

Western Australia

Water Agencies (Powers) Act 1984

As at 09 Apr 2006

Version 02-g0-03

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Water Agencies (Powers) Act 1984

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Western Australia

Water Agencies (Powers) Act 1984

An Act to vest powers in the Water Corporation and the Water and Rivers Commission, to make other provision in respect of their functions, and for related and other purposes.

[Long title inserted by No. 73 of 1995 s.4; amended by No. 67 of 2003 s. 62.]

Part I — Preliminary, and other matters

[Heading amended by No. 73 of 1995 s.5.]

[Division 1 heading deleted by No. 73 of 1995 s.6.]

1. Short title

This Act may be cited as the *Water Agencies (Powers) Act 1984*¹.

[Section 1 amended by No. 73 of 1995 s.7.]

2. Commencement

The provisions of this Act shall come into operation on a day to be fixed by proclamation¹.

3. Interpretation

- (1) In this Act and in and for the purposes of any relevant Act, unless that term is otherwise defined in that relevant Act, unless the context otherwise requires —

“**a former Minister**” means a Minister of the Crown who has at any time been charged with the administration of a relevant Act;

“**charge**” does not include anything described under this Act as a fee;

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

“**conduit**” includes a pipe or culvert;

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

“**drain**” means —

- (a) a conduit on or under any land; or
- (b) a channel,

whether natural or constructed, which was or is used or intended to be used to carry surplus water, and includes any part of such a conduit or channel;

“fittings” includes all pipes, meters, or other apparatus used for or in connection with the supply of water, and all pipes, cisterns, traps, syphons, manholes, ventilators, and all other apparatus connected with and requisite to secure the safe and proper working of any drain, sewer or property sewer;

“fixtures”, in relation to sewerage, includes all apparatus that may be attached to the plumbing system of a property for the collection, pumping or retention of any wastewater for ultimate discharge into the sewerage system and includes closet pans, urinals, baths, sinks, basins, troughs and pumps connected with the sewerage system;

“former Authority” means the Water Authority of Western Australia under this Act before the commencement of Part 2 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995*¹;

“functions” include powers, duties and authorities;

“government department” or **“department”** includes any branch of the Public Service of the State established as a Department within the meaning of that term as defined in the *Public Service Act 1978*², but also means any other body established by an Act being a body that —

- (a) administers or carries out in the State functions in the public interest on behalf of the Crown in right of the State, or which carries out the function of a public utility; and
- (b) is declared by the Governor, by Order in Council, to be deemed to be a government department for the purposes of this Act or a relevant Act;

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

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“land” includes any building or other structure on, over or under the land, and any tenement or hereditament of any tenure related to the land;

“local authority” means —

- (a) a local government;
- (b) any other person exercising the powers of a local government under the *Health Act 1911*; or
- (c) a Water Board constituted under the *Water Boards Act 1904*;

“Metropolitan Water, Sewerage, and Drainage Area” means the area constituted under section 6 of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*;

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

“officer”, in relation to —

- (a) the Commission, means a member of staff as defined in section 3 of the *Water and Rivers Commission Act 1995*;
- (b) the Corporation, means a member of the staff of the Corporation engaged under section 15 of the *Water Corporation Act 1995*;

“owner” has the meaning assigned in the *Local Government Act 1995*;

“pipe” means a main, reticulation, or service pipe used for water services, and includes any plug, stop-cock, water-cock, syphon, branch or apparatus used in connection with such pipe and any part of a pipe;

“plant” includes machinery, equipment, vehicles, boats or other apparatus utilised in the provision of water services;

“premises” means any land, street, structure or other place;

“property sewer” means a conduit, through, on or under any street or other land, whether public or private, laid wholly

or partly by or at the expense of the owner or occupier of any premises for the carriage therefrom of any sewage or wastewater to any sewer, and any part of such a conduit;

“relevant Act” means an Act referred to in section 5(1);

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

“road” has the same meaning as street;

“sewage” has the same meaning as wastewater;

“sewer” means a conduit through, on or under any street or other land, whether public or private, for the carriage of any sewage or wastewater, and includes any part of such a conduit but does not include a conduit that is a property sewer;

“statutory authority” means —

- (a) a Minister of the Crown in right of the State when acting in the capacity of a body corporate; or
- (b) any person or body, corporate or unincorporate, other than a Minister of the Crown in right of the State, who or which administered or administers, or carried out or carries out on behalf of the Crown in right of the State functions in the public interest (being functions which the Commission or the Corporation, as the case requires, is by this Act authorized to administer) pursuant to, a relevant Act;

“street” includes any highway, thoroughfare, lane, alley, square, court, place of public passage, public wharf, jetty or bridge and any private road maintained by a local government or other public authority;

“surplus water” means storm water, surface water or underground water which accumulates or may accumulate to the detriment or disadvantage of any person;

“unimproved value”, in relation to land, means the unimproved value of that land in force under the *Valuation of Land Act 1978*;

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“valuation”, in relation to land means a valuation of that land in force under the *Valuation of Land Act 1978*;

“waste” includes solid, liquid and gaseous waste;

“wastewater” means liquid waste, whether domestic or otherwise, and includes faecal matter and urine;

“watercourse” means —

- (a) any river, creek, stream or brook, whether artificially improved or altered or not;
- (b) any conduit that wholly or partially diverts a river, creek, stream or brook from its natural course and forms part of that river, creek, stream or brook; or
- (c) any natural collection of water into, through, or out of which any thing referred to in paragraph (a) or (b) flows, whether artificially improved or altered or not,

in which water flows or is contained whether permanently, intermittently or occasionally, together with the bed and banks of any thing referred to in paragraph (a), (b) or (c);

“water services” means water supply, sewerage, drainage or irrigation services;

“well” means a pit, excavation, shaft, hole, bore or other opening made for the purpose of obtaining a supply of underground water;

“works” includes waterworks, sewerage works, drainage works and irrigation works including surveys, excavations, structures, buildings and plant provided by or used or intended to be used by the Corporation for the purposes of water services or by the Commission for the assessment, control or management of water resources and the term may be construed as including the land upon which works are constructed or provided.

- (2) For the purpose of construing regulations or by-laws made under a relevant Act prior to the coming into operation of this Act, whether or not subsequently amended —

- (a) any reference therein to a term assigned a meaning by subsection (1) shall have that meaning, unless the context otherwise requires; and
 - (b) any reference in a regulation or by-law to the Act under which it was made shall be deemed to include a reference to this Act.
- (3) Where a provision of this Act or a relevant Act authorizes the Commission or the Corporation to enter upon, carry out works in, on, over or under, or exercise any other power in relation to, any land, premises or thing for any purpose the provision shall be deemed as also to authorize an officer of the Commission or the Corporation or other person acting on behalf of the Commission or the Corporation, together with such workmen and other persons, vehicles, vessels or plant as may be necessary for the purpose, to exercise that power and to occupy the land so far as is necessary for the purposes of this Act and any reference to a power of, or to an obligation or liability of, the Commission or the Corporation may, where the context so requires, be construed accordingly.

[Section 3 amended by No. 25 of 1985 s.3; No. 110 of 1985 s.4; No. 24 of 1987 s.3; No. 113 of 1987 s.32; No. 73 of 1995 ss.8 and 42; No. 14 of 1996 s.4; No. 67 of 2003 s. 62.]

[4. Repealed by No. 73 of 1995 s.9.]

5. Relevant Acts

- (1) For the purposes of this Act each of the enactments following is a relevant Act —

Metropolitan Water Authority Act 1982.

Metropolitan Water Supply, Sewerage and Drainage Act 1909.

Rights in Water and Irrigation Act 1914.

Water Supply, Sewerage and Drainage Act 1912.

Water Supply, Sewerage and Drainage Amendment and Validation Act 1981.

Country Areas Water Supply Act 1947.

Country Towns Sewerage Act 1948.

*Land Drainage Act 1925*¹²

Water Boards Act 1904, as read with the Water Boards Act Amendment Act 1928.

[(2) repealed]

[Section 5 amended by No. 25 of 1985 s.5; No. 73 of 1994 s.4; No. 73 of 1995 s.10.]

[Division 2 (section 6) repealed by No. 73 of 1995 s.11⁵.]

[Part II heading deleted by No. 73 of 1995 s.12.]

[Division 1 heading deleted by No. 73 of 1995 s.13.]

[7. Repealed by No. 73 of 1995 s.14.]

8. Vesting interest in land in the Corporation or the Commission

[(1) and (2) repealed]

- (3) Where the Governor (after, in the case of an interest previously vested in some other Minister of the Crown in right of the State, consultation with that other Minister) by Order in Council so directs, any interest in land specified therein previously vested in the former Authority, a statutory authority, the Crown or some other Minister of the Crown in right of the State which is, or is to be, used by the Corporation or the Commission shall, by operation of this section, be vested in the Corporation or the Commission, and on receipt of any such Order the Registrar of Titles or the Registrar of Deeds (as the relevant category of title may require) shall, by reference to the terms of the Order, cause the like record to be made in the document of title or by memorial in the register relating to the title to the land in

question to evidence the interest of the Corporation or the Commission as could have been made if a transfer or agreement relating to the vesting had been executed in full form.

[Section 8 amended by No. 110 of 1985 s.5; No. 73 of 1995 s.15; No. 31 of 1997 s.137(1).]

[9, 10. *Repealed by No. 73 of 1995 s.16.]*

[Division 2 (sections 11-17) repealed by No. 73 of 1995 s.17.]

[Division 3 (section 18) repealed by No. 73 of 1995 s.17.]

[Division 4 (sections 19, 20) repealed by No. 73 of 1995 s.17.]

[Division 5 (section 21) repealed by No. 73 of 1995 s.17.]

[Division 6 (section 22) repealed by No. 73 of 1995 s.17.]

[Division 7 (sections 23, 26-27) repealed by No. 73 of 1995 s.17.]

[24, 25. *Repealed by No. 113 of 1987 s.25.]*

[Division 8 (section 28) repealed by No. 73 of 1995 s.17.]

[Division 9 (sections 29-32) repealed by No. 73 of 1995 s.17.]

[Division 10 heading deleted by No. 73 of 1995 s.18.]

[33. *Repealed by No. 73 of 1995 s.19.]*

34. By-laws

- (1) The Minister may make by-laws prescribing all matters that are required or permitted by this Act or any relevant Act to be prescribed, or are necessary or convenient to be prescribed, for the purposes of the performance by the Commission, the Corporation or the Coordinator of their respective functions under this Act or any relevant Act⁶.
- (2) By-laws made under subsection (1) shall be subject to any regulations made under this Act or a relevant Act and where any

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such by-law is in any respect inconsistent with or repugnant to any such regulation the regulation shall prevail and the by-law shall be read and be construed and have effect accordingly.

- (3) Without limiting subsection (1), by-laws made under that subsection may —
- (a) amend by-laws made under a relevant Act; or provide that those by-laws shall be deemed to have been made under this Act, or do both;
 - (b) provide for the due management and use of water, works, water services, water resources and property of the Commission or the Corporation;
 - (c) include measures for the protection of works, water services or water resources, and for preventing or remedying the waste, misuse, undue consumption, fouling or contamination of, water;
 - (d) regulate or prohibit the deposit of anything likely to cause fouling or contamination in, or within a prescribed distance of, any works, water services, watercourse, surface water or underground water;
 - (e) provide for the construction, provision, maintenance, repair and cleansing of works and water services;
 - (f) control or limit the use of, or interference with, any watercourse or the flow of water;
 - (fa) prohibit, impose restrictions on or otherwise regulate the use of water;
 - (g) regulate the flow or require the disinfection, cleansing or other treatment of wastewater or other substances, discharged into or otherwise entering any works, reservoir, water services or watercourse;
 - (h) regulate, require or prohibit, the construction, provision, use, alteration, arrangement or repair of any drains, pipes, property sewers, fixtures or fittings, and make provision for the purposes for which, and the extent to

which, they may be used, and prohibit interference therewith;

- (i) empower the Corporation to effect repairs to pipes, drains, property sewers, fixtures and fittings —
 - (i) so as to prevent waste or fouling; or
 - (ii) in the case of damage to property of the Corporation,and to recover the cost thereof from the owner or occupier of the land;
- (j) provide for the inspection of premises and things provided with, or used for the purposes of, water services;
- (k) regulate the inspection, testing, stamping, marking and authorization of materials, fittings and fixtures intended to be connected with the Corporation's works and confer functions on the Coordinator in relation to those matters;
- (l) provide for systems of notification, certification, inspection and authorization of plumbing work, as defined in section 59I of the *Water Services Licensing Act 1995*, connected with or to be connected with the Corporation's works;
- [(m) deleted]*
- (n) prescribe the entitlements, if any, arising from the payment of any charges by way of a rate or otherwise.

[Section 34 amended by No. 25 of 1985 s.10; No. 110 of 1985 s.8; No. 24 of 1987 s.6; No. 73 of 1995 ss.20 and 41; No. 32 of 1997 s.18; No. 57 of 1997 s.126(1); No. 39 of 1999 s.11(7); No. 67 of 2003 s. 62.]

[35. *Repealed by No. 73 of 1995 s.21.]*

36. Regulations and by-laws generally

- (1) Regulations or by-laws made for the purposes of this Act or a relevant Act may be so made —
- (a) as to apply —
 - (i) generally, or in a specified class of case or in a specified case;
 - (ii) at all times, or at specified times or at a specified time; and
 - (iii) throughout the State, or in specified parts of the State or in a specified place;
 - (b) as to adopt, by reference to the text as amended and for the time being in force at the time of adoption of the by-law, unless a particular text is otherwise specified —
 - (i) such rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act, or under any Act of the Parliament of the Commonwealth or of the Parliament of the United Kingdom; or
 - (ii) such standards, rules, codes or specifications issued by Standards Australia, the British Standards Institution, or other specified body,either wholly or in part or with modifications, as are specified.
 - (c) as to provide that where by reason of unavailability of materials or other reason that the Commission or the Corporation considers valid any requirement imposed by the Commission or the Corporation cannot be conformed to, the Commission or the Corporation may dispense with that requirement and in lieu authorize in writing in any particular case the use of materials or any other matters which it considers to be appropriate;
 - (d) as to provide that, in a specified case or a specified class of case, whether on specified conditions or unconditionally, a person or thing or a class of persons

or things, may be exempted from the provisions of those regulations or by-laws either wholly or to such extent as is specified; or

- (e) as to require a matter affected by them to be in accordance with a specified standard, specification or requirement or to be as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body, or so as to confer on a specified person or body or a specified class of person or body a discretionary authority.
- (2) Where regulations or by-laws, or any provision of regulations or by-laws, made under and for the purposes of a relevant Act are necessary or convenient for other purposes under this Act regulations or by-laws made under this Act may adopt, by reference to the text as from time to time amended and for the time being in force, any such regulation, by-law or provision, either wholly or in part or with modifications, as may be specified.
- (3) The Governor, a Minister or a statutory authority may, for the purposes of the Commission or the Corporation under this Act, exercise a power conferred by a relevant Act to make, or to grant dispensation from the observance of, regulations or by-laws under that Act as though the power to do so had been conferred by the relevant Act.
- (4) Regulations or by-laws made under this Act —
- (a) may provide that contravention or failure to comply constitutes an offence;
 - (b) may make provision for penalties not exceeding \$2 000 for any such offence and if the offence is a continuing one a further penalty not exceeding \$200 for every day or part of a day during which the offence continues after notice of the offence has been given by or on behalf of the Commission or the Corporation to the offender;

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- (c) may provide that, in addition to the penalty, any expense, loss or damage incurred by the Commission or the Corporation in consequence of the offence shall be payable by the offender;
 - (d) may provide for fees to be payable to the Commission or the Corporation in relation to specified matters and make provision as to the recovery of any such fees; and
 - (e) may prescribe forms and other documents for the purposes of this Act or a relevant Act, and for the circumstances in which they are required and the manner in which information required is to be provided or verified.
- (5) In this section, “**specified**” means specified in the regulation or by-law in relation to which the term is used.
- (6) The court, when convicting a person for an offence constituted by a contravention of a regulation or by-law which provides that any expense, loss or damage incurred by the Commission or the Corporation in consequence of the offence shall be payable by the offender shall, if requested by an officer of the Commission or the Corporation or a person authorized by the Commission or the Corporation, assess the amount of the expense, loss or damage so incurred and payable by the person convicted and make an order for payment of the total amount assessed, and the amount specified in the order is recoverable in the same manner as it would be recoverable if it were a fine.
- (7) Nothing in subsection (6) prejudices or affects the right of the Commission or the Corporation to institute any civil action or proceeding for the recovery of damages in any other court of competent jurisdiction against the person convicted.

[Section 36 amended by No. 25 of 1985 s.11; No. 24 of 1987 s.7; No. 73 of 1995 s.42; No. 74 of 2003 s. 125(2).]

37. Regulations

Regulations may be made under this Act for or in respect of all matters that are required or permitted, or are necessary or convenient, to be prescribed for the purposes of this Act or any relevant Act.

[Section 37 amended by No. 73 of 1995 s.22.]

38. Revocation or amendment of by-laws and of town planning schemes

- (1) Where any local law has been or is made by a local government under the *Local Government Act 1995* or any other Act, or any local planning scheme is in force under the *Planning and Development Act 2005*, and that local law or scheme, or any provision of such a local law or scheme, is on the advice of the Commission or the Minister determined by the Governor to be repugnant to or inconsistent with the provisions of this Act or a relevant Act the Governor may, by Order published in the *Government Gazette*, revoke or amend that local law or scheme, or the relevant provision, in so far as it is so repugnant or inconsistent and effect shall be given to any such revocation or amendment 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 Order 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 an Order under this section has been laid before that House that the Order be disallowed, the Order thereupon ceases to have effect, but the disallowance of the Order does not affect or invalidate anything done in good faith before the passing of the resolution.

[Section 38 amended by No. 73 of 1995 s.23; No. 14 of 1996 s.4; No. 67 of 2003 s. 62; No. 38 of 2005 s. 15.]

Part III — Financial provisions

[Division 1 (sections 39, 40) repealed by No. 73 of 1995 s.24.]

Division 1A — Certain provisions as to charges

[Heading inserted by No. 24 of 1987 s.8.]

41. By-laws relating to charges

- (1) By-laws made under section 34(1) may, for the purpose of obtaining moneys for the carrying out by the Corporation of its functions under this Act and any relevant Act, provide for the payment to the Corporation of charges relating to the provision by the Corporation of water services and, in particular, may —
 - (a) prescribe charges by reference to the quantity of water or wastewater concerned or the gross rental value, unimproved value, or area of the land in respect of which a water service is provided, or on such other basis as may be specified in the by-laws, and, where any such charges relate to a particular period or matter, may prescribe 2 or more such charges (whether of the same kind or different kinds) in respect of particular land for the same period or matter;
 - (b) make provision for determining the land in respect of which a water service shall be taken, for the purposes of this Act, to be provided, irrespective of whether it is actually connected to a water supply or sewerage, or drained or irrigated;
 - (c) prescribe, or make provision for the Corporation to determine, the land that is to be the subject of a separate assessment of any charge;
 - (d) provide for certain classes of land that would otherwise be subject to a charge, whether by way of a rate or otherwise, under this Act to be exempt from the application of any such charge as is specified in the exemption;

- (e) provide for differential rates and charges to apply and may, for the purposes of applying provisions for differential rates or charges, prescribe —
 - (i) classes of land according to the use to which land is put, the purpose for which water is used on the land, or such other factor as the Corporation considers appropriate;
 - (ii) classes of water service according to the nature or quality of, or the source of, the water or wastewater concerned or such other factor as the Corporation considers appropriate,and provide for the classification of land or water services according to any such class;
- (f) provide for concessional charges to be payable by persons of any prescribed class, and provide for those concessional charges to apply to such persons generally or in such circumstances as are prescribed;
- (g) prescribe the minimum amount of any charge that, notwithstanding the limits imposed by sections 41A and 41B, shall apply and the maximum amount of any charge that, subject to those limits, shall apply, whether by setting out that minimum or maximum amount or by reference to any factor the Corporation considers appropriate;
- (h) make provision for an additional charge to be made, or for a rebate or refund to be given, as the case requires, where a change in any matter that was relevant to the assessment of a charge in respect of land takes place during the period for which the charge was assessed;
- (j) in respect of land that has been the subject of a change in circumstances such that, for a period during which the change in circumstances occurred, a charge that was not made in respect of the land would have been made had the circumstances as changed existed from the commencement of that period, make provision for a

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Division 1A Certain provisions as to charges

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charge to be made for the balance of the period remaining after the change occurred;

- (k) notwithstanding that charges have been prescribed in relation to the provision of any water service for a particular period, but subject to section 41A, prescribe such supplemental charges, by way of a rate or otherwise, in relation to the provision of such water service for the unexpired portion of that period as may, by reason of emergent circumstances, appear to the Corporation to be necessary;
- (l) where a charge is to be assessed by reference to the quantity of water or wastewater concerned, provide for the estimation of the quantity of water or wastewater concerned for any period during which the quantity has not been measured, or properly measured, whether by reason of the malfunction of any measuring apparatus or for any other reason, and that the quantity of water or wastewater concerned shall be deemed to be the quantity so estimated;
- (m) require payment of any account for charges imposed otherwise than by measure to be made in advance of the provision of the service concerned and require the payment, in respect of any charge to be imposed by measure, of a deposit in advance of the provision of the service concerned;
- (n) make provision in relation to any charge, whether by way of a rate or otherwise, and any amount payable under section 41L, for —
 - (i) the time when payment or, where by-laws provide for payment by instalments, each instalment, is due and the manner in which payment is to be made;
 - (ii) discounts to be allowed by the Corporation where payment is made before a time specified in the by-laws;

- (iii) an additional amount by way of interest, as prescribed in the by-laws, to be included where payment is made by instalments;
 - (iv) the amount payable to be increased as prescribed in the by-laws where payment is made in instalments or is not made in full by the time when it is due or such time thereafter as may be so prescribed;
 - (v) where in a particular case the Corporation is satisfied that there is proper cause, the making of special arrangements for payment, including such provision as to the payment of any additional charge and interest as the Corporation considers appropriate.
- (2) Pursuant to a determination under subsection (1)(b) land may be taken, for the purposes of this Act, to be land in respect of which drainage is provided notwithstanding that it is so determined by reason only that the land contributes to, or will contribute to, the need for drainage.
- (3) A by-law may prescribe a charge for a period, or for water or wastewater supplied or discharged during a period, that commences before the by-law is made, but not so as to affect the amount of any charge that has already become due and payable before the by-law is made.
- (4) The power to make charges relating to each of 2 or more matters includes the power to make one charge relating to both or all of those matters.

[Section 41 inserted by No. 24 of 1987 s.8; amended by No. 73 of 1995 ss.25 and 41.]

41A. Limits on certain charges

- (1) For the purposes of this section “**country land**” means land that —

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- (a) is not within an area that has been, or is to be regarded as having been, constituted a townsite, and given a name, under section 10 of the *Land Act 1933*¹¹; or
 - (b) is within a townsite as so defined but is used, or primarily used, for agricultural, pastoral, grazing, dairying, beekeeping, orcharding, viticultural, silvicultural, or other farming purposes, or any combination of those purposes.
- (2) Subject to any minimum charge prescribed under section 41(1)(g), the amount of a charge assessed under the by-laws in respect of land for any one year shall not exceed —
- (a) in the case of a charge relating to either the provision of a water supply or the provision of sewerage that is based on —
 - (i) the gross rental value of the land, an amount equal to 20 cents in the dollar;
 - (ii) the unimproved value of the land, an amount equal to 3.5 cents in the dollar;
 - (iii) the area of the land, that land being farmland within the meaning of the *Country Areas Water Supply Act 1947*, an amount equal to 30 cents per hectare;
 - (b) in the case of a charge relating to the provision of drainage that is based on —
 - (i) the gross rental value of the land, an amount equal to 5 cents in the dollar;
 - (ii) the area of the land, that land being country land as defined in subsection (1), an amount equal to \$10 per hectare.
- (3) In subsection (2)(a)(i) and (ii) and (b)(i), a reference to an amount in the dollar refers, where the value assigned under the *Valuation of Land Act 1978* to the land concerned has, for the year concerned, been increased under section 41C or reduced

under section 41D or 41E(3), to an amount in the dollar of the value as so increased or reduced, as the case requires.

- (4) A reference in subsection (2) to a charge assessed in relation to a particular water service for any one year shall be read, where for that year a supplemental charge relating to the same service is made, on the same basis, under section 41(1)(k), as a reference to the total amount of the charge in the first instance and the supplemental charge.

[Section 41A inserted by No. 24 of 1987 s.8; amended by No. 14 of 1996 s.4.]

41B. Limits related to charges in previous year

- (1) Subject to any minimum charge prescribed under section 41(1)(g) and to subsections (2), (4) and (5), where a charge for a year in respect of any separately assessed piece of land is prescribed on the basis of value and would, but for this section, exceed an amount that is 40% as much again as a charge prescribed on the basis of value that was payable for the previous year in respect of the same land in relation to the same kind of water service (in this section referred to as **“the corresponding charge”** for the previous year), the charge shall be reduced to that amount.
- (2) Where the difference between a charge to which subsection (1) applies and the corresponding charge for the previous year is wholly or in part attributable to —
- (a) a change in any matter or circumstance affecting the application to that land of a differential rate or charge made in accordance with section 41(1)(e);
 - (b) the charge not having been made for the whole or any part of the first of the 2 years concerned, or having been increased during either of those years as a result of the provision of a new or upgraded service; or

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- (c) an interim valuation under the *Valuation of Land Act 1978* reflecting any development or change of use of that land,

the Corporation shall estimate a notional charge for the first year, being the charge that would have been payable for the first year if, for the whole of that year —

- (d) the matters and circumstances currently prevailing had then prevailed;
- (e) any new or upgraded service referred to in paragraph (b) had then been provided; and
- (f) an interim valuation reflecting any development or change of use referred to in paragraph (c) had then been made and in force,

and in applying subsection (1) the notional charge estimated under this subsection shall be regarded as having been the corresponding charge for the first year.

- (3) Where a charge for a portion of a year in respect of any separately assessed land is prescribed on the basis of value, subsection (1) shall apply as if the charge were for a full year but for the purpose of so applying that subsection the corresponding charge for the previous year shall be adjusted according to the proportion of the year for which the charge is made.
- (4) Any supplemental charge made under section 41(1)(k) in either of the years concerned shall be disregarded for the purposes of applying subsection (1).
- (5) The by-laws may prescribe a percentage less than 40% for the purposes of subsection (1), and where a lesser percentage is so prescribed that subsection shall have effect as if the reference therein to 40% were a reference to the percentage so prescribed.

[Section 41B inserted by No. 24 of 1987 s.8; amended by No. 73 of 1995 s.41.]

41C. Certain valuations may be indexed

- (1) Except where a value was assigned to the land pursuant to a general valuation under the *Valuation of Land Act 1978* that was expressed by a notice under section 21 or 22 of that Act to come into force, and came into force for the purposes of this Act, at the commencement of the period for which the charge is to be imposed, the by-laws may, subject to this Act, impose a charge by reference to the value assigned to the land under that Act increased by such factor as is prescribed in the by-laws.
- (2) No objection or appeal lies in respect of any increase under this section.

[Section 41C inserted by No. 24 of 1987 s.8.]

41D. Phasing-in of certain valuations

- (1) Where by reason only of a general valuation under the *Valuation of Land Act 1978* in respect of gross rental values the value assigned to land is increased, the by-laws may impose a charge in respect of the land —
 - (a) for the first year after the general valuation came into force, by reference to the value so assigned reduced by two-thirds of the amount of the increase;
 - (b) for the second year after the general valuation came into force, by reference to the value so assigned reduced by one-third of the amount of the increase.
- (2) Where, for the purposes of this Act, the coming into force of a general valuation is postponed under section 41F in relation to any land, the value assigned to that land under that general valuation or under an interim valuation referred to in subsection (3) of that section shall be taken for the purposes of subsection (1) to have been assigned pursuant to a general valuation coming into force when the postponed general valuation comes into force in relation to that land for the purposes of this Act.

[Section 41D inserted by No. 24 of 1987 s.8; amended by No. 17 of 1993 s.13.]

41E. Interim valuations

- (1) Where the value assigned to land under the *Valuation of Land Act 1978* is increased or decreased pursuant to an interim valuation under that Act, the Corporation may, in the case of an increase, and shall, in the case of a decrease, re-assess any charge in respect of the land made for a period during which the interim valuation comes into force that is based on the value that has been changed and make such additional charge, or give such rebate or refund, for the period as is appropriate by reason of the change in value.
- (2) Except to the extent expressly provided in subsection (1), that subsection does not limit the generality of section 41(1)(h).
- (3) Where, in accordance with subsection (1), a charge for a year may be reassessed by reason that an increased gross rental value has been assigned to land pursuant to an interim valuation under the *Valuation of Land Act 1978*, and the value assigned pursuant to the interim valuation exceeds the value (in this section referred to as “**the notional value**”) that would have been assigned to that land immediately before the last general valuation in respect of gross rental values if it had then been developed and used as it is at the time the value was in fact assigned pursuant to the interim valuation, the amount of the charge may be assessed —
 - (a) if the last general valuation affecting the gross rental value of that land came into force at the commencement of the year for which the charge is made, by reference to the value assigned pursuant to the interim valuation reduced by two-thirds of the amount of the notional increase in value as defined in subsection (4);
 - (b) if the last general valuation affecting the gross rental value of that land came into force one year before the commencement of the year for which the charge is made, by reference to the value assigned pursuant to the interim valuation reduced by one-third of the amount of the notional increase in value as defined in subsection (4).

- (4) For the purposes of subsection (3), the notional increase in value of land referred to in that subsection is the amount by which the value assigned pursuant to the interim valuation exceeds the notional value.
- (5) Where, for the purposes of this Act, the coming into force of a general valuation is postponed under section 41F in relation to any land, the value assigned to that land under that general valuation or under an interim valuation referred to in subsection (3) of that section shall be taken for the purposes of subsections (3) and (4) to have been assigned pursuant to a general valuation coming into force when the postponed general valuation comes into force in relation to that land for the purposes of this Act.

[Section 41E inserted by No. 24 of 1987 s.8; amended by No. 17 of 1993 s.13; No. 73 of 1995 s.41.]

41F. Postponement of effect of general valuation

- (1) Notwithstanding that a notice may have been published under section 21 of the *Valuation of Land Act 1978* requiring the Corporation to use the valuations included in a general valuation of land within a valuation district for assessing any charge by way of a rate, where the Corporation is of the opinion that the information contained in the valuation roll for the district, or a valuation roll for any other district in which the charge is to apply, available to the Corporation pursuant to section 28 of that Act as at 31 March in any year is insufficient for the purpose of enabling the Corporation to obtain the comprehensive information necessary to enable charges for the forthcoming year to be made on a basis of valuations different from those then shown in the records of the Corporation, the Minister, by notice published in the *Government Gazette*, may authorize the Corporation —
- (a) to refrain from adopting the valuations made pursuant to the general valuation in respect of any district in which the charge is to apply and instead to use for the forthcoming year the valuations shown in the records of the Corporation in respect of the then current year; and

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(b) to calculate a rate on the basis of those valuations as if the general valuation had not been completed,

and for the purposes of making charges under this Act for the forthcoming year that general valuation shall be taken not to have come into force in relation to any such valuation district and the notice under section 21 of that Act shall not, in relation to any such district, apply in respect of the forthcoming year.

(2) Where, in relation to any district, a general valuation is not put into effect for a particular year by reason of an authorization given by the Minister to the Corporation under subsection (1), the general valuation shall, subject to any further authorization under this section, be taken for the purposes of this Act to come into force in relation to that district immediately after the end of that year and thereupon values shall be taken to have been assigned in accordance with that general valuation.

(3) Notwithstanding subsection (2), where, before a general valuation would, for the purposes of this Act, otherwise come into force under that subsection in relation to a district, land in the district is assigned a value pursuant to an interim valuation under the *Valuation of Land Act 1978*, the value assigned to the land pursuant to the interim valuation supersedes the value assigned pursuant to the general valuation notwithstanding that, in relation to that land, the general valuation is not yet in force for the purposes of this Act but until the general valuation so comes into force the value assigned pursuant to the interim valuation shall, for the purposes of this Act, be adjusted to the value that would have been assigned if the interim valuation had been made before the general valuation and the land had then been developed and used as it is at the time the interim valuation was in fact made.

[Section 41F inserted by No. 24 of 1987 s.8; amended by No. 73 of 1995 s.41.]

41G. Incomplete general valuation

- (1) Where the Corporation is of the opinion that information in relation to any general valuation in respect of a valuation district as furnished to the Corporation is not complete, the Minister may direct the Corporation to adopt the valuations made in respect of that general valuation in so far as they are available to the Corporation, and where such a valuation is not so available in relation to any land —
- (a) to refrain from making a charge based on the value of that land until the valuation of that land made under that general valuation is furnished to the Corporation; or
 - (b) to use the valuation shown in relation to that land in the records of the Corporation in respect of the then current year and to make any charge upon that basis for the forthcoming year, but when a new valuation of that land under that general valuation is furnished to the Corporation to adopt the new valuation and make such additional charge, or give such rebate or refund, as may be appropriate by reason of the different valuation,
- and the Corporation is authorized to give effect thereto.
- (2) Notwithstanding a direction under subsection (1), the Corporation may waive payment of an additional charge arising under that subsection where, having regard to the amount of the additional charge and the administrative and other costs that would otherwise be involved, the Corporation considers it appropriate to do so.

[Section 41G inserted by No. 24 of 1987 s.8; amended by No. 73 of 1995 s.41.]

41GA. Concession on certain charges after subdivision

- (1) Where, through a subdivisional plan or diagram approved by the Western Australian Planning Commission, a lot is created by subdivision, no water charge is payable to the Corporation in respect of the lot for the concession period if —

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- (a) the lot is not serviced and is not a habitable lot;
 - (b) it was created to be used solely or principally for residential purposes; and
 - (c) its area is not more than 2 000 m² or, if its area is more than 2 000 m², it is to be used for a building or group of buildings that —
 - (i) is solely for residential purposes; and
 - (ii) contains a number of separate residential units.
- (2) The concession period for the lot is the period from when the subdivisional plan or diagram is approved until —
- (a) the ownership of the lot changes as a result of an agreement for the sale of land;
 - (b) the lot becomes serviced or becomes a habitable lot; or
 - (c) one year passes after the approval.
- (3) For the purposes of this section a lot is serviced if it has a connection to a water service.
- (4) This section does not affect a water charge for any time after the concession period ends.
- (5) In this section —
- “**concession period**” has the meaning given by subsection (2);
 - “**habitable lot**” means a lot that has on it a building that is used, or suitable to be used, for residential purposes;
 - “**lot**” does not include a lot depicted on a strata plan unless it is a lot in a survey-strata scheme;
 - “**subdivision**” refers to the creation of 2 or more lots;
 - “**water charge**” means a charge under section 41 relating to the provision by the Corporation of a water service and does not include an amount required to be paid by way of a contribution to headworks or for extending a water service or providing a connection to it.

[Section 41GA inserted by No. 12 of 1996 s.10.]

41H. Apportionment between joint owners or occupiers

Where land is owned or occupied by a number of persons the Corporation may, having regard to any relevant determination made under the *Valuation of Land Act 1978* and, where appropriate, to Division 5 of Part IV of the *Strata Titles Act 1985*, apportion the valuation in relation to the several interests and assess, or amend the assessment of, charges based upon valuation payable in relation to the respective interests in the land on a basis proportionate to those interests.

[Section 41H inserted by No. 24 of 1987 s.8; amended by No. 73 of 1995 s.41.]

41J. Accounts based on estimated quantities

An account submitted on the basis of an estimate as provided for under section 41(1)(l) shall be clearly marked as such and the Corporation shall, upon request, give details of how the estimate was made.

[Section 41J inserted by No. 24 of 1987 s.8; amended by No. 73 of 1995 s.41.]

41K. Certain information to be made available

Where a person is liable, pursuant to an agreement with the owner of any land, for payment of the whole or a portion of the charges that are payable in respect of that land, he shall be entitled, upon written request, to be informed by the Corporation of the total of such charges payable in respect of the land together with any apportionment made by the Corporation of such charges.

[Section 41K inserted by No. 24 of 1987 s.8; amended by No. 73 of 1995 s.41.]

41L. Interest on overdue amounts

- (1) Where the payment of the amount of a charge, whether by way of a rate or otherwise, or an instalment of such a charge,

including any interest payable under this subsection, is not made by the time when it is due or such time thereafter as may be prescribed for the purposes of this section in the by-laws, interest calculated at the rate and in the manner prescribed shall be payable in accordance with the by-laws.

- (2) Where, in accordance with the by-laws, the amount of a charge that is payable has been increased by reason that payment is made in instalments or that it was not paid in full by the time when it was due or such time thereafter as was prescribed, subsection (1) applies in respect of the total amount outstanding, including the amount of any such increase.

[Section 41L inserted by No. 24 of 1987 s.8.]

41M. Corporation may waive or reduce certain amounts

The Corporation may, where it is satisfied that there is proper cause to do so, waive the obligation to pay, or reduce the amount of, any interest or additional amount arising by reason of the amount of a charge not having been paid in full by the time when it is due or such time thereafter as was prescribed.

[Section 41M inserted by No. 24 of 1987 s.8; amended by No. 73 of 1995 s.41.]

41N. Charges payable notwithstanding liability to prosecution

Where water is taken in contravention of this Act or a relevant Act, the liability to pay a charge imposed by the by-laws in respect of the water so taken is not affected by the fact that the taking of the water was unlawful, and the payment of the charge does not affect the liability of a person to be prosecuted as a result of the unlawful taking of the water.

[Section 41N inserted by No. 24 of 1987 s.8.]

[Division 2 (sections 42, 43) repealed by No. 73 of 1995 s.26.]

[44-48. Repealed by No. 98 of 1985 s.3.]

[Division 3 (sections 49-53) repealed by No. 73 of 1995 s.26.]

[Division 4 (sections 54-56) repealed by No. 73 of 1995 s.26.]

[Division 5 (sections 57-60) repealed by No. 73 of 1995 s.26.]

Division 6 — Liability, indemnity, etc.

[61. Repealed by No. 73 of 1995 s.27.]

62. Liability for physical damage to land, etc.

- (1) In the exercise of its powers of entry on to land or to carry out works under this Act or any relevant Act, except where the Act or an agreement relating to the exercise of the power otherwise provides, the Commission or the Corporation shall, in so far as that is practicable, forthwith make good or pay for the making good of, and, in so far as the making good is not practicable pay compensation for, the physical damage done to that land, or any premises or thing on that land, by the Commission or the Corporation in the course and at the time of, and the proximate cause of which is, the exercise or purported exercise of such a power, whether that damage is of a temporary character or a permanent character.
- (2) Any dispute as to the manner of making good of, or the amount of any payment in respect of, damage under subsection (1), shall be referred to the State Administrative Tribunal and dealt with as if it had come before the Tribunal under Part 10 of the *Land Administration Act 1997*.
- (3) The Commission or the Corporation shall not be liable to pay to any person any amount in respect of damage under subsection (1) unless —
 - (a) within 3 months after the damage is sustained, or within such further period as the Minister may allow, the person delivers in writing to the Commission or the Corporation a claim, or notice of intention to make a claim, for such amount; and

- (b) where there is no agreement with the Commission or the Corporation on the claim within 12 months after delivery of the claim or the notice, the person, within that time, brings an action against the Commission or the Corporation to establish the requirement for, and entitlement to, payment.
- (4) In calculating the amount payable under this section regard shall be had to any compensation received for the damage by the claimant pursuant to any other Act, and the amount payable under this section shall be adjusted accordingly.
- (5) In calculating compensation payable under any other Act regard shall be had to any amount received for the damage by the claimant pursuant to this section, and the body or court so calculating is hereby authorized to take such amount, if any, into account.

[Section 62 amended by No. 25 of 1985 s.14; No. 73 of 1995 s.42; No. 31 of 1997 s.137(2); No. 55 of 2004 s. 571.]

63. Actions for damages generally

- (1) The Commission or the Corporation shall not be liable for any injury or damage, other than damage of the kind referred to in section 62, occasioned in the exercise or purported exercise of a power conferred by this Act or any relevant Act and attributable to the Commission or the Corporation or a statutory authority or a person authorized by the Commission or the Corporation or a statutory authority unless negligence is established.
- (2) No action shall be maintained against the Commission or the Corporation in respect of any injury to the person, where the person injured fails without reasonable excuse to submit himself to medical examination by a specified medical practitioner or practitioners nominated by the Commission or the Corporation within such period as the Commission or the Corporation may by notice in writing require of him where that request is made by the Commission or the Corporation within 3 calendar months of the commencement of proceedings in respect of that injury.

[Section 63 amended by No. 73 of 1995 s.42.]

Part IV — Agreements relating to works and water services

[Heading inserted by No. 25 of 1985 s.15.]

64. Application

The provisions of this Part apply to and in relation to any land in relation to which the Corporation provides, proposes to provide, or is or may be requested to provide, water services.

[Section 64 inserted by No. 25 of 1985 s.15; amended by No. 73 of 1995 s.41.]

65. Interpretation of this Part

For the purposes of this Part —

(a) unless the context otherwise requires —

“development” has the meaning given under and for the purposes of the *Planning and Development Act 2005*;

“headworks” means all works necessary to provide and maintain water services, not being reticulation works;

“proposal” includes a plan, specification or design, and any amended proposal, for the development or subdivision of any land;

“planning condition” means a condition affixed —

(a) pursuant to Part 10 of the *Planning and Development Act 2005* to the granting of approval of a plan of subdivision; or

(b) pursuant to Part XV of the *Local Government (Miscellaneous Provisions) Act 1960* to the granting of a building licence;

“reticulation” means the system of works necessary to provide services to particular land, being works

connecting headworks to the point at which the service is provided;

(b) a reference to —

“development” includes a reference to, a redevelopment, or a proposed development or redevelopment;

“subdivision” includes a reference to re-subdivision or amalgamation;

“the provision of works” includes a reference to the construction, extension, addition, alteration or improvement of headworks or reticulation,

as the case may require, and cognate expressions shall be construed accordingly; and

(c) any question as to what constitutes headworks or reticulation may be determined by the Minister, and effect shall be given to that determination.

[Section 65 inserted by No. 25 of 1985 s.15; amended by No. 73 of 1995 s.28; No. 14 of 1996 s.4; No. 67 of 2003 s. 62; No. 38 of 2005 s. 15.]

66. Advice and guidelines

For the guidance of planning authorities, land developers and persons interested the Minister, the Commission or the Corporation may —

- (a) give advice, whether general or specific, in relation to a proposal; or
- (b) issue guidelines as to the works or water services appropriate to specified kinds of development,

and where the whole or any part of that advice or a relevant guideline is capable of being sufficiently identified it may be incorporated by reference in a planning condition as though it were set out in the text of the condition affixed.

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[Section 66 inserted by No. 15 of 1985 s.15; amended by No. 73 of 1995 s.29; No. 67 of 2003 s. 62.]

67. Agreements

- (1) Where the Corporation becomes aware that in order to satisfy a requirement for water services indicated by —
- (a) a proposal; or
 - (b) a change in, or a proposal to change, the use or nature of an existing development to which existing water services are provided,

the provision of works, or the use of water services provided by the Corporation, may or will be necessary in relation to the whole or any part of the land affected, the Corporation may, by notice served on the person submitting the proposal or on the owner of the land, require that the owner of the land, or a person authorized on his behalf, furnish information as to the proposal or change to the Corporation and negotiate and enter into an agreement under this section with the Corporation in relation to the provision of those works or the use of those water services.

- (2) Where a notice has been served by the Corporation on any person under subsection (1), the Corporation may, and if so directed by the Minister shall, serve another notice on that person varying or rescinding the earlier notice, and a reference to the requirements of the notice shall be read as a reference to the requirements of the notice as so varied.
- (3) Where the Corporation serves a notice under this section the Corporation may furnish a copy of that notice to the Western Australian Planning Commission or local government concerned advising that due to the proposal or change the Corporation is unwilling or unable to provide the required works or water services unless an agreement can be negotiated, and a planning condition requiring connection to, or the provision of, works or water services may be affixed by reference to that notice under the Act in pursuance of which the

proposal was submitted, and any approval under the Act imposing the planning condition shall not be taken to be effective until —

- (a) the planning condition is removed under the provision of that Act;
 - (b) the notice served by the Corporation under this section is rescinded by the Corporation; or
 - (c) the Western Australian Planning Commission or that local government is satisfied that —
 - (i) the provisions of an agreement entered into with the Corporation under this section in relation to the works or water services referred to in that planning condition have been implemented or that such implementation has been ensured in a manner satisfactory to the Corporation; or
 - (ii) the requirements of the Corporation have been otherwise met.
- (4) Nothing in this section requires that, by reason only of a notice served under this section by the Corporation having been rescinded or complied with, an application under Part 10 of the *Planning and Development Act 2005* for the approval of a plan of subdivision or under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960* for the grant of a building licence should be approved.
- (5) In the consideration of whether or not the provision of works, or the use of services provided by the Corporation, may or will be necessary in relation to any land, regard may be had to the existing and future requirements of that land and of other lands.
- (6) An agreement entered into under this section may make provision for —
- (a) works or water services which have been or are to be provided to or in relation to any land otherwise than by the Corporation; and

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- (b) any works which have been or are to be provided to connect with and form part of a system of works providing water services to that land and other lands.
- (7) An agreement entered into under this section may provide that the Corporation or a person shall be entitled to payment notwithstanding that works are or have been provided prior to a proposal being approved under the *Planning and Development Act 2005* or a building licence being issued or the subdivision or development being proceeded with, and that entitlement to payment shall not be affected by reason only that the approval is not given, the building licence not issued or the proposal not implemented.
- (8) An agreement entered into under this section may make provision for payment or an advance to be made in respect of the provision of works or water services, whether provided or to be provided by the Corporation or otherwise, or for security to be given for any payment or advance or in relation to any works under the agreement, or for the repayment of the whole or such part as may be agreed upon of any cost related to previous or existing works or water services incurred by any person, or in relation to any other relevant payment, advance or security.
- (9) The making of an advance to the Corporation towards the cost of the provision of works or water services specified in an agreement entered into under this section shall not be taken to be a borrowing entered into by the Corporation.
- (10) Unless the agreement otherwise requires, all works provided or in the course of being provided, whether or not by the Corporation, pursuant to an agreement entered into under this section vest in and are the property of the Corporation.
- (11) Where the Corporation is to provide works or water services pursuant to an agreement under this section it may, notwithstanding the terms of the agreement, provide works or water services involving greater expenditure than those

specified in the agreement if the additional cost is borne, or provided for, by the Corporation.

- (12) An agreement entered into under this section may impose charges by reference to the specific works contemplated by the agreement, or by reference to an apportioned amount which the Corporation determines as appropriate having regard to —
- (a) the nature of works and water services provided or to be provided;
 - (b) operating and maintenance costs; and
 - (c) the difficulty of ascertaining to what extent any particular land is thereby served.

[Section 67 inserted by No. 25 of 1985 s.15; amended by No. 84 of 1994 s.46; No. 73 of 1995 s.41; No. 14 of 1996 s.4; No. 38 of 2005 s. 15.]

67A. Deferring headworks payments for certain subdivisions

- (1) If, because of a requirement for water services as a result of a subdivision, a developer is required by the Corporation to pay any amount in respect of a particular lot as payment or an advance in respect of headworks and the developer requests in writing that the time for paying the amount be deferred in accordance with this section, the Corporation is required to agree in writing to defer payment of the amount as requested.
- (2) This section applies only if the lot —
- (a) is not serviced and is not a habitable lot;
 - (b) is created to be used solely or principally for residential purposes; and
 - (c) has an area of not more than 2 000 m² or, if its area is more than 2 000 m², is to be used for a building or group of buildings that —
 - (i) is solely for residential purposes; and
 - (ii) contains a number of separate residential units.

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- (3) For the purposes of this section a lot is serviced if it has a connection to a water service.
- (4) If a mortgage is registered against land, payment of an amount in respect of the land can be deferred under this section only if the mortgagee consents in writing.
- (5) Payment is deferred under this section until —
 - (a) the lot becomes serviced or becomes a habitable lot; or
 - (b) one year passes after the subdivisional plan or diagram is approved by the Western Australian Planning Commission,but payment may be made at an earlier time.
- (6) If full payment of the deferred amount is not made within one year after the subdivisional plan or diagram is approved by the Western Australian Planning Commission, interest calculated as referred to in section 41L accrues on any amount remaining unpaid.
- (7) Subsection (6) does not limit the ability of the Corporation to recover any amount outstanding under the agreement, and interest on the amount may be recovered as if it were a part of the amount.
- (8) In an agreement that provides for deferment under this section, if the Corporation so requires, the developer is to agree to pay to the Corporation the amount, as determined by the Corporation, of any costs or disbursements payable by the Corporation that are attributable to the deferment or to making section 67B apply or cease to apply.
- (9) If, with the consent of the Corporation, a lot is transferred while it is land to which section 67B applies, the transferor and transferee are jointly and severally liable for payment of the deferred amount but, subject to any agreement between them or any court order, the transferee may recover from the transferor

as a debt due any amount paid by the transferee that the transferee became liable to pay under this subsection.

(10) In this section —

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

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

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

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

“lot” does not include a lot depicted on a strata plan unless it is a lot in a survey-strata scheme.

[Section 67A inserted by No. 12 of 1996 s.11.]

67B. Transfer of land restricted until deferred amount paid

- (1) The Registrar cannot register or accept for registration an instrument to transfer land to which this section applies unless the Corporation consents in writing.
- (2) This section applies to a lot in respect of which payment is deferred under section 67A if —
 - (a) on the subdivisional plan or diagram approved by the Western Australian Planning Commission and deposited with the Registrar it is shown that this section is to apply to the lot; or
 - (b) the Corporation delivers to the Registrar a memorial, in a form approved by the Registrar, to make this section apply to the lot.

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- (3) When a plan or diagram that makes this section apply is deposited with the Registrar —
 - (a) the prescribed fee is payable for making this section apply; and
 - (b) the Registrar is required to endorse or note the Register Book to show that this section applies.
- (4) A plan or diagram that does not make this section apply cannot, after it is deposited with the Registrar, be altered to make this section apply.
- (5) When a memorial that makes this section apply is delivered to the Registrar, the Registrar is required, on payment of the prescribed fee, to register the memorial and endorse or note the Register Book accordingly.
- (6) When the deferred amount has been paid, the Corporation is required to provide a notice in writing directing that this section cease to apply to the land in respect of which the payment is made.
- (7) The notice is to be in the form approved by the Registrar and is to be signed by a person authorized by the Corporation's chief executive officer.
- (8) Upon delivery of the notice to the Registrar and payment of the prescribed fee, the Registrar is required to endorse or note the Register Book to indicate that this section has ceased to apply to the land, and this section ceases to apply accordingly.
- (9) In this section —

“prescribed fee” means such fee as may be prescribed under the *Transfer of Land Act 1893*;

“Registrar” means the Registrar of Titles.

[Section 67B inserted by No. 12 of 1996 s.11.]

Part V — Access to land and information for rating purposes

[Heading inserted by No. 25 of 1985 s.16.]

68. Access to land and information for the purposes of rating, etc.

- (1) For the purposes of this Act or a relevant Act, a person authorized in writing by the Corporation may —
- (a) enter into and upon any land without being liable to legal proceedings for or on account of the entry; and
 - (b) put to the owner, or an agent of the owner, or a person in occupation or in apparent charge of the land such questions as are necessary to enable the several particulars required to be ascertained to be compiled correctly,

in so far as may be required to enable the information shown in the rating records relating to the land to be confirmed or amended by the Corporation for the purposes of rates or charges.

- (2) A person who, after being informed of the purpose of the questions and of the authorization of the person putting the questions, refuses or omits to answer the questions or any of them to the best of his knowledge and belief, or who knowingly makes a false answer or statement in reply to a question so put, commits an offence.

Penalty: \$1 000.

[Section 68 inserted by No. 25 of 1985 s.16; amended by No. 73 of 1995 s.41.]

69. Provision of information as to rating, etc.

- (1) A person who —
- (a) becomes or ceases to be the owner of;

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- (b) not being the owner, becomes or ceases to be the occupier of; or
- (c) being a person on whom the Corporation is authorized by the owner to serve notices or demands, ceases to be so authorized in relation to,

any land liable to any rates or charges under this Act or a relevant Act and who fails, within 14 days thereafter, to give to the Corporation notice of the fact, commits an offence.

Penalty: \$50.

- (2) A person who, after being requested to furnish that name by the Corporation or any officer authorized by the Corporation —
 - (a) being the occupier of any land, refuses or wilfully omits to disclose, or wilfully misstates, to the Corporation or officer making the request the name of the owner of the land or of the person receiving or authorized to receive the rents of the land; or
 - (b) being a person receiving or authorized to receive the rent of any land refuses or wilfully omits to disclose, or wilfully misstates to the Corporation or officer making the request the name of the owner of the land,

commits an offence.

Penalty: \$1 000.

[Section 69 inserted by No. 25 of 1985 s.16; amended by No. 73 of 1995 s.41.]

69A. Rating records

- (1) Where charges are made under this Act in respect of land, the Corporation shall compile, from time to time amend, and maintain records in respect of all land in respect of which such charges are made showing —
 - (a) the description and situation of the land;
 - (b) the name and address of the owner;

- (c) the assessment number;

where it is relevant to the making of any charge in respect of the land,

- (d) the gross rental value, the unimproved value, or the area of the land, as the case requires;
- (e) the classification, if any, of the land for the purpose of the application of any charge in respect of the land;
- (f) any other information that the Corporation requires for the assessment of any charge in respect of the land;
- (g) the amount of any charge that has been assessed in respect of the land for a current period; and
- (h) such other information, if any, as may be prescribed in the by-laws.

- (2) Where the name or address of the owner of any land the subject of a charge under this Act is not known to the Corporation or the Corporation is otherwise authorized by or on behalf of the owner, the Corporation may —

- (a) record the fact that the name or address is unknown;
- (b) record the name and address of a person occupying, or responsible for the management of, the land or authorized to accept service of notices or demands on behalf of the owner; and
- (c) assess a charge in respect of the land and, in connection therewith, serve notice and make demand upon either —
 - (i) the owner or occupier, by that designation pursuant to this Act or a relevant Act; or
 - (ii) a person authorized to accept service on behalf of the owner.

- (3) The record for any land shall at all reasonable times be made available for inspection by any person without payment, and the Corporation shall, on request by any person who satisfies the Corporation that he has a material interest in any portion of the

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records, furnish a copy of that portion of the records to that person on payment of the prescribed amount.

- (4) For the purposes of this Act or a relevant Act, a person authorized in writing by the Corporation may at any reasonable time without any fee or charge inspect any valuation or rating records maintained by or in the possession of a local government and shall be permitted access thereto and to take copies or copies of extracts, and the chief executive officer of the local government shall on the request of the Corporation —
 - (a) furnish to the Corporation, on payment of such amount, if any, as may be prescribed, pursuant to the *Local Government Act 1995*, a copy of any such record verified by him by statutory declaration; and
 - (b) notify the Corporation in writing of any amendment or alteration made thereto.

[Section 69A inserted by No. 110 of 1985 s.10; amended by No. 24 of 1987 s.9; No. 73 of 1995 s.41; No. 14 of 1996 s.4.]

69B. Records to be basis of assessment

- (1) Except as otherwise provided in this Act the records maintained by the Corporation under section 69A for a period shall be the basis on which charges are assessed for that period.
- (2) The reference in subsection (1) to the records under section 69A includes a reference to amendments made to those records from time to time.
- (3) The records under section 69A may be amended not more than 5 years after the end of the period to which the records relate and the Corporation may thereupon assess or reassess any charge for that period and for any subsequent period as a result of that amendment and issue such assessment, or give such rebate or refund, as may be appropriate.
- (4) A person affected by an amendment of the records has the same rights of objection and appeal, if any, in relation to the

amendment as he would have had if the amendment had been an entry in the records for the first time at the time of the amendment.

[Section 69B inserted by No. 24 of 1987 s.10; amended by No. 73 of 1995 s.41.]

Part VI — Entry onto land

[Heading inserted by No. 25 of 1985 s.17; amended by No. 73 of 1995 s.30.]

70. The power of entry

- (1) Except where otherwise specifically provided by this Act or a relevant Act, entry by or on behalf of the Commission or the Corporation onto any land, premises or thing shall not be lawful unless —
 - (a) the consent of the owner or occupier has been obtained;
or
 - (b) due notice under this Act, a relevant Act, or Part 9 of the *Land Administration Act 1997* has been served.
- (2) Where due notice is served pursuant to subsection (1) a person authorized by the Commission or the Corporation may, unless the owner or occupier or a person authorized by the owner or occupier objects to the exercise of that power by the Commission or the Corporation, lawfully enter onto any land, premises or thing notwithstanding that the Commission or the Corporation has not obtained the consent of the owner or occupier.
- (3) The exercise of a power of entry conferred by this Part shall not be taken to require the Commission or the Corporation to acquire any interest in any land unless —
 - (a) the Commission or the Corporation elects to acquire the interest by agreement;
 - (b) the Commission or the Corporation elects to take an interest under and in accordance with Part 9 of the *Land Administration Act 1997*, as read with this Act; or
 - (c) the Commission or the Corporation is required to acquire an interest pursuant to section 81(4) of this Act or section 176 of the *Land Administration Act 1997*.

- (4) A notice required by this Act to be given in relation to any entry shall specify the purpose for which entry is required and shall continue to have effect for so long as that requirement subsists, and successive entries for that purpose shall be taken to be entries to which the notice relates.

[Section 70 inserted by No. 25 of 1985 s.17; amended by No. 73 of 1995 s.42; No. 31 of 1997 ss.137(3) and 142.]

71. Inspection

- (1) For the purposes of this Act and any relevant Act, the Commission or the Corporation —
- (a) may, subject to section 72(1), enter and re-enter at all reasonable times any land, premises or thing —
 - (i) to which water services are supplied by the Corporation; or
 - (ii) in, on, over or under which any works of the Commission or the Corporation are lawfully situate,

for the purpose of routine inspection, or routine maintenance and no notice under this Act is required unless an agreement in writing entered into by the owner or occupier of the land, premises or thing with the Commission or the Corporation in relation thereto otherwise provides; and
 - (b) may, without notice, enter at all reasonable times any land, premises or thing and take such measures as may be necessary to ascertain whether any offence against this Act or a relevant Act has been or is being committed.
- (2) Notwithstanding that the powers conferred by Subdivision 2 of Division 3, or Division 4, of Part 9 of the *Land Administration Act 1997* or section 82 or 83A of the *Public Works Act 1902* may in any particular case not be applicable, the Commission or the Corporation may enter upon any land if, in the opinion of

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the Commission or the Corporation, entry upon that land is necessary for the purposes of inspecting or examining the land to determine the feasibility of the use of that land for the purposes of this Act or a relevant Act, or as preliminary to any prospective or intended acquisition of the land or any estate or interest in that land.

- (3) Whenever the Commission or the Corporation, by its officers or agents, enters or has entered on or into any land, premises or thing the officer of the Commission or the Corporation responsible for the conduct of the entry shall, on request, produce evidence of his appointment and give particulars of the power conferred on the Commission or the Corporation by virtue of which the Commission or the Corporation claims a right of entry.

[Section 71 inserted by No. 25 of 1985 s.17; amended by No. 73 of 1995 ss.31, 41 and 42; No. 31 of 1997 s.137(4).]

72. Notice of entry

- (1) Notwithstanding that, by reason of section 71(1), a notice would not have been required to have been given where entry was required for the purpose of routine inspection or routine maintenance, where the Commission or the Corporation intends to exercise any of the powers conferred by this Part or section 83 and the purpose of entry is to carry out works that may affect the land, notice in writing of that intention shall, where practicable, be given by the Commission or the Corporation to the owner or occupier of the land, premises or thing to be affected not less than 48 hours before the power is to be exercised, save where this Act or a relevant Act otherwise provides.
- (2) Where the Commission or the Corporation enters onto any land, premises, or thing without prior notice, whether or not such notice was required under this or any other Act, for the purpose of exercising any power of the Commission or the Corporation to carry out works thereon then, wherever practicable, as soon

as may be thereafter notice in writing of the entry and of the works carried out, and of any further intention of the Commission or the Corporation relating thereto, shall be given to the owner or occupier of the land affected.

- (3) Where the owner of any unoccupied land, premises or thing is not within the State, or for any other sufficient reason it is not possible to give to any person, body or authority the notice required by this Act, then for the purposes of this Act the notice shall be deemed to have been given if it has been affixed or displayed on or over a conspicuous part of the land, premises or thing concerned and left so affixed or displayed for at least 48 hours.
- (4) The Commission or the Corporation may without prior notice enter on any street under the control of a local government or department and there exercise the powers conferred by section 83, but, except where entry is effected pursuant to section 73, notice pursuant to section 100 shall be given by the Commission or the Corporation to the local government or department concerned where that section applies.
- (5) A notice served pursuant to this Act for the purpose only of the exercise of the power of entry shall not be taken to have effect as a notice in relation to the taking of any land under Part 9 of the *Land Administration Act 1997*.
- (6) Where it is shown to the satisfaction of a justice that entry on or into any land, premises or thing is reasonably required by the Commission or the Corporation for the purpose of the exercise of a power conferred by this Act or a relevant Act but that entry has been refused or the entry is opposed or prevented, or in any case where such land, premises or thing is unoccupied and access cannot be obtained or a notice required by this Act or a relevant Act cannot be served without undue delay or difficulty, the justice may, by warrant in the form prescribed by regulations made under this Act, authorize the Commission or the Corporation by its officers together with such other persons as are named in the warrant, or any police officer, to enter upon

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the land, premises or thing, using such force as may be necessary, for the purpose therein specified and any such warrant shall continue to have effect until the purpose for which it was granted has been satisfied.

- (7) Where in the opinion of the Commission or the Corporation circumstances have arisen that may occasion undue delay in effecting entry on or into any land, premises or thing or in the carrying out of any works but the provisions of subsection (6) are not appropriate to the circumstances, the Commission or the Corporation may apply to the Supreme Court *ex parte* by notice of motion, notwithstanding that no cause or matter between the parties is before the Court or that no previous notice has been given to any party affected thereby, for the grant of an injunction prohibiting the persons therein specified from opposing or preventing the exercise by the Commission or the Corporation of its powers, or for an order directing the Commission or the Corporation as to the exercise of powers conferred by this Act or a relevant Act in the circumstances specified in that order, or for both such an injunction and such an order.

[Section 72 inserted by No. 25 of 1985 s.17; amended by No. 73 of 1995 s.42; No. 14 of 1996 s.4; No. 31 of 1997 s.137(5).]

73. Rights as to entry in emergency

- (1) Where it appears to the Commission or the Corporation an officer of the Commission or the Corporation or any other person who pursuant to section 3(3) is deemed to be authorized to act on behalf of the Commission or the Corporation, that by reason of —
- (a) actual or apprehended danger or health risk to any person or in relation to any property;
 - (b) the occurrence of injury, disease or damage attributable, or which might be attributable, to any defect in, or any malfunction, misuse or improper use of, the works of the

Commission or the Corporation, any property sewer or any fixture or fitting;

- (c) an urgent necessity to restore or provide water services to any place or person;
- (d) damage to, or interference with, water services generally; or
- (e) any other matter,

the circumstances are such that an emergency situation exists which makes compliance with the normal requirements of this Act or a relevant Act impractical or unreasonable, then, while those circumstances subsist and for so long thereafter as is reasonably required in relation thereto, the Commission or the Corporation or that person may lawfully effect immediate entry on or into any land, premises or thing necessary to deal with the emergency situation, and there exercise all such powers as are by this Act or a relevant Act conferred on the Commission or the Corporation or that person and are reasonably required to deal with that situation, and may in so far as is necessary use reasonable force to effect entry, without any requirement for notice or warrant and by force of this subsection.

- (2) Notwithstanding that no notice is required under subsection (1), where it is practicable so to do notice of an entry effected under subsection (1) shall be given to all persons who are, or are the owners or occupiers of land which is, likely to be affected.
- (3) Any question as to what is a necessary entry may be determined by the officer of the Commission or the Corporation or other person authorized by this section to effect or direct the entry, and any question as to what powers are reasonably required to deal with a situation to which subsection (1) refers may be determined by the person responsible for the exercise of the power, and in any proceedings arising therefrom such a determination shall be presumed, in the absence of evidence to the contrary, to have been made in good faith.

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- (4) The Commission or the Corporation or a person exercising powers pursuant to this section shall, as soon as may be, remove anything left on the land, premises or thing entered and shall make good any damage, or effect restoration, rehabilitation or restitution and section 62 has effect as though a reference in that section to the Commission or the Corporation included a reference to a person exercising powers pursuant to this section.

[Section 73 inserted by No. 25 of 1985 s.17; amended by No. 73 of 1995 ss.32 and 42.]

Part VII — Acquisition of land or interests in land

[Heading inserted by No. 25 of 1985 s.18; amended by No. 73 of 1995 s.33.]

74. Estates and interest in land

For the purposes of this Part, and in the *Land Administration Act 1997* when construed for the purposes of this Part, a reference to “**land**” shall be read as extending to any land, or to any portion of any land, or to the subsoil, surface or airspace relating thereto, and to any legal or equitable estate, right, title, easement, lease, licence, privilege, or other interest, in, over, under, affecting, or in connection with that land or any portion, stratum or other specified sector of that land (whether or not that interest is an interest recognised by the Common Law) the extent of which is ascertainable by reference to the documents purporting to relate thereto.

[Section 74 inserted by No. 25 of 1985 s.18; amended by No. 31 of 1997 s.137(6).]

75. Partial interests in land

- (1) Where, whether by way of agreement or by way of a compulsory taking under Part 9 of the *Land Administration Act 1997*, the Commission or the Corporation seeks to acquire an estate or interest in or relating to any land that is less than is held by the person from whom the acquisition is sought, the Commission or the Corporation may, subject to section 81(11), acquire such lesser estate or interest and shall not be required to acquire the whole of the estate or interest held by that person.
- (2) Where an estate or interest of the Commission or the Corporation of the kind referred to in subsection (1) is recorded on, or by way of memorial in the register relating to, the title to the land —
 - (a) that estate or interest shall enure for the benefit of the Commission or the Corporation and run with the land notwithstanding any sale, subdivision or other dealing with that land by the owner or occupier for the time

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being, but any such estate or interest may be relinquished by the Commission or the Corporation; and

- (b) the benefit of any right, restriction or covenant in relation to the use of land granted to or held by the Commission or the Corporation may be enforced by the Commission or the Corporation to the like extent as if the Commission or the Corporation were possessed of adjacent land for the benefit of which the same was to enure.

[Section 75 inserted by No. 25 of 1985 s.18; amended by No. 73 of 1995 ss.34 and 42; No. 31 of 1997 s.137(7).]

[76. Repealed by No. 73 of 1995 s.35.]

77. Agreements incidental to land matters

- (1) In order to facilitate the acquisition of, or dealing with, land to be acquired for the purposes of this Act or a relevant Act, the Commission or the Corporation may enter into agreements relating to incidental matters and things necessary to give effect to the powers conferred on the Commission or the Corporation by this Act or a relevant Act.
- (2) Where the fee simple of, or any other estate or interest in, any land is vested in the Commission or the Corporation and the Commission or the Corporation at the time of the acquisition or subsequently does not require the exclusive use and occupation of that land, then the Commission or the Corporation may in writing grant —
 - (a) a lease or licence to occupy the land or any part of the land, either exclusively or concurrently with the Commission or the Corporation; or
 - (b) any interest in or right to use that land or any part of the land,

to any other person (subject to the provisions of subsection (3) and of Division 5 of Part 9 of the *Land Administration Act 1997*), and where the lease, licence or other interest or right

so granted is stated in that grant as being given by way of consideration for the acquisition of the land by the Commission or the Corporation then that lease, licence, interest or right shall not be revoked without compensation unless the parties otherwise agree.

- (3) Where the Commission or the Corporation exercises the powers conferred by subsection (2), then unless an agreement entered into between the Commission or the Corporation and the person to whom the lease, licence, interest or right is granted otherwise provides, the grant —
- (a) shall be deemed to be subject to a condition that the Commission or the Corporation shall be indemnified against any costs, damages, claims, or expenses arising therefrom; and
 - (b) subject to subsection (2), may be terminated without any liability for compensation thereby arising, on not less than 21 days prior written notice.

[Section 77 inserted by No. 25 of 1985 s.18; amended by No. 73 of 1995 s.42; No. 31 of 1997 s.137(8).]

78. Power to dispose of land

- (1) Subject to subsection (2) and to section 12EB(2) of the *Country Areas Water Supply Act 1947* but otherwise in accordance with Part 9 of the *Land Administration Act 1997*, the Commission or the Corporation may sell or otherwise deal with any land, or any estate or interest in land, acquired by a former Minister, a statutory authority or the Commission or the Corporation and vested in the Commission or the Corporation for the purposes of this Act or a relevant Act and no longer required for such purposes.
- (2) Where any such land, estate or interest acquired by a former Minister, a statutory authority or the Commission or the Corporation was not acquired under this Act or any other Act by way of compulsory taking for any public work, sections 187,

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188, 189, 190, and 191 of the *Land Administration Act 1997* shall not have effect in relation thereto.

[Section 78 inserted by No. 25 of 1985 s.18; amended by No. 73 of 1995 s.42; No. 31 of 1997 ss.137(9) and 142.]

79. Planning approval

For the purposes of section 135 of the *Planning and Development Act 2005*, the Commission or the Corporation may submit to the Western Australian Planning Commission plans of a subdivision of land acquired, or to be acquired, by the Commission or the Corporation notwithstanding that the Commission or the Corporation is not the owner of the land, and approval under that Act may be given thereto.

[Section 79 inserted by No. 25 of 1985 s.18; amended by No. 84 of 1994 s.46; No. 73 of 1995 s.42; No. 38 of 2005 s. 15.]

[80. Repealed by No. 73 of 1995 s.35.]

81. Claims against the Commission or the Corporation for the use of land and the application of the *Public Works Act 1902*

- (1) Subject to subsection (3), the Commission or the Corporation shall not be liable to pay compensation for, or in respect of any damage attributable to, the placing of any works or other things to which subsection (1) of section 84 applies or by virtue of the grant of the right of access deemed by subsection (2) of that section to be vested in the Commission or the Corporation.
- (2) No claim lies against the Commission or the Corporation by reason only of any loss of enjoyment or amenity value, or by reason of any change in the aesthetic environment, alleged to be occasioned by the placing of works of the Commission or the Corporation on any land.
- (3) No claim lies against the Commission or the Corporation by reason only of the placing of any works of the Commission or

the Corporation upon, in, over or under any land, other than a claim —

- (a) pursuant to section 62; or
- (b) under Part 10 of the *Land Administration Act 1997*, as read with this Act, where the Commission or the Corporation —
 - (i) is by this or any other Act required; or
 - (ii) by reason of the nature of the works there placed, the nature of the locality in which the works are placed, the safeguarding of particular works, public safety, future development proposals, or otherwise, elects,

to acquire the land or an estate or interest in the land,

but this subsection does not affect any liability of the Commission or the Corporation where negligence is established for the purposes of section 63.

- (4) Notwithstanding the powers conferred on the Commission or the Corporation by Part VI, the Commission or the Corporation is required to acquire, where practicable by agreement but otherwise pursuant to Part 9 of the *Land Administration Act 1997* as read with this Act, such land, estate, or interest as may in the opinion of the Commission or the Corporation be appropriate to its needs in respect of —
 - (a) major works, other than works in relation to which the Minister has directed the Commission or the Corporation that this subsection is not to have effect; and
 - (b) such other works as may be prescribed by regulation under this Act as works to which this subsection shall apply,

and regulations made under this Act may make provision for such restriction of any use of the land thereby affected by other persons as may in the opinion of the Commission or the Corporation be necessary.

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- (5) Where for the purposes of this Act or a relevant Act the Commission or the Corporation determines that any land, or any estate or interest in land, is required to be acquired by the Commission or the Corporation otherwise than by agreement the power to do so shall be exercised under and in accordance with, and any compensation payable by the Commission or the Corporation in pursuance of such powers shall be assessed, determined and recovered under, Parts 9 and 10 of the *Land Administration Act 1997* as read with this Act.
- (6) A claim for compensation made under this section may only be made once, and where any land, estate, or interest is acquired by the Commission or the Corporation no further claim in respect thereof shall lie against the Commission or the Corporation notwithstanding any subsequent works of the Commission or the Corporation affecting that land, estate or interest unless it is shown that the original claim paid did not take into account the nature of the damage subsequently occurring.
- (7) Any entry upon, or acquisition of, land authorized by or under this Act or a relevant Act and any works carried out pursuant to this Act or a relevant Act shall be deemed to be for the purposes of a public work within the meaning of the *Public Works Act 1902*, and the Commission or the Corporation shall be deemed to be a local authority within the meaning of that Act authorized to effect that acquisition or undertake that public work.
- (8) For the purposes of this Act or a relevant Act, where the Commission or the Corporation so requires the Commission or the Corporation may exercise any power that is by the *Public Works Act 1902* or Parts 9 and 10 of the *Land Administration Act 1997* vested in the relevant Minister and in so far as that Act applies, or those Parts apply, to or in relation to the compulsory taking of any land, or the entry on, occupation or use of any land, pursuant to this Act or a relevant Act any reference in that Act or those Parts to the relevant Minister, or to the department of the Public Service principally assisting the relevant Minister

in the administration of that Act or those Parts, may be read for the purposes of this Act or a relevant Act as a reference to the Commission or the Corporation and that Act or those Parts may be construed accordingly.

- (9) Subsection (8) does not prevent the relevant Minister from exercising the relevant Minister's powers under the *Public Works Act 1902* or Parts 9 and 10 of the *Land Administration Act 1997* on behalf of the Commission or the Corporation when requested by the Commission or the Corporation to do so.
- (10) Where the Commission or the Corporation fails to serve an offer on a claimant against the Commission or the Corporation for compensation under Part 10 of the *Land Administration Act 1997* within the time limited for that purpose by that Act, then the Minister administering that Act may serve an offer on behalf of the Commission or the Corporation, and such offer shall be deemed to be an offer duly made by the Commission or the Corporation for the purposes of that Act.
- (11) A written objection served pursuant to section 175 of the *Land Administration Act 1997* in relation to any proposed taking for the purposes of the Commission or the Corporation may request —
 - (a) that instead of the whole estate or interest in the land being acquired, such a lesser estate or interest as is sufficient for the purposes of the Commission or the Corporation be acquired; or
 - (b) that instead of an estate or interest less than the whole being acquired, the whole estate or interest in the land be acquired,

and the Minister, after consultation with the Commission or the Corporation, may direct that the proposed taking be varied accordingly.

- (12) Where any land is compulsorily acquired under Part 9 of the *Land Administration Act 1997* for the purposes of the Commission or the Corporation under this Act or any other Act

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that land shall, on the registration of the relevant taking order made under section 177 of that Act, be vested in the Commission or the Corporation for the purpose of the public work for which the land is acquired, by force of section 179 of that Act as read with this subsection, save that the Minister administering that Act may, by that taking order, declare that any specified estate, interest, right or privilege of any person to the use, occupation or enjoyment of the land so acquired by the Commission or the Corporation, or any specified part of that land, may continue for the period therein specified or until terminated by that Minister by a subsequent order under that Act, and may provide that such continued use, occupation or enjoyment shall not be taken to be in satisfaction or part satisfaction of the compensation claimed, and effect shall be given thereto.

- (13) Where, whether by agreement or compulsory acquisition, any land (including any estate or interest in land to which section 74 applies), is vested in the Commission or the Corporation and the land thereby affected is taken by any other person, body or authority under or by virtue of Part 9 of the *Land Administration Act 1997* then notwithstanding section 179 of that Act —
- (a) the land or the estate or interest vested in the Commission or the Corporation shall continue to be so vested, unless the Commission or the Corporation otherwise agrees; and
 - (b) the Commission or the Corporation shall be deemed to be a person having an interest in the land, estate or interest to be taken for the purposes of section 202 of that Act.

- (14) In subsections (8) and (9) —

“relevant Minister” means the Minister administering the *Public Works Act 1902* or Parts 9 and 10 of the *Land Administration Act 1997*, as the case requires.

[Section 81 inserted by No. 25 of 1985 s.18; amended by No. 73 of 1995 ss.36 and 42; No. 31 of 1997 ss.137(10)-(17) and 142.]

Part VIII — Works

[Heading inserted by No. 25 of 1985 s.19.]

Division 1 — Carrying out of works under this Part

[Heading inserted by No. 25 of 1985 s.19.]

82. Power to carry out works under this Part

- (1) Subject to this Act and any relevant Act, the Commission may carry out works for the purposes of this Act or any relevant Act that are related to the conservation, protection or management of water resources.
- (1a) Subject to this Act, any relevant Act and the terms and conditions of any operating licence granted to it under the *Water Services Licensing Act 1995*, the Corporation may carry out —
 - (a) works for the purposes of this Act or any relevant Act that are intended to provide, or are related to the provision of, water services; and
 - (b) such other works as are requested by, and undertaken wholly or in part at the expense of, any other person being works of a kind that are related to the provision of water services.
- (2) The provisions of this Part have effect in relation to works carried out under and for the purposes of a relevant Act, except in so far as that relevant Act contains provisions inconsistent with the provisions of this Part in which case effect shall be given to the provisions of the relevant Act.

[Section 82 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.37; No. 67 of 2003 s. 62.]

83. Powers relating to works

- (1) For the purposes of its functions under this Act or a relevant Act the Corporation, subject to Part VI, may —

- (a) enter upon any land, street, premises or thing and acquire, provide or construct —
 - (i) wells, reservoirs, dams, pumping stations, pumping mains, water treatment plants and distributory works and such other works as in its opinion may be required for the purposes of the supply of water;
 - (ii) main and reticulation sewers, pumping stations, pumping mains, ocean outlets, wastewater treatment plants and such other works as in its opinion may be required for sewerage purposes; and
 - (iii) drains, compensating basins, pipes, pumping stations, pumping mains and such other works as in its opinion may be required for main drains or drainage purposes,and may do all such things as may be necessary or convenient for the construction, maintenance, repair, alteration, replacement, use, discontinuance or removal of any works for the provision of water services and works ancillary to the provision of water services; and
 - (b) carry out such other works, including the construction of premises and the provision of facilities, as may be necessary for the purposes of this Act or a relevant Act.
- (1a) For the purposes of its functions under this Act or a relevant Act the Commission, subject to Part VI, may —
- (a) enter upon any land, street, premises or thing and acquire, provide or construct wells, reservoirs, dams and such other works as in its opinion may be required for the purposes of the conservation or management of water; and
 - (b) carry out such other works including the construction of premises and provision of facilities as may be necessary for the purposes of this Act or any relevant Act.

- (2) Without limiting the generality of subsections (1) and (1a) the Commission or the Corporation, for the purposes of this Act or a relevant Act, may —
- (a) exercise the powers conferred by sections 82, 83A, 93, and 94 of the *Public Works Act 1902* and Division 4 of Part 9 of the *Land Administration Act 1997*, save that those sections shall be read and construed as though —
 - (i) a reference therein to the Minister administering that Act or that Part were a reference to the Commission or the Corporation; and
 - (ii) the provisions of this Act relating to entry on to land and the giving of notice had effect in substitution for the provisions of the *Land Administration Act 1997* and the *Public Works Act 1902* relating to those matters,
and the powers conferred by those sections shall be deemed to include the power to carry out general or specific investigations, tests, borings, explorations and other surface or underground studies —
 - (iii) to ascertain the existence, nature and extent of water resources including underground water resources;
 - (iv) to formulate schemes for the provision, extension or alteration of water services;
 - (v) to determine the feasibility and requirements of works or proposed works; and
 - (vi) to survey or demarcate land;
 - (b) for the purposes of this section —
 - (i) drain, pump, excavate or otherwise remove any water, soil or obstruction;
 - (ii) remove or use any earth, rock, trees and other things taken from any land;
 - (iii) take water, soil or other samples;

- (iv) acquire, provide, remove or reconstruct buildings, pumps and other structures or plant;
 - (v) open, or alter the position of, any pipe, sewer, drain, channel, tunnel, wire or other fitting or apparatus within or under any land, including any street or premises; or
 - (vi) remove, or make a gate in, or erect, any fence (taking all reasonable steps to notify the owner and occupier of the land on which, or on the boundary of which, the fence is, or is to be, erected).
- (3) In the exercise of the powers conferred by this section the Commission or the Corporation shall ensure that so far as is reasonable and practicable —
- (a) the free use of any land, street or premises is not obstructed; and
 - (b) as little detriment or inconvenience is caused and as little damage is done as is possible,

and section 62 applies in respect of damage thereby occasioned.

[Section 83 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 ss.38, 41 and 42; No. 31 of 1997 s.137(18).]

84. Property in works

- (1) Where the Commission or the Corporation places or has placed, or causes or permits or has caused or permitted any works or other things to be placed upon, in, over or under any land in the exercise or purported exercise of a power conferred by this Act or a relevant Act those works or other things shall be taken to have been lawfully so placed.
- (2) Those works or other things shall at all times continue to be the property of the Commission or the Corporation, unless the Commission or the Corporation has otherwise agreed or may otherwise determine, and the Commission or the Corporation

shall be deemed to have a right of access thereto for the purposes of this Act and any relevant Act.

- (3) The Commission or the Corporation may remove from, or demolish or destroy on, any land which is or has been occupied by the Commission or the Corporation, any plant, buildings, road, or other works placed or caused to be placed thereon by the Commission or the Corporation or by permission of the Commission or the Corporation.
- (4) In this section, a reference to the Commission or the Corporation includes a reference to a former Minister, to the former Authority and to a statutory authority.

[Section 84 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 ss.39 and 42.]

85. Local government works constructed with borrowed money

- (1) Notwithstanding that —
- (a) any water works and works relating to the procuring of a water supply;
 - (b) any sewers and works connected with sewerage; and
 - (c) any drains and works connected with drainage,
- have been constructed with money borrowed by a local government under the *Local Government Act 1995*, the Corporation may purchase from the local government any works so constructed.
- (2) Any works purchased by the Corporation from a local government pursuant to this section —
- (a) shall be acquired on such terms and conditions as the Corporation and the local government, having regard to the terms and conditions upon which the money referred to in subsection (1) was borrowed, agree upon and of which the Minister approves in writing;
 - (b) shall vest in and be the property of the Corporation; and

- (c) shall be subject to the provisions of this Act or a relevant Act as though they had been constructed or procured under the authority of this Act.

[Section 85 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.41; No. 14 of 1996 s.4; No. 57 of 1997 s.126(2); No. 74 of 2003 s. 125(3).]

Division 2 — Preliminaries to works

[Heading inserted by No. 25 of 1985 s.19.]

Subdivision A — Interpretation

[Heading inserted by No. 25 of 1985 s.19.]

86. Interpretation

In this Part and in Part VII —

“**exempt works**” means —

- (a) the maintenance, repair, minor alteration, reinstatement or replacement of existing works;
- (b) the construction or provision of other works —
 - (i) not being major or general works;
 - (ii) being works in, on, under or over private land, which are constructed or provided on, and at the request of the owner of, the land served or to be served by the water services in respect of which the works are required; or
 - (iii) being works in, on, under or over Crown land or road reserves and required to link other exempt works to existing works;
- (c) alterations to general works and additions or extensions to general works in, on, under or over land vested in the Commission or the Corporation;
- (d) alterations, extensions or additions to major works where section 91 does not apply; and

- (e) such other works of the nature specified in the Order as the Governor may, from time to time by Order in Council, declare to be exempt works for the purposes of this Act or a relevant Act, notwithstanding that such works may form part of or be related to general works or major works;

“general works” means the construction or provision of —

- (a) trunk and distribution water mains, pumping stations, pumping mains, control and metering stations, main and branch sewers, main drains, irrigation channels, compensating basins and water and sewerage reticulation mains, being reticulation mains not constructed at the request of the owner of the land affected;
- (b) such other works of a kind similar to the works referred to in paragraph (a) of this definition as the Governor may, from time to time by Order in Council declare to be general works for the purposes of this Act or a relevant Act; and
- (c) works in, on, under or over private land, other than exempt works;

“major works” means the construction or provision of —

- (a) dams, service reservoirs, bulk water storage facilities, groundwater schemes, irrigation schemes, wastewater treatment plants or water treatment plants; and
- (b) such other works as the Minister —
 - (i) considers, by virtue of their location, size or nature, to be of sufficient public interest to require public advertisement and that an opportunity to object or comment thereon should be given; and
 - (ii) directs the Commission or the Corporation, either generally or in a specific case, to treat as major works.

[Section 86 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.42.]

Subdivision B — Major works

[Heading inserted by No. 25 of 1985 s.19.]

87. Power to carry out major works

The Commission or the Corporation may carry out, or undertake the construction or provision of, major works, if the Commission or the Corporation has complied with sections 88 and 89 and the Minister has thereupon authorized the carrying out of such works and a notice of such authorization has been published in the *Government Gazette*, but not otherwise.

[Section 87 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.42.]

88. Advertisements and notices

- (1) The Commission or the Corporation shall, before submitting proposals to the Minister for the carrying out, construction or provision of major works —
 - (a) cause to be prepared plans of the area affected together with the current proposals for the works, and cause those plans and proposals, or certified copies to be deposited —
 - (i) in the head office of the Commission or the Corporation; and
 - (ii) where the proposed works are to be outside the Metropolitan Water, Sewerage, and Drainage Area, in the district office of the Commission or the Corporation nearest to the locality which will benefit from the proposed works;
 - (b) cause an advertisement to be published in the *Government Gazette*, and in one or more newspapers generally circulating in the locality in which the proposed works are to be situate, specifying —

- (i) a description of the proposed works;
 - (ii) the localities in which they will be situate;
 - (iii) the purposes for which they are required; and
 - (iv) the times when, and places at which, the plans and proposals may be inspected;
- and
- (c) cause a notice specifying the details referred to in paragraph (b) to be served on —
 - (i) the owner and occupier of any land which is to be entered for the purposes of the proposed works or which is, in the opinion of the Commission or the Corporation, likely to be affected; and
 - (ii) any local government in the area of which the proposed works will be situate or which, in the opinion of the Commission or the Corporation, has a material interest in the proposal or the services to be provided by the works.
- (2) The plans and proposals referred to in subsection (1) shall be open to inspection by any person interested, at the times and places specified in the advertisement.

[Section 88 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.42; No. 14 of 1996 s.4.]

89. Objections and comments

- (1) Any local government or person interested may, in writing, object to or comment on the carrying out, construction or provision of proposed major works.
- (2) Every such objection or comment shall be lodged with the Commission or the Corporation within one month from the date of the publication of the advertisement referred to in section 88(1).

- (3) Where the Commission or the Corporation so determines, and whether or not by reason of objections or comments received, the Commission or the Corporation may amend the proposal by making alterations to the plans or proposals so deposited and advise the persons who are, in the opinion of the Commission or the Corporation, likely to be affected by such alterations, but when submitting the proposal to the Minister for authorization shall indicate the nature and extent of the alterations effected.

[Section 89 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.42; No. 14 of 1996 s.4.]

90. Submission for authorization

- (1) Where the Commission or the Corporation considers that the requirements of sections 88 and 89 have been complied with and that the objections or comments, if any, have been met by amendment of the proposals or are, in the general public interest, not such as to cause the proposals to be amended, the Commission or the Corporation shall submit the final proposal to the Minister and shall furnish to the Minister such plans, description, specifications, estimates or other information as the Minister may require relating thereto.
- (2) The Commission or the Corporation shall prepare a report to the Minister on —
- (a) the original proposal;
 - (b) any amendment to that original proposal and the persons who have been advised of the amended proposal; and
 - (c) the final proposal, and any interest, objection or comment not met by the final proposal,

and the Minister shall have regard to that report and any recommendations contained therein and after considering the matter the Minister may —

- (d) direct that any amended proposal shall be re-advertised;
- (e) direct that further or other notices be served in respect of the proposal;

- (f) authorize the carrying out, construction, or provision of the proposed major works; or
- (g) decline to authorize the proposed major works.

[Section 90 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.42.]

91. Alteration or extension of major works

- (1) Where the Commission or the Corporation proposes substantially to alter or extend any major works it shall notify the Minister of the proposal and shall furnish to the Minister such plans, description, specifications, estimates or other information as the Minister may require relating thereto.
- (2) After considering the proposal the Minister may —
 - (a) direct that the procedures set forth in sections 88, 89 and 90, or such procedures as are specified by the Minister, be carried out in relation to the alteration or extension as if the proposed alteration or extension were a proposal for the initial provision of major works;
 - (b) authorize the proposed extension or alteration; or
 - (c) decline to authorize the proposed extension or alteration.
- (3) In considering a proposal notified to him under subsection (1) the Minister may have regard to any earlier proposal relating to the same or like works and any earlier objections or comments received by the Commission or the Corporation relating to that proposal.

[Section 91 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.42.]

Subdivision C — General works

[Heading inserted by No. 25 of 1985 s.19.]

92. Power to carry out general works

The Commission or the Corporation may carry out, or undertake the construction or provision of, general works, if the Commission or the Corporation has complied with sections 93, 94 and 95, but not otherwise.

[Section 92 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.42.]

93. Notices

- (1) The Commission or the Corporation shall —
- (a) cause to be prepared plans and a description of proposed general works and cause those plans and that description, or certified copies, to be deposited —
 - (i) in the head office of the Commission or the Corporation; and
 - (ii) where the proposed works are to be outside the Metropolitan Water, Sewerage, and Drainage Area, in the district office of the Commission or the Corporation nearest to the locality which will benefit from the proposed works;
- and
- (b) cause a notice, and an extract or illustration of the plans and a copy of the description referred to in paragraph (a) sufficient to indicate the nature and extent of the proposed general works, to be served on —
 - (i) the owner and the occupier of any land which is to be entered for the purposes of the proposed works or is, or the use of which is, in the opinion of the Commission or the Corporation, likely to be adversely affected; and
 - (ii) any local government in the area of which the proposed works will be situate or which, in the opinion of the Commission or the Corporation,

has a material interest in the proposal or the services to be provided by the works, specifying the details set forth in subparagraphs (i), (ii), (iii) and (iv) of section 88(1)(b) and nominating a date, which shall be a date not earlier than 7 days after service of the notice, by which all objections to, or comments upon, the proposal must be received by the Commission or the Corporation.

- (2) The plans and description referred to in subsection (1) shall be made available by the Commission or the Corporation for inspection by any person or local government upon whom or which a notice has been served pursuant to subsection (1)(b), at the times and places specified in the notice.

[Section 93 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.42; No. 14 of 1996 s.4; No. 57 of 1997 s.126(3).]

94. Objections and comments

- (1) Any person or local government upon whom or which notice has been served pursuant to section 93 may, in writing, object to or comment upon the carrying out, construction or provision of the proposed works.
- (2) Every such objection or comment shall be lodged with the Commission or the Corporation by the date specified in the notice.
- (3) Where the Commission or the Corporation so determines, and whether or not by reason of objections or comments received, the Commission or the Corporation may amend the proposal by making alterations to the plans or description so deposited, whether to meet objections or comments or otherwise, but shall advise the persons who are, in the opinion of the Commission or the Corporation, likely to be adversely affected by such alterations.

[Section 94 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.42; No. 14 of 1996 s.4.]

95. Authorization for general works

- (1) Where —
- (a) the Commission or the Corporation has complied with the requirements of sections 93 and 94 and —
 - (i) no objections or comments have been received by the time specified in the notices served pursuant to section 93(1); or
 - (ii) any objection or comment material to the proposal has been met;
 - and
 - (b) the Commission or the Corporation does not require the authorization of the Minister to a deviation from the plan pursuant to section 97(4),
- the Commission or the Corporation is authorized to proceed to carry out, construct or provide the general works.
- (2) Subject to subsection (1), where the Commission or the Corporation considers that the requirements of sections 93 and 94 have been complied with but that objections or comments material to the proposal have not been met by amendment of the proposal, the Commission or the Corporation shall submit the proposal to the Minister informing him of the original proposal and, if it has been altered, the manner in which it has been altered and shall furnish to the Minister such plans, description, specifications, estimates or other information as the Minister may require relating thereto.
- (3) Any question as to whether or not an interest, objection or comment is material to a proposal may be determined by the Commission or the Corporation.
- (4) After considering the proposal submitted to him pursuant to subsection (2) the Minister may —
- (a) authorize the carrying out, construction or provision of the proposed general works; or

(b) decline to authorize the proposed general works.

[Section 95 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.42.]

Subdivision D — Exempt works

[Heading inserted by No. 25 of 1985 s.19.]

96. Commission or the Corporation to carry out exempt works

Exempt works may be carried out, undertaken, constructed or provided by or on behalf of the Commission or the Corporation without any requirement for notification or advertisement of those works.

[Section 96 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.42.]

Subdivision E — Deviation and modification

[Heading inserted by No. 25 of 1985 s.19.]

97. Deviation and modification

- (1) Where the Commission or the Corporation is of the opinion that any deviation from the proposed line of works may be necessary, the Commission or the Corporation may, in preparing the plans of the proposed works pursuant to section 88 or section 93, show on those plans a limit within which the line of works as constructed may deviate to accommodate changes in location not inconsistent with the general proposal and any such deviation shall, if the works are authorized, be taken to be authorized.
- (2) Whether or not a limit within which the line of works may deviate during construction is shown on the plans of authorized works, the Commission or the Corporation in carrying out the works may deviate not more than 20 metres from the location shown on those plans if —
 - (a) the change is of a nature not inconsistent with the general proposal; and

- (b) where the proposed works are to be constructed or provided on land other than —
- (i) unoccupied Crown land; or
 - (ii) a road reserve,
- the deviation is agreed in writing by the owner and occupier of the affected land.
- (3) The Commission or the Corporation may, during the carrying out, construction or provision of works, depart from any description, proposal or plans authorized, and may make such modifications as are required by the circumstances, if the departure is agreed in writing by the owner and occupier of the affected land.
- (4) Where the Minister is satisfied that a deviation or modification of a kind to which subsection (1), subsection (2) or subsection (3) does not apply is not inconsistent with the general proposal, is necessary in the public interest, and does not adversely affect the interest of any person who is the owner or occupier of the land where the works are to be situate, he may authorize the carrying out of the proposal as so varied notwithstanding that the provisions of —
- (a) sections 88, 89 and 90; or
 - (b) sections 93, 94 and 95,
- as the case requires, have not been complied with in relation thereto.

[Section 97 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.42.]

Division 3 — Street works

[Heading inserted by No. 25 of 1985 s.19.]

98. Alterations to fittings in streets

Subject to section 99, where the Corporation considers it necessary at any time to alter the position of any pipes, wires or

other fittings or apparatus which are laid on, in, over or under any street and are under the control or management of any person, local government or department then the Corporation may by notice in writing request any such person, local government or department concerned to effect the alterations in such manner and within such reasonable time as is specified in that notice, and —

- (a) where that notice is complied with, the reasonable expenses incurred by that person, local government or department attendant upon or connected with those alterations shall be repayable by the Corporation; but
- (b) where that notice is not complied with, the Corporation may at its own cost cause such alterations to be made to those works as are required by the Corporation.

[Section 98 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.41; No. 14 of 1996 s.4.]

99. Street levels and widths

- (1) Where the Corporation proposes to place any works in any street, the local government or department responsible for determining the level of that street shall, within 10 days of the service of a written request from the Corporation or within such extended time as the Corporation at the request of the local government or department may allow, furnish the Corporation with particulars of any ascertained or proposed levels, or method of surfacing of that street, and in default of the furnishing of those particulars the existing contour of the street shall for the purposes of the Corporation relating to those works be deemed to be the level.
- (2) A local government or department having the control and management of any street shall give the Corporation at least 10 clear days notice in writing of its intention to change the level, width or surfacing of any street in which any works of the Corporation have been placed.

- (3) The Corporation may, within the period of notice referred to in subsection (2) or within such extended period as the local government or department, at the request of the Corporation, may allow, give notice to the local government or department specifying —
- (a) whether the Corporation intends to raise, lower or otherwise alter the position or alignment of any works of the Corporation in a street the level, width or surfacing of which is to be changed; and
 - (b) the time by which the Corporation estimates the work will have been carried out.
- (4) Where the notice required by subsection (2) is given the cost to the Corporation of doing the work referred to in a notice pursuant to subsection (3) shall be a debt due to the Corporation by the local government or department having the control and management of that street only in so far as the works carried out by the Corporation were attendant upon or connected with that change.
- (5) Where the notice required by subsection (2) is not given, the local government or department concerned shall be liable to make full compensation for, or otherwise indemnify the Corporation against, any loss, damage or costs arising from or in relation to any such change.

[Section 99 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.41; No. 14 of 1996 s.4.]

100. Breaking up of streets

The Corporation shall not open or break up the surface of any street, where a major obstruction of the street or dislocation of traffic will be caused thereby, unless the Corporation —

- (a) has given to the local government or department having the control and management of the street not less than 48 hours notice of its intention; or

- (b) is of the opinion that the circumstances are such that an emergency situation exists.

[Section 100 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.41; No. 14 of 1996 s.4.]

101. Streets broken up to be reinstated

Where the Corporation opens or breaks up the surface of any street or pavement the Corporation shall —

- (a) with all convenient speed complete the work for which it is broken up and fill in the ground, and reinstate and make good or cause to be reinstated or made good that surface; and
- (b) while any portion of the surface of the street or pavement continues to be opened or broken up, cause that portion of the street or pavement to be clearly marked with warning notices or otherwise guarded and a sufficient light to be kept there at night.

[Section 101 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.41.]

Division 4 — Provision of information as to works

[Heading inserted by No. 25 of 1985 s.19.]

102. Records and plans

- (1) The Corporation shall cause to be kept records or plans of each area in respect of which water services are provided, in such form, and with such particulars of mains, sewers, drains and other works, as the Corporation may think expedient, and cause those records or plans to be from time to time revised, and such additions made thereto as will show the works as they exist from time to time.
- (2) The records and plans shall, during the office hours of the Corporation, be open to the inspection of any interested person who may, where the records have been stored by means of a

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mechanical, electronic or other device, request that the information be compiled and be available to be inspected by him in the form of a plan.

- (3) A copy of the records or plans, or an extract therefrom, shall be supplied by the Corporation upon payment of the prescribed fee.

[Section 102 inserted by No. 25 of 1985 s.19; amended by No. 73 of 1995 s.41.]

Part IX — Infringement notices

[Heading inserted by No. 25 of 1985 s.20.]

103. Infringement notices

(1) In this section —

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

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

“**authorized person**” means a person authorized, or of a class authorized, under the regulations to give infringement notices in respect of the offences specified in relation to that person or class in the regulations;

“**designated person**” means a person designated, or of a class designated, under the regulations to whom payment may be made of modified penalties for the offences specified in relation to that person or class in the regulations;

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

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

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

(2) An authorized person who has reason to believe that a person has committed an offence against this Act or a relevant Act that is prescribed to be an offence that may be dealt with under this section and is an offence in respect of which the person is authorized to give a notice under this section may give to that person a notice in the prescribed form informing him that if he does not wish to be prosecuted for the alleged offence in a court

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he may, within a period of 21 days after the giving of the notice, pay to a person specified in the notice, other than the person giving the notice, the amount of money specified in the notice as being the modified penalty for that offence.

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

- (7) Any amount paid by way of modified penalty pursuant to an infringement notice that has been withdrawn under subsection (6) shall be refunded.
- (8) Where, pursuant to an infringement notice, the modified penalty has been paid in accordance with the notice within the period specified therein or within such further time as is allowed and the infringement notice has not been withdrawn under subsection (6), no proceedings shall be brought or penalty shall be imposed that could not be brought or imposed if the person to whom the infringement notice was given had been convicted by a court of, and punished for, the alleged offence.
- (9) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (7), be dealt with as if it were a fine imposed by a court as a penalty for an offence.

[(10) repealed]

- (11) The Commission and the Corporation shall issue to any member of staff who is an authorized person a certificate in the prescribed form which that person shall produce whenever required to do so by a person to whom he has given or is about to give an infringement notice.

[Section 103 inserted by No. 25 of 1985 s.20; amended by No. 110 of 1985 s.11; No. 73 of 1995 s.40; No. 78 of 1995 s.130; No. 84 of 2004 s. 80.]

Notes

¹ This is a compilation of the *Water Agencies (Powers) Act 1984* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Water Authority Act 1984</i>	3 of 1984	18 May 1984	1 Jul 1985 (see s. 2 and <i>Gazette</i> 7 Jun 1985 p. 1931)
<i>Acts Amendment and Repeal (Water Authorities) Act 1985, Part II</i>	25 of 1985	6 May 1985	1 Jul 1985 (see s. 2 and <i>Gazette</i> 7 Jun 1985 p. 1931)
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Water Authorities) Act 1985, Part II</i> ³	110 of 1985 (as amended by No. 24 of 1987 s. 156; No. 74 of 2003 s. 24)	17 Dec 1985	s. 3 -7, 9-11 and 13: 14 Mar 1986 (see s. 2 and <i>Gazette</i> 14 Mar 1986 p.726); s. 8: 1 Feb 1990 (see s. 2 and <i>Gazette</i> 5 Jan 1990 p.38); s. 12 repealed by No. 74 of 2003 s. 24
<i>Acts Amendment (Water Authority Rates and Charges) Act 1987, Part I</i> ¹²	24 of 1987	25 Jun 1987	14 Jul 1987 (see s. 2 and <i>Gazette</i> 14 Jul 1987 p. 2647)
<i>Water Authority Amendment Act 1987</i>	48 of 1987	3 Oct 1987	13 Nov 1987 (see s. 2 and <i>Gazette</i> 13 Nov 1987 p. 4141)
<i>Acts Amendment (Public Service) Act 1987, section 32 (schedule 2, item 53)</i>	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Acts Amendment (Land Administration) Act 1987, Part XVII</i>	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and <i>Gazette</i> 16 Sep 1988 p. 3637)

Short title	Number and year	Assent	Commencement
<i>Financial Administration Legislation Amendment Act 1993, sections 11 and 15</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Annual Valuations and Land Tax) Act 1993, section 13⁴</i>	17 of 1993	29 Nov 1993	29 Nov 1993
<i>Acts Amendment (Public Sector Management) Act 1994, section 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Water Authority Amendment Act 1994</i>	34 of 1994	8 Jul 1994	8 Jul 1994
<i>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994
<i>Planning Legislation Amendment Act (No. 2) 1994, section 46(4)</i>	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995, Part 2^{5, 6, 7, 8}</i>	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2 and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Sentencing (Consequential Provisions) Act 1995, Part 80</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996, Part 3^{9, 10}</i>	12 of 1996	28 Jun 1996	28 Jun 1996 (see s. 2)
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)

Water Agencies (Powers) Act 1984

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Land Administration) Act 1997, Part 64 and section 142</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Water Legislation Amendment Act 1997, Part 5</i>	32 of 1997	3 Oct 1997	15 Apr 1998 (see s. 2 and <i>Gazette</i> 15 Apr 1998 p. 2041)
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 126</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2)
<i>Water Services Coordination Amendment Act 1999, section 11(7)</i>	39 of 1999	9 Nov 1999	19 Jun 2000 (see s. 2 and <i>Gazette</i> 16 Jun 2000 p. 2939)
<i>Economic Regulation Authority Act 2003 s. 62</i>	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 125</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 s. 571¹³</i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and Year	Assent	Commencement
<i>Water Legislation Amendment (Competition Policy) Act 2005</i> s. 56-60(1), 61-62 ¹⁴	25 of 2005	12 Dec 2005	To be proclaimed (see s. 2)

N.B. This Act is affected by the *Strata Titles Act 1985* (No. 33 of 1985).

² Now see *Public Sector Management Act 1994* (No. 31 of 1994).

³ Section 13 of the *Acts Amendment (Water Authorities) Act 1985* (No. 110 of 1985) reads as follows —

“

13. Validation of Order in Council

The transfer of functions from a statutory authority to the Authority by the Governor by Order in Council made, before the coming into operation of this section, under section 4(1) of the principal Act shall not be invalid by reason only of the fixing of a day earlier than 28 days after the making of that Order as the day on which, in respect of that statutory authority, the provisions of subsection (2) of section 7 of the principal Act have effect.

”.

⁴ Section 3 of the *Acts Amendment (Annual Valuations and Land Tax) Act 1993* (No. 17 of 1993) reads as follows —

“

3. Application

The amendments made by this Part have effect in relation to a rate or tax for any period commencing on or after 1 July 1993 but do not have any effect in relation to a rate or tax for any period commencing before that date.

”.

⁵ Section 11(2) and (3) of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* (No. 73 of 1995) reads as follows —

“

- (2) The repeal of section 6(1) of the principal Act by this section does not affect the application of any regulations, by-laws or rules that continued to apply under that subsection and were in force immediately before the commencement of this section.
- (3) Regulations, by-laws or rules referred to in subsection (2) may be amended or repealed —

- (a) in the case of regulations or by-laws, as if they were made under the principal Act as amended by this Act; and
- (b) in the case of rules, as if they were by-laws made under the principal Act as amended by this Act.

⁶ Section 20(2) of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* (No. 73 of 1995) reads as follows —

- “(2) Any by-laws made or deemed to be made under section 34(1) of the principal Act as in force immediately before the commencement of this section are to continue in operation and have effect for all purposes as if made under that subsection as amended by this section.

⁷ Sections 189-200, and sections 203-218 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* (No. 73 of 1995) read as follows —

Part 14 — Transitional provisions

Division 1 — Preliminary

189. Definitions

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;

“**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 2 — Devolution of Water Authority’s assets, liabilities etc.

190. Minister to make order for allocation of assets and liabilities

- (1) As soon as is practicable after this section comes into force the Minister is to make and publish in the *Gazette* an order specifying —
 - (a) how assets, rights and liabilities of the Authority are to be allocated to the Corporation and the Commission; and
 - (b) any proceedings in which the Corporation or the Commission is to be, or both of those bodies are to be, substituted for the Authority as a party or parties.
- (2) An allocation under subsection (1)(a) may be made to —
 - (a) the Corporation;
 - (b) the Commission; or
 - (c) both of those bodies either jointly or as tenants in common in equal or unequal shares.
- (3) Without limiting subsection (1), an order under that subsection may —
 - (a) provide for the allocation of income in respect of any asset;

- (b) in respect of a particular liability, allocate a specified share of the liability to each of the Corporation and the Commission;
 - (c) provide for the transfer, debiting, crediting, closing or otherwise dealing with any account, reserve, fund, provision, profit or liability for any levy; and
 - (d) contain such incidental or supplementary provisions as the Minister thinks fit.
- (4) The transfer order may allocate particular assets, rights or liabilities or classes of assets, rights or liabilities by reference to schedules in which they are specified; and those schedules —
- (a) need not be published in the *Gazette*; but
 - (b) must be available for inspection by the public at a place identified in the order.
- (5) The transfer order may be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the commencement day.

191. Power to make subsequent order

- (1) Where for any reason it is not practicable to allocate any asset, right or liability to the Corporation or the Commission, or to both of those bodies, under section 190 before the commencement day —
- (a) the transfer order is to specify that the asset, right or liability is to be allocated under this section; and
 - (b) the Minister may make a further order under section 190 in respect of that asset, right or liability not later than 90 days after the commencement day.
- (2) An order under subsection (1) is to have effect from the commencement day.
- (3) The Authority is to be taken to continue to hold an asset or right, and to be liable for a liability, to which subsection (1) applies until the further order is made.

192. Transfer of assets and liabilities to the Corporation

- (1) On and after the commencement day —
- (a) the assets and rights of the Authority allocated to the Corporation by the transfer order vest in the Corporation by force of this section;
 - (b) the liabilities of the Authority (including a share of a liability) allocated to the Corporation by the transfer

order become, by force of this section, the liabilities of the Corporation;

- (c) without limiting section 214, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if the Corporation were substituted for the Authority in the agreement or instrument;
 - (d) the Corporation is a party to any proceedings by or against the Authority commenced before the commencement day in accordance with any provision of the transfer order to that effect made under section 190(1)(b);
 - (e) any proceedings or remedy that might have been commenced by or available against or to the Authority in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b), may be commenced and are available, by or against or to the Corporation;
 - (f) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement day by, to or in respect of the Authority (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 Corporation;
 - (g) the Authority is to deliver to the Corporation all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —
 - (i) the assets, rights and liabilities referred to in paragraphs (a) and (b); and
 - (ii) proceedings referred to in paragraph (d);and
 - (h) all provisions of the transfer order relevant to this section have effect.
- (2) Subsection (1)(c) and (e) has effect subject to any provision of the transfer order made under section 190(3)(b).

193. Transfer of assets and liabilities to the Commission

- (1) On and after the commencement day —
 - (a) the assets and rights of the Authority allocated to the Commission by the transfer order vest in the Commission by force of this section;

- (b) the liabilities of the Authority (including a share of a liability) allocated to the Commission by the transfer order become, by force of this section, the liabilities of the Commission;
 - (c) subject to section 214, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if the Commission were substituted for the Authority in the agreement or instrument;
 - (d) the Commission is a party to any proceedings by or against the Authority commenced before the commencement day in accordance with any provision of the transfer order to that effect made under section 190(1)(b);
 - (e) any proceedings or remedy that might have been commenced by or available against or to the Authority in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b), may be commenced and are available, by or against or to the Commission;
 - (f) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement day by, to or in respect of the Authority (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;
 - (g) the Authority is to deliver to the Commission all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —
 - (i) the assets, rights and liabilities referred to in paragraphs (a) and (b); and
 - (ii) proceedings referred to in paragraph (d);and
 - (h) all of the provisions of the transfer order relevant to this section have effect.
- (2) Subsection (1)(c) and (e) has effect subject to any provision of the transfer made under section 190(3)(b).

194. Transfer of assets and liabilities to both the Corporation and the Commission

On and after the commencement day —

- (a) the assets and rights of the Authority allocated to the Corporation and the Commission jointly by the transfer order vest in those bodies jointly by force of this section;
- (b) the assets and rights of the Authority allocated to the Corporation and the Commission as tenants in common by the transfer order vest in those bodies as tenants in common in the shares specified in the transfer order by force of this section;
- (c) the liabilities of the Authority allocated to the Corporation and the Commission jointly by the transfer order become, by force of this section, the liabilities of those bodies jointly;
- (d) subject to section 214, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a), (b) and (c) has effect, by force of this section, as if the Corporation and the Commission were substituted for the Authority in the agreement or instrument;
- (e) the Corporation and the Commission jointly are parties to any proceedings by or against the Authority commenced before the commencement day in accordance with any provision of the transfer order to that effect made under section 190(1)(b);
- (f) any proceedings or remedy that might have been commenced by or available against or to the Authority in relation to the assets, rights and liabilities referred to in paragraphs (a), (b) and (c), may be commenced and are available, by or against or to the Corporation and the Commission jointly or severally in accordance with the transfer order;
- (g) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a), (b) and (c) before the commencement day by, to or in respect of the Authority (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 Corporation and the Commission jointly or severally in accordance with the transfer order;
- (h) the Authority is to deliver to the Corporation and the Commission all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —
 - (i) the assets, rights and liabilities referred to in paragraphs (a), (b) and (c); and

- (ii) proceedings referred to in paragraph (e);
and
- (i) all of the provisions of the transfer order relevant to this section have effect.

195. Unallocated assets and liabilities

Subject to section 191, on and after the commencement day —

- (a) any assets and rights of the Authority that do not vest in the Corporation or the Commission under section 192, 193 or 194 are to be dealt with as the Minister directs;
- (b) any liability of the Authority that does not become a liability of the Corporation or the Commission under section 192, 193 or 194 is, so far as it is properly payable, to be discharged in such manner and from such source as the Minister, with the approval of the Treasurer, directs;
- (c) subject to section 214, any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if the State were substituted for the Authority in the agreement or instrument;
- (d) any proceedings or remedy that might have been commenced by or available against or to the Authority in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b), may be commenced and are available, by or against or to the State;
- (e) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement day by, to or in respect of the Authority (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 State; and
- (f) the Authority is to deliver to the Minister all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the assets, rights and liabilities referred to in paragraphs (a) and (b).

196. Debt paper

- (1) Without limiting section 192, 193 or 194 any debt paper which devolves under any of those sections, and the determination of rights and obligations in respect of the same, continue to be governed by section 54 of the principal Act and by-laws made under section 55 of that Act, despite the repeal of those sections, as if —

- (a) those sections and by-laws remained in force; and
 - (b) references in those sections and by-laws to the Authority were references to the Corporation or the Commission either individually, jointly or severally in accordance with the transfer order.
- (2) The Minister may, by further by-laws, amend by-laws that are made applicable by subsection (1).

197. Guarantees in respect of Authority

- (1) A guarantee under section 52(1) or 54(4) of the principal Act as in force immediately before the commencement day is not affected by —
- (a) any provision of this Act, including without limitation the transfer of any liability of the Authority under section 192, 193 or 194 to the Corporation or the Commission individually or to those bodies jointly; or
 - (b) any transfer, vesting or assumption of any liability of the Authority to, in or by the Corporation or the Commission, or those bodies jointly, by any other means.
- (2) Any guarantee referred to in subsection (1) is to continue in force and is to be read and construed, on and from —
- (a) the commencement day; or
 - (b) the day on which the transfer, vesting or assumption by any other means referred to in subsection (1) is effective,
- as if it were a guarantee in respect of the body to, in or by which the liabilities have been transferred, vested or assumed.
- (3) Despite its repeal by section 26 of this Act, section 52(4) of the principal Act is to be taken to continue to apply for the purposes of subsection (2).
- (4) The Treasurer may enter into any instrument confirming the continued liability of the State under a guarantee referred to in subsection (1).
- (5) Subject to subsection (7), sections 83 and 84 of the *Water Corporation Act 1995* are to be taken to apply to a liability of the Corporation referred to in subsection (1) if a guarantee of that liability cannot be preserved under this section (whether because the guarantee is governed otherwise than by the law of the State or for any other reason).
- (6) Subject to subsection (7), sections 29 and 30 of the *Water and Rivers Commission Act 1995* are to be taken to apply to a liability of the Commission referred to in subsection (1) if a guarantee of that liability cannot be preserved under this section (whether

because the guarantee is governed otherwise than by the law of the State or for any other reason).

- (7) If a guarantee (“**the original guarantee**”) cannot be preserved as mentioned in subsection (5) or (6) and the lender requests the Treasurer to exercise powers referred to in that subsection to give a guarantee in the same terms as the original guarantee, the Treasurer is to comply with that request.
- (8) By virtue of this subsection, any sum paid by the Treasurer under a guarantee referred to in subsection (1) in respect of the Corporation constitutes a charge on the assets of the Corporation.

198. Authority to complete necessary transactions

- (1) Where any asset, right or liability of the Authority cannot be properly vested in or succeeded to by the Corporation or the Commission, or by both of those bodies, by the operation of this Part (whether because the matter is governed otherwise than by the law of the State, or for any other reason) —
 - (a) the Authority is to be taken to continue to hold or be liable for that asset, right or liability until the same is effectively vested in or succeeded to by the Corporation or the Commission, or by both of those bodies, in accordance with the transfer order; and
 - (b) the Authority is to take all practicable steps for the purpose of securing that such asset, right or liability is effectively vested in or succeeded to by the Corporation or the Commission, or by both of those bodies, in accordance with the transfer order.
- (2) The fact that subsection (1)(a) applies to an asset, right or liability that is allocated to the Corporation or the Commission, or to both of those bodies, under this Part does not affect the duty of the Corporation or the Commission, or both of those bodies, to account for and report on that asset, right or liability under the written law by which the body is established.

199. Exemption from State taxation

- (1) In this section —

“**State tax**” includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge under a law of the State.
- (2) State tax is not payable in relation to —
 - (a) anything that occurs by the operation of this Part; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed,

lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of, giving effect to this Part.

- (3) The Treasurer or a person authorized by the Treasurer may, on request by the Corporation or the Commission, certify in writing that —
 - (a) a specified thing occurred by the operation of this Part; or
 - (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is conclusive evidence of the matters it certifies, except so far as the contrary is shown.

200. Registration of documents

- (1) The relevant officials are to take notice of the provisions of this Part and are empowered to record and register in the appropriate manner the necessary documents, and otherwise to give effect to this Part.
- (2) Without limiting subsection (1), a statement in an instrument executed by the Corporation or the Commission that any estate or interest in land or other property has become vested in it or in those bodies jointly or in specified shares under section 192, 193 or 194 is evidence of that fact, and the relevant official is entitled to rely on that statement without making further enquiry.
- (3) In subsection (1) —

“relevant officials” means the Registrar of Titles, the Registrar of Deeds, the Ministers respectively administering the *Land Act 1933* and the *Mining Act 1978* and any other person authorized by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property.

Division 4 — Staff, transition of employment

203. Transition to staff of Corporation

Any agreement made at any time between the Authority and a person for the employment of that person on the staff of the Corporation has effect after the commencement of section 15 of the *Water Corporation Act 1995* as if the person had been engaged by the board of the Corporation under that section.

204. Transition to staff of Commission

- (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 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.

205. Transition to staff of Coordinator

Any agreement made at any time between the employing authority of the department of the Public Service designated as the Office of Water Regulation (or as it may be redesignated) and a person for the employment of that person on the staff of that Office has effect after the commencement of Part 2 of the *Water Services Coordination Act 1995* as if the person had been appointed in accordance with section 6 of that Act.

206. Corporation may be constituted an SES organization

- (1) Despite sections 5 and 6 of the *Water Corporation Act 1995* the Minister for Public Sector Management (in this section called “**the Minister**”) may by order published in the *Gazette* (“**an order**”) constitute the Corporation as an SES organization within the meaning in the *Public Sector Management Act 1994* (“**the PSMA**”).

- (2) An order is only to be made if the Minister is satisfied that it is necessary to do so to make temporary provision for the employment of persons who before the commencement day were employed on the staff of the Authority but whose employment is not otherwise covered by this Division after that day.
- (3) An order —
 - (a) is to provide for the expiry of the order on a specified day; and
 - (b) may contain such incidental and supplementary provisions as the Minister thinks fit.
- (4) Subsection (3)(a) does not prevent the amendment of an order to extend its operation or the making of a new order on the expiry of an order.
- (5) The effect of an order is that while the order is in force, and subject to its terms —
 - (a) the board of the Corporation is to perform the functions of an employing authority under the PSMA in respect of persons referred to in subsection (2); and
 - (b) the chief executive officer of the Corporation is to perform the functions of a chief executive officer under the PSMA in respect of those persons, but only to the extent that he or she would be required to do so if he or she were deemed to be a chief executive officer under section 4(6) of the PSMA.
- (6) The Minister may amend an order by further order published in the *Gazette*, and is to revoke an order in like manner as soon as the Minister is satisfied that the need referred to in subsection (2) no longer applies.

207. Saving

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.

208. Employees' rights preserved

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

209. Definitions

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 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.

210. Annual report for part of a year

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.

211. Completion of things commenced

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.

212. Continuing effect of things done

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.

213. Immunity to continue

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.

214. References to Authority in Government agreements

- (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*.

215. Agreements and instruments generally

- (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

- (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.

216. Performance of necessary transitional functions

- (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.

217. Corporation, time to obtain certain licences

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.

218. Further transitional provision may be made

- (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.

”.

⁸ Section 219 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* (No. 73 of 1995) reads as follows —

“

219. Saving

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;
- (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.

”.

⁹ Section 9 of the *Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996* (No. 12 of 1996) reads as follows —

“

9. Application

- (1) The amendments made by section 10 apply only in relation to a charge in respect of a lot created through a subdivisional plan or diagram approved by the Western Australian Planning Commission after 30 June 1996.
- (2) The amendments made by section 11 apply if the request to defer payment of an amount in respect of headworks is made after 30 June 1996, regardless of whether the requirement to pay the amount was imposed before or after this Act commenced.

”.

¹⁰ Part 6 of the *Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996* (No. 12 of 1996) reads as follows —

“

Part 6 — Review

17. Review

- (1) Each relevant Minister is to carry out a review of the operation and effectiveness of the amendments made by this Act as soon as is practicable after the expiration of 3 years from the commencement of this Act.
- (2) The relevant Ministers are to prepare a joint report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.
- (3) In this section —
“**relevant Minister**” means a Minister responsible for the administration of an Act amended by this Act or the Minister responsible for the administration of the *Town Planning and Development Act 1978*.

”.

¹¹ References to the *Land Act 1933* are to be construed as being references to the *Land Administration Act 1997* (No. 30 of 1997) according to section 281(3) of that Act.

¹² Section 4 of the *Acts Amendment (Water Authority Rates and Charges) Act 1987* reads as follows:

“

4. Application of Part

The amendments effected by this part are of no effect in relation to the *Land Drainage Act 1925* or the doing of anything under or for the purposes of that Act and the principal Act applies in relation thereto as if this Part had not been enacted.

”

¹³ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 5*, the *State Administration Tribunal Act 2004 s. 167 and 169*, and the *State Administrative Tribunal Regulations 2004 r. 28 and 42* deal with certain transitional issues some of which may be relevant for this Act.

¹⁴ On the date as at which this compilation was prepared, the *Water Legislation Amendment (Competition Policy) Act 2005 56-60(1), 61-62* had not come into operation. It reads as follows:

“

Part 7 — Water Agencies (Powers) Act 1984

56. The Act amended

The amendments in this Part are to the *Water Agencies (Powers) Act 1984*.

57. Section 41 amended

- (1) Section 41(1)(g) is amended as follows:
 - (a) by deleting “, notwithstanding the limits imposed by sections 41A and 41B,”;
 - (b) by deleting “, subject to those limits,”.
- (2) Section 41(1)(k) is amended by deleting “but subject to section 41A,”.

58. Section 41A repealed

Section 41A is repealed.

59. Section 41B repealed

Section 41B is repealed.

60. Part III Division 2 inserted and consequential amendment to Water Services Licensing Act 1995

- (1) After Part III Division 1A the following Division is inserted —

“

Division 2 — Agreements as to charges

42. Agreements for different liability

- (1) The Corporation and a person who would be liable to pay a statutory charge (the “customer”) may agree that, instead of becoming liable to pay a statutory charge described in the agreement, the customer will become liable as specified in the agreement.
- (2) The agreement may provide for statutory charge provisions identified in the agreement to apply, with any modifications that may be agreed, in relation to the customer’s agreed liability.
- (3) The agreement has effect according to its terms, except that a person who is not bound by the agreement cannot be placed in a less favourable position than the person would have been in if the agreement had not been made.

- (4) In this section —

“**agreed liability**” means the customer’s liability under the agreement that is instead of liability to pay the statutory charge;

“**statutory charge**” means a charge under Division 1A relating to the provision by the Corporation of water services in relation to land;

“**statutory charge provisions**” means provisions of this Act or a relevant Act that would have applied in relation to the customer’s liability to pay a statutory charge if the customer’s agreed liability had not been substituted for it.

”.

61. Section 75 amended

Section 75(1) is amended as follows:

- (a) by deleting “seeks to acquire” and inserting instead —
“ seeks the acquisition of ”;
- (b) by deleting “Commission or the Corporation may, subject to section 81(11), acquire such lesser estate or interest and shall not be required to acquire” and inserting instead —

“

lesser estate or interest may, subject to section 81(11), be acquired instead of acquiring

”.

62. Section 81 amended and transitional

- (1) Section 81(4), (5), (6), (7), (8), (9), (10), (11), (12), and (13) are amended by deleting “or the Corporation” in each place where it occurs.
- (2) Any procedure that —
 - (a) has begun under the *Water Agencies (Powers) Act 1984* section 81 in relation to —
 - (i) the acquisition by the Corporation of land or an estate or interest in land; or
 - (ii) the claiming, determination, assessment or recovery of compensation payable by the Corporation in relation to such an acquisition;and
 - (b) has not been completed immediately before the commencement of this section,may be continued and completed under section 81 of that Act as if subsection (1) had not been enacted.
- (3) In subsection (2) —

“**Corporation**” has the meaning given to that term in the *Water Agencies (Powers) Act 1984* section 3(1).

”.