



Western Australia

Waterways Conservation Act 1976

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Defined terms

Western Australia

Waterways Conservation Act 1976

An Act to make provision for the conservation and management of certain waters and of the associated land and environment, to repeal the *Swan River Conservation Act 1958*, and for incidental and other purposes.

[Long title amended: No. 73 of 1995 s. 165; No. 38 of 2007 s. 141.]

Part 1 — Preliminary

[Heading inserted: No. 38 of 2007 s. 142.]

1. Short title

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

2. Commencement

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

3. Terms used

- (1) In this Act, unless the context otherwise requires, —
- associated land*** means land comprised within the boundaries of a management area as defined pursuant to section 10;
- by-law*** means a by-law or, in relation to a local government, a local law, made under this Act;
- CEO*** means the chief executive officer of the Department;
- Department*** means the department of the Public Service principally assisting in the administration of this Act;
- development control area*** has the meaning given by the *Swan and Canning Rivers Management Act 2006*;
- discharge***, in relation to waste or any other matter, includes causing or permitting it to be, or failing to prevent it from being, emitted, discharged, deposited or allowed to escape on or into the waters or associated land;
- former Board*** means the Swan River Conservation Board constituted pursuant to the *Swan River Conservation Act 1958*;
- function*** means powers and duties, and includes rights, benefits and obligations;
- honorary warden*** means a person appointed to that office pursuant to section 62;
- industrial*** includes any producing, manufacturing, or processing operation;

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

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

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

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

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

Riverpark has the meaning given by the *Swan and Canning Rivers Management Act 2006*;

section means section of this Act;

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

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

waste includes any and all waste substance, liquid or solid or gaseous, rubbish, refuse, garbage and materials used or produced in or by any industrial process, mining or quarrying, agriculture, commerce or any other trade or industrial undertaking or activity, sewage, household waste, effluent and

other matter which causes or is likely to cause pollution, and any matter or thing prescribed to be waste for the purposes of this Act;

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

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

- (2) Where a meaning is assigned to any term by this section cognate expressions used in this Act, unless a contrary or other intention appears, have a corresponding meaning.
- (3) For the purposes of the definition of **waters** in subsection (1) any artificial canal, canal system, lake, lagoon, harbour or embayment connected to a river, inlet or estuary that is in a management area shall be deemed to form part of that river, inlet or estuary if it is —
 - (a) within the associated land comprised in that management area; and
 - (b) for the time being declared by the Order in Council defining that management area to form part of that river, inlet or estuary.

[Section 3 amended: No. 97 of 1982 s. 2; No. 77 of 1987 s. 36; No. 73 of 1995 s. 166; No. 14 of 1996 s. 4; No. 52 of 2006 s. 6; No. 38 of 2007 s. 143.]

4. Repeal and transitional provisions

- (1) The *Swan River Conservation Act 1958* is hereby repealed.
- [(2) deleted]*
- (3) Without limiting the operation of the *Interpretation Act 1918*¹, until provision is made under this Act in relation to the matters formerly vested in or under the control or management of the

former Board the regulations, Orders in Council, proclamations, notices, permits, approvals, consents or authorisations made or given under the *Swan River Conservation Act 1958*, shall in so far as they are not inconsistent with this Act apply to persons, acts, circumstances and things under this Act as if they were made under this Act.

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

5. Construction of this Act

- (1) In this section a reference to the provisions of an Act includes a reference to the provisions of any regulation, local law, by-law, Order in Council, proclamation, declaration or notice, made, given or promulgated under the provisions of that Act, and in the case of the *Environmental Protection Act 1986* includes a reference to the provisions of an environmental protection policy approved under section 31 of that Act.
- (2) Where the provisions of this Act are in conflict with the provisions of —
 - (a) the *Bush Fires Act 1954*; or
 - (b) the *Health (Miscellaneous Provisions) Act 1911*; or
 - (ca) the *Public Health Act 2016*; or
 - (c) subject to section 6, the *Land Administration Act 1997*; or
 - (d) any Act for the time being providing for the conservation of wildlife or indigenous flora; or
 - (e) any Act relating to the powers of a Port Authority established under the provisions of an Act within the area of competence of that Port Authority, in so far as such powers relate to matters affecting navigation or the conduct and management of the port; or

(f) the *Environmental Protection Act 1986*,

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

(3) In so far as the provisions of this Act are in conflict with the powers conferred on a local government by the *Local Government Act 1995*, or any other Act —

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

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

- (4) Nothing in this Act shall be construed as operating to prevent the grant of any right, tenement, lease, licence, permit or other interest under or pursuant to —
- (a) the *Mining Act 1904*²; or
 - (b) the *Petroleum and Geothermal Energy Resources Act 1967*; or
 - (c) the *Petroleum (Submerged Lands) Act 1967*³,

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

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

[Section 5 amended: No. 77 of 1986 s. 37; No. 14 of 1996 s. 4; No. 31 of 1997 s. 141; No. 35 of 2007 s. 108; No. 38 of 2007 s. 144 and 188; No. 19 of 2016 s. 101 and 343(1).]

6. Crown bound

This Act binds the Crown.

7. Saving of rights at law

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

8. Exemptions

- (1) The Minister may, by a notice in writing from time to time provide that any requirement of this Act does not apply in respect of —
- (a) any waters or land specified in the notice; or
 - (b) any premises, act or thing specified in the notice; or

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- (c) all premises, acts or things comprised in a class thereof so specified or situated in an area so specified; or
 - (d) all or any premises, acts or things in the circumstances so specified.
- (2) The Minister may make any exemption granted under this section subject to such circumstances or conditions or both as the Minister may so specify, and an exemption granted under subsection (1) has effect according to its tenor.
- (3) When the circumstances and conditions subject to which an exemption has been granted under this section cease to exist or are breached, the exemption ceases to operate.

[Section 8 amended: No. 38 of 2007 s. 145 and 188.]

Part 2 — Application of the Act

[Heading inserted: No. 38 of 2007 s. 146.]

9. Application

- (1) This Act applies to the waters and associated land comprised within the respective management areas for the time being defined pursuant to section 10(1), and to land or water to which section 31 or section 32 applies, but not elsewhere.
- (1a) This Act does not apply in respect of the development control area or the Riverpark.

[(2) deleted]

- (3) Where any structure infringes the airspace over any such waters or associated land this Act applies to the whole of that structure.

[Section 9 amended: No. 21 of 1988 s. 25; No. 52 of 2006 s. 6; No. 38 of 2007 s. 147.]

10. Management areas

- (1) On the recommendation of the Minister the Governor may by Order in Council published in the *Gazette* —
 - (a) declare any area of the State containing one or more rivers, inlets or estuaries to be a management area for the purposes of this Act, assign a name to the area, define the boundaries of the waters and associated land comprised in the area, declare any artificial canal, canal system, lake, lagoon, harbour or embayment connected to a river, inlet or estuary that is in the area to form part of that river, inlet or estuary; or
 - (b) amend any previous Order in Council made under this Act in relation to any area; or
 - (c) declare that the provisions of this Act shall cease to apply to any waters or land.

[(2) deleted]

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- (3) The boundaries of a management area shall be defined by reference to a map showing, where practicable using geographical features, the extent of the waters and land affected in such a way as to enable those boundaries to be readily established.
- (4) No land shall be included within a management area unless, in the opinion of the Minister, the inclusion of that land is necessary in order satisfactorily to achieve the control needed for the conservation and management of the waters by reason of the contour of that land or its use, proximity or other relevant circumstance.
- (5) An Order in Council made under subsection (1) defining or altering the boundaries of a management area, shall be laid before each House of Parliament within the 6 sitting days of such House next following the date of publication in the *Gazette*, and the provisions of section 42 of the *Interpretation Act 1984*, shall apply to any such Order in Council as if it had been a regulation.
- (6) This section does not apply in respect of the development control area or the Riverpark.

[Section 10 amended: No. 97 of 1982 s. 3; No. 21 of 1988 s. 26; No. 73 of 1995 s. 168; No. 52 of 2006 s. 6; No. 38 of 2007 s. 148.]

Part 3 — Functions of the Minister

[Heading inserted: No. 38 of 2007 s. 149.]

11. Functions of Minister

- (1) The Minister has the overall responsibility for the conservation of the waters and associated land to which this Act applies and for —
 - (a) the preservation and enhancement of the quality of the environment and amenity of those waters and that land; and
 - (b) the control and prevention of any act or omission which may cause the pollution of those waters or that land.

- (2) In addition to any other functions of the Minister, the Minister has the following functions —
 - (a) to maintain and manage all areas to which this Act applies and to carry out works for the purposes of improving and maintaining the condition of the waters and associated land to which this Act applies;
 - (b) to carry out, or cause to be carried out, river training, dredging, reclamation and structural works;
 - (c) to control, under the regulations, acts or omissions which may cause the pollution of waters and associated land to which this Act applies;
 - (d) to promote coordinated action by owners and occupiers of land, and public authorities having the control of land adjacent to or associated with any of the waters to which this Act applies, for the control and prevention of pollution;
 - (e) to establish and develop criteria for the assessment of the extent of environmental change or pollution;
 - (f) to specify standards and criteria and the methods of sampling and testing to be used for any purpose;

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- (g) to conduct or promote relevant research or enter into projects for research or the collation of information;
 - (h) to provide advice and disseminate knowledge on the conservation and good management of rivers, inlets and estuaries and of associated lands;
 - (i) to publish reports and provide information for the purpose of increasing public awareness of the problems and remedies that exist in relation to environmental pollution as it relates to waters and associated land;
 - (j) to carry out, or cause to be carried out, works for the preservation or enhancement of amenities or facilities for recreation;
 - (k) to control, under the regulations, the excision or reclamation of any waters or associated land;
 - (l) generally promote, encourage, coordinate and carry out planning and projects in the management and conservation of rivers, inlets and estuaries.
- (3) In performing his or her functions under this Act, the Minister may arrange for local governments and other public authorities to carry out works and may finance the works or reimburse the local government or authority concerned.

[Section 11 inserted: No. 38 of 2007 s. 150.]

12. Performance of functions of Minister

- (1) The Minister is to perform his or her functions under this Act —
- (a) to the extent practicable, in consultation with relevant bodies, residents and other persons affected by the operation of this Act; and
 - (b) to the extent practicable, jointly with relevant bodies, residents and other persons affected by the operation of this Act.

- (2) In relation to a management area, the Minister is to perform his or her functions under this Act —
- (a) in a way that is consistent with the management programme for that area and any working plan included in that programme; and
 - (b) having regard to —
 - (i) the interests of navigation, fisheries, agriculture, water supply and recreation in the area; and
 - (ii) the natural beauty and amenity of the area; and
 - (iii) the preservation of public rights of access to the area; and
 - (iv) the rights acquired by persons in relation to boat houses, jetties and other structures to the extent that the exercise of those rights is not likely to impair the environment.
- (3) In subsection (1) —
- relevant bodies**, for any particular area to which this Act applies, means —
- (a) the local government or governments for the area; and
 - (b) any other public authority exercising functions in relation to the area; and
 - (c) other bodies representing persons interested in the use of the waters and land in the area.

[Section 12 inserted: No. 38 of 2007 s. 150.]

[13. Deleted: No. 73 of 1995 s. 170.]

[14-29. Deleted: No. 38 of 2007 s. 150.]

Part 4 — Agreements, management programmes and consultation

[Heading inserted: No. 38 of 2007 s. 151.]

30. Covenants

The Minister may take and enforce covenants as to the conservation of the land and waters to which this Act applies to the same extent as if the Minister were possessed of adjacent land for the benefit of which the covenant is to have effect.

[Section 30 inserted: No. 38 of 2007 s. 151.]

31. Agreements as to private land

- (1) The Minister may enter into and give effect to agreements with the owner, lessee or licensee of any area of land (including land from time to time or at all times covered by water) for the control or management of that land under the provisions of this Act.
- (2) No agreement under this section shall be entered into unless the owner, and any person occupying the land with the consent of the owner, has given approval in writing to the agreement.

[Section 31 amended: No. 38 of 2007 s. 152.]

32. Reserves may be placed under control of Minister

- (1) The Land Administration Minister may by order under Part 4 of that Act place with the Minister the care, control and management of any land reserved under that Part of that Act.
- (2) In relation to any land which is the subject of an order referred to in subsection (1) (the *management order*), the Land Administration Minister may by the management order provide —
 - (a) that the land shall be so controlled and managed subject to specified conditions, restrictions or limitations; and

- (b) that any power conferred upon the Minister by this Act may be exercised by the local government, or some other person or body therein named, on behalf of or under the direction of the Minister, (but no such provision shall prevent the Minister from exercising the power),

and the Land Administration Minister may by a subsequent order under Part 4 of that Act revoke the management order or vary anything to which the care, control and management of the land are made subject by the management order.

- (3) In this section —

Land Administration Minister means the Minister administering the *Land Administration Act 1997*.

[Section 32 amended: No. 14 of 1996 s. 4; No. 31 of 1997 s. 139; No. 38 of 2007 s. 153.]

33. Local government consultations, and initiatives

- (1) The Minister may refer to a local government any matter that may affect the district of the local government for any information and advice the local government may be able to offer and is to have regard to the views of the local government.
- (2) A local government which is aggrieved by any report, advice or recommendation to be submitted to the Minister under this Act, may so advise the Minister, and the Minister shall have regard to the views of the local government but shall not be bound to act in accordance with those views.
- (3) A local government may make representations to the Minister in relation to any management area or other area placed under the control or management of the Minister, and may request the Minister to initiate action in respect of land which in the opinion of the local government should be dealt with under the provisions of this Act.

[Section 33 amended: No. 14 of 1996 s. 4; No. 38 of 2007 s. 154.]

[34. Deleted: No. 38 of 2007 s. 155.]

35. Management programmes

- (1) The Minister, in consultation with the appropriate local governments and other public authorities, may cause to be prepared a detailed documented programme of the operations that are to be undertaken pursuant to this Act on or in relation to waters and associated land to which this Act applies, during the period to which the programme relates.
- (2) Regulations made under this Act may provide that no person shall, without the approval of the Minister, cause or permit any development to take place, or any interference or disturbance of the physical environment to occur, in relation to specified waters and associated land the subject of a management programme.
- (3) Notwithstanding the provisions of section 5, where a local government by resolution adopts the proposals, or any of them, from time to time contained in a management programme the provisions of any regulations or by-laws which are thereafter made under this Act with the approval of that local government as regards those waters and land under this section shall be binding on the local government in so far as they are reasonably necessary for the implementation of the proposals so adopted.
- (4) The Minister must consult publicly, in accordance with section 78, in relation to proposals to establish a management programme for the first time when prepared in relation to any area and that programme shall not take effect until the Minister, by notice in the *Gazette* and in the newspaper referred to in section 78(3), indicates that submissions made as to those proposals have been considered and fixes a date as that on which the programme is to commence.
- (5) A management programme shall be kept under constant review and may subsequently be amended from time to time by the Minister.

- (6) The CEO shall maintain a copy of the management programme as from time to time in force available for inspection by members of the public at reasonable hours without charge.
- (7) If the Minister considers it appropriate, the Minister may conduct a public inquiry into the establishment of a management programme for the first time for an area and the regulations may provide for the conduct of such an inquiry.
- (8) A management programme may include a working plan to be carried out for the improvement, development and maintenance of the waters and associated land, the prevention and control of fires, the public utilisation of the area, the study, care and restoration of the natural environment, the conservation of indigenous flora and fauna and such other matters as the Minister considers appropriate.
- (9) The Minister may arrange with any public authority for the carrying out, whether or not under the direction of the Minister, of any work specified in a working plan formulated pursuant to a management programme.

[Section 35 amended: No. 14 of 1996 s. 4; No. 38 of 2007 s. 156.]

36. Town planning referrals

- (1) The Minister may from time to time request a town planning authority, that is to say —
 - (a) the Minister to whom the Governor has for the time being committed the administration of the *Planning and Development Act 2005*; or
 - (b) the Western Australian Planning Commission established under the *Planning and Development Act 2005*; or
 - [(c) deleted]*
 - (d) a responsible authority within the meaning given to that expression by the *Planning and Development Act 2005*; or

- (e) any other body prescribed for the purposes of this section,

to submit to the Minister particulars of —

- (f) each application or proposal for the exercise of a power to approve —
 - (i) a local planning scheme;
 - (iia) an improvement scheme;
 - (ii) an interim development order;
 - (iii) the subdivision or amalgamation of any lot or lots;
 - (iv) the development of any land;
 - (v) the change of use of any land adjacent to any river, inlet or estuary;

or

- (g) such type or class only of those applications and proposals as the Minister specifies in the request,

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

- (2) Where particulars of an application or proposal referred to in subsection (1) are submitted to the Minister pursuant to that subsection —
 - (a) the Minister shall consider the matters so submitted and may for that purpose consult with the town planning authority; and
 - (b) the Minister shall furnish the town planning authority with the Minister's recommendations in writing as to whether the application or proposal ought to be carried into effect and whether or to what extent the Minister considers that the application or proposal ought to be modified, and the reasons on which the Minister's recommendations are based.

- (3) The Minister may at any time after the Minister has given the recommendations to the town planning authority under subsection (2), publish in any manner which the Minister considers appropriate the terms of those recommendations.
- (4) In considering any request or proposal referred to the Minister under subsection (1), and in making recommendations and generally exercising powers under subsection (2), the Minister shall, in particular, have regard to the terms of any relevant management programme for the area.
- (5) Unless and until the town planning authority has received and considered the recommendations of the Minister under this section, it shall not exercise any power of the kind referred to in subsection (1) in relation to any such land.

[Section 36 amended: No. 84 of 1994 s. 46; No. 57 of 1997 s. 127; No. 38 of 2005 s. 15; No. 38 of 2007 s. 157 and 188; No. 28 of 2010 s. 39.]

37. Ministerial referrals

- (1) Where it comes to the notice of a Minister of the Crown that a proposed development, project, industry, or other thing, may have a detrimental effect on the waters or land to which this Act applies he shall so advise the Minister and shall thereafter in relation to that matter furnish to the Minister such aid, information and facilities as are practicable.
- (2) The Minister may from time to time request any Minister of the Crown to submit to the Minister particulars relating to any application or proposal for the exercise of a power which could result in the waters or associated land to which this Act applies being detrimentally affected and that Minister shall thereupon cause the request made by the Minister to be complied with.

[Section 37 amended: No. 38 of 2007 s. 158 and 188.]

38. Public referrals

- (1) Any person or body may refer in writing to the Minister any matter which gives rise to concern as a possible cause of pollution affecting any river, inlet or estuary to which this Act applies.
- (2) Where any matter is referred to the Minister under subsection (1) the Minister shall consider the matter and may report and make recommendations thereon to any Minister of the Crown to whose administration the matter relates.

[Section 38 amended: No. 38 of 2007 s. 159 and 188.]

[39. Deleted: No. 38 of 2007 s. 160.]

[40, 41. Deleted: No. 73 of 1995 s. 181.]

[42, 43. Deleted: No. 38 of 2007 s. 160.]

[44. Deleted: No. 98 of 1985 s. 3.]

[45. Deleted: No. 38 of 2007 s. 160.]

Part 5 — Protection of waters and land

[Heading inserted: No. 38 of 2007 s. 161.]

46. Licences

- (1) In this section a reference to a licence includes a reference to a permit, approval, consent or authorisation granted under the *Swan River Conservation Act 1958*, and continued in force pursuant to section 4.
- [(2) deleted]*
- (3) Any person, in the prescribed manner, if any, may apply to the Minister for a licence authorising him to do or to omit to do anything the doing or omission of which would otherwise constitute an offence against this Act, and on payment of such fees or charges as may be prescribed in relation thereto the Minister may grant, renew or transfer any such licence.
- (4) The Minister, on giving written notice to the applicant of the reason, may refuse any application and no person shall be entitled to the grant, renewal or transfer of a licence as of right notwithstanding any other law or established practice.
- (5) The grant of a licence may be authorised subject to such reasonable conditions as the Minister thinks fit, which conditions shall be endorsed upon or attached to the licence when granted.
- (6) The Minister, at any time during the currency of a licence, by notice in writing given to the holder of the licence, may —
 - (a) vary or add to the conditions of the licence; or
 - (b) in the case of an unconditional licence, provide that it shall be subject to reasonable conditions specified in the notice,

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

- (7) The Minister may renew the period of operation of a licence from time to time, or transfer the authority it confers from one person to another, or, where its operation relates to any place, may transfer that operation to another place of the same kind.
- (8) Where in the opinion of the Minister a person is contravening, or is likely to contravene, the provisions of this Act the Minister may give to that person a notice in writing informing him of the opinion of the Minister and, where the Minister considers that the matter is one capable of being dealt with by a licence the conditions of which will impose a satisfactory degree of control, may thereby require him to apply for such a licence instead of instituting proceedings for the alleged offence.
- (9) Where the owner, and any person occupying the land with the consent of the owner, has given approval in writing the powers conferred by this section may be exercised in relation to any land placed by the owner, lessee or licensee of that land under the control or management of the Minister.
- (10) Where the holder of a licence contravenes or fails to comply with any condition endorsed upon or attached to the licence —
 - (a) he commits an offence and is liable for his act or omission to the extent that it was not authorised by the licence; and
 - (b) the court may, in addition to any other penalty, by order cancel the licence; and
 - (c) the Minister may, by notice in writing given to the holder of the licence, revoke that licence or suspend the operation of it for such period as the Minister thinks fit.
- (10a) The variation of a condition of a licence does not affect any penalty or punishment incurred, imposed, or liable to be incurred or imposed, prior to that variation, or any investigation or legal proceedings in respect of such a penalty or punishment, notwithstanding any other enactment.

- (11) A person who is aggrieved —
- (a) by a refusal of the Minister to grant or renew a licence under this Act; or
 - (b) by the revocation of a licence or the suspension of the operation of a licence pursuant to subsection (10); or
 - (c) by a condition imposed by the Minister in relation to any licence,

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

[Section 46 amended: No. 78 of 1995 s. 135; No. 55 of 2004 s. 1306; No. 38 of 2007 s. 162 and 188.]

47. Disposal licences

- (1) An application for a disposal licence authorising the discharge or deposit of any matter shall be made to the Minister in the prescribed manner and shall state —
- (a) the place and time at which it is proposed to make the discharge or deposit to which the application relates; and
 - (b) the nature and composition of the matter proposed to be discharged or deposited, and the maximum temperature of it; and
 - (c) the maximum quantity of the matter which it is proposed to discharge or deposit on any one day, or the highest rate at which it is proposed to discharge or deposit it.
- (2) An application for a licence authorising discharges or deposits at 2 or more places or times may be treated as separate applications for licences in respect of each of those places or times.
- (3) The Minister may —
- (a) grant a disposal licence either unconditionally or subject to conditions; or

(b) refuse to grant a licence,

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

- (4) The Minister shall determine any application for a disposal licence authorising the discharge or deposit of any matter having regard to all the circumstances of the case and in particular to the type of industry, the quantity, composition and temperature of the matter to be discharged or deposited, the condition and usage of the waters, the ability of the waters to absorb the matter without detriment or deterioration, and the number of similar or other types of matter already being discharged in the waters.
- (5) In considering any application, the Minister shall have regard to broad principles, and generally shall endeavour to ensure that any matter which it is proposed to discharge into the waters shall not contain —
- (a) sewage, unless treated to a standard approved by the Minister; or
 - (b) acidity or alkalinity outside the range of a pH value between pH5 and pH9; or
 - (c) poisons; or
 - (d) any substance which is likely —
 - (i) to contribute to the formation of sludge or other deposit; or
 - (ii) to contribute to the formation of scum, fat, oil, grease or floating material; or
 - (iii) to contribute to the formation of objectionable odours or discoloration; or
 - (iv) to be injurious to marine or animal or human life; or

- (v) to deplete excessively the oxygen content of the waters.
- (6) The conditions to which a disposal licence may be made subject include reasonable conditions —
 - (a) as to places and times at which the discharge or deposit to which the licence relates may be made; and
 - (b) as to the nature, composition, temperature, volume and rate of the discharge or deposit; and
 - (c) as to the provision of facilities for taking samples of the matter discharged or deposited; and
 - (d) as to the provision, maintenance and testing of meters for measuring the volume and rate of the discharge or deposit, and apparatus for determining the nature, composition and temperature of any discharge or deposit; and
 - (e) as to the keeping of records of the nature, composition, temperature, volume and rate of the discharge or deposit and in particular of records of the readings of meters and other recording apparatus provided in accordance with any other condition relating to that licence; and
 - (f) as to the making of returns and the furnishing of other information to the Minister in relation to any discharge or deposit,

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

- (7) Without limiting the generality of the provisions of this section, wastes shall not be permitted to be discharged into any waters —
 - (a) if it is reasonably practicable to dispose of them satisfactorily in some other manner; and
 - (b) unless every reasonable and practicable step has been taken to improve the quality and appearance of the wastes, prior to discharge; and

- (c) unless they conform with such bacterial, physical and chemical standards as may from time to time be laid down by the Minister.
- (8) It shall not be the responsibility of the Minister to specify the design, location, type of construction or particular manner in which any operation causing or threatening to cause a condition of pollution might be corrected, and any person ordered to correct the condition of any wastes shall correct the condition in a lawful manner.
- (9) Notwithstanding that a disposal licence may be expressed to have effect for a specified time and that the holder of the licence has not contravened or failed to comply with any of the conditions endorsed upon or attached to it, that licence may be revoked by notice in writing given by the Minister to the licence holder if in the opinion of the Minister it is necessary in the public interest in consequence of a change of circumstance (which may include a change in the information available as to the discharge or deposit to which the notice relates or as to the interaction with other matter) which could not reasonably have been foreseen at the time the licence was granted.
- (10) Provision may be made from time to time by regulations as to the issue of disposal licences, the rights and obligations of licensees thereunder, the fees to be paid in respect thereof, and such other matters as the Governor shall seem necessary or advisable to give effect to this section.
- (11) A regulation made for the purposes of this section may discriminate according to different premises, trades, industries, processes or otherwise and may provide for differing fees and charges to be payable, or for the remission of fees or charges that would otherwise be payable, according to prescribed factors.

[Section 47 inserted: No. 38 of 2007 s. 188.]

48. Control of pollution, and use of waters

- (1) The provisions of this section apply to and in relation to any waters or any land to which this Act applies, save where the exercise of the powers conferred by this section would be inconsistent with the provisions of any Agreement to which the State is a party and which, or the execution of which, is or has been ratified or approved by an Act and the Governor, by Order in Council published in the *Gazette*, declares that any or all of the provisions of this section shall not apply according to the Order in respect of any or all of the places, premises, acts or things to which that Agreement relates.
- (2) An Order in Council made for the purposes of subsection (1) may be varied or revoked by a subsequent Order.

[(3), (4) deleted]

- (5) Provision may be made by by-laws for —
 - (a) prohibiting or regulating the keeping or use on waters to which this section applies of a vessel that is fitted with a water closet or other prescribed sanitary appliance designed to permit polluting matter to pass into the water; and
 - (b) prohibiting the keeping or use on waters to which this section applies of a ferry or charter vessel that is not fitted with prescribed facilities for the storage of polluting matter; and
 - (c) regulating the disposal of polluting matter from facilities mentioned in paragraph (b) and, without limiting the generality of the foregoing, prohibiting it from being disposed of otherwise than at a prescribed place in a prescribed manner.
- (5a) In subsection (5) ***ferry or charter vessel*** means a vessel that —
 - (a) is kept or used for the carriage of passengers, or passengers and goods, for reward or plies for hire for the carriage of passengers, or passengers and goods; and

- (b) is authorised under the *Western Australian Marine Act 1982* to carry more than 10 passengers.
- (6) Provision may be made from time to time by by-laws as to the precautions to be taken by any person having the custody or control of any poisonous, noxious or polluting matter for the purpose of preventing the matter from entering waters to which this section applies and the by-laws may provide that any prescribed contravention shall be an offence to which subsection (9) applies.
- (7) Where it appears to the Minister that with a view to preventing poisonous, noxious or polluting matter from entering waters to which this section applies, it is appropriate to prohibit or restrict the carrying on in a particular place of activities which the Minister considers to be likely to result in pollution of those waters, provision may be made by by-laws that prescribed activities shall not be carried on in that place except under licence from the Minister (which shall not be unreasonably refused) and the by-laws may provide that any prescribed contravention shall be an offence to which subsection (9) applies.
- (8) Provision may be made from time to time by regulations for prohibiting or controlling —
 - (a) the use of waters to which this section applies for industrial purposes; or
 - (b) the doing or omitting of anything the doing or omission of which results or is likely to result in pollution except such as may be authorised by a licence under this Act; or
 - (c) the carrying out of any works or proposed works of any kind in, on, over or under the waters or land to which this section applies, or both or any part of either or both of them, (and such regulations may provide for the carrying out or removal of such works by or on behalf of the Minister and for the recovery of costs incurred by the Minister in so doing); or

- (d) dredging, drainage, river training, reclamation, and the provision or removal of structures, including jetties, wharves and bridges, and obstructions to navigation or the flow of the waters; or
 - (e) the putting into such waters of mud, earth, gravel, litter or other matter which is likely to cause obstruction or be objectionable.
- (9) A person guilty of a contravention of a regulation or a by-law which provides that this subsection shall apply, shall be liable to a fine not exceeding \$5 000, and where the offence is a continuing offence an additional fine not exceeding \$100 for each day on which the offence continues after service on the offender of written notice of the offence.

[Section 48 amended: No. 97 of 1982 s. 4; No. 73 of 1995 s. 184; No. 38 of 2007 s. 163 and 188.]

49. Injunctions

- (1) The Supreme Court or The District Court of Western Australia may, on the application of the Attorney General, or of the Minister, grant an injunction restraining a person from engaging in any course of conduct, or doing any act, that constitutes or would constitute —
- (a) a contravention of a provision of this Act; or
 - (b) attempting to contravene such a provision; or
 - (c) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision.
- (2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
- (3) The Court may rescind or vary an injunction granted under subsection (1) or subsection (2).

[Section 49 amended: No. 38 of 2007 s. 164.]

50. Orders

- (1) The Minister may serve on any person who has deposited in any waters or on any land to which this Act applies any poisonous, noxious or polluting matter an order in writing requiring him within such reasonable period as is specified in the order to cause that matter to be removed, and a person who, having been served with such an order, fails or neglects to comply with the provisions of that order commits an offence against this Act.
- (2) Provision may be made by regulations enabling the Minister for the purposes of preventing or minimising the effects of pollution, or any of such effects, on waters or associated land to which this Act applies, to serve on and enforce against any person an order requiring or directing that person to do or refrain from doing any prescribed act or thing.

[Section 50 amended: No. 38 of 2007 s. 165.]

51. Removal of structures

Where any structure or other matter or thing —

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

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

[Section 51 amended: No. 38 of 2007 s. 166 and 188.]

52. Remedial works

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

[Section 52 amended: No. 38 of 2007 s. 167.]

53. Recovery of expenses

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

[Section 53 amended: No. 38 of 2007 s. 168.]

Part 6 — General provisions

[Heading inserted: No. 38 of 2007 s. 169.]

Division 1 — By-laws

[Heading inserted: No. 38 of 2007 s. 169.]

54. By-laws

- (1) The Minister may make by-laws for the purposes of this Act that are applicable in the management area or areas specified in the by-laws.
- (2) By-laws may be made under subsection (1) prescribing or providing for any matter —
 - (a) that is required or permitted by this Act to be prescribed or provided for by by-laws; or
 - (b) that is necessary or convenient to be prescribed for the purpose of achieving the objects of this Act.
- (3) Before the Minister makes, amends or repeals any by-laws the Minister must consult publicly, in accordance with section 78.

[Section 54 inserted: No. 38 of 2007 s. 170.]

55. General provisions relating to by-laws

- (1) Any by-law may be made —
 - (a) so as to apply generally or in a particular class of case, or particular classes of cases, at all times or at a specified time or specified times, throughout the management area or in a specified part or specified parts of the area; and
 - (b) so as to require a matter affected by it to be in accordance with a specified standard or specified requirement, or as approved by, or to the satisfaction of, a specified person or body, or class of person or body, and so as to confer upon a specified body a discretionary authority; and

- (c) so as to provide that in specified cases, or a specified class of case, or specified classes of cases, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from its provisions either wholly or to such extent as is specified; and
 - (d) so as to provide for a modified penalty, not exceeding one quarter of the amount specified in that by-law as the penalty for which a person may be liable in relation to that offence, to be payable by a person who does not contest an allegation that he committed any specified breach of the provisions of those by-laws, and shall provide that the due payment of a modified penalty is a defence to a charge of the breach in respect of which that modified penalty was paid.
- (2) Any by-law may make provision for the imposition of penalties not exceeding \$100 in respect of any contravention, and may prescribe the fees and charges that shall be payable in relation to matters under this Act, the persons liable and the method of recovery of amounts not duly paid.
 - (3) Where in relation to a by-law made under this Act the expression *specified* is used, the expression, unless the context requires otherwise, means specified in that by-law.

56. Local laws

- (1) Subject to the provisions of this section, a local government may make local laws for carrying into effect the provisions of this Act within its district, and may repeal, amend, vary or suspend the operation of any such local law.
- (1a) Local laws must not be made under this section to have effect in the development control area or the Riverpark.
- (2) If there is conflict or inconsistency between the provisions of a by-law made under this Act and the provisions of a local law

made under this Act, the provisions of the by-law prevail to the extent of the conflict or inconsistency.

[(3) deleted]

- (4) Any local law may be restricted in its operation to any defined portion of the local government district.
- (5) Local laws made under this section are to be prepared according to the same procedures and requirements as if prepared by the local government under and for the purposes of the provisions of the *Local Government Act 1995*.

[Section 56 amended: No. 21 of 1988 s. 30; No. 14 of 1996 s. 4; No. 52 of 2006 s. 6; No. 38 of 2007 s. 171.]

57. Inconsistency of by-laws with regulations

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

[Section 57 amended: No. 14 of 1996 s. 4; No. 38 of 2007 s. 172.]

[58, 59. Deleted: No. 38 of 2007 s. 173.]

[60. Deleted: No. 21 of 1988 s. 31.]

Division 2 — Enforcement provisions

[Heading inserted: No. 38 of 2007 s. 174.]

61. Inspectors

[(1) deleted]

- (2) The CEO may appoint any person to be an inspector under this Act in relation to any portion of the State other than the development control area or the Riverpark.

- (3) Every person appointed to be an inspector under this Act shall be furnished with a certificate in the prescribed form evidencing his appointment and shall produce such certificate whenever required so to do by any person in respect of whom he has exercised or is about to exercise any of his powers under this Act.
- (4) Production of a certificate in the prescribed form is conclusive proof in any court of the appointment of the inspector to whom that certificate relates and of his authority to exercise the powers conferred upon an inspector appointed under this Act.
- (5) In addition to the persons appointed as inspectors under and for the purposes of this Act, the following persons are authorised to exercise the powers conferred on an inspector under this Act —
- (a) every person who is, or acts in the office of, —
 - (i) a conservation and land management officer, forest officer, wildlife officer or ranger, under the *Conservation and Land Management Act 1984*;
or
 - (ii) a fisheries officer referred to in the *Fish Resources Management Act 1994*;
 - and
 - (b) all members of the Police Force of the State,
- and reference in this Act to an inspector shall be construed as including a reference to any such person when exercising the powers of an inspector.
- (6) As regards a member of the Police Force, the provisions of this Act relating to inspectors are not in derogation of but are in addition to those of other Acts relating to members of the Police Force.

[Section 61 amended: No. 21 of 1988 s. 32; No. 53 of 1994 s. 264; No. 52 of 2006 s. 6; No. 38 of 2007 s. 175.]

62. Honorary wardens

[(1) deleted]

- (2) The CEO may appoint any person to be an honorary inspector under this Act in relation to any portion of the State other than the development control area or the Riverpark.
- (3) An honorary warden may exercise such of the powers conferred on an inspector by this Act as are prescribed within the limitation as to authority and area of jurisdiction specified in the terms of his appointment.
- (4) Every person appointed to be an honorary warden under this Act shall be furnished with a certificate in the prescribed form evidencing his appointment and shall produce that certificate whenever required so to do by any person in respect of whom he has exercised or is about to exercise any of his powers under this Act.
- (5) In any proceedings under this Act production of a certificate in the prescribed form is conclusive evidence in any court of the appointment of the honorary warden to whom the certificate relates and of his authority to exercise the powers specified in that certificate.

[Section 62 amended: No. 21 of 1988 s. 33; No. 52 of 2006 s. 6; No. 38 of 2007 s. 176.]

63. Powers of inspectors etc.

- (1) A reference in this section to an inspector shall be construed as including a reference to —
 - [(a), (b) deleted]*
 - (c) an honorary warden, acting within the limitations specified in the terms of his appointment; and
 - (d) a person authorised pursuant to section 61(5).
- (2) Any inspector in addition to such other powers and duties as may from time to time devolve upon him under this Act, or as

may be prescribed, may, together with any person he may think competent to assist him in making any inspection or examination, enter any premises with the consent of the occupier and may therein or thereon —

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

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

- (3) In the exercise of his powers under subsection (2) an inspector shall conform so far as is practicable to such reasonable requirements of the person owning or using the premises in question as are necessary to prevent the working of the business or the conduct of operations on the premises being obstructed.
- (4) The occupier of any premises and any person in charge or apparently in charge of any premises shall furnish all reasonable assistance and all relevant information that he is capable of furnishing to any inspector acting in the exercise of his powers and the discharge of his duties under this Act.
- (5) An inspector, by notice in writing served on the occupier of any premises, may require the occupier to furnish to the Minister within the period specified in that notice, such information as to any equipment, industrial plant, or process in or on the premises as is specified in that notice.
- (6) Where it is shown to the satisfaction of a justice that admission to the premises in question has been refused following a request by an inspector for entry thereto, or that the premises are unoccupied, the justice may, by warrant under his hand authorise that inspector or any other person named in the warrant to enter upon the premises, and a warrant granted under

this subsection continues in force until the purpose for which it was granted has been satisfied.

- (7) An inspector who finds a person committing an offence against this Act, or who on reasonable grounds suspects that an offence against this Act has been committed or is about to be committed, may without warrant other than the provisions of this subsection —
- (a) stop, detain and search any vehicle, vessel or conveyance; and
 - (b) remove any vehicle, animal or other thing from the waters or land; and
 - (c) enter and search any tent, caravan or other erection which is not permanent,

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

- (7a) The offices referred to in subsection (1) are each prescribed to be public officers for the purposes of the *Criminal Investigation (Identifying People) Act 2002* and as such may exercise the powers in Part 3 of that Act.
- (8) If the person making a statement pursuant to this section objected to making that statement, at the time of making it, on the ground that it might tend to incriminate him, it shall not be admissible in evidence in any prosecution against that person for any offence not being the offence of contravening or failing to comply with the provisions of this section.

[Section 63 amended: No. 6 of 2002 Sch. 2 cl. 6; No. 38 of 2007 s. 177.]

64. Duty of police officers etc.

It is the duty of the members of the Police Force of the State, and of all other persons authorised by section 61(5) to exercise the power of an inspector, who find a person committing or attempting to commit, or who on reasonable grounds suspect a person of having committed or attempted to commit, an offence against the provisions of this Act to demand from the person his name and address, and immediately to report the offence or attempt and the name and address of the person to the Minister.

[Section 64 amended: No. 38 of 2007 s. 178.]

65. Persons obstructing execution of this Act

- (1) A person who wilfully obstructs any person acting in the execution of this Act commits an offence against this Act.
Penalty: \$500.
- (2) A person who fails to give to any person acting in the execution of this Act any assistance which that person may reasonably request him to give, or any information which that person is expressly authorised by this Act to call for or may reasonably require, or who, when required to give any such information, knowingly makes any false or misleading statement in relation thereto, shall be treated as having wilfully obstructed that person.

[66, 67. Deleted: No. 38 of 2007 s. 179.]

Division 3 — General offence and procedural provisions

[Heading inserted: No. 38 of 2007 s. 180.]

68. Prosecution expenses

The court by or before which a person is convicted of an offence against this Act may, whether or not it imposes any other punishment, order that the person convicted pay the reasonable costs of and incidental to any measurement, analysis, or other

matter undertaken by or on behalf of the prosecution towards the investigation of the offence and the giving of evidence in relation thereto, and may make such order as the court thinks just as to those costs.

69. Offences generally

- (1) A person who does not do a thing which by or under this Act he is required or ordered to do, and a person who does or attempts to do a thing which by or under this Act he is prohibited from doing, commits an offence against this Act.
- (2) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or ordered to do, or to refrain from doing, anything within a particular period, that offence is deemed to continue so long as the thing so required or ordered remains undone, or continues to be done, as the case may be, notwithstanding that the particular period has elapsed.
- (3) It shall be a defence in any proceedings for an offence against this Act to show that the act or omission complained of was done under and in accordance with a licence granted or order issued by the Minister under this Act or otherwise to the knowledge of and with the approval of the Minister.

[Section 69 amended: No. 38 of 2007 s. 181.]

70. General penalty

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

- (a) where the offence is not a continuing offence to a fine not exceeding \$200; and
- (b) where the offence is a continuing offence, to a fine not exceeding \$200 and an additional fine not exceeding

\$25 for each day in which the offence continues after
service on the offender of written notice of the offence.

71. Proceedings

- (1) A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.
- (2) A prosecution for an offence against this Act may be commenced and conducted by —
 - (a) any inspector; and
 - (b) an honorary warden in relation to the matters and in the area in respect of which he is authorised to exercise his powers under this Act; and
 - (c) any other person authorised in writing for the purpose of the proposed proceedings by the Minister.
- (3) In any proceedings under this Act the authority of any person to prosecute for an offence shall be presumed unless the contrary is proved.
- (4) A prosecution for an offence under this Act must be commenced within 2 years after the date on which the offence is alleged to have been committed.

[Section 71 amended: No. 59 of 2004 s. 141; No. 84 of 2004 s. 80; No. 38 of 2007 s. 182.]

72. Liability for the acts of others etc.

- (1) A person who employs, causes, procures, or knowingly permits or suffers or connives with, another person to contravene any provision of this Act commits an offence punishable as is the provision contravened.
- (2) Where proceedings are taken against a person for or in respect of a contravention of any provision of this Act it is no defence for that person to prove that he was the agent or employee of any other person or was acting in pursuance of an order or direction given by such other person unless he satisfies the court

that he had acted without knowledge, and could not reasonably be expected to have known, that any provision of this Act had been contravened.

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

73. Offences by bodies corporate

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director or member of the governing authority of the body corporate, or the manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in that capacity, he as well as the body corporate shall be deemed to have committed that offence and may be convicted and punished accordingly.
- (2) Where in any proceedings under this Act in respect of any act or thing done by a body corporate it is necessary to establish the intention of the body corporate, it is sufficient to show that a person who was concerned or took part in the management, or a servant or agent, of the body corporate by whom the relevant act or thing was done had that intention.
- (3) Any act done or course of conduct engaged in on behalf of a body corporate by a person who was concerned or took part in the management, or an agent or servant, of the body corporate or by another person at the direction or with the consent or agreement (whether express or implied) of such a person, agent or servant shall be deemed, for the purposes of this Act, to have been done or engaged in also by the body corporate.

74. Recovery of penalty and costs paid

- (1) Where on the hearing of any prosecution for an offence under this Act the court records a finding to the effect that the accused has satisfied the court that —
- (a) being an agent or servant, he had acted without knowledge, and could not reasonably be expected to have known, that any provision of this Act had been contravened or had not been complied with; or
 - (b) being a principal or employer, he had used due diligence to enforce the execution of this Act and that without his connivance or consent and in contravention of his orders the provisions of this Act were contravened or not complied with by his agent or servant,

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

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

[Section 74 amended: No. 84 of 2004 s. 82.]

75. Evidentiary provisions

- (1) In a prosecution or in other legal proceedings instituted under this Act, proof of the following is not required unless evidence is given to the contrary —
- (a) the particular or general appointment of a person by the CEO under this Act;

(b) authorisation by the Minister of a person to make a complaint, prosecute an offence or otherwise institute proceedings under this Act.

(2) Where in a charge of an offence against this Act there is an averment that an act occurred within the boundaries of waters or associated land to which this Act applies, courts and persons acting judicially shall, on the act being proved, presume in the absence of proof to the contrary that the act occurred within the boundaries of such land or waters as averred.

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

(a) no notice had been given, or application submitted, to the Minister;

(b) no licence or other permission or authorisation had been granted by the Minister, in relation to any matter to which this Act applies,

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

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

(a) a copy of the *Gazette* containing a regulation, declaration, map, notice or other evidence of the exercise of any power or authority in pursuance or purported pursuance of the provisions of this Act; or

(b) a copy purporting to be certified as a copy of a regulation, declaration, map, notice or other evidence of the exercise of any such power or authority, by a certificate purporting to have been signed by the CEO,

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

- (5) In all proceedings in which any notice, order, or other document required or authorised to be given to or served on a party to the proceedings under this Act has to be proved, the party is deemed to have received notice to produce it, and, until the contrary is shown, the document and its due service may be sufficiently proved by the production of what purports to be a copy, bearing what purports to be a certificate under the hand of the person authorised to issue the original, or of the CEO, as the case may be, that the copy is a true copy of the original and that the original was served on the date specified in the certificate.
- (6) The validity of any declaration, map, notice, order, or other document or of its publication or service is not affected by any error, misdescription, or irregularity which is not calculated to mislead, or which in fact does not mislead.
- (7) In all courts and before all persons authorised to receive evidence a signature purporting to be that of the Minister, the CEO, a delegate of the minister or CEO or a person otherwise authorised or appointed by the Minister or the CEO under this Act shall be taken to be the signature of the person whose signature it purports to be until the contrary is proved.
- [(8) *deleted*]
- (9) The provisions of this section —
- (a) are in addition to and not in derogation of those of the *Evidence Act 1906*; and
 - (b) do not render valid a regulation or by-law which has been disallowed under section 42(2) of the *Interpretation Act 1984*, or which has been invalidly made.

[Section 75 amended: No. 73 of 1995 s. 186; No. 84 of 2004 s. 80; No. 38 of 2007 s. 183.]

Division 4 — Administrative provisions

[Heading inserted: No. 38 of 2007 s. 184.]

76. Delegation by Minister

- (1) The Minister may delegate to —
 - (a) the CEO; or
 - (b) another officer of the Department; or
 - (c) an officer of another department or an employee of an organisation; or
 - (d) another Minister; or
 - (e) the employing authority of another department or organisation; or
 - (f) any other person or body (whether incorporated or not),any power or duty of the Minister under another provision of this Act.
- (2) The delegation must be in writing signed by the Minister.
- (3) A person to whom a power or duty is delegated under subsection (1)(b), (c) or (f) cannot delegate that power or duty.
- (4) A delegation under subsection (1)(d) may expressly authorise the other Minister to further delegate the power or duty but only to an officer or employee of a department administered by the other Minister.
- (5) A delegation under subsection (1)(a) or (e) may expressly authorise the delegate to further delegate the power or duty but only to an officer or employee of the department or organisation.
- (6) A person exercising or performing a power or duty that has been delegated to the person under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of —

- (a) the Minister to perform a function through an officer or agent; and
 - (b) a Minister or employing authority to whom a power or duty is delegated under this section from exercising that power or performing that duty through an officer or agent.
- (8) In this section, *department*, *employing authority* and *organisation* each have the meaning given to them in section 3 of the *Public Sector Management Act 1994*.

[Section 76 inserted: No. 38 of 2007 s. 184.]

77. Delegation by CEO

- (1) The CEO may delegate to —
- (a) another officer of the Department; or
 - (b) the employing authority of another department or organisation; or
 - (c) an officer of another department or an employee of an organisation; or
 - (d) any other person or body (whether incorporated or not),
- any power or duty of the CEO under another provision of this Act.
- (2) The delegation must be in writing signed by the CEO.
- (3) Except in the case of an officer of the Department, a power or duty can only be delegated to a person or body under subsection (1) if the person or body has been approved, or is in a class of person or body approved, by the Minister for the purposes of this section.
- (4) A person to whom a power or duty is delegated under subsection (1)(a), (c) or (d) cannot delegate that power or duty.

- (5) A delegation under subsection (1)(b) may expressly authorise the delegate to further delegate the power or duty but only to an officer or employee of the department or organisation.
- (6) A person or body exercising or performing a power or duty that has been delegated to the person or body under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of —
 - (a) the CEO to perform a function through an officer or agent; and
 - (b) an employing authority to whom a power or duty is delegated under this section from exercising that power or performing that duty through an officer or agent.
- (8) In this section, *department*, *employing authority* and *organisation* each have the meaning given to them in section 3 of the *Public Sector Management Act 1994*.

[Section 77 inserted: No. 38 of 2007 s. 184.]

78. Public consultation

- (1) If the Minister considers it appropriate to do so, or is required to do so by this Act, the Minister must consult publicly on any proposal for making, amending or repealing regulations, by-laws, a management programme or a working plan.
- (2) To consult publicly, the Minister must —
 - (a) if the Minister is of the opinion that the proposal may affect the functions of a body that is responsible for the planning for, or management of, a natural resource — submit the proposal to that body; and
 - (b) call for public comment on the proposal in accordance with subsection (3); and
 - (c) consider any submissions made by a body to which a proposal was submitted or a person under subsection (3).

- (3) The Minister is taken to have complied with subsection (2)(b) if the Minister —
- (a) publishes in 2 issues of a daily newspaper circulating in the area or areas concerned a notice outlining the proposal; and
 - (b) includes in the notice a statement —
 - (i) specifying the places at which a copy of the proposal may be inspected or obtained; and
 - (ii) indicating that written submissions on the proposal may be made by any person within a specified period; and
 - (iii) showing the address to which submissions may be delivered or posted.
- (4) The period specified under subsection (3)(b)(ii) is not to be less than 30 days after both of the notices referred to in subsection (3)(a) have been published.

[Section 78 inserted: No. 38 of 2007 s. 184.]

79. Information officially obtained to be confidential

- (1) A person who misuses confidential information obtained by reason of any function that person has, or at any time had, in the administration of this Act commits an offence.
Penalty: \$10 000 or 12 months imprisonment.
- (2) A person misuses confidential information if it is, directly or indirectly, recorded, used, or disclosed to another person, other than —
- (a) in the course of duty; or
 - (b) under this Act or another law; or
 - (c) with the consent of the CEO; or
 - (d) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence; or

- (e) with the consent of the person or persons to whom the information relates; or
- (f) in circumstance prescribed in the regulations.

(3) In this section —

confidential information means information that has not been made public and that —

- (a) is by its nature confidential; or
- (b) was specified to be confidential by the person who supplied it; or
- (c) is known by the person using or disclosing it to be confidential.

[Section 79 inserted: No. 38 of 2007 s. 184.]

80. Annual reports

(1) The Minister may delete from —

- (a) a copy of a report under the *Financial Management Act 2006* (and any accompanying document) that is to be laid before a House of Parliament or made public; or
- (b) any other document of the Department that is to be, or might be, made public,

information that is of a commercially sensitive nature, despite section 64 of the *Financial Management Act 2006* or an obligation, however arising, to make the document public.

(2) Subsection (1) does not apply to the extent to which —

- (a) the information is already in the public domain; or
- (b) the information is summary or statistical information that could not reasonably be expected to enable particulars relating to any person to be ascertained; or
- (c) disclosure of the information is authorised by each person or organisation to whom it relates.

- (3) A copy of a document from which any matter has been deleted must —
- (a) contain a statement, at the place in the document where the matter was deleted, detailing the reasons for the deletion; and
 - (b) be accompanied by an opinion from the Auditor General stating that the information deleted is commercially sensitive.

[Section 80 inserted: No. 38 of 2007 s. 184.]

81. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person other than the Crown for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the Crown is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 81 inserted: No. 38 of 2007 s. 184.]

82. Regulations

- (1) The Governor may make 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.
- (2) Regulations made under this Act —
 - (a) apply only within the boundaries of the waters or associated land to which this Act applies; and

- (b) may be limited in their application to time, place, circumstance, or class of case; and
- (c) may provide that any act or thing may or shall be done with the approval or to the satisfaction of a specified person or class of persons; and
- (d) may provide that any act or thing shall be, or shall not be, permitted; and
- (e) may confer a discretionary authority; and
- (f) may provide for the payment or remission of fees and charges, for the form and manner of making applications, for the grant of exemptions, for the service and enforcement of orders, for the recovery of fees, charges and expenses, and for the general administration of this Act; and
- (g) may impose a penalty not exceeding —
 - (i) where the specific penalty is provided in the section of this Act pursuant to which the regulation was made, the amount of that specific penalty; or
 - (ii) in any other case, \$500, and as a continuing daily penalty \$50,

for any breach or non-observance thereof.

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

[Section 82, formerly section 76, amended: No. 55 of 2004 s. 1307, renumbered as section 82: No. 38 of 2007 s. 185; amended: No. 38 of 2007 s. 186.]

[Schedule deleted: No. 38 of 2007 s. 187.]

Notes

This is a compilation of the *Waterways Conservation Act 1976* and includes amendments made by other written laws⁴. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

| Short title | Number and year | Assent | Commencement |
|---|-----------------|-------------|--|
| <i>Waterways Conservation Act 1976</i> | 131 of 1976 | 9 Dec 1976 | s. 1-3, 14 and 16-20: 25 Mar 1977 (see s. 2 and <i>Gazette</i> 25 Mar 1977 p. 829); Act other than s. 1-3, 14 and 16-20: 22 Jul 1977 (see s. 2 and <i>Gazette</i> 22 Jul 1977 p. 2335) |
| <i>Waterways Conservation Amendment Act 1980</i> | 16 of 1980 | 15 Oct 1980 | 12 Nov 1980 |
| <i>Waterways Conservation Amendment Act 1982</i> | 97 of 1982 | 22 Nov 1982 | 22 Nov 1982 |
| <i>Acts Amendment and Repeal (Disqualification for Parliament) Act 1984 s. 22</i> | 78 of 1984 | 14 Nov 1984 | 1 Jul 1985 (see s. 2 and <i>Gazette</i> 17 May 1985 p. 1671) |
| <i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i> | 98 of 1985 | 4 Dec 1985 | 1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255) |
| <i>Acts Amendment and Repeal (Environmental Protection) Act 1986 Pt. IX</i> | 77 of 1986 | 4 Dec 1986 | 20 Feb 1987 (see s. 2 and <i>Gazette</i> 20 Feb 1987 p. 440) |
| <i>Acts Amendment (Public Service) Act 1987 s. 32</i> | 113 of 1987 | 31 Dec 1987 | 16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813) |
| <i>Acts Amendment (Swan River Trust) Act 1988 Pt. 10</i> | 21 of 1988 | 5 Oct 1988 | 1 Mar 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 264) |
| <i>Guardianship and Administration Act 1990 s. 123</i> | 24 of 1990 | 7 Sep 1990 | 20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811) |
| <i>Financial Administration Legislation Amendment Act 1993 s. 11</i> | 6 of 1993 | 27 Aug 1993 | 1 Jul 1993 (see s. 2(1)) |

Waterways Conservation Act 1976**Notes** Compilation table

| Short title | Number and year | Assent | Commencement |
|--|------------------------|---------------|---|
| <i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19 | 32 of 1994 | 29 Jun 1994 | 1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948) |
| <i>Fish Resources Management Act 1994</i> s. 264 | 53 of 1994 | 2 Nov 1994 | 1 Oct 1995 (see s. 2 and <i>Gazette</i> 29 Sep 1995 p. 4649) |
| <i>Planning Legislation Amendment Act (No. 2) 1994</i> s. 46(13) | 84 of 1994 | 13 Jan 1995 | 1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567) |
| <i>Industrial Legislation Amendment Act 1995</i> s. 35 | 1 of 1995 | 9 May 1995 | 1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 24 Nov 1995 p. 5389) |
| <i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> Pt. 12 ⁵ | 73 of 1995 | 27 Dec 1995 | 1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291) |
| <i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 82 | 78 of 1995 | 16 Jan 1996 | 4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632) |
| Reprint of the Waterways Conservation Act 1976 as at 1 Mar 1996 (includes amendments listed above except those in the <i>Sentencing (Consequential Provisions) Act 1995</i>) | | | |
| <i>Local Government (Consequential Amendments) Act 1996</i> s. 4 | 14 of 1996 | 28 Jun 1996 | 1 Jul 1996 (see s. 2) |
| <i>Acts Amendment (Land Administration) Act 1997</i> Pt. 66 and s. 141 | 31 of 1997 | 3 Oct 1997 | 30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765) |
| <i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 127 | 57 of 1997 | 15 Dec 1997 | 15 Dec 1997 (see s. 2(1)) |
| <i>Criminal Investigation (Identifying People) Act 2002</i> Sch. 2 cl. 6 | 6 of 2002 | 4 Jun 2002 | 29 Jun 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037) |
| Reprint of the Waterways Conservation Act 1976 as at 20 Sep 2002 (includes amendments listed above) | | | |
| <i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141 | 59 of 2004 | 23 Nov 2004 | 1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128) |

| Short title | Number and year | Assent | Commencement |
|--|-----------------|-------------|--|
| <i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 134⁶</i> | 55 of 2004 | 24 Nov 2004 | 1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130) |
| <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82</i> | 84 of 2004 | 16 Dec 2004 | 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53)) |
| <i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i> | 38 of 2005 | 12 Dec 2005 | 9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078) |
| <i>Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006 s. 6</i> | 52 of 2006 | 6 Oct 2006 | 25 Sep 2007 (see s. 2 and <i>Gazette</i> 25 Sep 2007 p. 4835) |
| <i>Financial Legislation Amendment and Repeal Act 2006 Sch. 1 cl. 179</i> | 77 of 2006 | 21 Dec 2006 | 1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137) |
| Reprint 3: The Waterways Conservation Act 1976 as at 6 Apr 2007 (includes amendments listed above except those in the <i>Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006</i>) | | | |
| <i>Petroleum Amendment Act 2007 s. 108</i> | 35 of 2007 | 21 Dec 2007 | 19 Jan 2008 (see s. 2(b) and <i>Gazette</i> 18 Jan 2008 p. 147) |
| <i>Water Resources Legislation Amendment Act 2007 Pt. 8</i> | 38 of 2007 | 21 Dec 2007 | 1 Feb 2008 (see s. 2(2) and <i>Gazette</i> 31 Jan 2008 p. 251) |
| <i>Approvals and Related Reforms (No. 4) (Planning) Act 2010 s. 39</i> | 28 of 2010 | 19 Aug 2010 | 22 Nov 2010 (see s. 2(b) and <i>Gazette</i> 19 Nov 2010 p. 5709) |
| Reprint 4: The Waterways Conservation Act 1976 as at 18 Jul 2014 (includes amendments listed above) | | | |
| <i>Public Health (Consequential Provisions) Act 2016 s. 101 and Pt. 5 Div. 28 (other than s. 343(2))</i> | 19 of 2016 | 25 Jul 2016 | s. 101: 24 Jan 2017 (see s. 2(1)(c) and <i>Gazette</i> 10 Jan 2017 p. 165); Pt. 5 Div. 28 (other than s. 343(2)): 20 Sep 2017 (see s. 2(1)(c) and <i>Gazette</i> 19 Sep 2017 p. 4880) |

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

| Short title | Number and year | Assent | Commencement |
|--|-----------------|-------------|-----------------------------------|
| <i>Public Health (Consequential Provisions) Act 2016</i> s. 343(2) | 19 of 2016 | 25 Jul 2016 | To be proclaimed (see s. 2(1)(c)) |
| <i>Aquatic Resources Management Act 2016</i> s. 374 | 53 of 2016 | 29 Nov 2016 | To be proclaimed (see s. 2(b)) |

Other notes

- ¹ Repealed by the *Interpretation Act 1984*.
- ² Repealed by the *Mining Act 1978*.
- ³ Repealed by the *Petroleum (Submerged Lands) Act 1982*.
- ⁴ The *Water Resources Legislation Amendment Act 2007* Pt. 11 deals with certain transitional issues some of which may be relevant for this Act.
- ⁵ The *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* s. 189, 201, 202, 204, 207, 208 and 209-219 read as follows:

Part 14 — Transitional provisions

Division 1 — Preliminary

189. Definitions

In this Part, unless the contrary intention appears —
assets means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and includes without limitation —

- choses in action;
- goodwill;
- rights, interests and claims of every kind in or to property,

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

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

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

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

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

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

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

principal Act means the *Water Authority Act 1984*;

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

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

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

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

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

201. Definitions

In this Division, unless the contrary intention appears —

former body means —

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

202. Devolution of former bodies' assets, liabilities etc.

On and after the commencement day —

- (a) the assets and rights of a former body that were immediately before that day vested in that body vest in the Commission by force of this section;
- (b) the liabilities of a former body immediately before that day become, by force of this section, the liabilities of the Commission;
- (c) any proceedings or remedy that immediately before that day might have been brought or continued by or available

against or to a former body, may be brought or continued and are available, by or against or to the Commission;

- (d) any act, matter or thing done or omitted to be done before the commencement day by, to or in respect of a former body (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the Commission; and
- (e) each former body is to deliver to the Commission all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to its operations.

204. Transition to staff of Commission

- (1) Any agreement made at any time between a person and —
 - (a) the employing authority of the department of the Public Service designated as the Water and Rivers Commission (or as it may be redesignated); or
 - (b) the Commission,

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

- (2) A person who immediately before the commencement day was engaged under section 39(5)(b) of the *Waterways Conservation Act 1976* is to be taken after that day to be engaged by the Commission under the power referred to in section 23(5) of the *Water and Rivers Commission Act 1995*.
- (3) A person who immediately before the commencement day —
 - (a) was employed on the staff of the Water Resources Division of the Authority and does not come within subsection (1), section 203 or 205; or
 - (b) was employed on the staff of the Waterways Commission and does not come within subsection (1) or (2) or section 203 or 205,

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

207. Saving

A person who comes within section 204(3) or 206 may be party to an agreement referred to in section 204 or 205 after the

commencement day, in which case the agreement has effect under that section on the day provided for in the agreement.

208. Employees' rights preserved

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

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

Division 5 — General transitional provisions

209. Definitions

In this Division, unless the contrary intention appears —

former body means —

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

relevant successor means —

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

210. Annual report for part of a year

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

211. Completion of things commenced

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

212. Continuing effect of things done

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

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

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

213. Immunity to continue

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

214. References to Authority in Government agreements

- (1) A Government agreement which contains a reference to —
 - (a) the Authority;
 - (b) the Metropolitan Water Authority;
 - (c) the Metropolitan Water Supply, Sewerage and Drainage Department; or
 - (d) the Metropolitan Water Supply, Sewerage and Drainage Board,

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

- (2) Subsection (1) does not apply to a provision of a Government agreement that is spent or has had its effect.
- (3) In this section —
Government agreement has the same meaning as it has in the *Government Agreements Act 1979*.

215. Agreements and instruments generally

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

-
- (2) Any agreement or instrument to which this section applies —
- (a) to which a former body was a party; or
 - (b) which contains a reference to a former body,
- has effect after that day as if —
- (c) the relevant successor to the former body were substituted for the former body as a party to the agreement or instrument; and
 - (d) any reference in the agreement or instrument to the former body were (unless the context otherwise requires) amended to be or include a reference to the relevant successor.
- (3) In this section —
instrument includes subsidiary legislation.

216. Performance of necessary transitional functions

- (1) Despite the repeals effected by sections 14, 163 and 169, a former body continues in existence for the purpose of —
- (a) reporting as required by section 210; and
 - (b) performing the functions described in sections 191(3), 192(1)(g), 193(1)(g), 194(h), 195(f) and 198.
- (2) The accountable authority, within the meaning in the *Financial Administration and Audit Act 1985*, of a former body also continues in existence for the purpose described in subsection (1)(a).
- (3) Despite the provisions of the relevant written laws —
- (a) the members of each of the former bodies immediately before the commencement day cease to hold office on that day; and
 - (b) each of the former bodies is to —
 - (i) be constituted by a person appointed by the Minister; and
 - (ii) perform the functions referred to in subsection (1) through that person.
- (4) The person referred to in subsection (3)(b) holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
- (5) The former bodies as constituted under this section have the powers that are necessary or convenient for the purposes of subsection (1).
- (6) The relevant successor to a former body is to provide the clerical or other assistance that the former body reasonably requires for the

purposes of subsection (1) in respect of the functions that after the commencement day are functions of that successor.

217. Corporation, time to obtain certain licences

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

218. Further transitional provision may be made

- (1) If there is no sufficient provision in this Part for any matter or thing necessary or convenient to give effect to the transition from a former body to the relevant successor the Minister may make that provision by order published in the *Gazette*.
- (2) The Minister may by order published in the *Gazette* make any provision that is necessary to rectify any omission from the transfer order.
- (3) An order under this section may be made so as to have effect from the commencement day.
- (4) To the extent that a provision of any such order has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State, the Corporation, the Commission, the Coordinator or any authority of the State), the rights of that person existing before the day of its publication; or
 - (b) to impose liabilities on any person (other than the State, the Corporation, the Commission, the Coordinator or any authority of the State), in respect of anything done or omitted to be done before the day of publication.

219. Saving

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

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any

instrument, because of a change in the beneficial or legal ownership of any asset, right or liability;

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

⁶ 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.

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

| Defined term | Provision(s) |
|-----------------------------------|---------------------|
| associated land | 3(1) |
| by-law | 3(1) |
| CEO | 3(1) |
| confidential information..... | 79(3) |
| Department..... | 3(1) |
| department | 76(8), 77(8) |
| development control area | 3(1) |
| discharge | 3(1) |
| employing authority | 76(8), 77(8) |
| ferry or charter vessel..... | 48(5a) |
| former Board..... | 3(1) |
| function | 3(1) |
| honorary warden | 3(1) |
| industrial | 3(1) |
| inspector..... | 3(1) |
| Land Administration Minister..... | 32(3) |
| management area | 3(1) |
| management order..... | 32(2) |
| management programme..... | 3(1) |
| organisation..... | 76(8), 77(8) |
| pollution | 3(1) |
| public authority | 3(1) |
| relevant bodies | 12(3) |
| Riverpark | 3(1) |
| section | 3(1) |
| sewage..... | 3(1) |
| specified | 55(3) |
| standard..... | 3(1) |
| waste | 3(1) |
| waters..... | 3(1) |
| working plan | 3(1) |