

Western Australia

## **Water Services Licensing Act 1995**

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## Water Services Licensing Act 1995

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### CONTENTS

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<b>Part 1 — Preliminary</b>		
1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
<b>Part 2 — Role of Economic Regulation Authority</b>		
4.	Functions of Authority	5
<b>Part 3 — Licensing of water services providers</b>		
<b>Division 1 — Controlled areas</b>		
10.	Controlled areas, classification	6
11.	Declaration of controlled areas	6
12.	Areas need not be continuous	7
13.	Consultation	7
14.	Orders to be laid before Parliament	7
<b>Division 2 — Classification of licences</b>		
15.	Classification of operating licences	7
16.	Operating licence, area to which applies	7
<b>Division 3 — Licensing requirements</b>		
17.	Licensing extends to statutory providers	8
18.	Requirement for licences	8
19.	Power to exempt	9
20.	Notice of intention to provide water services	10
21.	Transitional provision	10
<b>Division 4 — Licence application, grant etc.</b>		
22.	Application for licence	11

Contents

---

23.	Matters relevant to grant of licence	12
24.	Terms and conditions of licences	12
25.	Duration of licence	12
26.	Gazettal	13
27.	Licences to be available for inspection	13
28.	Renewal of licence	13
29.	Other laws not affected	14
30.	Transfer of licence	14
31.	Amendment of licence	15
31A.	Matters relevant to determination of public interest	16
31B.	Regulations about public consultation	16
	<b>Division 5 — Duty to provide services</b>	
32.	General duty to provide services	16
33.	Duty in individual cases	17
34.	Prerequisite to making regulations referred to in section 33	18
35.	Interruption etc. of water service	18
	<b>Division 6 — Other duties included in licences</b>	
36.	Asset management system	18
37.	Operational audit	19
38.	Technical standards	19
	<b>Division 7 — Enforcement</b>	
39.	Failure to comply with licence	20
40.	Right of licensee to make submissions	21
41.	Exception where public health endangered	21
42.	Cancellation of licence	21
	<b>Division 8 — Review</b>	
44.	Appeal against Authority's decision	23
	<b>Division 9 — Powers of licensees, other than Corporation</b>	
45.	Extension of certain enactments to licensees	23
46.	Parliamentary disallowance	24
	<b>Division 10 — Transfer of certain assets on land not held by the statutory asset owner</b>	
46A.	Definitions	24
46B.	Minister may make order for transfer of assets	25
46C.	Transfer of assets etc.	27
46D.	Transferor to complete necessary transactions	28
46E.	Exemption from stamp duty	28

46F.	Assets no longer required	29
46G.	Notation on title to affected land	30
46H.	Rectifying omission from transfer order	31
46I.	Saving	32
46J.	Regulations	32
	<b>Division 11 — Licensee operating with holding body</b>	
46K.	Authority may approve of licensee operating with holding body	33
46L.	Licensee to be treated as holder of assets for certain purposes	33
46M.	Certain enactments can be applied to holding body	34
	<b>Part 4 — Inspectors</b>	
47.	Designation of inspectors	35
48.	Certificates of designation	35
49.	Powers of inspection etc.	36
50.	Incriminating statements	36
51.	Inspector may be accompanied	37
52.	Inspector to comply with reasonable requests	37
53.	Power to prohibit use etc.	37
54.	Appeal	38
55.	Offences	38
	<b>Part 5A — Licensing of plumbers and related matters</b>	
	<b>Division 1 — Plumbers Licensing Board</b>	
59.	Board established	39
59A.	Membership of Board	39
59B.	Functions of Board	39
59C.	Powers of Board	40
59D.	Delegation	40
59E.	Minister may give directions	40
59F.	Minister to have access to information	41
59G.	Use of government staff, etc.	43
59H.	Application of <i>Financial Administration and Audit Act 1985</i>	43
	<b>Division 2 — Regulations</b>	
59I.	Definitions	44
59J.	Regulations	44

Contents

---

59K.	Offences against regulations	44
59L.	Adoption of other laws, codes etc.	45
	<b>Part 6 — General</b>	
60A.	Protection from liability	46
60B.	Confidentiality	46
61.	Regulations	47
62.	Review	47
	<b>Schedule 1</b>	<b>49</b>
	<b>Schedule 2</b>	<b>52</b>
	<b>Schedule 3 — Purposes for which, or matters about which, regulations may be made</b>	<b>56</b>
	<b>Notes</b>	
	Compilation table	58
	Provisions that have not come into operation	59

Western Australia

## **Water Services Licensing Act 1995**

**An Act to establish a scheme for the licensing of water services, to confer functions on the Economic Regulation Authority in respect of that scheme and other matters, to establish a Board with functions related to the licensing of plumbers, to provide for regulation making powers in respect of the Board, licensing matters and the carrying out of plumbing work and to make related provisions.**

*[Long title amended by No. 39 of 1999 s.4; No. 67 of 2003 s. 62.]*

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Water Services Licensing Act 1995*<sup>1</sup>.

*[Section 1 amended by No. 67 of 2003 s. 62.]*

### **2. Commencement**

This Act comes into operation on the day on which Part 2 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* comes into operation, that is, on the day fixed by proclamation made under section 2(2) of that Act<sup>1</sup>.

### **3. Interpretation**

In this Act, unless the contrary intention appears —

“**Authority**” means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*;

“**Board**” means the Plumbers Licensing Board established by section 59;

“**controlled area**” means an area for the time being constituted as such under section 11(1);

“**department**” means the department of the Public Service principally assisting the Minister in the administration of this Act;

“**inspector**” means a member of the Authority or a person designated as an inspector under section 47;

“**irrigation**” means any method of —

- (a) causing water from a watercourse, water services works or an artificial collection of water to flow upon and spread over land; or
- (b) applying water to land from a watercourse, water service works or an artificial collection of water,



for the purpose of cultivation of any kind or of tillage or improvement of pasture;

**“licence”** —

- (a) in Schedule 3, means a licence under the regulations; and
- (b) otherwise, means an operating licence;

**“licensee”** means the holder of an operating licence;

**“operating licence”** means a licence granted for the purposes of section 18;

**“plumber”** means a person who carries out plumbing work as defined in section 59I;

**“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, irrigation or drainage services;

**“water services works”** includes —

- (a) waterworks, sewerage works, drainage works and irrigation works;
- (b) excavations, structures, buildings, equipment and plant used or intended to be used for the provision of any water services; and

**s. 3**

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- (c) except where the context otherwise requires, land upon which water services works are constructed or provided.

*[Section 3 amended by No. 39 of 1999 s.5; No. 67 of 2003 s. 62.]*

## **Part 2 — Role of Economic Regulation Authority**

*[Heading inserted by No. 67 of 2003 s. 62.]*

### **4. Functions of Authority**

The functions of the Authority under this Act are —

- (a) to administer the licensing scheme provided for in Part 3;
- (b) to monitor and report to the Minister on the operation of that licensing scheme and on compliance by licensees with their licences;
- (c) to inform the Minister about any failure by a licensee to meet operational standards or other requirements of its licence;
- (d) to monitor —
  - (i) the performance of the water services industry and of those participating in that industry; and
  - (ii) the performance of providers of water services, and, for the purposes of such monitoring, to consult with interested groups and persons; and
- (e) the other functions conferred on the Authority by this Act.

*[Section 4 inserted by No. 67 of 2003 s. 62.]*

*[5-9. Repealed by No. 67 of 2003 s. 62.]*

## **Part 3 — Licensing of water services providers**

### **Division 1 — Controlled areas**

#### **10. Controlled areas, classification**

- (1) Controlled areas are classified as follows —
  - (a) controlled area (water supply services);
  - (b) controlled area (sewerage services);
  - (c) controlled area (irrigation services); or
  - (d) controlled area (drainage services).
- (2) A controlled area is to be designated by reference to one or more of the classifications specified in subsection (1).
- (3) An area of the State may at the same time be included in 2 or more categories of controlled areas but the boundaries of those controlled areas need not be coterminous.

#### **11. Declaration of controlled areas**

- (1) The Governor may by order published in the *Government Gazette* —
  - (a) constitute an area as a controlled area;
  - (b) add an area to, or excise an area from, a controlled area; or
  - (c) cancel the status of an area as a controlled area.
- (2) An order is not to be made under subsection (1) excising an area from a controlled area or cancelling the status of an area as a controlled area unless the Governor is satisfied that water services provided in the area in question will not, after the excision or cancellation, be of a lower standard than those provided in that area before the excision or cancellation.

**12. Areas need not be continuous**

A controlled area may be one continuous area or be made up of 2 or more separate areas.

**13. Consultation**

Where it is proposed that an order be made under section 11, the Minister must, before the order is made, consult with any licensee who will be affected by the proposed order.

**14. Orders to be laid before Parliament**

An order under section 11 is to be laid before each House of Parliament under section 42 of the *Interpretation Act 1984* and that section applies as if the order were a regulation.

**Division 2 — Classification of licences**

**15. Classification of operating licences**

- (1) Operating licences are classified as follows —
  - (a) operating licence (water supply services);
  - (b) operating licence (sewerage services);
  - (c) operating licence (irrigation services); or
  - (d) operating licence (drainage services).
- (2) An operating licence is to be designated by reference to one or more of the classifications specified in subsection (1).

**16. Operating licence, area to which applies**

- (1) An operating licence that has a particular designation, whether solely or together with any other designation, is to apply to an area that has a corresponding designation under section 10, whether solely or together with any other designation.

- (2) For example —
  - (a) an operating licence (water supply services) is only to apply to an area that is designated under section 10 as a controlled area (water supply services); and
  - (b) an operating licence (water supply services and sewerage services) is only to apply in respect of each of those services to an area that is designated under section 10 for that service.
- (3) If an operating licence is designated by reference to more than one classification the boundaries of the controlled areas to which it applies need not be coterminous.

### **Division 3 — Licensing requirements**

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

The requirements of this Division apply to a person despite the fact that the person, in providing a water service, is performing a function that —

- (a) is authorised or provided for by or under a written law; or
- (b) has been approved by the Governor or any other person under a written law.

#### **18. Requirement for licences**

- (1) A person must not provide a water service in a controlled area or part of a controlled area except under the authority of an operating licence granted by the Authority that applies to that area or that part of the area.  
Penalty: \$100 000 and a daily penalty of \$5 000.
- (2) An operating licence may specify the water services works that are to be undertaken, used or operated for the provision of water services, and those works may be situated outside the controlled area for that licence.

*[Section 18 amended by No. 67 of 2003 s. 62.]*

**19. Power to exempt**

- (1) The Governor may by order published in the *Government Gazette* provide for exemptions from section 18(1).
- (1a) The Governor must not make an order under subsection (1) unless he or she is satisfied that it would not be contrary to the public interest to do so.
- (1b) The Governor, in determining whether the making of the order would not be contrary to the public interest, may take into account one or more of the following matters —
  - (a) environmental considerations;
  - (b) social welfare and equity considerations, including community service obligations;
  - (c) economic and regional development, including employment and investment growth;
  - (d) the interests of water services customers generally or of a class of water services customers;
  - (e) the interests of any licensee, or applicant for a licence, in respect of the controlled area or part of a controlled area to which the order, if made, would apply;
  - (f) the importance of competition in water services industry markets;
  - (g) public health considerations in relation to the provision of a safe drinking water supply;
  - (h) the policy objectives of government in relation to water services;
  - (i) any other matter that he or she considers relevant.
- (2) Section 43(4) and (7) to (9) of the *Interpretation Act 1984* applies to an order under subsection (1) as though the order were subsidiary legislation.

*[Section 19 amended by No. 67 of 2003 s. 62.]*

**20. Notice of intention to provide water services**

- (1) A person must not provide any water service in any part of the State that is not a controlled area designated under section 10 for that classification of water service unless the person has given the required notice to the Authority.
- (2) The required notice is that at least 3 months before the provision of the water service commences the person give to the Authority notice in writing of the person's intention to commence the provision of that service.

Penalty: \$10 000.

*[Section 20 amended by No. 67 of 2003 s. 62.]*

**21. Transitional provision**

- (1) This section applies to every person (an **“existing operator”**) that immediately before the commencement of this Part is doing anything that, after that commencement, is required to be licensed under section 18.
- (2) An existing operator is to be treated as if the person were the holder of the relevant operating licence —
  - (a) until the expiry of 120 days after the commencement of this Part; or
  - (b) until —
    - (i) the grant of a licence of that kind to the person has been refused; and
    - (ii) the time for applying under section 44 for a review of the refusal has expired without an application being made or an application has been made but has been unsuccessful,whichever happens first.
- (3) For the purposes of subsection (2)(b)(ii) an application is unsuccessful if it —



- (a) results in the refusal referred to in paragraph (b)(i) of that subsection being confirmed; or
- (b) is withdrawn, discontinued or dismissed.

*[Section 21 amended by No. 55 of 2004 s. 1298.]*

#### **Division 4 — Licence application, grant etc.**

### **22. Application for licence**

- (1) An application for a licence is to be —
  - (a) made in a form approved by the Authority; and
  - (b) accompanied by the prescribed fee.
- (2) Without limiting subsection (1)(a), an applicant for a licence is to inform the Authority of —
  - (a) the nature of the business activities undertaken or to be undertaken by the applicant;
  - (b) where, if a licence is granted, the applicant will have power to determine prices or charges, the methods or principles that the applicant proposes to apply in doing so;
  - (c) the methods or principles that the applicant proposes to apply in the provision of water services;
  - (d) the nature of the construction, operation or maintenance of water services works undertaken or to be undertaken to provide water services; and
  - (e) the terms and conditions of any proposed standard customer contract between the applicant and any purchaser of water services from the applicant.
- (3) The applicant must also provide such other information (including information as to surveys carried out) as the Authority may require for the proper consideration of the application.

*[Section 22 amended by No. 67 of 2003 s. 62.]*

**23. Matters relevant to grant of licence**

The Authority is not to grant a licence unless the Authority is satisfied that —

- (a) the applicant has, and is likely to continue to have, the financial and technical ability to provide the water services that will be covered by the licence; and
- (b) it would not be contrary to the public interest to grant the licence.

*[Section 23 inserted by No. 67 of 2003 s. 62.]*

**24. Terms and conditions of licences**

- (1) A licence is subject to such terms and conditions as are determined by the Authority.
- (2) Without limiting subsection (1) the terms and conditions may include provisions relating to any matter provided for by Schedule 1.
- (3) Despite subsections (1) and (2) conditions relating to any matter referred to in paragraph (d), (e), (j)(i) or (iii) or (m) of Schedule 1 cannot be included in a licence granted to —
  - (a) the Water Corporation established by section 4 of the *Water Corporation Act 1995*; or
  - (b) a Water Board constituted under the *Water Boards Act 1904*.
- (4) A requirement made under paragraph (c) of Schedule 1 must not be inconsistent with any enactment that regulates the financial administration of the Water Corporation or a Water Board.

*[Section 24 amended by No. 67 of 2003 s. 62.]*

**25. Duration of licence**

A licence may be granted or renewed for such period as the Authority thinks fit, but the period cannot exceed 25 years from the day of grant or renewal of the licence.

*[Section 25 amended by No. 67 of 2003 s. 62.]*

**26. Gazettal**

- (1) The Authority must ensure that notice of the grant of a licence is published in the *Government Gazette* as soon as is practicable after the grant.
- (2) The notice is to include —
  - (a) the classification of the licence;
  - (b) the name of the licensee;
  - (c) the term of the licence;
  - (d) the area or areas covered by the licence; and
  - (e) the place where a copy of the licence and any plan may be inspected under section 27.

*[Section 26 amended by No. 67 of 2003 s. 62.]*

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

The Authority is to keep available at its office for inspection by members of the public during normal office hours —

- (a) a copy of every licence, as in force from time to time; and
- (b) if any area covered by a licence is specified by reference to a plan, a copy of the plan.

*[Section 27 amended by No. 67 of 2003 s. 62.]*

**28. Renewal of licence**

- (1) An application for the renewal of a licence is to be —
  - (a) made in a form approved by the Authority; and
  - (b) accompanied by the prescribed fee.
- (2) The Authority is not to renew a licence unless the Authority is satisfied that it would not be contrary to the public interest to do so.

*[Section 28 amended by No. 67 of 2003 s. 62.]*

**29. Other laws not affected**

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

**30. Transfer of licence**

- (1) The Authority may transfer a licence.
- (2) An application for the transfer of a licence is to be —
  - (a) made in a form approved by the Authority by the person to whom the licence is to be transferred; and
  - (b) accompanied by —
    - (i) the licensee's written consent to the transfer of the licence to the applicant; and
    - (ii) the prescribed fee.
- (3) The applicant must provide any additional information that the Authority requires for the proper consideration of the application.
- (4) The Authority is not to transfer a licence unless the Authority is satisfied that —
  - (a) the applicant has, and is likely to continue to have, the financial and technical ability to provide the water services covered by the licence; and
  - (b) it would not be contrary to the public interest to transfer the licence.
- (5) The transfer of a licence may be subject to any terms and conditions that the Authority considers appropriate.
- (6) The transfer of a licence does not affect the term of the licence.

- (7) The Authority is to ensure that notice of the transfer of a licence is published in the *Gazette* as soon as is practicable after the transfer.
- (8) The notice is to include —
  - (a) the classification of the licence;
  - (b) the name of the transferee;
  - (c) the term of the licence;
  - (d) the area or areas covered by the licence; and
  - (e) the place where a copy of the licence and any plan may be inspected under section 27.

*[Section 30 inserted by No. 67 of 2003 s. 62.]*

**31. Amendment of licence**

- (1) The Authority may determine that a licence is to be amended.
- (1a) The Authority is not to make a determination under subsection (1) unless the Authority is satisfied that it would not be contrary to the public interest to do so.
- (2) If the licence specifies a procedure to be followed in making such a determination, the determination may only be made in accordance with that procedure.
- (3) An amendment cannot take effect until it is notified to the licensee under subsection (4) or under the procedure referred to in subsection (2).
- (4) If a licence is amended under this section the Authority must —
  - (a) if subsection (2) does not apply, notify the licensee of the amendment; and
  - (b) ensure that notice is published in the *Government Gazette* indicating the nature of the amendment and the place where a copy of the licence may be inspected under section 27.

**Water Services Licensing Act 1995**

**Part 3** Licensing of water services providers

**Division 5** Duty to provide services

**s. 31A**

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- (5) This section applies to the substitution of a new licence for an existing licence in the same way as it applies to the amendment of a licence.

*[Section 31 amended by No. 67 of 2003 s. 62.]*

**31A. Matters relevant to determination of public interest**

Where the Authority is required under this Division to determine whether something would not be contrary to the public interest, the Authority, in making its determination, may take into account one or more of the matters referred to in section 19(1b).

*[Section 31A inserted by No. 67 of 2003 s. 62.]*

**31B. Regulations about public consultation**

Regulations made under section 61 may require the Authority, before it makes a decision on any application for the grant, renewal or transfer of a licence under this Division, to undertake public consultation in accordance with the procedure specified in the regulations.

*[Section 31B inserted by No. 67 of 2003 s. 62.]*

**Division 5 — Duty to provide services**

**32. General duty to provide services**

- (1) It is a condition of every licence that, subject to this Division, the licensee is to —
- (a) provide the water services; and
  - (b) undertake, maintain and operate any water services works, specified in the licence.
- (2) Subsection (1) does not affect the protection given to the Water Corporation by section 27(5) of the *Water Corporation Act 1995*.

- (3) The Governor may by order published in the *Government Gazette* provide for exemptions from subsection (1).
- (4) Section 43(4) and (7) to (9) of the *Interpretation Act 1984* applies to an order under subsection (3) as though the order were subsidiary legislation.

**33. Duty in individual cases**

- (1) Subject to section 34, regulations made under section 61 may —
  - (a) prescribe standards of performance that are to be achieved in individual cases in the provision of water services; and
  - (b) provide that if a licensee fails to meet such a standard, the licensee is to pay a prescribed amount to any person affected by the failure who comes within a prescribed description.
- (2) The regulations may —
  - (a) include a requirement for a licensee, in prescribed circumstances, to inform a person of his or her rights under the regulations;
  - (b) provide for any dispute under the regulations to be referred to the Authority for determination;
  - (c) make provision for the procedure to be followed in connection with any such reference and for the enforcement of the Authority's determination; and
  - (d) provide for exemptions from the requirements of the regulations.
- (3) Regulations referred to in subsection (1) are to have effect despite section 27(5) of the *Water Corporation Act 1995*.  
*[Section 33 amended by No. 67 of 2003 s. 62.]*

**34. Prerequisite to making regulations referred to in section 33**

Regulations of the kind described in section 33(1) are not to be made or amended unless the Minister has furnished to the Governor a certificate that —

- (a) a copy of, and a statement of reasons for, the proposed regulations or amendment have been served on each existing licensee that will be affected if the proposal is carried into effect;
- (b) a reasonable opportunity has been given to each such licensee to make submissions on the proposal; and
- (c) the Minister has considered any submissions so made.

**35. Interruption etc. of water service**

- (1) This section has effect despite any provision in this Division or in regulations referred to in section 33.
- (2) A licensee may interrupt, suspend or restrict the provision of a water service if in the licensee's opinion it is necessary to do so because of an accident, emergency, potential danger or other unavoidable cause.
- (3) A licensee is not liable for any loss or damage that arises from any such interruption, suspension or restriction except to the extent that an agreement to which the licensee is a party provides otherwise.

**Division 6 — Other duties included in licences**

**36. Asset management system**

- (1) It is a condition of every licence that the licensee is to —
  - (a) provide for an asset management system in respect of the licensee's assets;
  - (b) notify details of the system and any changes to it to the Authority; and



- (c) not less than once in every period of 24 months (or such longer period as the Authority allows) calculated from the commencement of this section, provide the Authority with a report by an independent expert acceptable to the Authority as to the effectiveness of the system.
- (2) An asset management system is to set out the measures to be taken by the licensee for the proper maintenance of assets used in the provision of water services and for the undertaking, maintenance and operation of water services works.

*[Section 36 amended by No. 67 of 2003 s. 62.]*

**37. Operational audit**

- (1) It is a condition of every licence that the licensee is to, not less than once in every period of 24 months (or such longer period as the Authority allows) calculated from the commencement of this section, provide the Authority with an operational audit conducted by an independent expert acceptable to the Authority.
- (2) An operational audit is an audit of the effectiveness of measures taken by the licensee to maintain any quality and performance standards referred to in the licence.
- (3) The Authority is to present to the Minister a report on each operational audit within one month after its receipt of the audit.

*[Section 37 amended by No. 67 of 2003 s. 62.]*

**38. Technical standards**

- (1) The Authority may, by instrument published in the *Government Gazette*, set minimum technical standards (“**technical standards**”) for —
  - (a) the provision of water services; and
  - (b) the undertaking, maintenance and operation of water services works.
- (2) It is a condition of every licence that the licensee is to comply with the technical standards.

- (3) Sections 9, 10, 15, 43(4) and 43(7) to (9) of the *Interpretation Act 1984* apply to the technical standards as if they were regulations.

*[Section 38 amended by No. 67 of 2003 s. 62.]*

### **Division 7 — Enforcement**

#### **39. Failure to comply with licence**

- (1) If, in the opinion of the Authority, a licensee contravenes an operating licence, the Authority may cause a notice to be served on the licensee requiring the licensee to rectify the contravention within a specified period.
- (2) If, in the opinion of the Authority, a licensee has failed to comply with a notice under subsection (1) the Authority may, subject to section 40, do one or more of the following —
- (a) serve a letter of reprimand on the licensee;
  - (b) order the licensee to pay a monetary penalty fixed by the Authority but not exceeding \$100 000;
  - (c) cause the contravention to be rectified to the satisfaction of the Authority.
- (3) Persons authorised by the Authority may enter any premises and do all things that are necessary for the purposes of subsection (2)(c).
- (4) The Authority may recover —
- (a) a penalty imposed under subsection (2)(b); or
  - (b) the costs and expenses of any action taken under subsection (2)(c),

in a court of competent jurisdiction as a debt due by the licensee to the Crown.

*[Section 39 amended by No. 67 of 2003 s. 62.]*

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

The Authority is not to take any action under section 39(2)(b) or (c) unless it has notified the licensee of the proposed action and given the licensee a reasonable opportunity of making submissions on the matter.

*[Section 40 amended by No. 67 of 2003 s. 62.]*

**41. Exception where public health endangered**

If in the opinion of the Authority the health or safety of members of the public is or may be at risk, the Authority may cause any contravention of a licence to be rectified under section 39(2)(c) without —

- (a) serving notice on the licensee under section 39(1); or
- (b) complying with section 40.

*[Section 41 amended by No. 67 of 2003 s. 62.]*

**42. Cancellation of licence**

- (1) The Governor may cancel a licence if he or she is satisfied that the licensee —
  - (a) has failed to comply with the condition imposed by section 32 or is otherwise in default as defined in subsection (2);
  - (b) in the case of a company, is an externally administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (c) has within a period of 12 months been convicted of more than 3 offences for which the prescribed punishment is a fine of \$10 000 or more or imprisonment for 12 months or more.

**Water Services Licensing Act 1995**

**Part 3** Licensing of water services providers

**Division 8** Review

**s. 42**

---

- (2) For the purposes of subsection (1)(a) a licensee is in default if the Governor is satisfied that —
- (a) the licensee has failed to comply with a term or condition of the licence, other than that imposed by section 32;
  - (b) the failure is material in terms of the operation of the licence as a whole;
  - (c) the Minister has given to the licensee written notice of the failure and the fact that in the Minister's opinion paragraph (b) applies to it; and
  - (d) the licensee has not, within the time specified in the notice, either remedied the failure or shown cause why the licence should not be cancelled.
- (3) If a licence is cancelled under this section the Authority must ensure that notice of the cancellation is published in the *Government Gazette*.
- (4) Regulations may be made under section 61 providing, in the event of a licence being cancelled, for —
- (a) the vesting of assets and rights of the former licensee in a person (including the Minister as a corporation) for the purpose of enabling water services to be provided after the cancellation;
  - (b) the conferral of powers and duties for that purpose;
  - (c) the discharge or assignment of liabilities;
  - (d) the disposal of property; and
  - (e) all matters that are necessary or convenient for dealing with the consequences of the cancellation and the vesting referred to in paragraph (a).

*[Section 42 amended by No. 10 of 2001 s.220; No. 67 of 2003 s. 62.]*

*[43. Repealed by No. 67 of 2003 s. 62.]*

### **Division 8 — Review**

*[Heading inserted by No. 55 of 2004 s. 1299.]*

#### **44. Appeal against Authority's decision**

- (1) A person who is aggrieved by a decision of the Authority —
- (a) to refuse to grant, renew or transfer a licence;
  - (b) as to the length of the period for which a licence is granted or renewed;
  - (c) as to any term or condition of a licence; or
  - (d) to amend a licence under section 31,

may apply to the State Administrative Tribunal for a review of the decision.

*[(2)-(5) repealed]*

*[Section 44 amended by No. 67 of 2003 s. 62; No. 55 of 2004 s. 1300.]*

### **Division 9 — Powers of licensees, other than Corporation**

#### **45. Extension of certain enactments to licensees**

- (1) A reference to the Corporation in an enactment referred to in a Part of Schedule 2 includes a licensee if that licensee —
- (a) is prescribed by regulations made under section 61 for the purposes of that Part; or
  - (b) belongs to a class of licensees that is so prescribed.
- (2) Any such prescription may be made in terms that —
- (a) modify the operation of, add a further requirement to, or make inapplicable an enactment or part of an enactment in relation to a licensee or class of licensees;
  - (b) impose conditions or restrictions on the doing of any thing by a licensee or a member of a class of licensees;
  - (c) prohibit a licensee or a member of a class of licensees from doing any thing; or

**Water Services Licensing Act 1995**

**Part 3** Licensing of water services providers

**Division 10** Transfer of certain assets on land not held by the statutory asset owner

**s. 46**

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- (d) require a consent or approval to be obtained for the doing of, or the manner of doing, any thing.
- (3) This section does not apply to a licensee that is a water board under the *Water Boards Act 1904*.
- (4) In subsection (1) —  
“**Corporation**” means the Water Corporation established by section 4 of the *Water Corporation Act 1995*.

**46. Parliamentary disallowance**

- (1) Regulations referred to in section 45 do not come into operation until they have been —
  - (a) published in the *Government Gazette*; and
  - (b) laid before each House of Parliament and either —
    - (i) 15 sitting days of each House have passed after the regulations were so laid and notice of a motion to disallow the regulations has not been given; or
    - (ii) if notice of a motion to disallow the regulations has been given, the motion has lapsed or has been withdrawn or defeated.
- (2) The Minister is to cause notice to be published in the *Government Gazette* showing the day on which any such regulations came into operation.

**Division 10 — Transfer of certain assets on land not held by the statutory asset owner**

*[Heading inserted by No. 33 of 1997 s.3.]*

**46A. Definitions**

In this Division, unless the contrary intention appears —

“**affected land**” means the land upon, in, over, or under which an asset has been placed;

**“asset”** means any works, or any other thing used or intended to be used for the provision of irrigation or drainage services, that —

- (a) is the property of a statutory asset owner; and
- (b) is upon, in, over, or under land that is not the property of the statutory asset owner;

**“statutory asset owner”** means —

- (a) a person who is or was the holder of an operating licence authorising the licensee to provide irrigation or drainage services, whether or not also authorising the provision of any other water services; or
- (b) a person who is a holding body, within the meaning given to that term by section 46K, of a person described in paragraph (a) of this definition;

**“transfer day”** means the day on which a transfer order takes effect under section 46B(11);

**“transfer order”** means the order and any amendments to it made by the Minister under section 46B;

**“transferee”** means the person to whom any asset is to be transferred by a transfer order;

**“works”** means irrigation works or drainage works and includes excavations, structures, buildings, equipment and plant used or intended to be used for the provision of irrigation or drainage services.

*[Section 46A inserted by No. 33 of 1997 s.3.]*

**46B. Minister may make order for transfer of assets**

- (1) With the consent of a statutory asset owner from whom assets are to be transferred, the Minister may make and publish in the *Gazette* an order specifying —
  - (a) the statutory asset owner;
  - (b) the assets that are to be transferred and the affected land; and

**Water Services Licensing Act 1995**

**Part 3** Licensing of water services providers

**Division 10** Transfer of certain assets on land not held by the statutory asset owner

**s. 46B**

---

- (c) the transferee.
- (2) The transfer order may specify assets and the affected land by reference to schedules which —
  - (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.
- (3) If the transfer order specifies by reference to schedules assets that are in a local government district, the schedules must be available for inspection by the public under subsection (2)(b) at least by exhibiting them —
  - (a) on a notice board at the local government's offices; and
  - (b) on a notice board at every local government library in the district.
- (4) Schedules must be exhibited under subsection (3) for a reasonable time, being not less than —
  - (a) the time prescribed for the purposes of this subsection; or
  - (b) if no time is prescribed, 7 days.
- (5) Notice of the places where schedules are to be exhibited under subsection (3) must be published in a newspaper circulating in the relevant local government district at least 14 days before the schedules are so exhibited.
- (6) The form and content of a schedule by reference to which a transfer order specifies assets and affected land is to be approved, before the order is made, by each relevant official to whom a copy of it will be required to be delivered under section 46G.
- (7) The transfer order may, with the consent of the transferor and the transferee, be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the transfer day.



- (8) For the purposes of this section the Water Corporation is to be taken to have consented to anything that it is obliged to do because of a direction given to it under the *Water Corporation Act 1995* by the Minister administering that Act.
- (9) The Minister is to cause a copy of an order published under this section to be laid before each House of Parliament within 6 sitting days of that House after the order is published.
- (10) Either House of Parliament may, by resolution of which notice has been given within 14 sitting days of that House after an order has been laid before it, pass a resolution disallowing the order.
- (11) As soon as an order is no longer subject to disallowance under subsection (10), the order takes effect.
- (12) The Minister is to cause notice to be published in the *Gazette* showing the day on which an order took effect under subsection (11).

*[Section 46B inserted by No. 33 of 1997 s.3.]*

**46C. Transfer of assets etc.**

- (1) On and after the transfer day —
  - (a) the assets specified in the transfer order vest in the transferee by force of this section;
  - (b) except as agreed, any agreement or instrument relating to the assets transferred has effect, by force of this section, as if the transferee were substituted for the transferor in the agreement or instrument;
  - (c) except as agreed, any proceedings or remedy that might have been commenced by or available against or to the transferor in relation to the assets may be commenced and are available, by or against or to the transferee;
  - (d) except as agreed, any act, matter or thing done or omitted to be done in relation to the assets before the transfer day by, to or in respect of the transferor (to the

**Water Services Licensing Act 1995**

**Part 3** Licensing of water services providers

**Division 10** Transfer of certain assets on land not held by the statutory asset owner

**s. 46D**

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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 transferee; and

- (e) the transferor is to deliver to the transferee all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the assets transferred.

- (2) In this section —

**“except as agreed”** means except as agreed between the transferor and transferee;

**“transferor”** includes a person to whom, or through whom, the transferor is the legal successor.

*[Section 46C inserted by No. 33 of 1997 s.3.]*

**46D. Transferor to complete necessary transactions**

- (1) Where any asset of the transferor cannot be properly vested in the transferee by the operation of this Division (whether because it is governed otherwise than by the law of the State, or for any other reason) —

- (a) the transferor is to be taken to continue to hold that asset until the same is effectively vested in the transferee in accordance with the transfer order; and
- (b) the transferor is to take all practicable steps for the purpose of securing that such asset is effectively vested in the transferee in accordance with the transfer order.

- (2) The fact that subsection (1)(a) applies to an asset does not affect the duty of the transferee to take that asset into account in providing for the asset management system required by section 36.

*[Section 46D inserted by No. 33 of 1997 s.3.]*

**46E. Exemption from stamp duty**

- (1) In this section —

**“stamp duty”** means stamp duty chargeable under the *Stamp Act 1921*.

- (2) Stamp duty is not payable in relation to —
  - (a) anything that occurs by the operation of this Division; or
  - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Division, or to give effect to this Division, or for a purpose connected with or arising out of giving effect to this Division.
- (3) The Treasurer or a person authorised by the Treasurer may, on request by the transferee, certify in writing that —
  - (a) a specified thing occurred by the operation of this Division; or
  - (b) a specified thing was done under this Division, or to give effect to this Division, or for a purpose connected with or arising out of giving effect to this Division.
- (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.

*[Section 46E inserted by No. 33 of 1997 s.3.]*

**46F. Assets no longer required**

- (1) If the Minister is satisfied that the use, or further use, of an asset is not necessary or expedient for the performance of the licensee’s functions and the statutory asset owner consents to the making of the order, the Minister may make and publish in the *Gazette* an order extinguishing the rights of the statutory asset owner in the asset if it is a fixture or requiring the statutory asset owner to remove the asset if it is not a fixture.
- (2) The order is to specify the statutory asset owner, the assets, and the affected land, and is to identify whether or not a specified asset is a fixture.
- (3) The order may operate by reference to schedules which —

**Water Services Licensing Act 1995**

**Part 3** Licensing of water services providers

**Division 10** Transfer of certain assets on land not held by the statutory asset owner

**s. 46G**

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- (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.
- (4) Upon the publication of the order in the *Gazette* —
- (a) any right existing before the publication of the order in a specified asset that is a fixture is extinguished and it merges with the land that was the affected land; and
  - (b) the statutory asset owner is required, as soon as is practicable, to remove from the affected land a specified asset that is not a fixture.
- (5) The extinguishment under this section of a right does not give rise to any right to compensation.
- (6) An asset that would be a fixture if it were the property of the owner of the affected land is a fixture.

*[Section 46F inserted by No. 33 of 1997 s.3.]*

**46G. Notation on title to affected land**

- (1) The Minister is to —
- (a) cause a copy of each transfer order, and any schedule to which it refers, to be delivered to each relevant official; and
  - (b) give notice in writing of the transfer order to the owner of any affected land.
- (2) The relevant official is to —
- (a) keep the order and any schedule delivered under subsection (1) and make them available for public inspection; and
  - (b) make any entry in, or endorse or note, the relevant title, land register or record,

so as to ensure that a person searching the title to that land receives notice that the assets on the land that were transferred vest in the statutory asset owner.

- (3) If an asset specified in a transfer order —
- (a) ceases to be upon, in, over, or under the affected land; or
  - (b) merges, under section 46F, with the affected land,

the statutory asset owner is to deliver to the relevant official a notice in writing to that effect, in a form approved by the relevant official, and the relevant official is to make any entry in, or endorse or note, the title, land register or record in respect of the land accordingly.

- (4) In this section —
- “relevant official”** means —

- (a) the Registrar of Titles;
- (b) the Registrar of Deeds; or
- (c) the Minister administering the *Land Act 1933*<sup>2</sup>, according to which of them has responsibility for the register relating to the affected land.

*[Section 46G inserted by No. 33 of 1997 s.3.]*

**46H. Rectifying omission from transfer order**

- (1) The Minister may by order published in the *Gazette* make any provision that is necessary to rectify any omission from, or to correct any error in, a transfer order.
- (2) An order under this section may be made so as to have effect from the same time as the transfer order.
- (3) To the extent that a provision of an order under this section 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 Water Corporation, the Authority or any authority of the State), the rights of that person existing before the day of its publication; or

**Water Services Licensing Act 1995**

**Part 3** Licensing of water services providers

**Division 10** Transfer of certain assets on land not held by the statutory asset owner

**s. 46I**

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- (b) to impose liabilities on any person (other than the State, the Water Corporation, the Authority or any authority of the State), in respect of anything done or omitted to be done before the day of publication.

*[Section 46H inserted by No. 33 of 1997 s.3; amended by No. 67 of 2003 s. 62.]*

**46I. Saving**

The operation of any provision of this Division 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 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;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

*[Section 46I inserted by No. 33 of 1997 s.3.]*

**46J. Regulations**

Regulations may be made under section 61 providing for —

- (a) any matter or thing for which it is necessary or convenient to make provision in order to give effect to a transfer of assets;
- (b) any matter that it is necessary or convenient to deal with as a consequence of the making of an order under section 46F.

*[Section 46J inserted by No. 33 of 1997 s.3.]*

**Division 11 — Licensee operating with holding body**

*[Heading inserted by No. 33 of 1997 s.3.]*

**46K. Authority may approve of licensee operating with holding body**

The Authority may approve of an arrangement under which assets that are to be used by a licensee in the provision of irrigation or drainage services (in this Division called “**the assets**”) are to be held by another person (in this Division called “**the holding body**”).

*[Section 46K inserted by No. 33 of 1997 s.3; amended by No. 67 of 2003 s. 62.]*

**46L. Licensee to be treated as holder of assets for certain purposes**

- (1) If assets are held in accordance with an arrangement approved under section 46K —
  - (a) the licensee has the same duties under this Part; and
  - (b) the powers given by this Part, other than Division 10, in respect of the licensee or the assets are the same,as if the assets were held by the licensee rather than the holding body.
- (2) Without limiting section 45(2) or section 46M, regulations made in accordance with section 45(1) may provide that an enactment applies in relation to a licensee prescribed as if the assets were held by the licensee rather than the holding body.
- (3) In subsection (2) —
  - (a) the reference to an enactment includes reference to part of an enactment; and
  - (b) if the regulations prescribe a class of licensees, the reference to a licensee prescribed includes a reference to a licensee of a class prescribed.

**Water Services Licensing Act 1995**

**Part 3** Licensing of water services providers

**Division 11** Licensee operating with holding body

**s. 46M**

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*[Section 46L inserted by No. 33 of 1997 s.3.]*

**46M. Certain enactments can be applied to holding body**

- (1) Section 45 applies in relation to the holding body as if the holding body were the licensee.
- (2) For the purposes of subsection (1), section 83(2)(a) of the *Water Agencies (Powers) Act 1984* (which is listed in Schedule 2, Part 1, of this Act) is to be read and construed as though it did not include a reference to section 112A of the *Public Works Act 1902*.

*[Section 46M inserted by No. 33 of 1997 s.3.]*



## Part 4 — Inspectors

### 47. Designation of inspectors

- (1) The Authority may designate persons to be inspectors for the purposes of this Act, and amend or revoke a designation.
- (2) An instrument of designation of an inspector is to specify —
  - (a) the classification of that inspector by reference to the kind of water services to which his or her powers relate;
  - (b) the powers of inspection that the inspector may exercise; and
  - (c) any limitations or restrictions that apply to that exercise.
- (3) A person is not to be designated as an inspector unless he or she has the qualifications or experience, or both, prescribed for the classification that applies to him or her.
- (4) A member of the Authority has the powers of an inspector by virtue of his or her office.

*[Section 47 amended by No. 67 of 2003 s. 62.]*

### 48. Certificates of designation

- (1) The Authority is to issue to an inspector a certificate specifying the matters referred to in section 47(2) that apply to that inspector.
- (2) An inspector must produce the certificate whenever requested to do so by any person apparently having charge of any land, premises, or thing in respect of which the inspector has exercised or is about to exercise any power.
- (3) Production of the certificate is evidence in any court of the designation, classification and powers of the inspector to whom that certificate relates.

*[Section 48 amended by No. 67 of 2003 s. 62.]*

**49. Powers of inspection etc.**

An inspector may, subject to this Part and the terms of his or her designation as an inspector —

- (a) enter without notice on or into any land, premises or thing where he or she has reason to believe that —
  - (i) any water services of the kind to which his or her powers relate are or may be provided; or
  - (ii) any water services works used for the provision of any of those water services are or may be situated;
- (b) require any person having the control or custody of any land, premises or thing which the inspector is authorised to inspect to furnish reasonable access to it and other reasonable assistance;
- (c) inspect any water service works used or intended to be used for or in connection with the provision of any water service to which his or her powers relate;
- (d) make any inspection, examination, sampling, inquiry or test, and request any information (including by way of answers to questions) and production of any records or other documents, that he or she considers necessary or desirable to ascertain —
  - (i) whether any order, condition, restriction, or limitation is being or has been observed; or
  - (ii) the cause, results and other aspects of any failure of any water service works including damage and other matters arising from or suspected of being related to the failure.

**50. Incriminating statements**

Where a person, before making a statement or answering a question for the purposes of section 49(d), objects to having to make it on the ground that the statement might tend to

incriminate the person, any statement made after that objection —

- (a) is not admissible in evidence in any prosecution against the person for any offence other than an offence against section 55; and
- (b) if recorded, in writing or otherwise, must set out the fact of the objection having been made.

**51. Inspector may be accompanied**

An inspector may be accompanied by any person that the inspector thinks necessary to assist the inspector in the performance of his or her functions.

**52. Inspector to comply with reasonable requests**

In the performance of his or her functions an inspector is to comply so far as is practicable with any reasonable requirement of a person owning or using the land, premises, or thing inspected.

**53. Power to prohibit use etc.**

- (1) If an inspector is of the opinion that any thing that the inspector is authorised to inspect does not conform with the requirements of any term or condition of an operating licence, the inspector must as soon as practicable report his or her opinion in writing to the Authority.
- (2) Where the Authority has received a report under subsection (1) about any thing, the Authority may —
  - (a) by order in writing prohibit the use of that thing absolutely or except in accordance with any condition or restriction; and
  - (b) disconnect the supply of water services to or from that thing, or to or from the premises on which it is situated, until the Authority is satisfied that the thing conforms with the requirements referred to in subsection (1).

**s. 54**

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*[Section 53 amended by No. 67 of 2003 s. 62.]*

**54. Appeal**

- (1) Any person aggrieved by any order made by the Authority under section 53 may apply to the State Administrative Tribunal for a review of the order.

*[(2), (3) repealed]*

*[Section 54 amended by No. 67 of 2003 s. 62; No. 55 of 2004 s. 1301.]*

**55. Offences**

- (1) A person must not without reasonable excuse —
  - (a) obstruct an inspector, or a person to whom section 51 applies, in the performance of his or her functions; or
  - (b) fail to comply with a requirement under section 49(b).
- (2) A person must not without reasonable excuse, and subject to section 50, fail to comply with a request under section 49(d).
- (3) A person must not give false or misleading information in response to a request under section 49(d).
- (4) A person must not contravene or fail to comply with an order under section 53.

Penalty applicable to this section —

- (a) for an individual: \$5 000;
- (b) for a body corporate: \$20 000.

*[Part 5 (s. 56-58) repealed by No. 67 of 2003 s. 62.]*

## **Part 5A — Licensing of plumbers and related matters**

*[Heading inserted by No. 39 of 1999 s.7.]*

### **Division 1 — Plumbers Licensing Board**

*[Heading inserted by No. 39 of 1999 s.7.]*

#### **59. Board established**

A board called the Plumbers Licensing Board is established.

*[Section 59 inserted by No. 39 of 1999 s.7.]*

#### **59A. Membership of Board**

The Board consists of not more than 9 members appointed by the Minister in accordance with the regulations.

*[Section 59A inserted by No. 39 of 1999 s.7.]*

#### **59B. Functions of Board**

- (1) The functions of the Board are —
  - (a) to monitor matters relating to the qualification and training of plumbers, and to provide advice on those matters to the Minister and, with the approval of the Minister, to any other person or body concerned with those matters;
  - (b) to advise the Minister on matters relating to the licensing and regulation of plumbers;
  - (c) to administer any licensing scheme provided for by the regulations; and
  - (d) to perform licensing, disciplinary and other functions given to it by the regulations.
- (2) It is also a function of the Board to do things that it is authorised to do by any other written law.

*[Section 59B inserted by No. 39 of 1999 s.7; amended by No. 67 of 2003 s. 62.]*

**59C. Powers of Board**

The Board has all the powers it needs to perform its functions under this Act or any other written law.

*[Section 59C inserted by No. 39 of 1999 s.7.]*

**59D. Delegation**

- (1) The Board may, by instrument, delegate the performance of any of its functions, except this power of delegation and any disciplinary power conferred by the regulations or another written law.
- (2) A delegation under subsection (1) may be made to —
  - (a) a member of the Board;
  - (b) any committee established under the regulations; or
  - (c) with the approval of the Minister, any other person.
- (3) A function performed by a delegate is to be taken to be performed by the Board.
- (4) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

*[Section 59D inserted by No. 39 of 1999 s.7.]*

**59E. Minister may give directions**

- (1) Subject to subsection (2), the Minister may give directions in writing to the Board with respect to the performance of its functions, either generally or in relation to a particular matter, and the Board is to give effect to any such direction.
- (2) The Minister must not under subsection (1) direct the Board with respect to the performance of its licensing or disciplinary functions, whether under this Act or any other written law, in respect of —
  - (a) a particular person; or

- (b) a particular application, complaint or proceeding.
- (3) The Minister must, within 14 days after a direction is given under subsection (1), cause a copy of it to be laid before each House of Parliament or dealt with in accordance with subsection (4).
- (4) If —
- (a) at the commencement of the period referred to in subsection (3) a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that that House will not sit during that period,
- the Minister is to transmit a copy of the direction to the Clerk of that House.
- (5) A copy of a direction transmitted to the Clerk of a House is to be —
- (a) taken to have been laid before that House; and
  - (b) taken to be a document published by order or under the authority of that House.
- (6) The laying of a copy of a direction that is taken to have occurred under subsection (5)(a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.
- (7) The text of a direction given under subsection (1) is to be included in the annual report submitted by the accountable officer of the department under section 66 of the *Financial Administration and Audit Act 1985*.

*[Section 59E inserted by No. 39 of 1999 s. 7; amended by No. 5 of 2005 s. 46.]*

**59F. Minister to have access to information**

- (1) The Minister is entitled —
- (a) to have information in the possession of the Board; and

**Water Services Licensing Act 1995**

**Part 5A** Licensing of plumbers and related matters

**Division 1** Plumbers Licensing Board

**s. 59F**

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- (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
- (a) request the Board to furnish information to the Minister;
  - (b) request the Board to give the Minister access to information; and
  - (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.
- (3) The Board is to —
- (a) comply with a request under subsection (2); and
  - (b) make its staff and facilities available to the Minister for the purposes of subsection (2)(c).
- (4) The Minister is not entitled to have information under this section in a form that —
- (a) discloses the identity of a person involved in a complaint; or
  - (b) might enable the identity of any such person to be ascertained,

unless that person has consented to the disclosure.

- (5) In this section —
- “document”** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
- “information”** means information specified, or of a description specified, by the Minister that relates to the functions of the Board;
- “staff”** means any person whose services are the subject of an arrangement under section 59G(1).

*[Section 59F inserted by No. 39 of 1999 s.7.]*



**59G. Use of government staff, etc.**

- (1) The Board may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
  - (a) in the Public Service; or
  - (b) in a State agency or instrumentality.
- (2) The Board may by arrangement with —
  - (a) a department of the Public Service; or
  - (b) a State agency or instrumentality,make use of any facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) is to be on the terms agreed to by the parties.

*[Section 59G inserted by No. 39 of 1999 s.7.]*

**59H. Application of *Financial Administration and Audit Act 1985***

- (1) Any acts or things done by the Board under this Act or any other written law are to be regarded —
  - (a) as services under the control of the department for the purposes of section 52 of the *Financial Administration and Audit Act 1985*; and
  - (b) part of the operations of the department for the purposes of Division 13 of Part II of that Act.
- (2) The department's annual report is to include details of —
  - (a) the number, nature, and outcome, of —
    - (i) investigations and inquiries undertaken by, or at the direction of, the Board into licensing under this Act; and
    - (ii) matters that have been brought before the State Administrative Tribunal under this Act;

- (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
- (c) any trends or special problems that may have emerged;
- (d) forecasts of the workload of the Board in the year after the year to which the report relates; and
- (e) any proposals for improving the operation of the Board.

*[Section 59H inserted by No. 39 of 1999 s.7; amended by No. 55 of 2004 s. 1303.]*

### **Division 2 — Regulations**

*[Heading inserted by No. 39 of 1999 s.7.]*

#### **59I. Definitions**

In this Division and in Schedule 3 —

“**plumbing work**” means work of a kind specified to be water supply plumbing, sanitary plumbing or drainage plumbing;

“**specified**” means specified in the regulations.

*[Section 59I inserted by No. 39 of 1999 s.7.]*

#### **59J. Regulations**

Regulations may be made under section 61 for all or any of the purposes, or about all or any of the matters, set out in Schedule 3.

*[Section 59J inserted by No. 39 of 1999 s.7.]*

#### **59K. Offences against regulations**

Regulations referred to in section 59J may —

- (a) create offences and provide, in respect of an offence so created, for the imposition of a fine not exceeding \$5 000; and
- (b) establish a scheme for the giving of infringement notices in respect of specified offences against the regulations,

prescribe modified penalties for such offences and provide for the appointment of persons to give infringement notices and administer that scheme.

*[Section 59K inserted by No. 39 of 1999 s.7.]*

**59L. Adoption of other laws, codes etc.**

- (1) Regulations referred to in section 59J may adopt, either wholly or in part or with modifications —
  - (a) any rules, regulations, codes, or other subsidiary legislation made, determined or issued under any other Act or under any Commonwealth Act; or
  - (b) any of the standards, rules, codes or specifications of Standards Australia or a similar specified body.
- (2) If any subsidiary legislation, standard, rule, code or specification is adopted under subsection (1), it is adopted as in force from time to time unless the regulations specify that a particular text is adopted.

*[Section 59L inserted by No. 39 of 1999 s.7; amended by No. 74 of 2003 s. 128.]*

## **Part 6 — General**

*[60. Repealed by No. 67 of 2003 s. 62.]*

### **60A. Protection from liability**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (1a) Subsection (1) does not apply to a person referred to in section 56(1) of the *Economic Regulation Authority Act 2003*.
- (2) The Board and the Crown are also relieved of any liability that either of them might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

*[Section 60A inserted by No. 39 of 1999 s.8; amended by No. 67 of 2003 s. 62.]*

### **60B. Confidentiality**

- (1) This section applies to a person —
  - (a) who has been the Coordinator of Water Services under this Act;
  - (b) who is or has been a member of the Board; or
  - (c) who is or has been a person performing functions under this Act.
- (2) A person to whom this section applies must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —
  - (a) for the purpose of performing functions under this Act;

- (b) as required or allowed by this Act or under another written law;
- (c) with the written consent of the person to whom the information relates; or
- (d) in other prescribed circumstances.

Penalty: \$5 000.

- (3) Subsection (2) does not apply to the disclosure of any summary or statistical information that could not reasonably be expected to enable particulars relating to any person or business to be ascertained.

*[Section 60B inserted by No. 39 of 1999 s.8; amended by No. 67 of 2003 s. 62.]*

## **61. Regulations**

The Governor may make any regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

## **62. Review**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement.
- (2) In the course of that review the Minister is to consider and have regard to —

*[(a), (b) deleted]*

- (ba) the effectiveness of the operations of the Board;
- (bb) the need for the continuation of the functions of the Board; and
- (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

**s. 62**

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- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

*[Section 62 amended by No. 39 of 1999 s.9; No. 67 of 2003 s. 62.]*

## Schedule 1

[Section 24]

### Licence terms and conditions

An operating licence may include provisions —

- (a) requiring the licensee to enter into agreements on specified terms or on terms of a specified type;
- (b) requiring the licensee to observe specified industry codes with such modifications or exemptions as may be determined by the Authority;
- (c) requiring the licensee to maintain specified accounting records and to prepare accounts according to specified principles;
- (d) preventing the licensee from engaging in or undertaking specified business activities or any other business;
- (e) specifying methods or principles to be applied by the licensee in proposing prices or charges for inclusion in authorising by-laws;
- (f) specifying methods or principles to be applied in the provision of water services authorised by the licence;
- (g) specifying procedures for amendment, revocation or surrender of the licence;
- (h) requiring the licensee to provide to the Authority, in the manner and form determined by the Authority, specified information on any matter relevant to the operation of the licence, the operation of the licensing scheme provided for in Part 3, or the performance of the Authority's functions under this Act;
- (i) requiring or regulating the construction, operation or maintenance of water services works;
- (j) relating to the performance of functions by the licensee including —
  - (i) the range of functions that may be performed by the licensee;

**Schedule 1**

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- (ii) quality and performance standards to be met by the licensee, except to the extent that regulations of the kind described in section 33 apply; and
  - (iii) community service obligations, that is obligations that are not commercially justified, to be discharged by the licensee;
- (k) specifying —
  - (i) the terms and conditions of any customer contract which an owner or occupier of land is required to enter into with the licensee in the absence of any express agreement between the customer and the licensee to the contrary; and
  - (ii) any limitation on the capacity of the parties by express agreement to exclude, modify or restrict the terms and conditions of the customer contract;
- (l) relating to obligations of the licensee with respect to public authorities and other licensees;
- (m) relating to the disposal or transfer of property, rights or liabilities of a specified kind either during the currency of the licence or on or after its expiration by effluxion of time including provisions —
  - (i) prohibiting any disposal or transfer of property except with the approval of a specified person;
  - (ii) prohibiting the giving of any encumbrance over specified property except with the approval of the Authority;
  - (iii) requiring the transfer of property, rights or liabilities of a specified kind to a specified person on or within a specified time after the expiration of the licence;
  - (iv) with respect to the consideration to be provided in respect of any disposal or transfer;
  - (v) with respect to the arbitration of disputes that arise in connection with any disposal or transfer;
  - (vi) of a supplementary, consequential or transitional nature in relation to any disposal or transfer;



- (n) requiring the licensee to develop and implement specified programmes for the conservation and efficient use of water including programmes intended to educate the community about the conservation and efficient use of water; and
- (o) requiring the licensee to establish committees of consumers for the purpose of obtaining the opinions of consumers on the prices charged and the standard of service provided by the licensee.

*[Schedule 1 amended by No. 67 of 2003 s. 62.]*

Schedule 2

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**Schedule 2**

[Section 45]

**Enactments that may apply to licensees, other than the Corporation**

**Part 1 — Provisions for which any licensee may be prescribed**

*Water Agencies (Powers) Act 1984*

s.3 (definitions of “officer” and “works”)	s.62(1)	s.83	s.100
	s.63	s.84	s.101
	s.64	s.86	s.102
s.3(3)	s.66	s.87	
s.34	s.67	s.88	
s.36	s.67A	s.89	
s.37	s.67B	s.90	
s.41	s.68	s.91	
s.41B	s.69	s.92	
s.41E	s.69A	s.93	
s.41F	s.69B	s.94	
s.41G	s.70 (except	s.95	
s.41GA	subsection	s.96	
s.41H	(3)(b))	s.97	
s.41J	s.71(1) & (3)	s.98	
s.41K	s.72	s.99	
s.41M	s.73		

*Town Planning and Development Act 1928*

s.20D(a)(ii)  
s.27A(1)(b)(ii)

**Part 2 — Provisions for which a licensee (water supply services) may be prescribed**

*Country Areas Water Supply Act 1947*

s.11	s.37	s.45	s.77
s.14	s.38	s.46	s.78
s.28	s.39A	s.58	s.108
s.29	s.40	s.59	s.111
s.30	s.42	s.60	s.112
s.31	s.43	s.62A	s.113
s.32	s.43A	s.71	s.115
s.33	s.43B	s.73	
s.35	s.44	s.76	

*Metropolitan Water Authority Act 1982*

s.4 (definition of “works”)  
s.43

*Metropolitan Water Supply, Sewerage and Drainage Act 1909*

s.14	s.49	s.56A	s.152
s.37	s.50	s.57	s.153
s.38	s.50A	s.57EA	s.154
s.39	s.51	s.103	s.156
s.40	s.52	s.105B	s.157
s.41	s.53	s.110	s.159
s.42	s.54	s.146	s.161
s.43	s.55	s.148	
s.45	s.56	s.150	

*Energy Operators (Powers) Act 1979*

s.42(2)(a)

*Home Building Contracts Act 1991*

s.9(1)(d)  
s.9(6)

Schedule 2

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**Part 3 — Provisions for which a licensee (sewerage services) may be prescribed**

*Country Towns Sewerage Act 1948*

s.11	s.34	s.45	s.105
s.23	s.35	s.46	s.108
s.23A	s.36	s.61	s.110
s.24	s.37	s.62	s.111
s.25	s.39	s.63	s.113
s.28	s.40	s.65A	s.119
s.29	s.41	s.75	
s.30	s.41A	s.79	
s.31	s.42	s.80	
s.32	s.43	s.81	
s.33	s.44	s.102	

*Metropolitan Water Authority Act 1982*

s.4 (definition of “works”)  
s.43

*Metropolitan Water Supply, Sewerage and Drainage Act 1909*

s.31	s.63	s.70	s.154
s.32	s.64	s.110	s.156
s.33	s.65	s.146	s.157
s.58	s.66	s.148	s.159
s.59	s.67	s.150	s.161
s.61	s.68	s.152	
s.61A	s.69	s.153	

*Health Act 1911*

s.63A

*Home Building Contracts Act 1991*

s.9(1)(d)  
s.9(6)

**Part 4 — Provisions for which a licensee (drainage services) may be prescribed**

*Land Drainage Act 1925*

s.64	s.81	s.100B	s.161
s.70	s.81A	s.152	s.162
s.71	s.85	s.153	s.167
s.73	s.94	s.154	s.171
s.74	s.100	s.155	

*Metropolitan Water Authority Act 1982*

s.4 (definition of “works”)	s.100	s.103	s.108
	s.101	s.105	
s.43	s.102	s.107	

*Metropolitan Water Supply, Sewerage and Drainage Act 1909*

s.103	s.148	s.153	s.161
s.109	s.150	s.156	
s.110	s.151	s.157	
s.146	s.152	s.159	

*Health Act 1911*

s.63A

**Part 5 — Provisions for which a licensee (irrigation services) may be prescribed**

*Rights in Water and Irrigation Act 1914*

s.33	s.39C	s.42A	s.69
s.35	s.39E	s.43	s.70
s.36	s.39G	s.44	s.71
s.37	s.39I	s.45	s.75
s.38	s.41	s.63	s.79A
s.39A	s.42	s.66	

[Schedule 2 amended by No. 12 of 1996 s.16; No. 32 of 1997 s.19; No. 58 of 1999 s.87.]

**Schedule 3 Purposes for which, or matters about which, regulations  
may be made**

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**Schedule 3 — Purposes for which, or matters about which,  
regulations may be made**

[s.59J]

1. The membership of the Board and the manner in which the membership is to be determined.
2. The appointment of a chairperson and deputy chairperson of the Board.
3. The term of office of members of the Board and the circumstances in which a member of the Board may be removed from office.
4. The appointment of alternate members of the Board.
5. The constitution and proceedings of the Board.
6. The remuneration of members of the Board and members of any committee established by the Board.
7. To permit the Board to establish committees for supervisory, regulatory, or other purposes and to provide for the constitution, practice and procedure of any such committee.
8. The licensing of plumbers, including, without limitation —
  - (a) the persons who may hold a licence;
  - (b) classes of licence and the plumbing work that may be carried out under the authority of a licence of a particular class;
  - (c) the qualifications, level of experience or competency requirements necessary for the grant of a licence of a particular class;
  - (d) the matters of which the Board must be satisfied before granting a licence of a particular class;
  - (e) the issue, duration, renewal, suspension or cancellation of licences;
  - (f) the imposition of conditions or restrictions on licences;
  - (g) the keeping of a register of specified information in respect of licences and matters relating to the amendment and accuracy of the register;
  - (h) the manner of making a complaint against or concerning a person who is or was the holder of a licence, and who may make such a complaint;

**Purposes for which, or matters about which, regulations may be made** **Schedule 3**

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- (i) disciplinary matters and the regulation of the practice and procedure to be followed in the investigation of disciplinary matters;
  - (j) the conferral on the State Administrative Tribunal of jurisdiction to deal with disciplinary matters and the orders that may be made following the hearing and determination of disciplinary matters, which may include orders imposing disciplinary penalties;
  - (k) the conferral on the State Administrative Tribunal of jurisdiction to deal with applications for the review of decisions of the Board or any committee established by the Board;
  - [(l) deleted]*
  - (m) the publication in specified circumstances of information relating to the cancellation or suspension of a licence, and the manner of such publication;
  - (n) the manner in which holders of licences may advertise, display or otherwise publicise the fact that they carry out plumbing work; and
  - (o) matters of a savings or transitional nature.
9. The prohibition of persons other than holders of licences from carrying out plumbing work.
10. The regulation and control of plumbing work.
11. Standards to be observed in, or in connection with, the carrying out of plumbing work.
12. The appointment or authorisation of persons to inspect plumbing work and investigate complaints in respect of plumbing work, and their powers, including powers of entry, for the purposes of such inspection or investigation.
13. Fees to be paid for or in connection with matters provided for in the regulations, other than for bringing matters before the State Administrative Tribunal, and the persons liable to pay those fees.

*[Schedule 3 inserted by No. 39 of 1999 s.10; amended by No. 55 of 2004 s. 1304.]*

**Notes**

<sup>1</sup> This is a compilation of the *Water Services Licensing Act 1995* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Water Services Coordination Act 1995</i> <sup>5</sup>	72 of 1995	27 Dec 1995	1 Jan 1996 (see section 2 and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996</i> , Part 5 <sup>3</sup>	12 of 1996	28 Jun 1996	28 Jun 1996 (see section 2)
<i>Water Legislation Amendment Act 1997</i> , Part 6	32 of 1997	3 Oct 1997	Proclaimed 15 Apr 1998 (see section 2 and <i>Gazette</i> 15 Apr 1998 p. 2041)
<i>Water Services Coordination Amendment Act 1997</i>	33 of 1997	3 Oct 1997	3 Oct 1997 (see section 2)
<i>Water Services Coordination Amendment Act 1999</i> , sections 1 to 10	39 of 1999	9 Nov 1999	Proclaimed 19 Jun 2000 (see section 2 and <i>Gazette</i> 16 Jun 2000 p.2939)
<i>Gas Corporation (Business Disposal) Act 1999</i> , section 87	58 of 1999	24 Dec 1999	Deemed operative immediately before distribution licence granted, i.e. 1 Jul 2000 (see section 2(2) and <i>Gazette</i> 4 Jul 2000 p.3545)
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 128	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Economic Regulation Authority Act 2003</i> s. 62 <sup>4</sup>	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 133 <sup>6</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)



Short title	Number and year	Assent	Commencement
<i>Financial Administration Legislation Amendment Act 2005</i> s. 46	5 of 2005	27 Jun 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6243)

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

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Water Legislation Amendment (Competition Policy) Act 2005</i> s. 7(4), 28(2), 60(2) and Pt. 8 <sup>8</sup>	25 of 2005	12 Dec 2005	To be proclaimed (see s. 2)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15 <sup>9</sup>	38 of 2005	12 Dec 2005	To be proclaimed (see s. 2)

<sup>2</sup> Under section 281(3) of the *Land Administration Act 1997* (No. 30 of 1997), references to the *Land Act 1933* may be construed as references to the *Land Administration Act 1997*.

<sup>3</sup> 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*.

4 The *Economic Regulation Authority Act 2003* s. 63(1), which gives effect to Sch. 3, reads as follows:

“

**63. Transitional and saving provisions**

- (1) Schedule 3 has effect to make transitional and saving provisions in respect of the amendments made in Schedule 2 Divisions 8, 12 and 18.

”

Schedule 3 reads as follows:

“

**Schedule 3 — Transitional and saving provisions for amendments in Schedule 2 Divisions 8, 12 and 18**

[s. 63(1)]

**1. Definitions**

In this Schedule —

“**commencement day**” means the day on which this Schedule comes into operation;

“**former official**” means —

- (a) the Coordinator of Water Services referred to in section 4 of the *Water Services Coordination Act 1995* as in effect immediately before the commencement day;
- (b) the Gas Pipelines Access Regulator; or
- (c) the Rail Access Regulator;

“**Gas Pipelines Access Regulator**” means the Western Australian Independent Gas Pipelines Access Regulator referred to in section 27 of the *Gas Pipelines Access (Western Australia) Act 1998* as in effect immediately before the commencement day;

“**Rail Access Regulator**” means the Western Australian Independent Rail Access Regulator referred to in section 13 of the *Railways (Access) Act 1998* as in effect immediately before the commencement day.

- 2. Interpretation Act 1984 to apply**  
This Schedule does not limit the operation of the *Interpretation Act 1984*.
- 3. Decisions of Gas Pipelines Access Regulator**  
Without limiting the operation of clause 6, a decision made by the Gas Pipelines Access Regulator as the local Regulator for the purposes of the Gas Pipelines Access (Western Australia) Law that was in effect immediately before the commencement day continues, on and after that day, as if made by the Authority as the local Regulator for the purposes of that Law.
- 4. Decisions of Rail Access Regulator**  
Without limiting the operation of clause 6, a decision made by the Rail Access Regulator as the Regulator for the purposes of the Code (as defined in the *Railways (Access) Act 1998*) that was in effect immediately before the commencement day continues, on and after that day, as if made by the Authority as the Regulator for the purposes of that Code.
- 5. Licences under Part 3 of the Water Services Coordination Act 1995**  
Without limiting the operation of clause 6, an operating licence that was in effect under Part 3 of the *Water Services Coordination Act 1995* immediately before the commencement day continues, on and after that day, as an operating licence in effect under that Part as amended by Schedule 2 Division 18.
- 6. Continuing effect of things done**  
On and after the commencement day any act, matter or thing done or omitted to be done before that day by, to, or in respect of, a former official (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 Authority.
- 7. Completion of things begun**  
On and after the commencement day anything lawfully commenced by a former official may, so far as it is not contrary to this Act or any other written law that gives functions to the Authority, be carried on and completed by the Authority.
- 8. Proceedings etc.**  
Any proceedings or remedy that immediately before the commencement day might have been brought or continued by or available against or to a former official, may, on and after that day,

be brought or continued and are available, by or against or to the Authority.

**9. Records**

On and after the commencement day the Authority is to take delivery of all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of each former official.

**10. Bank accounts**

- (1) The moneys standing to the credit of the account referred to in section 45 of the *Gas Pipelines Access (Western Australia) Act 1998* immediately before the commencement day are to be transferred to the account referred to in section 21 as soon as is practicable after that day.
- (2) The moneys standing to the credit of the account referred to in section 23D of the *Railways (Access) Act 1998* immediately before the commencement day are to be transferred to the account referred to in section 21 as soon as is practicable after that day.

**11. References to former official in agreements and instruments**

Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which a former official is a party; or
- (b) which contains a reference to a former official,

has effect after the commencement day as if —

- (c) the Authority were substituted for the former official as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the former official were (unless the context otherwise requires) amended to be or include a reference to the Authority.

**12. References to former official in written law**

A reference to a former official in an enactment in force immediately before the commencement day may, where the context so requires, be read as if it had been amended to be a reference to the Authority.

**13. Immunity to continue**

Despite the amendments made in Schedule 2 Divisions 8, 12 and 18, where a former official 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 Authority.

**14. Saving**

The operation of any provision of this Schedule 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.

”.

<sup>5</sup> Now known as the *Water Services Licensing Act 1995*; short title changed (see note under s. 1).

<sup>6</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative 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.

<sup>7</sup> Footnote no longer applicable.

<sup>8</sup> On the date as at which this compilation was prepared, the *Water Legislation Amendment (Competition Policy) Act 2005* s. 7(4), 28(2), 60(2) and Pt. 8 had not come into operation. They read as follows:

“

**7. Section 71 repealed and consequential amendments (including to *Water Services Licensing Act 1995*)**

.....

- (4) The *Water Services Licensing Act 1995* Schedule 2 Part 2 is amended under the heading “*Country Areas Water Supply Act 1947*” by deleting “s.71”.

**28. Section 81 repealed and consequential amendment to *Water Services Licensing Act 1995***

.....

- (2) The *Water Services Licensing Act 1995* Schedule 2 Part 3 is amended under the heading “*Country Towns Sewerage Act 1948*” by deleting “s.81”.

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

.....

- (2) The *Water Services Licensing Act 1995* Schedule 2 Part 1 is amended under the heading “*Water Agencies (Powers) Act 1984*” by inserting after “s.41M” —

“ s.42 ”.

**Part 8 — *Water Services Licensing Act 1995***

**63. The Act amended**

The amendments in this Part are to the *Water Services Licensing Act 1995*.

**64. Section 3 amended**

Section 3 is amended after the definition of “plumber” by inserting the following definition —

“

“**Registrar of Deeds**” means the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*;

”.

**65. Part 3 Division 8A inserted**

After Part 3 Division 8 the following Division is inserted —

“

**Division 8A — Powers relating to land**

**44A. Power of public authority to grant certain interests**

- (1) In this section —

“**public authority**” means —

- (a) a Minister of the State;
- (b) an agency, authority or instrumentality of the State or a local government; or

- (c) a body, whether corporate or unincorporate, that is established or continued for a public purpose by or under a written law and prescribed for the purposes of this definition;

“**relevant interest**” means a lease, easement, licence or other authority necessary or expedient to enable the licensee to construct, alter, operate or maintain water services works.

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

**44B. Taking of interest or easement for purposes of licence**

- (1) For the purpose of enabling a licensee to provide any water service as authorised by a licence, an interest in land or easement over land may be taken under Part 9 of the *Land Administration Act 1997* as if for a public work within the meaning of that Act.
- (2) The power conferred by subsection (1) can only be exercised on the recommendation of the Minister administering this Act.
- (3) If requested to do so in a written objection served under section 175 of the *Land Administration Act 1997*, the Minister as defined in section 3(1) of that Act (the “**LAA Minister**”), after consultation with the licensee, may vary the proposal to take an interest or easement in accordance with this section so that —
- (a) instead of the whole of the interest that was proposed to be taken, a lesser estate or interest that is sufficient for the purposes of the licensee is proposed to be taken; or
- (b) instead of a partial interest that was proposed to be taken, the whole of an interest is proposed to be taken.
- (4) The LAA Minister may, by notice published in the *Gazette*, delegate to the Minister administering this Act the power conferred on the LAA Minister by subsection (3).
- (5) If in the opinion of the Minister administering this Act an interest in land or easement over land is appropriate to a licensee’s needs in respect of —
- (a) major works or general works, as defined in section 86 of the *Water Agencies (Powers) Act 1984*; or
- (b) any other works of a kind prescribed for the purposes of this subsection,

that Minister is to advise the licensee of that opinion and the licensee is required to acquire that interest in land or easement over land where practicable by agreement but otherwise by the

taking of the land under Part 9 of the *Land Administration Act 1997* as if for a public work within the meaning of that Act.

- (6) The requirement imposed by subsection (5) does not extend to land that is vested in, or otherwise occupied or managed by or on behalf of, the State or a public authority as defined in section 44A(1).
- (7) Any costs and expenses incurred in the taking of an interest or easement under this section —
  - (a) are to be paid by the licensee; and
  - (b) may be recovered in a court of competent jurisdiction as a debt due from the licensee to the State.
- (8) For the purposes of this section a reference in Part 9 of the *Land Administration Act 1997* to an interest in land includes an easement over land.

**44C. Vesting of interest or easement**

- (1) Despite anything in Part 9 of the *Land Administration Act 1997*, on the taking of an interest in land or easement over land under section 44B, the interest or easement vests in the licensee for the purpose of enabling the licensee to provide any water service as authorised by a licence except to the extent that, under section 178(7) of that Act, the taking order continues any specified estate, interest, right or privilege of any person to the use, occupation or enjoyment of the land, or any specified part of the land.
- (2) Part 9 of the *Land Administration Act 1997* applies, with all necessary changes, in relation to the recording or registering of an interest or easement taken under section 44B.
- (3) Where, whether by agreement or compulsory acquisition, any interest in land or easement is vested in a licensee and the land is subsequently affected by a taking order under Part 9 of the *Land Administration Act 1997* then despite section 179 of that Act —
  - (a) the licensee's interest or easement continues unless the licensee otherwise agrees; and
  - (b) the licensee is a person having an interest in the land for the purposes of section 202 of that Act.

**44D. Proceedings and liability**

- (1) Proceedings in respect of compensation, or otherwise for the purpose of complying with Parts 9 and 10 of the *Land Administration Act 1997*, may be taken against the licensee.



- (2) The licensee is liable in respect of the taking of an interest in land or easement over land under section 44B to the same extent as the Minister administering the *Land Administration Act 1997* would have been liable if the taking had been for the purpose of a public work.

**44E. Easements in gross**

An easement may be taken under section 44B without there being a dominant tenement and there may be made appurtenant or annexed to any such easement another easement or the benefit of a restriction as to the user of the land.

”

**66. Part 3 Division 8B inserted**

Before Part 3 Division 9 the following Division is inserted —

“

**Division 8B — Powers for recovering charges**

**44F. Prohibition on dealings in land**

- (1) In this section —

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

“**water services charge**”, in relation to land, means a charge made under the *Water Agencies (Powers) Act 1984* in respect of that land relating to —

- (a) the provision of a water supply under the *Country Areas Water Supply Act 1947*;
- (b) the provision of sewerage under the *Country Towns Sewerage Act 1948*; or
- (c) the provision, under the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* or the *Metropolitan Water Authority Act 1982*, of any water services as defined in section 3(1) of the *Water Agencies (Powers) Act 1984*,

and includes an amount owing for a combination of those charges and also includes interest on any amount owing.

- (2) This section does not apply to a prescribed licensee or a licensee belonging to a prescribed class of licensees.
- (3) If, in relation to any land, the payment of an amount due to a licensee in respect of any water services charge is in arrears, the licensee may lodge a memorial to that effect with the Registrar

who, on payment of the prescribed fee, is to register the memorial and make appropriate endorsements on the title and records relating to that land.

- (4) Until the memorial is withdrawn under subsection (5), the Registrar is not to register, without the written consent of the licensee, an instrument affecting the land that was lodged for registration after the memorial was lodged.
- (5) If the payment of an amount referred to in a memorial registered under subsection (3) is no longer to any extent in arrears, the licensee is to withdraw the memorial by delivering to the Registrar a withdrawal of memorial signed by an authorised officer of the licensee, and the Registrar is then to record the withdrawal of memorial on the title and records relating to the land.
- (6) A memorial under subsection (3) or withdrawal of memorial under subsection (5) is to be in a form approved by the Registrar.

**44G. Transitional provision**

A memorial that, when section 45 of the *Water Legislation Amendment (Competition Policy) Act 2005* comes into operation, has been delivered or registered under section 124A of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* but not endorsed under subsection (3) of that section is to be regarded as having been lodged or registered, as the case requires, under this section.

”.

**67. Schedule 2 amended**

- (1) Schedule 2 Part 1 is amended under the heading “*Water Agencies (Powers) Act 1984*” as follows:
  - (a) by deleting “s.3 (definitions of “officer” and “works”) and inserting instead —  
“ s.3 (definition of “works”) ”;
  - (b) by deleting “s.62(1)” and inserting instead —  
“ s.62 ”;
  - (c) after “s.73” by inserting —

“

s.75  
s.77  
s.78  
s.79  
s.81

”.

- 
- (2) Schedule 2 Part 2 is amended under the heading “*Country Areas Water Supply Act 1947*” by inserting after “s.78” —  
“ s.81 ”.
- (3) Schedule 2 Part 2 is amended under the heading “*Metropolitan Water Supply, Sewerage and Drainage Act 1909*” as follows:  
(a) after “s.14” by inserting —  
“ s.36 ”;  
(b) after “s.105B” by inserting —  
“ s.109 ”.
- (4) Schedule 2 Part 3 is amended under the heading “*Metropolitan Water Supply, Sewerage and Drainage Act 1909*” by inserting after “s.70” —  
“  
s.103  
s.109  
”.
- (5) Schedule 2 Part 4 is amended under the heading “*Land Drainage Act 1925*” as follows:  
(a) before “s.64” by inserting —  
“ s.60 ”;  
(b) by deleting “s.73”, “s.74”, “s.81”, “s.81A”, “s.85”, “s.94”, and “s.100B”.
- (6) Schedule 2 Part 5 is amended after “s.39E” by inserting —  
“ s.39F ”.

<sup>9</sup> On the date as at which this compilation was prepared, the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 15, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

**15. Acts in Schedule 2 amended**

The Acts mentioned in Schedule 2 are amended as set out in that Schedule.

”.

Schedule 2, cl. 71 reads as follows:

“

**Schedule 2 — Consequential amendments**

[s. 15]

**71. *Water Services Licensing Act 1995***

Schedule 2 Part 1 is amended by deleting “*Town Planning and Development Act 1928*”, “s. 20D(a)(ii)” and “s. 27A(1)(b)(ii)” and inserting instead —

“

*Planning and Development Act 2005*

s. 157(1)(a)(ii)

s. 167(2)(b)(ii)

”.

”.