Act 1985*

43. [(1) *repealed*]

(2) Except in so far as the disclosure is commendatory, the Commission shall not disclose particulars relating to any individual business in an annual report prepared for the purposes of the *Financial Administration and Audit Act 1985* in respect of the operation of this Act.

[*Section 43 inserted by No. 98 of 1985 s.3; amended by No. 73 of 1995 s.182.*]

[44. *Repealed by No. 98 of 1985 s.3.*]

Exemption from personal liability

45. A person who carries out any function or exercises or performs or has exercised or performed any power conferred or any duty imposed by this Act, is not personally liable for anything done or omitted in good faith in, or in connection with, the carrying out of that function or the exercise or purported exercise of any power conferred or purported to be conferred, or the performance of any duty imposed or purported to be imposed, by this Act.

[*Section 45 amended by No. 73 of 1995 s.183.*]

Licences

46. (1) In this section a reference to a licence includes a reference to a permit, approval, consent or authorization granted under the *Swan River Conservation Act 1958*, and continued in force pursuant to section 4.

(2) In this section a reference to the Commission shall be construed as including a reference to a Management Authority or some other person or body acting on behalf of or under the direction of the Commission exercising a power conferred by delegation or otherwise pursuant to this Act.

(3) Any person, in the prescribed manner, if any, may apply to the Commission for a licence authorizing him to do or to omit to do anything the doing or omission of which would otherwise constitute an offence against this Act, and on payment of such fees or charges as may be prescribed in relation thereto the Commission may grant, renew or transfer any such licence.

(4) The Commission, on giving written notice to the applicant of the reason, may refuse any application and no person shall be entitled to the grant, renewal or transfer of a licence as of right notwithstanding any other law or established practice.

(5) The grant of a licence may be authorized subject to such reasonable conditions as the Commission thinks fit, which conditions shall be endorsed upon or attached to the licence when granted.

(6) The Commission, at any time during the currency of a licence, by notice in writing given to the holder of the licence, may —

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

but, subject to the provisions of this section, a licence shall otherwise take effect according to its tenor and for the period specified therein.

(7) The Commission may renew the period of operation of a licence from time to time, or transfer the authority it confers

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from one person to another, or, where its operation relates to any place, may transfer that operation to another place of the same kind.

(8) Where in the opinion of the Commission a person is contravening, or is likely to contravene, the provisions of this Act the Commission may give to that person a notice in writing informing him of the opinion of the Commission and, where the Commission considers that the matter is one capable of being dealt with by a licence the conditions of which will impose a satisfactory degree of control, may thereby require him to apply for such a licence instead of instituting proceedings for the alleged offence.

(9) Where the owner, and any person occupying the land with the consent of the owner, has given approval in writing the powers conferred by this section may be exercised in relation to any land placed by the owner, lessee or licensee of that land under the control or management of the Commission.

(10) Where the holder of a licence contravenes or fails to comply with any condition endorsed upon or attached to the licence —

- (a) he commits an offence and is liable for his act or omission to the extent that it was not authorized by the licence (and the provisions of section 11 of *The Criminal Code* shall not apply thereto notwithstanding that the condition is subsequently varied);
- (b) the court may, in addition to any other penalty, by order cancel the licence; and
- (c) the Commission may, by notice in writing given to the holder of the licence, revoke that licence or suspend the operation of it for such period as the Commission thinks fit.

(11) A person who is aggrieved —

- (a) by a refusal of the Commission to grant or renew a licence under this Act;

- (b) by the revocation of a licence or the suspension of the operation of a licence pursuant to subsection (10) of this section; or
- (c) by a condition imposed by the Commission in relation to any licence,

may, within the time and in the manner prescribed, appeal against the decision of the Commission to the Minister who, after causing such inquiry, if any, to be made as he thinks fit, may determine the appeal and may uphold, reverse, or vary, the decision of the Commission.

(12) A person who is aggrieved by a decision of the Minister given pursuant to subsection (11) of this section may appeal from the decision of the Minister to the Supreme Court and the appeal shall, unless the Judge otherwise directs, be heard and dealt with by a Judge sitting in chambers.

Disposal licences

47. (1) An application for a disposal licence authorizing the discharge or deposit of any matter shall be made to the Commission 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

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applications for licences in respect of each of those places or times.

(3) The Commission 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 Commission may by notice in writing to the applicant allow, the Commission has neither granted or refused to grant a disposal licence the application shall be deemed to have been refused.

(4) The Commission 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 condition 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.

(5) In considering any application, the Commission shall have regard to broad principles, and generally shall endeavour to ensure that any matter which it is proposed to discharge into the waters shall not contain —

- (a) sewage, unless treated to a standard approved by the Commission;
- (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.

(6) 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 discharged or deposited;
- (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

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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 Commission in relation to any discharge or deposit,

and any such condition may be of general or limited application according to place, time, or circumstance.

(7) Without limiting the generality of the provisions of this section, wastes shall not be permitted to be discharged into any waters —

- (a) if it is reasonably practicable to dispose of them satisfactorily in some other manner;
- (b) unless every reasonable and practicable step has been taken to improve the quality and appearance of the wastes, prior to discharge; and
- (c) unless they conform with such bacterial, physical and chemical standards as may from time to time be laid down by the Commission.

(8) It shall not be the responsibility of the Commission to specify the design, location, type of construction or particular manner in which any operation causing or threatening to cause a condition of pollution might be corrected, and any person ordered to correct the condition of any wastes shall correct the condition in a lawful manner.

(9) Notwithstanding that a disposal licence may be expressed to have effect for a specified time and that the holder of the licence has not contravened or failed to comply with any of the conditions endorsed upon or attached to it, that licence may be revoked by notice in writing given by the Commission to the licence holder if in the opinion of the Commission 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.

(10) Provision may be made from time to time by 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 matters as the Governor shall seem necessary or advisable to give effect to this section.

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

Control of pollution, and the use of waters

48. (1) The provisions of this section apply to and in relation to any waters or any land for the time being subject to the powers of the Commission, save where the exercise of the powers conferred by this section 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 and the Governor, by Order in Council published in the *Gazette*, declares that any or all of the provisions of this section 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.

(2) An Order in Council made for the purposes of subsection (1) of this section may be varied or revoked by a subsequent Order.

(3) Subject to subsection (1) of this section, 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 waters or land to

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which this section applies 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 those waters or any subterranean source of those waters, 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, whether treated or otherwise, to be discharged or deposited so as to run or otherwise enter into waters to which this section applies, or any subterranean source of those waters; or
- (c) anything to be done, or omitted, whereby the use of the waters or associated or adjacent land for navigational, recreational or other beneficial purposes is impaired or otherwise adversely affected.

(4) A person shall not be guilty of an offence by virtue of subsection (3) of this section if —

- (a) the discharge or deposit is authorized by a disposal licence issued for the purpose under section 47 and is in accordance with the conditions, if any, to which the licence is subject;
- (b) the entry of the matter into the waters is attributable to an act or omission which is in accordance with good agricultural practice and the Commission has not, by notice in writing given not less than 3 months previously, required the owner or occupier of the place where the act or omission occurred, or any previous owner or occupier of that place, to apply for a licence in respect of that act or omission;

- (c) 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 Commission and to such other persons as the Commission may direct; or
- (d) the entry of the matter into the waters is attributable to events none of which that person could reasonably have been expected to prevent.

(5) Provision may be made by by-laws for —

- (a) prohibiting or regulating the keeping or use on waters to which this section applies of a vessel that is fitted with a water closet or other prescribed sanitary appliance designed to permit polluting matter to pass into the water;
- (b) prohibiting the keeping or use on waters to which this section applies of a ferry or charter vessel that is not fitted with prescribed facilities for the storage of polluting matter; and
- (c) regulating the disposal of polluting matter from facilities mentioned in paragraph (b) of this subsection and, without limiting the generality of the foregoing, prohibiting it from being disposed of otherwise than at a prescribed place in a prescribed manner.

(5a) In subsection (5) of this section “**ferry or charter vessel**” means a vessel that —

- (a) is kept or used for the carriage of passengers, or passengers and goods, for reward or plies for hire for the carriage of passengers, or passengers and goods; and
- (b) is authorized under the *Western Australian Marine Act 1948* to carry more than 10 passengers.

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(6) Provision may be made from time to time by by-laws as to the precautions to be taken by any person having the custody or control of any poisonous, noxious or polluting matter for the purpose of preventing the matter from entering waters to which this section applies and the by-laws may provide that any prescribed contravention shall be an offence to which subsection (9) of this section applies.

(7) Where it appears to the Commission that with a view to preventing poisonous, noxious or polluting matter from entering waters to which this section applies, it is appropriate to prohibit or restrict the carrying on in a particular place of activities which the Commission considers to be likely to result in pollution of those waters, provision may be made by by-laws that prescribed activities shall not be carried on in that place except under licence from the Commission (which shall not be unreasonably refused) and the by-laws may provide that any prescribed contravention shall be an offence to which subsection (9) of this section applies.

(8) Provision may be made from time to time by regulations for prohibiting or controlling —

- (a) the use of waters to which this section applies for industrial purposes;
- (b) the doing or omitting of anything the doing or omission of which results or is likely to result in pollution except such as may be authorized by a licence under this Act;
- (c) the carrying out of any works or proposed works of any kind in, on, over or under the waters or land to which this section applies, or both or any part of either or both of them, (and such regulations may provide for the carrying out or removal of such works by or on behalf of the Commission and for the recovery of costs incurred by the Commission in so doing);

- (d) dredging, drainage, river training, reclamation, and the provision or removal of structures, including jetties, wharves and bridges, and obstructions to navigation or the flow of the waters; or
- (e) the putting into such waters of mud, earth, gravel, litter or other matter which is likely to cause obstruction or be objectionable.

(9) A person guilty of an offence against subsection (3) of this section, or of a contravention of a regulation or a by-law which provides that this subsection shall apply, shall be liable to a fine not exceeding \$5 000, and where the offence is a continuing offence an additional fine not exceeding \$100 for each day on which the offence continues after service on the offender of written notice of the offence.

[Section 48 amended by No. 97 of 1982 s.4; No. 73 of 1995 s.184.]

Injunctions

49. (1) The Supreme Court or The District Court of Western Australia may, on the application of the Attorney General, or of the Commission or a Management Authority, grant an injunction restraining a person from engaging in any course of conduct, or doing any act, that constitutes or would constitute —

- (a) a contravention of a provision of this Act;
- (b) attempting to contravene such a provision; or
- (c) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision.

(2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending

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determination of an application under subsection (1) of this section.

(3) The Court may rescind or vary an injunction granted under subsection (1) or subsection (2) of this section.

Orders

50. (1) The Commission, or the relevant Management Authority, may serve on any person who has deposited in any waters or on any land for the time being subject to its control any poisonous, noxious or polluting matter an order in writing requiring him within such reasonable period as is specified in the order to cause that matter to be removed, and a person who, having been served with such an order, fails or neglects to comply with the provisions of that order commits an offence against this Act.

(2) Provision may be made by regulations enabling the Commission and any Management Authority for the purposes of preventing or minimising the effects of pollution, or any of such effects, on waters subject to its control or on any associated land, to serve on and enforce against any person an order requiring or directing that person to do or refrain from doing any prescribed act or thing.

Removal of structures

51. Where any structure or other matter or thing —

- (a) has been the subject of an order made or an injunction granted under this Act and that order or injunction has not been complied with; or
- (b) appears to the Commission to have been abandoned or to belong to a person the whereabouts of whom cannot be traced without unreasonable difficulty or expense,

the Commission may apply to the Supreme Court or The District Court of Western Australia for an order with respect to the disposal of that structure or other matter or thing and the Court may authorize the Commission or a Management Authority, upon such terms as the Court thinks fit, to undertake the removal and to dispose of that matter or thing in any manner authorized by the Court.

Remedial works

52. Where it appears to the Commission or a Management Authority that any poisonous, noxious or polluting matter is likely to enter or is or was present in waters subject to its control and the Commission or that Authority has reason to believe that an order served under section 50 would not be effective or effective within the time required, the Commission or that Authority may carry out such works as may be necessary for the purpose of preventing the matter from entering the waters or for the purpose of removing and disposing of the matter or remedying or mitigating any pollution thereby caused.

Recovery of expenses

53. Any expenses reasonably incurred by the Commission or a Management Authority pursuant to section 50, section 51 or section 52 may be defrayed out of any money obtained by the Commission or that Authority from the disposal of any matter so dealt with and, in so far as they are not so defrayed, shall be recoverable as a debt due to the Commission or that Authority, as the case may be, from any person in default under the order or injunction or who caused or knowingly permitted the circumstances to occur which gave rise to the necessity for the expenditure.

By-laws

54. (1) The Commission may cause to be prepared and published in the *Gazette* draft model by-laws which a Management Authority may adopt, with or without alterations, for the purposes of this Act.

(2) Where a draft model by-law is adopted, with or without alterations, by an Authority that by-law shall for all purposes have effect as if it were a by-law prepared and made by that Authority.

(3) Any Management Authority in relation to the area under its control and management may make by-laws for any of the purposes permitted by this Act.

(4) By-laws made under this section are required to be confirmed by the Governor before being published in the *Gazette* and laid before each House of Parliament.

(5) The provisions of the *Interpretation Act 1918*, in general, and those of sections 36 and 38 of that Act in particular, apply in respect of by-laws made and the making of by-laws under this Act.

(6) Where an Authority intends to make a by-law, whether by adoption of a model by-law or otherwise, that Authority shall —

- (a) cause a draft of the proposed by-law to be prepared, or specify the draft model by-law to be adopted setting out any alterations proposed;
- (b) resolve that the by-law be made, or be made by way of the adoption of a draft model by-law, specifying in the record of that resolution any alterations proposed to a draft model by-law;
- (c) cause notice of the intention to submit the by-law for confirmation by the Governor to be published once in

a newspaper circulating in the locality of the management area affected, and cause to be stated in the notice the purport of the by-law and of the alterations, if any, where a model by-law is adopted and notification that the full text of the by-law may be inspected by members of the public free of charge at the places therein specified;

- (d) for a period of 21 days commencing on the day of publication of the notice in a newspaper pursuant to the requirements of paragraph (c) of this subsection, cause —
 - (i) a copy of that notice to be kept posted on the official notice board of each of the local government authorities within the district of which the by-law is to apply (and any such local government authority is required to permit the notice to be so posted for that period); and
 - (ii) a copy of the full text of the by-law to be available free of charge for public inspection during office hours at the places specified in the notice.

(7) The notice of the intention to submit the by-law for confirmation by the Governor published in a newspaper in accordance with paragraph (c) of subsection (6) of this section and the notice posted on the official notice board of the local government authority in accordance with paragraph (d) of that subsection shall in each case include a provision making known to the public that objections to and representations in respect of the proposed by-law may be made to the Management Authority during the period of 21 days commencing on the date of the publication and in the manner specified in the notice.

(8) Within the period of 21 days commencing on the date of the publication and in the manner so specified, any person or body that wishes to make an objection or representation to the Management Authority in respect of the proposed by-law may

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submit that objection or representation with all relevant accompanying documents or information to that Authority.

(9) The Management Authority shall consider any objection or representation made under subsection (8) of this section and, if that Authority thereafter still desires to make the by-law in the form published, cause the record of the resolution to be delivered to the Minister together with a report on the objections and representations made in respect of the proposal.

(10) If the Governor confirms the by-law the Minister shall cause the full text of the by-law to be published in the *Gazette* and to be laid before both Houses of Parliament as required by section 36 of the *Interpretation Act 1918*.

General provisions relating to by-laws

55. (1) Any by-law may be made —

- (a) so as to apply generally or in a particular class of case, or particular classes of cases, at all times or at a specified time or specified times, throughout the management area or in a specified part or specified parts of the area;
- (b) so as to require a matter affected by it to be in accordance with a specified standard or specified requirement, or as approved by, or to the satisfaction of, a specified person or body, or class of person or body, and so as to confer upon a specified body a discretionary authority;
- (c) so as to provide that in specified cases, or a specified class of case, or specified classes of cases, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from its provisions either wholly or to such extent as is specified; and

- (d) so as to provide for a modified penalty, not exceeding one quarter of the amount specified in that by-law as the penalty for which a person may be liable in relation to that offence, to be payable by a person who does not contest an allegation that he committed any specified breach of the provisions of those by-laws, and shall provide that the due payment of a modified penalty is a defence to a charge of the breach in respect of which that modified penalty was paid.

(2) Any by-law may make provision for the imposition of penalties not exceeding \$100 in respect of any contravention, and may prescribe the fees and charges that shall be payable in relation to matters under this Act, the persons liable and the method of recovery of amounts not duly paid.

(3) Where in relation to a by-law made under this Act the expression "**specified**" is used, the expression, unless the context requires otherwise, means specified in that by-law.

Local government authority by-laws

56. (1) Subject to the provisions of this section, a local government authority may make by-laws for carrying into effect the provisions of this Act within its district, and may repeal, amend, vary or suspend the operation of any such by-law.

(1a) By-laws shall not be made under this section to have effect in the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*.

(2) A local government authority may, by resolution, adopt the whole or any part of a draft model by-law prepared by the Commission and published in the *Gazette*, with or without modification.

(3) Where a local government authority adopts the whole or any part of a draft model by-law prepared under this Act the

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by-law so adopted shall in all courts be deemed to be within the powers conferred on the local government authority.

(4) Any by-law may be restricted in its operation to any defined portion of the local government authority district.

(5) By-laws made under this section are required to be confirmed by the Governor before being published in the *Gazette* and laid before each House of Parliament and shall be prepared or adopted with the necessary modifications but otherwise subject to the same procedures and requirements as if prepared or adopted by the local government authority under and for the purposes of the provisions of the *Local Government Act 1960*.

[Section 56 amended by No. 21 of 1988 s.30.]

Inconsistency of by-laws with regulations

57. Where there is conflict or inconsistency between the provisions of a by-law made under this Act by a Management Authority or a local government authority and the provisions of regulations made under this Act, the provisions of the regulations prevail to the extent of the conflict or inconsistency.

Revocation of by-laws

58. (1) Where any by-law has been or is made by a Management Authority or a local government authority under this Act and that by-law, or the manner in which that by-law is administered, is in the opinion of the Governor unduly oppressive, repugnant to or inconsistent with the provisions of this Act the Governor may by notice published in the *Gazette* revoke that by-law or any part thereof and effect shall be given to any such revocation but without affecting the validity, or curing the invalidity, of any thing done, or of the omission of any thing, in the meantime.

(2) The Minister shall cause a copy of any notice published under this section to be laid before each House of Parliament within 6 sitting days of that House next following the publication, and if either House of Parliament passes a resolution of which notice has been given within the first 14 sitting days of that House after the copy of a notice under this section has been laid before that House that the notice be disallowed, the notice thereupon ceases to have effect, but the disallowance of the notice does not affect or invalidate anything done in good faith before the passing of the resolution.

Public consultation

59. (1) Where the Commission or a Management Authority is so directed by the Minister or is required to do so by this Act, any proposals for regulations or a management programme or working plan shall be published in the *Gazette* and 3 issues within a 21 day period of a newspaper circulating throughout the locality in question in such a manner as to make known to the public an informative and comprehensive outline of the proposals and to invite objections and representations within a time and in a manner thereby specified, and regard shall be had to any such objection or representation.

(2) Notwithstanding the requirements of section 54, the Minister or the Commission may direct a Management Authority to make a preliminary advertisement and inquiry of the kind referred to in subsection (1) of this section before preparing, or in relation to, the draft of a proposed by-law.

[**60.** *Repealed by No. 21 of 1988 s.31.*]

Inspectors

61. (1) A Management Authority may appoint any person to be an inspector under this Act in relation to the management area under its control.

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(2) The Commission may appoint any person to be an inspector under this Act in relation to any portion of the State other than the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*, but no such appointment shall be made in relation to any management area without prior consultation with the Management Authority for that area.

(3) Every person appointed to be an inspector under this Act shall be furnished with a certificate in the prescribed form evidencing his appointment and shall produce such certificate whenever required so to do by any person in respect of whom he has exercised or is about to exercise any of his powers under this Act.

(4) Production of a certificate in the prescribed form is conclusive proof in any court of the appointment of the inspector to whom that certificate relates and of his authority to exercise the powers conferred upon an inspector appointed under this Act.

(5) In addition to the persons appointed as inspectors under and for the purposes of this Act, the following persons are authorized to exercise the powers conferred on an inspector under this Act —

- (a) every person who is, or acts in the office of, —
 - (i) a forest officer, under the *Forests Act 1918*⁵;
 - (ii) a fisheries officer referred to in the *Fish Resources Management Act 1994*;
 - (iii) a wildlife officer under the *Wildlife Conservation Act 1950*; or
 - (iv) a ranger, under the *National Parks Authority Act 1976*⁵; and
- (b) all members of the Police Force of the State,

and reference in this Act to an inspector shall be construed as including a reference to any such person when exercising the powers of an inspector.

(6) As regards a member of the Police Force, the provisions of this Act relating to inspectors are not in derogation of but are in addition to those of other Acts relating to members of the Police Force.

[Section 61 amended by No. 21 of 1988 s.32; No. 53 of 1994 s.264.]

Honorary wardens

62. (1) A Management Authority may appoint any person to be an honorary warden under this Act in relation to the whole or any part of the management area under its control.

(2) The Commission may appoint any person to be an honorary warden under this Act in relation to any portion of the State other than the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*, but no such appointment shall be made in relation to any management area without prior consultation with the Management Authority for that area.

(3) An honorary warden may exercise such of the powers conferred on an inspector by this Act as are prescribed within the limitation as to authority and area of jurisdiction specified in the terms of his appointment.

(4) Every person appointed to be an honorary warden under this Act shall be furnished with a certificate in the prescribed form evidencing his appointment and shall produce that certificate whenever required so to do by any person in respect of whom he has exercised or is about to exercise any of his powers under this Act.

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(5) In any proceedings under this Act production of a certificate in the prescribed form is conclusive evidence in any court of the appointment of the honorary warden to whom the certificate relates and of his authority to exercise the powers specified in that certificate.

[Section 62 amended by No. 21 of 1988 s.33.]

Powers of inspectors, etc.

63. (1) A reference in this section to an inspector shall be construed as including a reference to —

- (a) a member of the Commission;
- (b) a member of a Management Authority acting in that official capacity within the management area under the control of that Authority;
- (c) an honorary warden, acting within the limitations specified in the terms of his appointment; and
- (d) a person authorized pursuant to subsection (5) of section 61.

(2) Any inspector in addition to such other powers and duties as may from time to time devolve upon him under this Act, or as may be prescribed, may, together with any person he may think competent to assist him in making any inspection or examination, enter any premises with the consent of the occupier and may therein or thereon —

- (a) examine and inspect any equipment, industrial plant, or process; and
- (b) make such examination and inquiry and tests, and ask such questions, and request such information as he considers necessary or desirable,

to the extent required to ascertain whether the provisions of this Act or any requirement or order made under or pursuant thereto or the conditions attached to any exemption granted thereunder are being or have been complied with.

(3) In the exercise of his powers under subsection (2) of this section an inspector shall conform so far as is practicable to such reasonable requirements of the person owning or using the premises in question as are necessary to prevent the working of the business or the conduct of operations on the premises being obstructed.

(4) The occupier of any premises and any person in charge or apparently in charge of any premises shall furnish all reasonable assistance and all relevant information that he is capable of furnishing to any inspector acting in the exercise of his powers and the discharge of his duties under this Act.

(5) An inspector, by notice in writing served on the occupier of any premises, may require the occupier to furnish to the Commission or a specified Management Authority within the period specified in that notice, such information as to any equipment, industrial plant, or process in or on the premises as is specified in that notice.

(6) Where it is shown to the satisfaction of a justice that admission to the premises in question has been refused following a request by an inspector for entry thereto, or that the premises are unoccupied, the justice may, by warrant under his hand authorize that inspector or any other person named in the warrant to enter upon the premises, and a warrant granted under this subsection continues in force until the purpose for which it was granted has been satisfied.

(7) An inspector who finds a person committing an offence against this Act, or who on reasonable grounds suspects that an offence against this Act has been committed or is about to be committed, may without warrant other than the provisions of this subsection —

- (a) stop, detain and search any vehicle, vessel or conveyance;

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- (b) remove any vehicle, animal or other thing from the waters or land;
- (c) enter and search any tent, caravan or other erection which is not permanent; and
- (d) require any person to give to him the person's name and address and detain the person if, when required to do so, he does not give to the inspector his name and address, or gives to the inspector a false name and address, until he can be delivered to a member of the Police Force, or the inspector may take that person into custody himself to be dealt with according to law pursuant to section 50 of the *Police Act 1892*, as if he had not given his name and address, or had given a false name and address, to a member of the Police Force,

but an inspector, shall not exercise any power specified in paragraph (a), (b) or (c) of this subsection unless he has first taken all reasonable steps to communicate to the owner or person in charge of the vehicle, animal, vessel, conveyance, tent, caravan or other thing concerned his intention to exercise the power and his reasons for believing that he is authorized to exercise the power.

(8) If the person making a statement pursuant to this section objected to making that statement, at the time of making it, on the ground that it might tend to incriminate him, it shall not be admissible in evidence in any prosecution against that person for any offence not being the offence of contravening or failing to comply with the provisions of this section.

Duty of Police Officers etc.

64. It is the duty of the members of the Police Force of the State, and of all other persons authorized by subsection (5) of section 61 to exercise the power of an inspector, who find a person committing or attempting to commit, or who on

reasonable grounds suspect a person of having committed or attempted to commit, an offence against the provisions of this Act to demand from the person his name and address, and immediately to report the offence or attempt and the name and address of the person to the Commission or to the Management Authority for the area concerned.

Persons obstructing execution of this Act

65. (1) A person who wilfully obstructs any person acting in the execution of this Act commits an offence against this Act.

Penalty: \$500.

(2) A person who fails to give to any person acting in the execution of this Act any assistance which that person may reasonably request him to give, or any information which that person is expressly authorized by this Act to call for or may reasonably require, or who, when required to give any such information, knowingly makes any false or misleading statement in relation thereto, shall be treated as having wilfully obstructed that person.

Secrecy

66. A person who discloses any information relating to any industrial or trade secret used in carrying on or operating any particular undertaking or equipment or plant that has been furnished to him or obtained by him under this Act or in connection with the execution of this Act, unless the disclosure is made —

- (a) with the consent of the person carrying on or operating that undertaking, equipment or plant; or
- (b) in connection with the execution of this Act and with the prior permission of the Minister,

commits an offence against this Act.

Penalty: \$10 000 or 12 months imprisonment.

[Section 66 amended by No. 73 of 1995 s.185.]

Appropriation of penalties

67. All pecuniary penalties imposed under this Act shall, notwithstanding anything to the contrary contained in the *Fines and Penalties Appropriation Act 1909*, or any other Act, be appropriated and paid to the Commission for the purposes of this Act.

Prosecution expenses

68. The court by or before which a person is convicted of an offence against this Act may, whether or not it imposes any other punishment, order that the person convicted pay the reasonable costs of and incidental to any measurement, analysis, or other matter undertaken by or on behalf of the prosecution towards the investigation of the offence and the giving of evidence in relation thereto, and may make such order as the court thinks just as to those costs.

Offences generally

69. (1) A person who does not do a thing which by or under this Act he is required or ordered to do, and a person who does or attempts to do a thing which by or under this Act he is prohibited from doing, commits an offence against this Act.

(2) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or ordered to do, or to refrain from doing, anything within a particular period, that offence is deemed to continue so long as the thing so required or ordered remains undone, or continues to be done, as the case may be, notwithstanding that the particular period has elapsed.

(3) It shall be a defence in any proceedings for an offence against this Act to show that the act or omission complained of was done under and in accordance with a licence granted or order issued by the Commission or the relevant Management Authority

under this Act or otherwise to the knowledge of and with the approval of the Commission or that Authority.

General penalty

70. A person who commits an offence against this Act is liable to the penalty expressly mentioned as the punishment for the offence, and, where a penalty is not expressly mentioned, is liable —

- (a) where the offence is not a continuing offence to a fine not exceeding \$200; and
- (b) where the offence is a continuing offence, to a fine not exceeding \$200 and an additional fine not exceeding \$25 for each day in which the offence continues after service on the offender of written notice of the offence.

Proceedings

71. (1) All proceedings for offences against this Act shall be disposed of summarily before a court constituted by a stipendiary magistrate sitting alone.

(2) A complaint for an offence against this Act may be made and prosecuted by —

- (a) any inspector;
- (b) an honorary warden in relation to the matters and in the area in respect of which he is authorized to exercise his powers under this Act; and
- (c) any other person authorized in writing for the purpose of the proposed proceedings by the Commission or a Management Authority on behalf of the Commission.

(3) In any proceedings under this Act the authority of any person to prosecute for an offence shall be presumed unless the contrary is proved.

(4) The provisions of the *Justices Act 1902*, shall have effect in relation to proceedings under this Act, in so far as they are applicable, save that a complaint for an offence under this Act may be made at any time within 2 years from the time when the offence was committed.

Liability for the acts of others, etc.

72. (1) A person who employs, causes, procures, or knowingly permits or suffers or connives with, another person to contravene any provision of this Act commits an offence punishable as is the provision contravened.

(2) Where proceedings are taken against a person for or in respect of a contravention of any provision of this Act it is no defence for that person to prove that he was the agent or employee of any other person or was acting in pursuance of an order or direction given by such other person unless he satisfies the court that he had acted without knowledge, and could not reasonably be expected to have known, that any provision of this Act had been contravened.

(3) It shall be a defence for any person who would otherwise be liable for an offence under this Act to prove that he had taken all reasonable means to enforce the provisions of this Act and that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it.

Offences by bodies corporate

73. (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director or member of the governing

authority of the body corporate, or the manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in that capacity, he as well as the body corporate shall be deemed to have committed that offence and may be convicted and punished accordingly.

(2) Where in any proceedings under this Act in respect of any act or thing done by a body corporate it is necessary to establish the intention of the body corporate, it is sufficient to show that a person who was concerned or took part in the management, or a servant or agent, of the body corporate by whom the relevant act or thing was done had that intention.

(3) Any act done or course of conduct engaged in on behalf of a body corporate by a person who was concerned or took part in the management, or an agent or servant, of the body corporate or by another person at the direction or with the consent or agreement (whether express or implied) of such a person, agent or servant shall be deemed, for the purposes of this Act, to have been done or engaged in also by the body corporate.

Recovery of penalty and costs paid

74. (1) Where on the hearing of any prosecution for an offence under this Act the court records a finding to the effect that the defendant has satisfied the court that —

- (a) being an agent or servant, he had acted without knowledge, and could not reasonably be expected to have known, that any provision of this Act had been contravened or had not been complied with; or
- (b) being a principal or employer, he had used due diligence to enforce the execution of this Act and that without his connivance or consent and in contravention of his orders the provisions of this Act were contravened or not complied with by his agent or servant,

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whether or not any other person has been convicted or punished in relation to the same matter, the defendant may recover in any court of competent jurisdiction from any person directly responsible for the contravention of, or failure to comply with, those provisions, the amount of any pecuniary penalty imposed on his conviction and any other charges or other expenses ordered to be paid upon his conviction and paid or payable by him in or in relation to his defence to the prosecution.

(2) Where a person satisfies the court in accordance with the provisions of subsection (1) of this section, the court may if it thinks fit suspend the operation of the conviction for any period not exceeding 3 months to enable the defendant to effect such recovery.

Evidentiary provisions

75. (1) In a prosecution or in other legal proceedings instituted by or on behalf of the Commission under the provisions of this Act, until proof is given to the contrary, proof is not required of —

- (a) the constitution of the Commission or any Management Authority or the particular or general appointment of any member, officer or other employee of the Commission or an authority;
- (b) any order of the Commission to prosecute;
- (c) any authorization by which the Commission or an Authority authorizes a person to make a complaint for an offence against this Act, to prosecute on behalf of the Commission, or otherwise to represent the Commission or a Management Authority.

(2) Where in a complaint of an offence against this Act there is an averment that an act occurred within the boundaries of land or waters under the control or management of the Commission or a Management Authority, courts and persons

acting judicially shall, on the act being proved, presume in the absence of proof to the contrary that the act occurred within the boundaries of such land or waters as averred.

(3) In any proceedings for an offence against this Act the fact that —

- (a) no notice had been given, or application submitted, to the Commission or a Management Authority;
- (b) no licence or other permission or authorization had been granted by the Commission or a Management Authority, in relation to any matter to which this Act applies,

shall be deemed to be proved until proof is given to the contrary.

(4) The production in a prosecution or other legal proceedings of —

- (a) a copy of the *Gazette* containing a regulation, declaration, map, notice or other evidence of the exercise of any power or authority in pursuance or purported pursuance of the provisions of this Act; or
- (b) a copy purporting to be certified as a copy of a regulation, declaration, map, notice or other evidence of the exercise of any such power or authority, by a certificate purporting to have been signed by the chief executive officer of the Commission,

is evidence of the making, existence, and publication of the regulation, declaration, map or notice, or of the exercise of the power or authority, and of all the preliminary steps having been regularly taken to give full force and effect to it and to its provisions.

(5) In all proceedings in which any notice, order, or other document required or authorized to be given or served under this Act has to be proved, the defendant is deemed to have received

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notice to produce it, and, until the contrary is shown, the document and its due service may be sufficiently proved by the production of what purports to be a copy, bearing what purports to be a certificate under the hand of the person authorized to issue the original, or of the chief executive officer of the Commission, as the case may be, that the copy is a true copy of the original and that the original was served on the date specified in the certificate.

(6) The validity of any declaration, map, notice, order, or other document or of its publication or service is not affected by any error, misdescription, or irregularity which is not calculated to mislead, or which in fact does not mislead.

(7) In all courts and before all persons authorized to receive evidence a signature purporting to be that of the Minister, the Chairman of a Management Authority, or the chief executive officer or other authorized officer of the Commission or of a Management Authority shall be taken to be the signature of the person whose signature it purports to be until the contrary is proved.

(8) Where a record is produced and identified as the minutes or an excerpt from the minutes of the Commission or a Management Authority, the record is, until the contrary is proved, proof of the matters recorded having taken place, without proof —

- (a) that the meeting to which the record relates was duly convened;
- (b) that other requirements relating to the regularity of the meeting were complied with; and
- (c) that the minutes were confirmed, and that the signature purporting to be that of the person authorized to sign the confirmation of the minutes is in fact his signature and that he was so authorized.

(9) The provisions of this section —

- (a) are in addition to and not in derogation of those of the *Evidence Act 1906*; and

- (b) do not render valid a regulation or by-law which has been disallowed under subsection (2) of section 36 of the *Interpretation Act 1918*, or which has been invalidly made.

[Section 75 amended by No. 73 of 1995 s.186.]

Regulations

76. (1) The Governor may, on the recommendation of the Commission, from time to time make, repeal or alter regulations for giving effect to this Act.

(2) Regulations made under this Act —

- (a) apply only within the boundaries of the land and waters under the control or management of the Commission or a Management Authority;
- (b) may be limited in their application to time, place, circumstance, or class of case;
- (c) may provide that any act or thing may or shall be done with the approval or to the satisfaction of a specified person or class of persons;
- (d) may provide that any act or thing shall be, or shall not be, permitted;
- (e) may confer a discretionary authority;
- (f) may provide for the payment or remission of fees and charges, for the form and manner of making applications, for the grant of exemptions, for the form and use of the seal of the Commission and the conduct of proceedings of the Commission and of the Management Authorities, for the making and determination of appeals, for the service and enforcement of orders, for the recovery of fees, charges

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and expenses, and for the general administration of this Act; and

- (g) may impose a penalty not exceeding —
 - (i) where the specific penalty is provided in the section of this Act pursuant to which the regulation was made, the amount of that specific penalty; or
 - (ii) in any other case, \$500, and as a continuing daily penalty \$50,

for any breach or non-observance thereof.

(3) The regulations may provide for a modified penalty, not exceeding \$50, to be payable by a person who does not contest an allegation that he committed any specified breach of the provisions of this Act, and shall provide that the due payment of a modified penalty is a defence to a charge of the breach in respect of which that modified penalty was paid.

SCHEDULE

***Procedural matters common to meetings of the Council,
a Management Authority, or a committee***

Sections 11, 14 and 21

Chairman

1. (1) The Chairman shall, when present, preside at all meetings.

(2) Subject to section 14 (2a), in the absence of the Chairman the members who are present at any meeting may elect one of their number to preside at that meeting.

Quorum

2. To constitute a meeting there must be more than one-half of the members present.

Meetings

3. The Minister or the Chairman may at any time convene a meeting and a meeting shall be convened by the Chairman within 7 days of the receipt by him of a written request signed by one-third of the members specifying the business in respect of which the meeting is to be convened.

Voting

4. (1) At any meeting all questions shall be decided by a majority of the members present and voting.

(2) Each member, including the member presiding, shall have a deliberative vote only.

(3) In the case of an equality of votes the question shall be declared to be negatived.

Records

5. A record of the proceedings of every meeting shall be kept in such manner as the Minister may direct or approve, and shall be amended as necessary and certified correct by the member presiding at that or the next succeeding meeting.

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Sch.

Validity of proceedings

6. (1) A vacancy among the membership shall not invalidate the proceedings of any meeting.

(2) All acts done at any meeting shall, notwithstanding it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member, be as valid as if that defect had not existed.

Interests

7. (1) A member who has a direct or indirect pecuniary interest in any matter that is before a meeting for consideration shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to the members present at the meeting and such disclosure shall be recorded in the record of the meeting.

(2) A member who has disclosed his interest in any matter may speak once only in the consideration or discussion, but shall not vote.

Disputes

8. In all cases of dispute, doubt or difficulty respecting or arising out of matters of procedure or order the decision of the member presiding at the meeting shall be final and conclusive.

Procedure

9. Subject to this Act the proceedings may be regulated in such manner as the members think fit.

[Schedule amended by No. 16 of 1980 s.4; No. 73 of 1995 s.187.]

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NOTES

^{1.} This reprint is a compilation as at 1 March 1996 of the *Waterways Conservation Act 1976* and includes the amendments effected by the other Acts referred to in the following Table^{1a}.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Waterways Conservation Act 1976</i>	131 of 1976	9 December 1976	Sections 1, 2, 3, 14, 16, 17, 18, 19 and 20: 25 March 1977 (see <i>Gazette</i> 25 March 1977 p.829); balance: 22 July 1977 (see <i>Gazette</i> 22 July 1977 p.2335)	
<i>Waterways Conservation Amendment Act 1980</i>	16 of 1980	15 October 1980	12 November 1980	
<i>Waterways Conservation Amendment Act 1982</i>	97 of 1982	22 November 1982	22 November 1982	
<i>Acts Amendment and Repeal (Disqualification for Parliament) Act 1984, section 22</i>	78 of 1984	14 November 1984	1 July 1985 (see <i>Gazette</i> 17 May 1985 p.1671)	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2 and <i>Gazette</i> 30 June 1986 p.2255)	
<i>Acts Amendment and Repeal (Environmental Protection) Act 1986, Part IX</i>	77 of 1986	4 December 1986	20 February 1987 (see <i>Gazette</i> 20 February 1987 p.440)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Public Service) Act 1987, section 32</i>	113 of 1987	31 December 1987	16 March 1988 (see <i>Gazette</i> 16 March 1988 p.813)	
<i>Acts Amendment (Swan River Trust) Act 1988, Part 10</i>	21 of 1988	5 October 1988	1 March 1989 (see section 2 and <i>Gazette</i> 27 January 1989 p.264)	
<i>Guardianship and Administration Act 1990, section 123</i>	24 of 1990	7 September 1990	20 October 1992 (see <i>Gazette</i> 2 October 1992 p.4811)	
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993	
<i>Acts Amendment (Public Sector Management) Act 1994, section 19</i>	32 of 1994	29 June 1994	1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948)	
<i>Fish Resources Management Act 1994, section 264</i>	53 of 1994	2 November 1994	1 October 1995 (see <i>Gazette</i> 29 September 1995 p.4649)	
<i>Planning Legislation Amendment Act (No. 2) 1994, section 46 (13)</i>	84 of 1994	13 January 1995	1 March 1995 (see <i>Gazette</i> 21 February 1995 p.567)	
<i>Industrial Legislation Amendment Act 1995, section 35</i>	1 of 1995	9 May 1995	1 January 1996 (see <i>Gazette</i> 24 November 1995 p.5389)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995, Part 12</i>	73 of 1995	27 December 1995	1 January 1996 (see section 2 and <i>Gazette</i> 29 December 1995 p.6291)	Transitional ²

^{1a} As at the date of this reprint Part 2 of the *Sentencing (Consequential Provisions) Act 1995* (Act No. 78 of 1995) was not in operation.

² Sections 189, 201, 202, 204, 207, 208, 209-219 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* (Act No. 73 of 1995) read as follows —

“ **PART 14 — TRANSITIONAL PROVISIONS**

Division 1 — Preliminary

Definitions

189. In this Part, unless the contrary intention appears —

“**assets**” means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and includes without limitation —

- (a) choses in action;
- (b) goodwill;
- (c) rights, interests and claims of every kind in or to property,

whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

“**Authority**” means the Authority under the principal Act as in force before the commencement day;

“**commencement day**” means the day on which Part 2 comes into operation;

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“**Commission**” means the Water and Rivers Commission established by section 4 of the *Water and Rivers Commission Act 1995*;

“**Coordinator**” means the Coordinator of Water Services referred to in section 4 of the *Water Services Coordination Act 1995*;

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

“**liability**” means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

“**principal Act**” means the *Water Authority Act 1984*;

“**right**” means any right, power, privilege or immunity whether actual, contingent or prospective;

“**transfer order**” means the order and any amendments to it made by the Minister under section 190, and includes any order made under section 191;

“**Water Resources Council**” means the council established by section 4 of the *Western Australian Water Resources Council Act 1982*;

“**Waterways Commission**” means the body established by section 11 of the *Waterways Conservation Act 1976*.

Division 3 — Water and Rivers Commission, succession to Waterways Commission and Water Resources Council

Definitions

201. In this Division, unless the contrary intention appears —

“**former body**” means —

- (a) the Waterways Commission; or
- (b) the Water Resources Council.

Devolution of former bodies' assets, liabilities etc.

202. On and after the commencement day —

- (a) the assets and rights of a former body that were immediately before that day vested in

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- that body vest in the Commission by force of this section;
- (b) the liabilities of a former body immediately before that day become, by force of this section, the liabilities of the Commission;
 - (c) any proceedings or remedy that immediately before that day might have been brought or continued by or available against or to a former body, may be brought or continued and are available, by or against or to the Commission;
 - (d) any act, matter or thing done or omitted to be done before the commencement day by, to or in respect of a former body (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the Commission; and
 - (e) each former body is to deliver to the Commission all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to its operations.

Transition to staff of Commission

204. (1) Any agreement made at any time between a person and —

- (a) the employing authority of the department of the Public Service designated as the Water and Rivers Commission (or as it may be redesignated); or
- (b) the Commission,

for the employment of that person on the staff of the Commission has effect after the commencement of Part 5 of the *Water and Rivers Commission Act 1995* as if the person had been appointed in accordance with section 23 (1) or engaged under section 23 (2) of that Act, as the case may require.

(2) A person who immediately before the commencement day was engaged under section 39 (5) (b) of the *Waterways Conservation Act 1976* is to be taken after that day to be engaged by the Commission under the power referred to in section 23 (5) of the *Water and Rivers Commission Act 1995*.

(3) A person who immediately before the commencement day —

- (a) was employed on the staff of the Water Resources Division of the Authority and does

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not come within subsection (1), section 203 or 205; or

- (b) was employed on the staff of the Waterways Commission and does not come within subsection (1) or (2) or section 203 or 205,

is to be taken after that day to have been appointed in accordance with section 23 (1), or engaged under section 23 (2), of the *Water and Rivers Commission Act 1995*, as the case may require.

Saving

207. A person who comes within section 204 (3) or 206 may be party to an agreement referred to in section 204 or 205 after the commencement day, in which case the agreement has effect under that section on the day provided for in the agreement.

Employees' rights preserved

208. Except as otherwise agreed by an employee, the operation of this Division does not —

- (a) affect the employee's pay, as that term is defined in regulation 3 of the *Public Sector Management (Redeployment and Redundancy) Regulations 1994*;
- (b) prejudice the employee's existing or accruing rights in respect of annual leave, long service leave or sick leave;
- (c) affect any rights under a superannuation scheme; or
- (d) interrupt continuity of service.

Division 5 — General transitional provisions

Definitions

209. In this Division, unless the contrary intention appears —

“former body” means —

- (a) the Authority;
- (b) the Waterways Commission;
- (c) the Water Resources Council;

“relevant successor” means —

- (a) the Corporation in relation to any function of the Authority that after the

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- commencement day is a function of the Corporation;
- (b) the Commission in relation to any function of —
- (i) the Authority;
 - (ii) the Waterways Commission; or
 - (iii) the Water Resources Council,
- that after the commencement day is a function of the Commission;
- (c) the Coordinator in relation to any function of the Authority that after the commencement day is a function of the Coordinator.

Annual report for part of a year

210. The accountable authority, within the meaning in the *Financial Administration and Audit Act 1985*, of a former body is to report in respect of that body as required by section 66 of that Act, but limited to the period from the preceding 1 July to the commencement day, and Division 14 of Part II of that Act applies as if that period were a full financial year.

Completion of things commenced

211. Anything commenced to be done by a former body under any written law before the commencement day may be continued by the relevant successor so far as the doing of that thing is within the functions of the relevant successor after the commencement day.

Continuing effect of things done

212. Any act, matter or thing done or omitted to be done before the commencement day by, to or in respect of a former body, to the extent that that act, matter or thing —

- (a) has any force or significance after that day; and
- (b) where the former body is the Authority, is not governed by section 192 (1) (f), 193 (1) (f), 194 (g) or 195 (e),

is to be taken to have been done or omitted by, to or in respect of the relevant successor.

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Immunity to continue

213. Despite any repeal effected by Part 2, where the Authority had the benefit of any immunity in respect of an act, matter or thing done or omitted before the commencement day, that immunity continues in that respect for the benefit of the relevant successor.

References to Authority in Government agreements

214. (1) A Government agreement which contains a reference to —

- (a) the Authority;
- (b) the Metropolitan Water Authority;
- (c) the Metropolitan Water Supply, Sewerage and Drainage Department; or
- (d) the Metropolitan Water Supply, Sewerage and Drainage Board,

has effect after the commencement day as if the reference were to the Corporation.

(2) Subsection (1) does not apply to a provision of a Government agreement that is spent or has had its effect.

(3) In this section —

“Government agreement” has the same meaning as it has in the *Government Agreements Act 1979*.

Agreements and instruments generally

215. (1) This section applies to any agreement or instrument subsisting immediately before the commencement day that does not come within the provisions of section 192 (1) (c), 193 (1) (c), 194 (d), 195 (c) or 214.

(2) Any agreement or instrument to which this section applies —

- (a) to which a former body was a party; or
- (b) which contains a reference to a former body,

has effect after that day as if —

- (c) the relevant successor to the former body were substituted for the former body as a party to the agreement or instrument; and

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- (d) any reference in the agreement or instrument to the former body were (unless the context otherwise requires) amended to be or include a reference to the relevant successor.
- (3) In this section —
- “**instrument**” includes subsidiary legislation.

Performance of necessary transitional functions

216. (1) Despite the repeals effected by sections 14, 163 and 169, a former body continues in existence for the purpose of —

- (a) reporting as required by section 210; and
- (b) performing the functions described in sections 191 (3), 192 (1) (g), 193 (1) (g), 194 (h), 195 (f) and 198.

(2) The accountable authority, within the meaning in the *Financial Administration and Audit Act 1985*, of a former body also continues in existence for the purpose described in subsection (1) (a).

(3) Despite the provisions of the relevant written laws —

- (a) the members of each of the former bodies immediately before the commencement day cease to hold office on that day; and
- (b) each of the former bodies is to —
 - (i) be constituted by a person appointed by the Minister; and
 - (ii) perform the functions referred to in subsection (1) through that person.

(4) The person referred to in subsection (3) (b) holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.

(5) The former bodies as constituted under this section have the powers that are necessary or convenient for the purposes of subsection (1).

(6) The relevant successor to a former body is to provide the clerical or other assistance that the former body reasonably requires for the purposes of subsection (1) in respect of the functions that after the commencement day are functions of that successor.

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Corporation, time to obtain certain licences

217. Where before the commencement day the Authority was doing anything and after that day the Corporation in continuing to do that thing is required to hold a licence under the *Rights in Water and Irrigation Act 1914*, the Corporation is to be treated as if it were the holder of such a licence until the expiry of 120 days after the commencement day.

Further transitional provision may be made

218. (1) If there is no sufficient provision in this Part for any matter or thing necessary or convenient to give effect to the transition from a former body to the relevant successor the Minister may make that provision by order published in the *Gazette*.

(2) The Minister may by order published in the *Gazette* make any provision that is necessary to rectify any omission from the transfer order.

(3) An order under this section may be made so as to have effect from the commencement day.

(4) To the extent that a provision of any such order has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as —

- (a) to affect, in a manner prejudicial to any person (other than the State, the Corporation, the Commission, the Coordinator or any authority of the State), the rights of that person existing before the day of its publication; or
- (b) to impose liabilities on any person (other than the State, the Corporation, the Commission, the Coordinator or any authority of the State), in respect of anything done or omitted to be done before the day of publication.

Saving

219. The operation of any provision of this Part is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;

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- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety. ”.

³ Repealed by the *Mining Act 1978* (Act No. 107 of 1978).

⁴ Now see the *Industrial Relations Act 1979*.

⁵ Repealed by the *Conservation and Land Management Act 1984* (Act No. 126 of 1984).

