

Western Australia

Waterways Conservation Act 1976

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Waterways Conservation Act 1976

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Waterways Conservation Act 1976

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

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

1. Short title

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

2. Commencement

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

3. Terms used in this Act

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

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

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

“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;

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

“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 feculant 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;

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

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

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

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

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

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

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

4. Repeal and transitional provisions

- (1) The *Swan River Conservation Act 1958* is hereby repealed.
- [(2) repealed]*
- (3) Without limiting the operation of the *Interpretation Act 1918*², 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 by 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*;
 - (b) the *Health Act 1911*;
 - (c) subject to section 6, the *Land Administration Act 1997*;
 - (d) any Act for the time being providing for the conservation of wildlife or indigenous flora;
 - (e) any Act relating to the powers of a Port Authority established under the provisions of an Act within the area of competence of that Port Authority, in so far as such powers relate to matters affecting navigation or the conduct and management of the port; or
 - (f) the *Environmental Protection Act 1986*,

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

- (3) In so far as the provisions of this Act are in conflict with the powers conferred on a local government 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 Commission 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;
 - (b) where the matter in question relates to associated land or land to which section 31 or section 32 applies and the Commission agrees with the local government that it is not likely to affect such waters, the provisions of this Act shall be deemed not to apply; and
 - (c) where the matter in question is a matter which in the opinion of the Commission may indirectly affect such waters, the local government shall consult with the Commission and in the event of any dispute thereon the provisions of section 15 shall apply,

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

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

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

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

[Section 5 amended by No. 77 of 1986 s. 37; No. 14 of 1996 s. 4; No. 31 of 1997 s. 141.]

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 Commission may, by a notice in writing from time to time provide that any requirement of this Act does not apply in respect of —
- (a) any waters or land specified in the notice;
 - (b) any premises, act or thing specified in the notice;
 - (c) all premises, acts or things comprised in a class thereof so specified or situated in an area so specified; or
 - (d) all or any premises, acts or things in the circumstances so specified.
- (2) The Commission may make any exemption granted under this section subject to such circumstances or conditions or both as it may so specify, and an exemption granted under subsection (1) 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.

9. Application

- (1) The powers of the Commission apply to the waters and associated land comprised within the respective management areas for the time being defined pursuant to 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) The powers of a Management Authority apply to the waters and associated land comprised in the management area for the time being defined pursuant to section 10(1), and to any land or water to which section 31 or section 32 applies, which is placed under the control and management of that Authority, but not elsewhere.
- (3) Where any structure infringes the airspace over any such waters or associated land the powers of the Commission and the relevant Authority shall be deemed to apply to the whole of that structure.

[Section 9 amended by No. 21 of 1988 s. 25; No. 52 of 2006 s. 6.]

10. Management areas

- (1) On the recommendation of the Environmental Protection Authority the Governor may by Order in Council published in the *Gazette* —
 - (a) declare any area of the State containing one or more rivers, inlets or estuaries to be a management area for the purposes of this Act, assign a name to the area, constitute a Management Authority for the area, define the boundaries of the waters and associated land comprised in the area, declare any artificial canal, canal system, lake, lagoon, harbour or embayment connected to a river, inlet or estuary that is in the area to form part

- of that river, inlet or estuary and place the area under the control and management of the Authority so constituted;
- (b) amend any previous Order in Council made under this Act in relation to any area; or
 - (c) dissolve a Management Authority, or declare that the provisions of this Act shall cease to apply to any waters or land.
- (2) Subject to this Act, a Management Authority shall be constituted for each management area but where an area is, for any reason, for the time being not under the control and management of an Authority the Commission may control and manage the area until an Authority for the area is constituted or reconstituted and whilst so doing shall be deemed to be the Management Authority for the area.
- (3) The boundaries of a management area shall be defined by reference to a map showing, where practicable using geographical features, the extent of the waters and land affected in such a way as to enable those boundaries to be readily established.
- (4) No land shall be included within the area to which the powers of the Commission or an Authority are to apply unless, in the opinion of the Commission, the inclusion of that land is necessary in order satisfactorily to achieve the control needed for the conservation and management of the waters by reason of the contour of that land or its use, proximity or other relevant circumstance.
- (5) An Order in Council made under subsection (1) defining or altering the boundaries of the waters and associated land to which the powers of the Commission or an Authority apply or are to apply, shall be laid before each House of Parliament within the 6 sitting days of such House next following the date of publication in the *Gazette*, and the provisions of section 36 of the *Interpretation Act 1918*², shall apply to any such Order in Council as if it had been a regulation.

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- (6) This section does not apply in respect of the development control area or the Riverpark.

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

11. Rivers and Estuaries Council

- (1) There is to be a body called the Rivers and Estuaries Council.
- (2) The Council is to consist of —
- (a) a member of the board of management of the Commission appointed by the Commission;
 - (b) the chief executive officer for the time being of the Commission;
 - (c) the chairman for the time being of the Swan River Trust under the *Swan River Trust Act 1988*;
 - (d) the chairman for the time being of each Management Authority; and
 - (e) not more than 2 other persons appointed by the Commission.
- (3) The person appointed under subsection (2)(a) is to be the chairperson of the Council.
- (4) The Commission may determine —
- (a) the term of appointment of a member of the Council appointed under subsection (2)(a) and (e) (“**appointed member**”);
 - (b) the provisions that are to govern —
 - (i) the removal and resignation of appointed members; and
 - (ii) the attendance at meetings of representatives of *ex officio* members who are unable to attend.
- (5) The Schedule has effect in respect of proceedings at Council meetings.

- (6) The Minister may determine that an appointed member of the Council is to receive remuneration or an allowance and, if the Minister so determines, he or she is to fix the remuneration or allowance on the recommendation of the Minister for Public Sector Management.
- (7) The Commission is to provide the Council with such support services as it may reasonably require.

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

11A. Functions of the Council

- (1) The functions of the Council are to provide advice to the Commission on —
 - (a) the performance of the Commission's functions under this Act;
 - (b) any other matter relating to the operation of this Act that is referred to it by the Commission.
- (2) The Council may, with the approval of the Commission, obtain assistance and advice from any person to enable it to provide advice under subsection (1).

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

12. Administration of this Act

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

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

14. Management Authorities

[(1) repealed]

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- (2) A Management Authority shall consist of a Chairman and not less than 5 nor more than 11 other members each of whom shall be appointed by the Governor pursuant to an instrument in writing setting out the terms upon which the person is to hold and vacate office.
- (2a) Of the members of a Management Authority other than the Chairman, one shall be appointed by the Governor to be the Deputy Chairman of that Authority and a person so appointed —
- (a) shall preside at any meeting of that Authority at which he, but not the Chairman, is present; and
 - (b) in the event of the absence of the Chairman of that Management Authority from any meeting of the Council, shall be entitled to attend that meeting and act in the office of the Chairman of the Management Authority and, when so attending, has all the powers, functions and duties of a member of the Council.
- (3) The membership of a Management Authority shall so far as is practicable be selected from amongst persons resident in the local community to which the Authority relates or who are representative of local governments or officers of departments of the Public Service of the State having responsibility for and knowledge of local affairs.
- (4) Of the membership of the Management Authority constituted for —
- [(a) deleted]*
 - (b) the Peel Inlet and the Harvey Estuary, and the Leschenault Estuary, respectively, 3 shall in each case be persons selected by the Minister for recommendation by him to the Governor, chosen by the Minister from amongst such persons as are nominated to the Minister by the several local governments which have, in the opinion of the Minister, a direct interest in the area to

which the powers of each of those respective Management Authorities are to apply.

- (5) Notification of the appointment of the chairman and of the other members of a Management Authority by the Governor shall be published in the *Gazette*.
- (6) The chairperson of the board of the Commission, or a person acting with his written authority, has power to attend any meeting of a Management Authority and may speak to any matter without notice, but is not entitled to vote.
- (7) A Management Authority shall make available to the Commission the records of its proceedings, and all documents relating to its functions under this Act, and shall advise and inform the Commission with respect to any matter referred to it by the Commission.
- (8) The provisions of the Schedule to this Act shall have effect with respect to the proceedings of a Management Authority.
- (9) A Management Authority shall, on payment of the prescribed fee, supply to any person a map or diagram (which may be produced from aerial photography) showing the boundaries of the area to which the powers of the Authority apply.

[Section 14 amended by No. 16 of 1980 s. 3; No. 21 of 1988 s. 28; No. 73 of 1995 s. 171; No. 14 of 1996 s. 4.]

15. Disputes

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

the discharge of any duties by either or both of them may be finally and conclusively determined by the Minister.

16. Tenure of office

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

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

and

- (b) is eligible, unless disqualified otherwise, for reappointment as a member of the Authority notwithstanding that he has previously held office as a member.

17. Disqualifications

If a member of an Authority —

- (a) is a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration Act 1990*;
- (b) is an undischarged bankrupt or person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (c) is convicted of an indictable offence; or
- (d) has his appointment terminated by the Governor for inability, inefficiency or misbehaviour,

his office becomes vacant and he is not eligible for reappointment.

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

18. Remuneration of Authority members

- (1) Subject to subsection (3), members of an Authority or any committee of an Authority shall be paid such remuneration and allowances as the Governor, on the recommendation of the Minister, determines, and where a person who holds or acts in the office of chairman of an Authority thereby exercises functions as a member of the Council he may be remunerated accordingly.
- (2) The Minister shall not make a recommendation to the Governor as to the remuneration and allowances to be paid —
 - (a) to a member; or
 - (b) to a person appointed a member of a committee of an Authority,

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

- (3) If a person who would be eligible to receive remuneration or allowances under this Act is or becomes a member of, or a candidate for election to, the Parliament of the Commonwealth, he shall not be paid remuneration or allowances under this section but shall, subject to the approval of the Governor, be reimbursed such expenses as he reasonably incurs by reason of his attendance at meetings or of his engagement pursuant to this Act on the official business of the Council or an Authority.

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

19. Deputies and acting members

- (1) The Governor may, in respect of each member of an Authority, appoint a person representative of the same interests as that member to be his deputy and while taking the place of a member his deputy has all the powers and entitlements of the member under this Act.
- (2) Where —
 - (a) both a member and the deputy of that member are absent or temporarily incapable of fulfilling the duties of a member; or
 - (b) the office of a member is vacant and is not taken by a deputy or filled in accordance with this Act; or
 - (c) there is for any reason in relation to a Management Authority no person available to hold or act in the office of member of the Council,

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

- (3) Any reference in this Act to a member shall be construed as including a reference to —
 - (a) a deputy acting in the office of that member; and
 - (b) a person appointed by the Minister to act in the place of a member during any absence, temporary incapacity or casual vacancy.
- (4) Where a member of an Authority ceases to hold office before the expiration of the period of his appointment, the person who was at that time the deputy of that member is, until the office of member is filled by the appointment of another member or until the expiration of 3 months from the date the member ceased to hold office, whichever is the lesser time, entitled to attend any

meeting of the Authority and, when so attending, has all the powers, functions and duties of an Authority member.

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

20. Application of *Public Sector Management Act 1994*

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

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

21. Committees

- (1) A Management Authority may, from time to time, appoint a committee or committees to investigate and advise on any aspect of its functions or to carry out such of those functions, other than the power of delegation, as may, with such approval as is required by section 22, have been delegated to that committee.
- (2) The delegation to a committee of any power or duty does not relieve the Authority of the responsibility for the actions or decisions of that committee.
- (3) A committee may consist of such persons as the Authority determines, whether members of the Authority or persons who are not such members, but so that in every case not less than one person on the committee shall be a member of the appointing body.
- (4) Each committee appointed shall report on its activities at such times as may be directed.

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

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

22. Delegation

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

[(2) repealed]

- (3) A Management Authority may, with the approval of the Commission, delegate to a public authority, or any officer or employee of a public authority, or to any other person or body specified in the instrument of delegation any power exercisable by that Authority.
- (4) The power of delegation conferred by this section does not authorise a person or body to whom or which a duty or power has been delegated to delegate that duty or power to any other person or body, except that a power (not being itself a power to delegate) which is delegated by the Commission to an Authority may with the approval of the Commission be delegated by that Authority in accordance with the provisions of this section.
- (5) The exercise of the power to delegate conferred by this section shall be evidenced by an instrument in writing.
- (6) A delegation under this section —
- (a) may be varied or revoked in like manner;
 - (b) does not prevent the performance of the duty or the exercise of the power by the delegating body; and
 - (c) shall be implemented in accordance with the instrument of delegation.
- (7) Where the exercise of a power in relation to a matter is dependent upon the opinion, belief or state of mind of the body

in which that power is vested by this Act and that power is delegated pursuant to this section, the power may be exercised upon the opinion, belief, or state of mind of the delegate.

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

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

23. Duty of the Commission

- (1) The Commission shall have the general duty of conserving the rivers, inlets, and estuaries to which the powers of the Commission apply and of advising the Environmental Protection Authority thereon.
- (2) It shall be the duty of the Commission —
- (a) to preserve or enhance the quality of the environment and amenities of the waters and of the associated land to which the powers of the Commission apply;
 - (b) to control and wherever practicable to prevent any act or omission which causes or is capable of causing pollution of those waters or that land;
 - (c) to provide advice and disseminate knowledge on the conservation and good management of rivers, inlets, and estuaries and of lands associated therewith;
 - (d) in so far as that is practicable, to act in concert with, consult and make arrangements and agreement with relevant local governments, residents and other persons affected by the operation of this Act;
 - (da) to provide services to the Swan River Trust as required by section 31(1) of the *Swan River Trust Act 1988*;

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- (e) generally, to provide administrative and co-ordinating services for the purposes of this Act and so to conserve and manage those waters and the associated land and to administer this Act as to attain the objects of this Act.
- (3) The Commission shall, as soon as practicable after the receipt of the request, report to the Minister on any matter on which a report is requested by him.

[Section 23 amended by No. 21 of 1988 s. 29; No. 14 of 1996 s. 4.]

24. Functions of the Commission

- (1) In the performance of its functions the Commission shall be subject to the Minister, and shall give effect to any direction, whether general or specific, which the Minister may give as to those functions.
- (2) In the performance of its functions the Commission shall comply with any lawful direction given as to those functions by the Environmental Protection Authority.
- (2a) In the performance of its functions the Commission is to have regard to any advice given to it by the Council.
- (3) Upon the direction of the Minister the Commission shall consult with, and have regard to the representations of—
 - (a) the Management Authority for any area constituted under this Act;
 - (b) the local government for the area in question;
 - (c) any other statutory body or instrumentality of the Crown exercising functions in relation to the area concerned which appears to the Minister, the Environmental Protection Authority, or the Commission to be likely to be affected by the exercise of the powers of the Commission; and

- (d) other bodies representing persons interested in the use of the waters and land in question,

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

- (4) In performing its functions the Commission shall have regard to —
 - (a) the interests of navigation, fisheries, agriculture, water supply, recreation and leisure-time occupation for the benefit of the public, the natural beauty and amenity of the area, and the preservation of public rights of access; and
 - (b) the rights acquired by persons, whether as owners or occupiers, in relation to boat houses, jetties and other structures then in being, being rights the exercise of which is not likely to impair the environment.
- (5) The Commission has the duties imposed and the powers conferred by this Act.

[Section 24 amended by No. 73 of 1995 s. 177; No. 14 of 1996 s. 4.]

25. Powers of the Commission

- (1) The Commission has all such powers, rights and privileges as may be reasonably necessary to enable it to carry out its duties.
- (2) Without limiting the generality of the provisions of this section, the Commission may —
 - (a) maintain and manage either alone or jointly with other persons or any public authority all areas, whether comprising water or land or both, to which for the time being the powers of the Commission apply including the carrying out of works for the purposes of improving and maintaining the condition of the waters and associated land;

- (b) carry out, or cause to be carried out, river training, dredging, reclamation, and structural works;
- (c) carry out policies, or formulate and implement schemes for coordinated action by owners and occupiers of land, and agencies and instrumentalities of the Crown and public authorities having the control of land adjacent to or associated with any part of the waters to which the powers of the Commission apply, directed to the abatement or prevention of pollution including the control by licensing or prohibition in accordance with regulations made under this Act —
 - (i) of the discharge of effluent or the disposal of waste; and
 - (ii) of dredging,likely to lead to the impairment of the condition or flow of the waters or to an aggravation of pollution due to other causes or the consequences of such pollution;
- (d) cooperate with and make representations to the Environmental Protection Authority, planning and local governments and others with a view to the attainment of the objects of this Act;
- (e) establish and develop criteria for the assessment of the extent of environmental change or pollution;
- (f) specify standards and criteria, and the methods of sampling and testing to be used for any purpose;
- (g) conduct or promote relevant research, or enter into projects for research or the collation of information jointly with others, in consultation with the Environmental Protection Authority;
- (h) publish reports and provide information for the purpose of increasing public awareness of the problems and remedies that exist in relation to environmental pollution as it relates to waters and associated land;

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

[Section 25 amended by No. 14 of 1996 s. 4.]

26. Duty of a Management Authority

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

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- (3) A Management Authority shall have responsibility for the initial preparation and constant review of the proposals for any management programme related to its area, and where a management programme or a working plan formulated pursuant to a management programme is in force the Authority shall not act in a manner inconsistent therewith.
- (4) In the preparation and review of management programmes a Management Authority shall furnish and from time to time update a financial estimate commensurate with the current proposals, and where finance is provided pursuant to this Act shall be responsible for the management and allocation of the monies within the area and for the purposes of the performance of its functions.

27. Functions of a Management Authority

- (1) In the performance of its functions a Management Authority shall be subject to the Minister, and shall give effect to any direction, whether general or specific, which the Minister may give as to those functions.
- (2) A Management Authority may advise the Minister independently of the Commission where that Authority is at variance on any matter with the Commission, and may communicate directly with the Minister on any matter.
- (3) With the necessary modifications, the provisions of section 24(2), (3), (4) and (5) apply to an Authority as they apply to the Commission.

28. Powers of a Management Authority

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

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- (2) In relation to its area a Management Authority may advise and make recommendations to —
- (a) the Minister;
 - (b) the Environmental Protection Authority;
 - (ba) the Council;
 - (c) the Commission; or
 - (d) any public authority or other person,

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

- (3) Without limiting the generality of the provisions of this section, a Management Authority in, or in relation to, its area may —
- (a) arrange with local governments and other public authorities for the carrying out of works, and finance such works or reimburse the local government or authority concerned within the limitations of the financial programme of the Commission;
 - (b) establish facilities, including jetties, boat ramps, change rooms, toilets, recreation areas and barbecue sites, and carry out or cause to be carried out the requisite works;
 - (c) control and manage the waters, and formulate and implement schemes, (which may include licensing provisions), either alone or jointly with others directed to the conservation of those waters;
 - (d) control and manage the associated land generally, having particular regard to the foreshore, including the formulation and implementation of schemes directed to the abatement, control and prevention of litter and other forms of pollution; and
 - (e) make and enforce by-laws pursuant to this Act.

[Section 28 amended by No. 73 of 1995 s. 178; No. 14 of 1996 s. 4.]

29. Suspension of an Authority, and effect of dissolution and reconstitution

- (1) Subject to subsection (2) the Governor on the recommendation of the Minister may by notice published in the *Gazette* suspend the functions and powers of a Management Authority for such time as he thinks necessary if it appears to the Minister after consultation with the Commission that the Authority —
 - (a) is not performing the duties imposed upon it by this Act;
 - (b) is exceeding the powers conferred upon it by this Act; or
 - (c) is acting in a manner which is contrary to policies and procedures formulated under this Act and which is detrimental to the achievement of the objects of this Act.
- (2) The Minister shall not make a recommendation pursuant to subsection (1) without first giving the Authority concerned notice in writing of his intention to do so and affording that Authority reasonable opportunity to show cause why he should not do so.
- (3) The Minister may —
 - (a) at any time after the suspension of the functions and powers of an Authority pursuant to subsection (1), remove that suspension by notice published in the *Gazette*;
 - (b) at any time after the dissolution of an Authority pursuant to section 10(1), recommend to the Governor that the Authority be reconstituted.

30. Continuity of administration

Where an Authority is suspended or dissolved, or is reconstituted, whether or not the management area is to be, or was, for any period of time administered by the Commission, the Governor may by notice in the *Gazette* make transitional provisions for the continuity of the administration of the area and the devolution of the relevant rights, obligations and

liabilities, and effect shall be given to any such provisions without further or other assurance.

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

31. Agreements as to private land

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

32. Reserves may be placed under the control of the Commission

- (1) The Minister administering the *Land Administration Act 1997* may by order under Part 4 of that Act place with the Commission 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 Minister referred to in that subsection 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 Commission 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 Commission, (but no such provision shall prevent the Commission from exercising the power),

and that Minister may by a subsequent order under Part 4 of that Act revoke the management order or vary anything to which the

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care, control and management of the land are made subject by the management order.

[Section 32 amended by No. 14 of 1996 s. 4; No. 31 of 1997 s. 139.]

33. Local government consultations, and initiatives

- (1) Whenever directed by the Minister so to do in relation to any matter, the Commission or a Management Authority shall refer the matter in question to every local government the district of which in the opinion of the Minister may be affected for any information and advice the local government may be able to offer, shall have regard to the views of the local government and shall notify the local government of the general nature of any report, advice or recommendation which the Commission or that Authority may then intend to submit to the Minister.
- (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 Commission or the relevant Management Authority in relation to any management area or other area placed under the control or management of an Authority, and may request the Commission or that Management Authority to initiate action in respect of land which in the opinion of the local government should be dealt with under the provisions of this Act.

[Section 33 amended by No. 14 of 1996 s. 4.]

34. Agreements for joint action

- (1) The Commission or a Management Authority may, from time to time, enter into and give effect to agreements providing for co-ordinated measures to be taken jointly with other persons or

bodies relating to any matter in respect of which they are authorised to exercise powers under this Act.

[(2) repealed]

[Section 34 amended by No. 14 of 1996 s. 4.]

35. Management programmes

- (1) The Commission, in consultation with the relevant Management Authority and 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 —
 - (a) waters and associated land placed under the control of the Commission or that Authority; and
 - (b) waters and land the subject of an agreement made by the owner, lessee or licensee thereof with the Commission or that Authority pursuant to section 31,during the period to which the programme relates.
- (2) Regulations made under this Act may provide that no person shall, without the approval of the Commission or relevant Management Authority, cause or permit any development to take place, or any interference or disturbance of the physical environment to occur, in relation to specified waters and associated land the subject of a management programme.
- (3) Notwithstanding the provisions of section 5, where a local government 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) Proposals to establish a management programme for the first time when prepared in relation to any area shall be brought to the notice of persons likely to be affected by being published in

a newspaper circulating in the locality and in such other manner as the Minister may direct, but that programme shall not take effect until the Minister, by notice in the *Gazette* and in that newspaper, indicates that the representations made as to those proposals have been considered and fixes a date as that on which the programme is to commence.

- (5) A management programme shall be kept under constant review and may subsequently be amended from time to time with the approval of the Minister, but where the Minister so directs any proposal for amendment shall be brought to the notice of persons likely to be affected before taking effect.
- (6) The Commission and the relevant Management Authority shall maintain a copy of the management programme as from time to time in force available for inspection by members of the public at reasonable hours without charge.
- (7) The method of making representations regarding the proposals for a management programme shall be as prescribed, and the regulations may provide for the conduct of a public inquiry if the Minister so thinks fit.
- (8) A management programme may include a working plan to be carried out for the improvement, development and maintenance of the waters and associated land, the prevention and control of fires, the public utilisation of the area, the study, care and restoration of the natural environment, the conservation of indigenous flora and fauna and such other matters as the Management Authority and the Commission recommend and the Minister approves.
- (9) The Commission may, with the approval of the Minister, arrange with any public authority for the carrying out on behalf of the Commission or Management Authority, and whether or not under the direction of the Commission or that Authority, of any work specified in a working plan formulated pursuant to a management programme.

[Section 35 amended by No. 14 of 1996 s. 4.]

36. Town planning referrals

- (1) The Commission 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*;
 - (b) the Western Australian Planning Commission established under the *Planning and Development Act 2005*;
 - [(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 Commission particulars of —

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

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

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- (2) Where particulars of an application or proposal referred to in subsection (1) are submitted to the Commission pursuant to that subsection —
- (a) the Commission shall consider the matters so submitted to it and may for that purpose consult with the town planning authority; and
 - (b) the Commission shall furnish the town planning authority with its recommendations in writing as to whether the application or proposal ought to be carried into effect and whether or to what extent the Commission considers that the application or proposal ought to be modified, and the reasons on which the Commission's recommendations are based.
- (3) The Commission may at any time after it has furnished its recommendations to the town planning authority under subsection (2), publish in any manner which it considers appropriate the terms of those recommendations.
- (4) In considering any request or proposal referred to it under subsection (1), and in making its recommendations and generally exercising its powers under subsection (2), the Commission shall, in particular, have regard to the terms of any relevant management programme for the area.
- (5) Unless and until the town planning authority has received and considered the recommendations of the Commission under this section, it shall not exercise any power of the kind referred to in subsection (1) in relation to any such land.

[Section 36 amended by No. 84 of 1994 s. 46; No. 57 of 1997 s. 127; No. 38 of 2005 s. 15.]

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 the powers of the Commission apply he shall so advise the

Commission and shall thereafter in relation to that matter furnish to the Commission and the relevant Management Authority all such aid, information and facilities as are practicable, and the Commission shall report to the Minister on the matter when and as often as the Minister requires.

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

38. Public referrals

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

39. Staff

[(1) repealed]

- (2) A Management Authority may, with the consent of the Commission and on such terms as may be agreed, make use of the services of any officer or employee of the Commission.
- (3) For the purposes of this Act, a Management Authority may, with the consent of the Minister of the Crown having responsibility for the administration of the Act relating to a department of the Public Service of the State or an instrumentality or agency of the Crown, make use of the services of any officer of that department, instrumentality or

agency, upon such terms as may be agreed with the Minister and approved by the employing authority, within the meaning of the *Public Sector Management Act 1994*, of that officer.

[(4) repealed]

- (5) Subject to the provisions of this Act and the approval of the Commission, a Management Authority may engage —
- (a) officers and employees under contract of service; or
 - (b) professional, technical or other assistance under contract for works or services,

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

- (6) Subject to any relevant award or industrial agreement under the *Industrial Arbitration Act 1912*⁵, the terms and conditions of appointment and employment of officers and employees of an Authority engaged pursuant to subsection (5), including the salary payable, shall be such terms and conditions as the Commission, after consultation with the Minister for Public Sector Management determines but where the Commission considers that a person is, or is to be, employed in similar circumstances to an employment in the Public Service the terms and conditions under this Act shall be similar to those applicable in the Public Service to those circumstances.
- (7) A person engaged under the provisions of subsection (5) is not a person appointed under Part 3 of the *Public Sector Management Act 1994*.

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

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

42. Funds of the Management Authorities

- (1) The funds available to a Management Authority for the purpose of enabling it to exercise its functions under this Act are —
 - (a) moneys received from the Commission, which may be appropriated by the Commission to specific purposes; and
 - (b) moneys received by that Authority by way of fees, charges, or otherwise under the authority of this Act,and all such moneys shall be expended for the purposes of this Act and not otherwise.
- (2) Whenever so required by the Commission a Management Authority shall cause to be prepared a written statement showing —
 - (a) the amount which the Authority estimates will be required to meet the expenses of and incidental to the administration of this Act in relation to that management area in the period or for the project specified in that request;
 - (b) the amount which the Authority has or is likely to have on its own account to meet those expenses, or in respect of which it can make provision; and
 - (c) the amount of the balance for which no other provision has been made.
- (3) A Management Authority shall furnish the Commission from time to time on demand with details of its financial affairs and make available to the Commission all books and accounts maintained by the Authority and all documents relating thereto.

43. Application of *Financial Management Act 2006*

[(1) repealed]

- (2) Except in so far as the disclosure is commendatory, the Commission shall not disclose particulars relating to any individual business in an annual report prepared for the

purposes of the *Financial Management Act 2006* in respect of the operation of this Act.

[Section 43 inserted by No. 98 of 1985 s. 3; amended by No. 73 of 1995 s. 182; No. 77 of 2006 s. 17.]

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

45. Exemption from personal liability

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

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

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) In this section a reference to the Commission shall be construed as including a reference to a Management Authority or some other person or body acting on behalf of or under the direction of the Commission exercising a power conferred by delegation or otherwise pursuant to this Act.
- (3) Any person, in the prescribed manner, if any, may apply to the Commission for a licence 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 Commission may grant, renew or transfer any such licence.

- (4) The Commission, on giving written notice to the applicant of the reason, may refuse any application and no person shall be entitled to the grant, renewal or transfer of a licence as of right notwithstanding any other law or established practice.
- (5) The grant of a licence may be authorised subject to such reasonable conditions as the Commission thinks fit, which conditions shall be endorsed upon or attached to the licence when granted.
- (6) The Commission, at any time during the currency of a licence, by notice in writing given to the holder of the licence, may —
- (a) vary or add to the conditions of the licence; or
 - (b) in the case of an unconditional licence, provide that it shall be subject to reasonable conditions specified in the notice,
- but, subject to the provisions of this section, a licence shall otherwise take effect according to its tenor and for the period specified therein.
- (7) The Commission may renew the period of operation of a licence from time to time, or transfer the authority it confers from one person to another, or, where its operation relates to any place, may transfer that operation to another place of the same kind.
- (8) Where in the opinion of the Commission a person is contravening, or is likely to contravene, the provisions of this Act the Commission may give to that person a notice in writing informing him of the opinion of the Commission and, where the Commission considers that the matter is one capable of being dealt with by a licence the conditions of which will impose a satisfactory degree of control, may thereby require him to apply for such a licence instead of instituting proceedings for the alleged offence.
- (9) Where the owner, and any person occupying the land with the consent of the owner, has given approval in writing the powers conferred by this section may be exercised in relation to any

land placed by the owner, lessee or licensee of that land under the control or management of the Commission.

- (10) Where the holder of a licence contravenes or fails to comply with any condition endorsed upon or attached to the licence —
- (a) he commits an offence and is liable for his act or omission to the extent that it was not authorised by the licence;
 - (b) the court may, in addition to any other penalty, by order cancel the licence; and
 - (c) the Commission may, by notice in writing given to the holder of the licence, revoke that licence or suspend the operation of it for such period as the Commission thinks fit.
- (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 Commission to grant or renew a licence under this Act;
 - (b) by the revocation of a licence or the suspension of the operation of a licence pursuant to subsection (10); or
 - (c) by a condition imposed by the Commission in relation to any licence,

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

[Section 46 amended by No. 78 of 1995 s. 135; No. 55 of 2004 s. 1306.]

47. Disposal licences

- (1) An application for a disposal licence authorising the discharge or deposit of any matter shall be made to the Commission in the prescribed manner and shall state —
 - (a) the place and time at which it is proposed to make the discharge or deposit to which the application relates;
 - (b) the nature and composition of the matter proposed to be discharged or deposited, and the maximum temperature of it; and
 - (c) the maximum quantity of the matter which it is proposed to discharge or deposit on any one day, or the highest rate at which it is proposed to discharge or deposit it.
- (2) An application for a licence 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 Commission may —
 - (a) grant a disposal licence either unconditionally or subject to conditions; or
 - (b) refuse to grant a licence,

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

- (4) The Commission shall determine any application for a disposal licence 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 Commission shall have regard to broad principles, and generally shall endeavour to ensure that any matter which it is proposed to discharge into the waters shall not contain —
- (a) sewage, unless treated to a standard approved by the Commission;
 - (b) acidity or alkalinity outside the range of a pH value between pH5 and pH9;
 - (c) poisons; or
 - (d) any substance which is likely —
 - (i) to contribute to the formation of sludge or other deposit;
 - (ii) to contribute to the formation of scum, fat, oil, grease or floating material;
 - (iii) to contribute to the formation of objectionable odours or discoloration;
 - (iv) to be injurious to marine or animal or human life; or
 - (v) to deplete excessively the oxygen content of the waters.
- (6) The conditions to which a disposal licence may be made subject include reasonable conditions —
- (a) as to places and times at which the discharge or deposit to which the licence relates may be made;
 - (b) as to the nature, composition, temperature, volume and rate of the discharge or deposit;
 - (c) as to the provision of facilities for taking samples of the matter discharged or deposited;
 - (d) as to the provision, maintenance and testing of meters for measuring the volume and rate of the discharge or

deposit, and apparatus for determining the nature, composition and temperature of any discharge or deposit;

- (e) as to the keeping of records of the nature, composition, temperature, volume and rate of the discharge or deposit and in particular of records of the readings of meters and other recording apparatus provided in accordance with any other condition relating to that licence; and
- (f) as to the making of returns and the furnishing of other information to the Commission in relation to any discharge or deposit,

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

- (7) Without limiting the generality of the provisions of this section, wastes shall not be permitted to be discharged into any waters —
 - (a) if it is reasonably practicable to dispose of them satisfactorily in some other manner;
 - (b) unless every reasonable and practicable step has been taken to improve the quality and appearance of the wastes, prior to discharge; and
 - (c) unless they conform with such bacterial, physical and chemical standards as may from time to time be laid down by the Commission.
- (8) It shall not be the responsibility of the Commission to specify the design, location, type of construction or particular manner in which any operation causing or threatening to cause a condition of pollution might be corrected, and any person ordered to correct the condition of any wastes shall correct the condition in a lawful manner.
- (9) Notwithstanding that a disposal licence may be expressed to have effect for a specified time and that the holder of the licence has not contravened or failed to comply with any of the

conditions endorsed upon or attached to it, that licence may be revoked by notice in writing given by the Commission to the licence holder if in the opinion of the Commission it is necessary in the public interest in consequence of a change of circumstance (which may include a change in the information available as to the discharge or deposit to which the notice relates or as to the interaction with other matter) which could not reasonably have been foreseen at the time the licence was granted.

- (10) Provision may be made from time to time by regulations as to the issue of disposal licences, the rights and obligations of licensees thereunder, the fees to be paid in respect thereof, and such other matters as the Governor shall seem necessary or advisable to give effect to this section.
- (11) A regulation made for the purposes of this section may discriminate according to different premises, trades, industries, processes or otherwise and may provide for differing fees and charges to be payable, or for the remission of fees or charges that would otherwise be payable, according to prescribed factors.

48. Control of pollution, and the use of waters

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

- (3) Subject to subsection (1), a person shall be guilty of an offence if he causes or knowingly permits —
- (a) any poisonous, noxious or polluting matter to be discharged or deposited on or in any waters or land to which this section applies which he knows or ought reasonably to know will lead, or be likely to lead, to the impairment of the physical, chemical or biological condition of those waters or any subterranean source of those waters, or will tend (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper flow of those waters in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of the consequences of such pollution; or
 - (b) any industrial effluent, waste or other matter from any mine, treatment plant, processing establishment, or factory, whether treated or otherwise, to be discharged or deposited so as to run or otherwise enter into waters to which this section applies, or any subterranean source of those waters; or
 - (c) anything to be done, or omitted, whereby the use of the waters or associated or adjacent land for navigational, recreational or other beneficial purposes is impaired or otherwise adversely affected.
- (4) A person shall not be guilty of an offence by virtue of subsection (3) if —
- (a) the discharge or deposit is authorised by a disposal licence issued for the purpose under section 47 and is in accordance with the conditions, if any, to which the licence is subject;
 - (b) the entry of the matter into the waters is attributable to an act or omission which is in accordance with good agricultural practice and the Commission has not, by notice in writing given not less than 3 months

previously, required the owner or occupier of the place where the act or omission occurred, or any previous owner or occupier of that place, to apply for a licence in respect of that act or omission;

- (c) the discharge or deposit is caused or permitted in an emergency in order to avoid danger to the public and, as soon as reasonably practicable after it occurs, particulars of the discharge or deposit are furnished to the Commission and to such other persons as the Commission may direct; or
- (d) the entry of the matter into the waters is attributable to events none of which that person could reasonably have been expected to prevent.

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

- (a) prohibiting or regulating the keeping or use on waters to which this section applies of a vessel that is fitted with a water closet or other prescribed sanitary appliance designed to permit polluting matter to pass into the water;
- (b) prohibiting the keeping or use on waters to which this section applies of a ferry or charter vessel that is not fitted with prescribed facilities for the storage of polluting matter; and
- (c) regulating the disposal of polluting matter from facilities mentioned in paragraph (b) 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 1948*⁶ 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 Commission that with a view to preventing poisonous, noxious or polluting matter from entering waters to which this section applies, it is appropriate to prohibit or restrict the carrying on in a particular place of activities which the Commission considers to be likely to result in pollution of those waters, provision may be made by by-laws that prescribed activities shall not be carried on in that place except under licence from the Commission (which shall not be unreasonably refused) and the by-laws may provide that any prescribed contravention shall be an offence to which subsection (9) applies.
- (8) Provision may be made from time to time by regulations for prohibiting or controlling —
- (a) the use of waters to which this section applies for industrial purposes;
 - (b) the doing or omitting of anything the doing or omission of which results or is likely to result in pollution except such as may be authorised by a licence under this Act;
 - (c) the carrying out of any works or proposed works of any kind in, on, over or under the waters or land to which this section applies, or both or any part of either or both of them, (and such regulations may provide for the carrying out or removal of such works by or on behalf of the Commission and for the recovery of costs incurred by the Commission in so doing);

- (d) dredging, drainage, river training, reclamation, and the provision or removal of structures, including jetties, wharves and bridges, and obstructions to navigation or the flow of the waters; or
 - (e) the putting into such waters of mud, earth, gravel, litter or other matter which is likely to cause obstruction or be objectionable.
- (9) A person guilty of an offence against subsection (3), or of a contravention of a regulation or a by-law which provides that this subsection shall apply, shall be liable to a fine not exceeding \$5 000, and where the offence is a continuing offence an additional fine not exceeding \$100 for each day on which the offence continues after service on the offender of written notice of the offence.

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

49. Injunctions

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

50. Orders

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

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 Commission to have been abandoned or to belong to a person the whereabouts of whom cannot be traced without unreasonable difficulty or expense,

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

52. Remedial works

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

53. Recovery of expenses

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

54. By-laws

- (1) The Commission may cause to be prepared and published in the *Gazette* draft model by-laws which a Management Authority may adopt, with or without alterations, for the purposes of this Act.
- (2) Where a draft model by-law is adopted, with or without alterations, by an Authority that by-law shall for all purposes have effect as if it were a by-law prepared and made by that Authority.

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- (3) Any Management Authority in relation to the area under its control and management may make by-laws for any of the purposes permitted by this Act.
 - (4) By-laws made under this section are required to be confirmed by the Governor before being published in the *Gazette* and laid before each House of Parliament.
 - (5) The provisions of the *Interpretation Act 1918*², in general, and those of sections 36 and 38 of that Act in particular, apply in respect of by-laws made and the making of by-laws under this Act.
 - (6) Where an Authority intends to make a by-law, whether by adoption of a model by-law or otherwise, that Authority shall —
 - (a) cause a draft of the proposed by-law to be prepared, or specify the draft model by-law to be adopted setting out any alterations proposed;
 - (b) resolve that the by-law be made, or be made by way of the adoption of a draft model by-law, specifying in the record of that resolution any alterations proposed to a draft model by-law;
 - (c) cause notice of the intention to submit the by-law for confirmation by the Governor to be published once in a newspaper circulating in the locality of the management area affected, and cause to be stated in the notice the purport of the by-law and of the alterations, if any, where a model by-law is adopted and notification that the full text of the by-law may be inspected by members of the public free of charge at the places therein specified;
 - (d) for a period of 21 days commencing on the day of publication of the notice in a newspaper pursuant to the requirements of paragraph (c), cause —
 - (i) a copy of that notice to be kept posted on the official notice board of each of the local governments within the district of which the

by-law is to apply (and any such local government is required to permit the notice to be so posted for that period); and

- (ii) a copy of the full text of the by-law to be available free of charge for public inspection during office hours at the places specified in the notice.
- (7) The notice of the intention to submit the by-law for confirmation by the Governor published in a newspaper in accordance with paragraph (c) of subsection (6) and the notice posted on the official notice board of the local government in accordance with paragraph (d) of that subsection shall in each case include a provision making known to the public that objections to and representations in respect of the proposed by-law may be made to the Management Authority during the period of 21 days commencing on the date of the publication and in the manner specified in the notice.
- (8) Within the period of 21 days commencing on the date of the publication and in the manner so specified, any person or body that wishes to make an objection or representation to the Management Authority in respect of the proposed by-law may submit that objection or representation with all relevant accompanying documents or information to that Authority.
- (9) The Management Authority shall consider any objection or representation made under subsection (8) and, if that Authority thereafter still desires to make the by-law in the form published, cause the record of the resolution to be delivered to the Minister together with a report on the objections and representations made in respect of the proposal.
- (10) If the Governor confirms the by-law the Minister shall cause the full text of the by-law to be published in the *Gazette* and to be laid before both Houses of Parliament as required by section 36 of the *Interpretation Act 1918*².

[Section 54 amended by No. 14 of 1996 s. 4.]

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;
 - (b) so as to require a matter affected by it to be in accordance with a specified standard or specified requirement, or as approved by, or to the satisfaction of, a specified person or body, or class of person or body, and so as to confer upon a specified body a discretionary authority;
 - (c) so as to provide that in specified cases, or a specified class of case, or specified classes of cases, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from its provisions either wholly or to such extent as is specified; and
 - (d) so as to provide for a modified penalty, not exceeding one quarter of the amount specified in that by-law as the penalty for which a person may be liable in relation to that offence, to be payable by a person who does not contest an allegation that he committed any specified breach of the provisions of those by-laws, and shall provide that the due payment of a modified penalty is a defence to a charge of the breach in respect of which that modified penalty was paid.
- (2) Any by-law may make provision for the imposition of penalties not exceeding \$100 in respect of any contravention, and may prescribe the fees and charges that shall be payable in relation to matters under this Act, the persons liable and the method of recovery of amounts not duly paid.

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

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) A local government may, by resolution, adopt as a local law the whole or any part of a draft model by-law prepared by the Commission and published in the *Gazette*, with or without modification.
- (3) Where a local government adopts the whole or any part of a draft model by-law prepared under this Act the local law adopting the model by-law shall in all courts be deemed to be within the powers conferred on the local government.
- (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 required to be confirmed by the Governor before being published in the *Gazette* and laid before each House of Parliament and shall be prepared or adopted with the necessary modifications but otherwise subject to the same procedures and requirements as if prepared or adopted by the local government under and for the purposes of the provisions of the *Local Government Act 1995*.

[Section 56 amended by No. 21 of 1988 s. 30; No. 14 of 1996 s. 4; No. 52 of 2006 s. 6.]

57. Inconsistency of by-laws with regulations

Where there is conflict or inconsistency between the provisions of a by-law made under this Act by a Management Authority or a local government 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 by No. 14 of 1996 s. 4.]

58. Revocation of by-laws

- (1) Where any by-law has been or is made by a Management Authority or a local government under this Act and that by-law, or the manner in which that by-law is administered, is in the opinion of the Governor unduly oppressive, repugnant to or inconsistent with the provisions of this Act the Governor may by notice published in the *Gazette* revoke that by-law or any part thereof and effect shall be given to any such revocation but without affecting the validity, or curing the invalidity, of any thing done, or of the omission of any thing, in the meantime.
- (2) The Minister shall cause a copy of any notice published under this section to be laid before each House of Parliament within 6 sitting days of that House next following the publication, and if either House of Parliament passes a resolution of which notice has been given within the first 14 sitting days of that House after the copy of a notice under this section has been laid before that House that the notice be disallowed, the notice thereupon ceases to have effect, but the disallowance of the notice does not affect or invalidate anything done in good faith before the passing of the resolution.

[Section 58 amended by No. 14 of 1996 s. 4.]

59. Public consultation

- (1) Where the Commission or a Management Authority is so directed by the Minister or is required to do so by this Act, any proposals for regulations or a management programme or

working plan shall be published in the *Gazette* and 3 issues within a 21 day period of a newspaper circulating throughout the locality in question in such a manner as to make known to the public an informative and comprehensive outline of the proposals and to invite objections and representations within a time and in a manner thereby specified, and regard shall be had to any such objection or representation.

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

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

61. Inspectors

- (1) A Management Authority may appoint any person to be an inspector under this Act in relation to the management area under its control.
- (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, but an appointment must not be made in relation to a management area without prior consultation with the Management Authority for that area.
- (3) Every person appointed to be an inspector under this Act shall be furnished with a certificate in the prescribed form evidencing his appointment and shall produce such certificate whenever required so to do by any person in respect of whom he has exercised or is about to exercise any of his powers under this Act.
- (4) Production of a certificate in the prescribed form is conclusive proof in any court of the appointment of the inspector to whom that certificate relates and of his authority to exercise the powers conferred upon an inspector appointed under this Act.

- (5) In addition to the persons appointed as inspectors under and for the purposes of this Act, the following persons are 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 forest officer, under the *Forests Act 1918*⁷;
 - (ii) a fisheries officer referred to in the *Fish Resources Management Act 1994*;
 - (iii) a wildlife officer under the *Wildlife Conservation Act 1950*; or
 - (iv) a ranger, under the *National Parks Authority Act 1976*⁷;
- and
- (b) all members of the Police Force of the State,

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

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

[Section 61 amended by No. 21 of 1988 s. 32; No. 53 of 1994 s. 264; No. 52 of 2006 s. 6.]

62. Honorary wardens

- (1) A Management Authority may appoint any person to be an honorary warden under this Act in relation to the whole or any part of the management area under its control.
- (2) The 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, but an appointment must not be made in relation to a management area without prior consultation with the Management Authority for that area.

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- (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 by No. 21 of 1988 s. 33; No. 52 of 2006 s. 6.]

63. Powers of inspectors, etc.

- (1) A reference in this section to an inspector shall be construed as including a reference to —
 - (a) a member of the Commission;
 - (b) a member of a Management Authority acting in that official capacity within the management area under the control of that Authority;
 - (c) an honorary warden, acting within the limitations specified in the terms of his appointment; and
 - (d) a person 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 Commission or a specified Management Authority within the period specified in that notice, such information as to any equipment, industrial plant, or process in or on the premises as is specified in that notice.
- (6) Where it is shown to the satisfaction of a justice that admission to the premises in question has been refused following a request by an inspector for entry thereto, or that the premises are unoccupied, the justice may, by warrant under his hand 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;
 - (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 by No. 6 of 2002 s. 96.]

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 Commission or to the Management Authority for the area concerned.

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. Secrecy

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

- (a) with the consent of the person carrying on or operating that undertaking, equipment or plant; or

- (b) in connection with the execution of this Act and with the prior permission of the Minister,

commits an offence against this Act.

Penalty: \$10 000 or 12 months imprisonment.

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

67. Appropriation of penalties

All pecuniary penalties imposed under this Act shall be appropriated and paid to the Commission for the purposes of this Act.

[Section 67 amended by No. 78 of 1995 s. 136.]

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

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;
 - (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 Commission or a Management Authority on behalf of the Commission.
- (3) In any proceedings under this Act the authority of any person to prosecute for an offence shall be presumed unless the contrary is proved.

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- (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 by No. 59 of 2004 s. 141; No. 84 of 2004 s. 80.]

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.

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- (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 by No. 84 of 2004 s. 82.]

75. Evidentiary provisions

- (1) In a prosecution or in other legal proceedings instituted by or on behalf of the Commission under the provisions of this Act, until proof is given to the contrary, proof is not required of —
- (a) the constitution of the Commission or any Management Authority or the particular or general appointment of any member, officer or other employee of the Commission or an authority;
 - (b) any order of the Commission to prosecute;
 - (c) any authorisation by which the Commission or an Authority authorises a person to commence a prosecution for an offence against this Act, to prosecute on behalf of the Commission, or otherwise to represent the Commission or a Management Authority.
- (2) Where in a charge of an offence against this Act there is an averment that an act occurred within the boundaries of land or waters under the control or management of the Commission or a Management Authority, courts and persons acting judicially shall, on the act being proved, presume in the absence of proof to the contrary that the act occurred within the boundaries of such land or waters as averred.
- (3) In any proceedings for an offence against this Act the fact that —
- (a) no notice had been given, or application submitted, to the Commission or a Management Authority;

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

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

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

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

- (5) In all proceedings in which any notice, order, or other document required or 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 chief executive officer of the Commission, as the case may be, that the copy is a true copy of the original and that the original was served on the date specified in the certificate.
- (6) The validity of any declaration, map, notice, order, or other document or of its publication or service is not affected by any

error, misdescription, or irregularity which is not calculated to mislead, or which in fact does not mislead.

- (7) In all courts and before all persons authorised to receive evidence a signature purporting to be that of the Minister, the Chairman of a Management Authority, or the chief executive officer or other authorised officer of the Commission or of a Management Authority shall be taken to be the signature of the person whose signature it purports to be until the contrary is proved.
- (8) Where a record is produced and identified as the minutes or an excerpt from the minutes of the Commission or a Management Authority, the record is, until the contrary is proved, proof of the matters recorded having taken place, without proof —
- (a) that the meeting to which the record relates was duly convened;
 - (b) that other requirements relating to the regularity of the meeting were complied with; and
 - (c) that the minutes were confirmed, and that the signature purporting to be that of the person authorised to sign the confirmation of the minutes is in fact his signature and that he was so authorised.
- (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 36(2) of the *Interpretation Act 1918*², or which has been invalidly made.

[Section 75 amended by No. 73 of 1995 s. 186; No. 84 of 2004 s. 80.]

76. Regulations

- (1) The Governor may, on the recommendation of the Commission, from time to time make, repeal or alter regulations for giving effect to this Act.
- (2) Regulations made under this Act —
 - (a) apply only within the boundaries of the land and waters under the control or management of the Commission or a Management Authority;
 - (b) may be limited in their application to time, place, circumstance, or class of case;
 - (c) may provide that any act or thing may or shall be done with the approval or to the satisfaction of a specified person or class of persons;
 - (d) may provide that any act or thing shall be, or shall not be, permitted;
 - (e) may confer a discretionary authority;
 - (f) may provide for the payment or remission of fees and charges, for the form and manner of making applications, for the grant of exemptions, for the form and use of the seal of the Commission and the conduct of proceedings of the Commission and of the Management Authorities, for the 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.

s. 76

- (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 76 amended by No. 55 of 2004 s. 1307.]

Schedule

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

Sections 11, 14 and 21

[Heading amended by No. 73 of 1995 s. 187.]

1. Chairman

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

[Clause 1 amended by No. 16 of 1980 s. 4.]

2. Quorum

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

3. Meetings

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

4. Voting

- (1) At any meeting all questions shall be decided by a majority of the members present and voting.
- (2) Each member, including the member presiding, shall have a deliberative vote only.
- (3) In the case of an equality of votes the question shall be declared to be negatived.

cl. 5

5. Records

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

6. Validity of proceedings

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

7. Interests

- (1) A member who has a direct or indirect pecuniary interest in any matter that is before a meeting for consideration shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to the members present at the meeting and such disclosure shall be recorded in the record of the meeting.
- (2) A member who has disclosed his interest in any matter may speak once only in the consideration or discussion, but shall not vote.

8. Disputes

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

9. Procedure

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

Notes

¹ This is a compilation of the *Waterways Conservation Act 1976* and includes the amendments made by the other written laws referred to in the following table ^{1a, 10}. The table also contains information about any reprint.

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, 16-20: 25 Mar 1977 (see s. 2 and <i>Gazette</i> 25 Mar 1977 p. 829); balance: 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))
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)

Waterways Conservation Act 1976

Short title	Number and year	Assent	Commencement
<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 ⁸	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 <i>Waterways Conservation Act 1976</i> 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> s. 96	6 of 2002	4 Jun 2002	29 Jun 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037)
Reprint of the <i>Waterways Conservation Act 1976</i> 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)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 134 ⁹	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)

Short title	Number and year	Assent	Commencement
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	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</i> s. 15	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</i> s. 6	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</i> s. 17	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 *Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006*)

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

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Water Resources Legislation Amendment Act 2007</i> Pt. 8 ¹¹	38 of 2007	21 Dec 2007	To be proclaimed (see s. 2(2))
<i>Petroleum Amendment Act 2007</i> s. 108 ¹²	35 of 2007	21 Dec 2007	To be proclaimed (see s. 2(b))

² Repealed by the *Interpretation Act 1984*.

³ Repealed by the *Mining Act 1978*.

⁴ Repealed by the *Petroleum (Submerged Lands) Act 1982*.

⁵ Repealed by the *Industrial Relations Act 1979*.

⁶ Repealed by the *Western Australian Marine Act 1982*.

⁷ Repealed by the *Conservation and Land Management Act 1984*.

⁸ 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 —

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

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

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

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

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

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

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

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

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

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

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

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

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

Division 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.

⁹ 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.

¹⁰ The *Water Resources Legislation Amendment Act 2007* Pt. 11 reads as follows:

“

Part 11 — Transitional provisions

Division 1 — Interpretation

202. Terms used in this Part

In this Part —

“**assets**” means property of any kind whether tangible or intangible, real or personal and, without limiting that meaning, includes —

- (a) any chose in action; and
- (b) goodwill; and
- (c) any right, interest or claim of any kind, 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;

“**CEO**” means the chief executive officer of the Department;

“**Commission**” means the Water and Rivers Commission established by the *Water and Rivers Commission Act 1995* section 4 and in existence before the repeal of that Act;

“**Department**” means the department of the Public Service principally assisting in the administration of the *Water Agencies (Powers) Act 1984*;

“**former body**” means the Commission or a former Management Authority;

“**former Management Authority**” means a Management Authority constituted under the *Waterways Conservation Act 1976* sections 10 and 14 as in force before the transfer time;

“**liability**” means any liability, duty or obligation —

- (a) whether actual, contingent or prospective, liquidated or unliquidated; or
- (b) whether owed alone or jointly or jointly and severally with any other person;

“**management area**” has the meaning given by the *Waterways Conservation Act 1976* section 3(1);

“**Minister**” means the Minister administering the *Water Agencies (Powers) Act 1984*;

“**Ministerial Body**” means the Water Resources Ministerial Body established by the *Water Agencies (Powers) Act 1984* section 11;

“**Minister for the Environment**” means the Minister to whom the administration of the *Environmental Protection Act 1986* is committed;

“**relevant successor**” means —

- (a) the Minister in relation to a former body and a function of the former body that, after the transfer time, became a function of the Minister; and
- (b) the CEO in relation to a former body and a function of the former body that, after the transfer time, became a function of the CEO; and
- (c) the State in relation to assets and liabilities transferred to the State by section 205; and
- (d) the Ministerial Body in relation to assets and liabilities transferred to the Ministerial Body by section 205;

“**repealed Act**” means the *Water and Rivers Commission Act 1995*;

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

“**transfer order**” means an order under section 204;

“**transfer time**” means the time at which section 4 comes into operation.

203. Interpretation Act 1984 not limited

This Part does not limit the operation of the *Interpretation Act 1984*.

Division 2 — Transfer of assets, liabilities, accounts, proceedings etc.

204. Minister to make transfer orders

- (1) As soon as is practicable after this section comes into operation the Minister is to make and publish in the *Gazette* a transfer order that —
 - (a) specifies which assets and liabilities of the Commission are to be assigned to the Ministerial Body by operation of section 205; and
 - (b) specifies proceedings in which the Ministerial Body is to be substituted for the Commission as a party by operation of section 205; and

- (c) specifies any agreement or instrument that, by operation of section 205, is to have effect as if references to the State or the Ministerial Body were substituted, in accordance with the order, for references in it to the Commission; and
 - (d) specifies land the care, control and management of which is to be placed with the Minister for the Environment by operation of section 206.
- (2) A transfer order may also deal with incidental or supplementary matters and has effect accordingly.
 - (3) The transfer order may specify things by reference to schedules which —
 - (a) need not be published in the *Gazette*; but
 - (b) must be available for public inspection,and anything specified in a Schedule is to be taken to be specified in the order.
 - (4) A thing may be specified in a transfer order by describing the class to which it belongs.
 - (5) Before a transfer order is made specifying anything by reference to a Schedule, a copy of which will be required to be delivered to a relevant official under section 210, the Minister is to consult with the, or each, relevant official as to the form and content of the Schedule.
 - (6) To the extent to which a Schedule to a transfer order relates to the functions of the Registrar of Titles, the Schedule is to be in a form that meets the requirements of the Registrar.
 - (7) A thing done by, under or for the purposes of this Part is not invalid merely because subsection (5) or (6) was not complied with.
 - (8) A transfer order can only be made before the transfer time.
 - (9) The fact that a previous transfer order has been made does not prevent a further transfer order from being made.
 - (10) A transfer order, or a Schedule to which it refers, may be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the transfer time.

205. Transfer of assets and liabilities

If a transfer order is made, then —

- (a) at the transfer time —

- (i) the assets of the Commission specified in the transfer order are, by operation of this section, assigned to the Ministerial Body; and
 - (ii) the rest of the assets of the Commission are, by operation of this section, assigned to the State;
- and
- (b) at the transfer time —
 - (i) the liabilities of the Commission specified in the transfer order are, by operation of this section, assigned to and become the liabilities of the Ministerial Body; and
 - (ii) the rest of the liabilities of the Commission are, by operation of this section, assigned to and become the liabilities of the State;
- and
- (c) at the transfer time, the Ministerial Body is substituted for the Commission as a party to any proceedings specified in the transfer order and the State is substituted for the Commission as a party to all other proceedings in which the Commission was a party immediately before the transfer time; and
- (d) any agreement or instrument specified in the order has effect, by operation of this section, as if references to the State or the Ministerial Body were, at the transfer time, substituted, in accordance with the order, for references in it to the Commission; and
- (e) any proceedings or remedy that might have been commenced by, or available against or to, the Commission in relation to the assets and liabilities assigned by paragraphs (a) and (b) may be commenced by, or are available against or to —
 - (i) the Ministerial Body, in the case of assets and liabilities assigned by paragraphs (a)(i) and (b)(i); and
 - (ii) the State, in the case of assets and liabilities assigned by paragraphs (a)(ii) and (b)(ii);
- and
- (f) anything done or omitted to be done in relation to the assets and liabilities assigned by paragraphs (a) and (b) before the assignment, by, to or in respect of the Commission (to the extent that that thing has any effect)

is to be taken to have been done or omitted by, to or in respect of —

- (i) the Ministerial Body, in the case of assets and liabilities assigned by paragraphs (a)(i) and (b)(i); and
- (ii) the State, in the case of assets and liabilities assigned by paragraphs (a)(ii) and (b)(ii).

206. Transfer of care, control and management of reserved land

- (1) In this section —
“**Minister for the Environment**” means the Minister administering the *Environmental Protection Act 1986*.
- (2) Land that, immediately before the transfer time, is under the care, control and management of the Commission under the *Land Administration Act 1997* is to be regarded as if it had, at that time, been placed under the care, control and management of the Minister, under section 46 of that Act.
- (3) Land that, immediately before the transfer time, is under the care, control and management of the Commission under an enactment (other than the *Land Administration Act 1997*) is to be regarded as if it had, at that time, been placed under the care, control and management of the Minister, under that enactment as in force after the transfer time.
- (4) Subsections (2) and (3) do not apply to land specified in a transfer order under section 204(1)(d).
- (5) Land to which subsection (2) or (3) would apply but for subsection (4), is to be regarded as if it had, immediately before the transfer time, been placed under the care, control and management of the Minister for the Environment under the relevant enactment as in force after the transfer time.
- (6) Any conditions to which the care, control or management was subject immediately before the transfer time apply to the Minister or the Minister for the Environment (which ever is relevant) after the transfer time.

207. The Water and Rivers Commission Account

The balance, immediately before the transfer time, of the Water and Rivers Commission Account referred to in section 26 of the repealed Act is, at the transfer time, to be credited to an account established under the *Financial Management Act 2006* section 16 for the Department.

208. Commission to complete necessary transactions

- (1) If an asset or liability of the Commission cannot be properly assigned to the State or the Ministerial Body by the operation of this Division (whether because the matter is governed otherwise than by the law of the State or for any other reason) —
 - (a) the Commission is to be taken to continue to hold that asset or be liable for that liability until it is effectively assigned to the State or the Ministerial Body in accordance with this Division; and
 - (b) the Commission is to take all practicable steps for the purpose of ensuring that the asset or liability is effectively assigned to the State or the Ministerial Body in accordance with this Division.
- (2) The fact that subsection (1)(a) applies to an asset or liability that is assigned to the State or the Ministerial Body under this Division does not affect the duty of the accountable authority of the Department under the *Financial Management Act 2006*.
- (3) Despite the repeal of the repealed Act, the Commission continues in existence for the purpose of performing the functions described in subsection (1).
- (4) The Commission is to perform the functions referred to in subsection (3) through a person appointed by the Minister.
- (5) The person holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
- (6) The Commission as continued by this section has the powers that are necessary or convenient for the purposes of this section.

209. The *Water Supply, Sewerage, and Drainage Act 1912*

- (1) In this section —
“**the body corporate**” means the body corporate constituted under the *Water Supply, Sewerage, and Drainage Act 1912*.
- (2) At the transfer time, the Ministerial Body becomes the successor of the body corporate.
- (3) Despite subsection (2), land that, immediately before the transfer time, is under the care, control and management (however described) of the body corporate —
 - (a) under the *Water Supply, Sewerage, and Drainage Act 1912* — is to be regarded as if it had, at that time, been placed under the care, control and management of the Minister, under the *Land Administration Act 1997* section 46; and

- (b) under an enactment (other than the *Water Supply, Sewerage, and Drainage Act 1912*) — is to be regarded as if it had, at that time, been placed under the care, control and management of the Minister, under that enactment as in force after the transfer time.

210. Registration of documents

- (1) In this section —

“**relevant official**” means —

- (a) the Registrar of Titles; or
- (b) the Minister administering the *Mining Act 1978*; or
- (c) any other person authorised by a written law to record and give effect to the registration of documents relating to property transactions,

according to which of them, if any, has responsibility for a register relating to the relevant property;

“**relevant property**” means property of a kind affected by this Part, whether it is an estate or interest in land or any other property.

- (2) The relevant officials are to take notice of this Part and any transfer order, including a Schedule to which the order refers, and are to record and register in the appropriate manner the documents necessary to show the effect of this Part and the transfer order.
- (3) The Minister is to cause a copy of each transfer order and any Schedule to which it refers to be delivered to each relevant official.

211. Exemption from State taxes

- (1) In this section —

“**State tax**” includes stamp duty chargeable under the *Stamp Act 1921* and any other tax under a written law.

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

- (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is sufficient evidence of the matters it certifies, except so far as the contrary is shown.

212. Rectifying error in transfer order

- (1) The Minister may, by order published in the *Gazette*, make any provision that is necessary to correct any error in a transfer order or a Schedule to which a transfer order refers.
- (2) An order under this section may be made so as to have effect from the transfer time.
- (3) To the extent that a provision of an order under this section has effect before the day of its publication in the *Gazette*, section 205 does not, as a result of that provision, operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State, the Ministerial Body, or a Minister, officer or agency of the State), the rights of that person existing before the day of publication; or
 - (b) to impose liabilities on any person (other than the State, the Ministerial Body, or a Minister, officer or agency of the State) in respect of anything done or omitted to be done before the day of publication.

Division 3 — Staff etc.

213. Transfer of staff

- (1) At the transfer time, the CEO becomes the employing authority, within the meaning of the *Public Sector Management Act 1994*, of each person for whom the board of the Commission was the employing authority under that Act immediately before the transfer time.
- (2) A person whose engagement under section 23(2) of the repealed Act is in force immediately before the transfer time becomes, at the transfer time, a person engaged by the CEO under the *Water Agencies (Powers) Act 1984* section 107.

214. Transfer of arrangements about use of other staff

An arrangement between the Commission and an employer under the repealed Act section 24 that is in force immediately before the transfer time becomes, at the transfer time, an arrangement between the CEO and the employer.

215. Employees' rights preserved

- (1) 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 the *Public Sector Management (Redeployment and Redundancy) Regulations 1994* regulation 3; or
 - (b) affect the employee's existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave, which are enforceable against the State; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt the continuity of the employee's service.
- (2) For the purposes of subsection (1)(d), the employee's service with the Commission is to be taken to have been with the Department.

216. Transfer of contracts for services

A person engaged by the Commission under a contract for services (under the *Public Sector Management Act 1994* section 100) that is in force immediately before the transfer time, is to be taken to have been engaged, at the transfer time, by the CEO under that section on the same terms and conditions, for the remainder of the duration of the contract.

Division 4 — Committees of the Commission

217. Transfer of members of committees of the Commission

- (1) The members of a committee of the board of the Commission (established under the repealed Act Schedule 1 clause 15) that was in existence immediately before the transfer time become, at the transfer time, the members of an equivalent committee that is to be taken, for all purposes, to have been established by the Minister under the *Water Agencies (Powers) Act 1984* section 109.
- (2) A committee that is to be taken to have been established because of subsection (1) —
 - (a) has the same name as that of the committee from which the members came; and
 - (b) has the same functions (to the extent to which the functions are not inconsistent with the *Water Agencies (Powers) Act 1984* section 109) as those of the committee from which the members came.

**Division 5 — Former Management Authorities under the
*Waterways Conservation Act 1976***

- 218. By-laws under the *Waterways Conservation Act 1976***
By-laws made under the *Waterways Conservation Act 1976* section 54 by a former Management Authority in relation to a management area and in force immediately before the transfer time become, at the transfer time, by-laws under that section (as in force after the transfer time) in relation to that management area, as if they had been made by the Minister administering the *Waterways Conservation Act 1976*.
- 219. Proceedings in relation to a former Management Authority**
At the transfer time —
- (a) in relation to any proceedings by or against a former Management Authority commenced before the transfer time, the State is substituted for the Authority as a party to the proceedings; and
 - (b) any proceedings or remedy that might have been commenced by, or available against or to, a former Management Authority in relation to anything done or omitted to be done by the Authority, may be commenced by, or are available against or to, the State.

Division 6 — Continuing effect of things done

- 220. Continuing effect of licences, directions, determinations, notices etc.**
- (1) A licence, permit or permission (however described) granted under an enactment by a former body and in force immediately before the transfer time is to be taken, for all purposes, to have been granted, at the transfer time, by the relevant successor of the former body under that enactment (as in force after the transfer time).
 - (2) A direction, determination or notice (however described) given under an enactment by a former body and in force immediately before the transfer time is to be taken, for all purposes, to have been given or made, at the transfer time, by the relevant successor of the former body under that enactment (as in force after the transfer time).
- 221. Completion of things commenced**
Anything commenced to be done by a former body under a written law before the transfer time may be continued by the relevant successor of the former body so far as the doing of that thing is

within the functions of the relevant successor after the transfer time.

222. Continuing effect of things done generally

Any act, matter or thing done or omitted to be done before the transfer time 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 the transfer time; and
- (b) is not governed by another provision of this Part,

is to be taken, after the transfer time, to have been done or omitted by, to or in respect of the relevant successor of the former body.

223. Agreements and instruments generally

- (1) Any agreement or instrument (including subsidiary legislation) in force immediately before the transfer time —

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

has effect after the transfer time, to the extent to which the agreement or instrument relates to the functions of a relevant successor to the former body, as if —

- (c) the relevant successor 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.

- (2) This section does not apply to any agreement or instrument covered by another provision of this Part.

Division 7 — General transitional provisions

224. Confidentiality obligations to continue

- (1) Despite the repeal of the repealed Act section 34, the section continues to apply to a person to whom it applied immediately before the transfer time as if paragraph (a) of that section were amended by inserting “or under another written law” after “this Act”.
- (2) Subsection (1) only applies to the extent that another enactment about the use and disclosure of the information does not apply to the person and the information.

225. Further transitional provision may be made

- (1) If there is not sufficient provision in this Part for any matter or thing necessary or convenient to give effect to the transition from a former body to a relevant successor, the regulations may make that provision.
- (2) The regulations may be made so as to have effect from the transfer time.
- (3) To the extent that a provision of the regulations 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 Ministerial Body or any other 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 Ministerial Body or any other authority of the State) in respect of anything done or omitted to be done before the day of publication.
- (4) The Governor may make regulations for the purposes of this section.
- (5) Regulations may not be made under this section after the end of the 24 months after the day on which this Act receives the Royal Assent.

226. 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; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities or the disclosure of information; or
- (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 or liability; or
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

”.

¹¹ On the date as at which this compilation was prepared, the *Water Resources Legislation Amendment Act 2007* Pt. 8 had not come into operation. It reads as follows:

“

Part 8 — Amendments to the *Waterways Conservation Act 1976*

140. The Act amended

The amendments in this Part are to the *Waterways Conservation Act 1976*.

141. Long title amended

The long title is amended by deleting “, for the establishment of a Rivers and Estuaries Council and certain Management Authorities”.

142. Heading to Part 1 inserted

Before section 1 the following heading is inserted —

“

Part 1 — Preliminary

”.

143. Section 3 amended

Section 3(1) is amended as follows:

- (a) by deleting the definitions of “Commission”, “committee”, “Council”, “Management Authority” or “Authority” and “the Environmental Protection Authority”;
- (b) by inserting in the appropriate alphabetical positions —

“

“**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;

”.

144. Section 5 amended

Section 5(3)(c) is amended by deleting “and in the event of any dispute thereon the provisions of section 15 shall apply”.

145. Section 8 amended

Section 8(2) is amended by deleting “it” and inserting instead —

“ the Minister ”.

146. Heading to Part 2 inserted

After section 8 the following heading is inserted —

“

Part 2 — Application of the Act

”.

147. Section 9 amended

- (1) Section 9(1) is amended by deleting “The powers of the Commission apply” and inserting instead —

“ This Act applies ”.

- (2) Section 9(2) is repealed.

- (3) Section 9(3) is amended by deleting “the powers of the Commission and the relevant Authority shall be deemed to apply” and inserting instead —

“ this Act applies ”.

148. Section 10 amended

- (1) Section 10(1) is amended as follows:

- (a) by deleting “Environmental Protection Authority” and inserting instead —
“ Minister ”;
- (b) in paragraph (a) by deleting “constitute a Management Authority for the area,”;
- (c) in paragraph (a) by deleting “and place the area under the control and management of the Authority so constituted”;
- (d) in paragraph (c) by deleting “dissolve a Management Authority, or”.

- (2) Section 10(2) is repealed.

- (3) Section 10(4) is amended by deleting “the area to which the powers of the Commission or an Authority are to apply unless, in the opinion of the Commission” and inserting instead —

“ a management area unless, in the opinion of the Minister ”.

- (4) Section 10(5) is amended as follows:

- (a) by deleting “the waters and associated land to which the powers of the Commission or an Authority apply or are to apply” and inserting instead —
“ a management area ”;

- (b) by deleting “section 36 of the *Interpretation Act 1918*” and inserting instead —
“ section 42 of the *Interpretation Act 1984* ”.

149. Heading to Part 3 inserted

After section 10 the following heading is inserted —

“

Part 3 — Functions of the Minister

”.

150. Sections 11 to 30 replaced by sections 11 and 12

Sections 11 to 30 are repealed and the following sections are inserted instead —

“

11. Functions of the 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;
 - (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.

12. Performance of the functions of the 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.

”.

151. Heading to Part 4 and section 30 inserted

Before section 31 the following heading and section are inserted —

“

Part 4 — Agreements, management programmes and consultation

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.

”.

152. Section 31 amended

Section 31(1) is amended by deleting “Commission or a Management Authority” and inserting instead —

“ Minister ”.

153. Section 32 amended

- (1) Section 32(1) is amended as follows:
- (a) by deleting “Minister administering the *Land Administration Act 1997*” and inserting instead —
“ Land Administration Minister ”;
 - (b) by deleting “Commission” and inserting instead —

“ Minister ”.

- (2) Section 32(2) is amended as follows:
- (a) by deleting “Minister referred to in that subsection” and inserting instead —
“ Land Administration Minister ”;
 - (b) in paragraph (b) by deleting “Commission” in each place where it occurs and inserting instead —
“ Minister ”;
 - (c) by deleting “that Minister” and inserting instead —
“ the Land Administration Minister ”.
- (3) After section 32(2) the following subsection is inserted —

“

- (3) In this section —
“**Land Administration Minister**” means the Minister administering the *Land Administration Act 1997*.

”.

154. Section 33 amended

- (1) Section 33(1) is repealed and the following subsection is inserted instead —

“

- (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) Section 33(3) is amended as follows:
- (a) by deleting “Commission or the relevant Management Authority” and inserting instead —
“ Minister ”;
 - (b) by deleting “an Authority” and inserting instead —
“ the Minister ”;
 - (c) by deleting “Commission or that Management Authority” and inserting instead —
“ Minister ”.

155. Section 34 repealed

Section 34 is repealed.

156. Section 35 amended

- (1) Section 35(1) is amended as follows:
- (a) by deleting “Commission, in consultation with the relevant Management Authority and” and inserting instead —
“ Minister, in consultation ”;
 - (b) by deleting all of the subsection from and including “in relation to” and inserting instead —

“

in relation to waters and associated land to which this Act applies, during the period to which the programme relates.

”.

- (2) Section 35(2) is amended by deleting “Commission or relevant Management Authority” and inserting instead —

“ Minister ”.

- (3) Section 35(4) is amended as follows:

- (a) by deleting “Proposals” and inserting instead —

“

The Minister must consult publicly, in accordance with section 78, in relation to proposals

”;

- (b) by deleting “shall be brought to the notice of persons likely to be affected by being published in a newspaper circulating in the locality and in such other manner as the Minister may direct, but” and inserting instead —
“ and ”;

- (c) by deleting “that newspaper, indicates that the representations” and inserting instead —

“

the newspaper referred to in section 78(3), indicates that submissions

”.

- (4) Section 35(5) is amended by deleting all of the subsection from and including “with the approval of” and inserting instead —

“ by the Minister. ”.

- (5) Section 35(6) is amended by deleting “Commission and the relevant Management Authority” and inserting instead —

“ CEO ”.

- (6) Section 35(7) is repealed and the following subsection is inserted instead —

“

- (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.

”.

- (7) Section 35(8) is amended by deleting “the Management Authority and the Commission recommend and the Minister approves” and inserting instead —

“ the Minister considers appropriate ”.

- (8) Section 35(9) is amended as follows:

- (a) by deleting “Commission may, with the approval of the Minister,” and inserting instead —

“ Minister may ”;

- (b) by deleting “on behalf of the Commission or Management Authority, and whether or not under the direction of the Commission or that Authority” and inserting instead —

“ , whether or not under the direction of the Minister ”.

157. Section 36 amended

- (1) Section 36(1) is amended by deleting “Commission” in the first, third, fourth and fifth places where it occurs and inserting instead —

“ Minister ”.

- (2) Section 36(2) is amended as follows:

- (a) in paragraph (a) by deleting “to it”;

- (b) in paragraph (b) by deleting “its” and inserting instead —
“ the Minister’s ”;

- (c) in paragraph (b) by deleting “Commission’s” and inserting instead —

“ Minister’s ”.

- (3) Section 36(3) is amended as follows:

- (a) by deleting “it has furnished its” and inserting instead —

“ the Minister has given the ”;

- (b) by deleting “it” in the second place where it occurs and inserting instead —
“ the Minister ”.
- (4) Section 36(4) is amended as follows:
 - (a) by deleting “it” and inserting instead —
“ the Minister ”;
 - (b) by deleting “its” in both places where it occurs.

158. Section 37 amended

- (1) Section 37(1) is amended as follows:
 - (a) by deleting “the powers of the Commission apply” and inserting instead —
“ this Act applies ”;
 - (b) by deleting “Commission” in the second and third places where it occurs and inserting instead —
“ Minister ”;
 - (c) by deleting “and the relevant Management Authority all such aid, information and facilities as are practicable, and the Commission shall report to the Minister on the matter when and as often as the Minister requires” and inserting instead —

“

such aid, information and facilities as are practicable

”.

- (2) Section 37(2) is amended by deleting “in any management area or area to which section 31 or section 32 applies” and inserting instead —
“ to which this Act applies ”.

159. Section 38 amended

Section 38(1) is amended as follows:

- (a) by deleting “Commission” in the first place where it occurs and inserting instead —
“ Minister ”;
- (b) by deleting “the powers of the Commission apply” and inserting instead —
“ this Act applies ”.

160. Sections 39 to 45 repealed

Sections 39, 42, 43 and 45 are repealed.

161. Heading to Part 5 inserted

Before section 46 the following heading is inserted —

“

Part 5 — Protection of waters and land

”.

162. Section 46 amended

Section 46(2) is repealed.

163. Section 48 amended

- (1) Section 48(1) is amended by deleting “for the time being subject to the powers of the Commission” and inserting instead —
“ to which this Act applies ”.
- (2) Section 48(3) and (4) are repealed.
- (3) Section 48(5a) is amended by deleting “1948” and inserting instead —
“ 1982 ”.
- (4) Section 48(9) is amended by deleting “of an offence against subsection (3), or”.

164. Section 49 amended

Section 49(1) is amended by deleting “Commission or a Management Authority” and inserting instead —
“ Minister ”.

165. Section 50 amended

- (1) Section 50(1) is amended as follows:
 - (a) by deleting “Commission, or the relevant Management Authority,” and inserting instead —
“ Minister ”;
 - (b) by deleting “for the time being subject to its control” and inserting instead —
“ to which this Act applies ”.
- (2) Section 50(2) is amended as follows:
 - (a) by deleting “Commission and any Management Authority” and inserting instead —
“ Minister ”;
 - (b) by deleting “subject to its control or on any associated land” and inserting instead —
“ or associated land to which this Act applies ”.

166. Section 51 amended

Section 51 is amended by deleting “or a Management Authority”.

167. Section 52 amended

Section 52 is amended as follows:

- (a) by deleting “Commission or a Management Authority” and inserting instead —
“ Minister ”;
- (b) by deleting “subject to its control” and inserting instead —
“ to which this Act applies ”;
- (c) by deleting “Commission or that Authority” in both places where it occurs and inserting instead —
“ Minister ”.

168. Section 53 amended

Section 53 is amended as follows:

- (a) by deleting “Commission or a Management Authority” and inserting instead —
“ Minister ”;
- (b) by deleting “Commission or that Authority” in the first place where it occurs and inserting instead —
“ Minister ”;
- (c) by deleting “Commission or that Authority, as the case may be,” and inserting instead —
“ Minister ”.

169. Headings to Part 6 and Division 1 inserted

After section 53 the following headings are inserted —

“

Part 6 — General provisions

Division 1 — By-laws

”.

170. Section 54 replaced

Section 54 is repealed and the following section is inserted instead —

“

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.

”.

171. Section 56 amended

- (1) Section 56(2) and (3) are repealed and the following subsection is inserted instead —

“

- (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.

”.

- (2) Section 56(5) is repealed and the following subsection is inserted instead —

“

- (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*.

”.

172. Section 57 amended

Section 57 is amended by deleting “made under this Act by a Management Authority or a local government” and inserting instead —

“ or local law made under this Act ”.

173. Sections 58 and 59 repealed

Sections 58 and 59 are repealed.

174. Heading to Division 2 inserted

Before section 61 the following heading is inserted —

“

Division 2 — Enforcement provisions

”.

175. Section 61 amended

- (1) Section 61(1) is repealed.
- (2) Section 61(2) is amended by deleting all of the words from and including “, but” to and including “for that area”.
- (3) Section 61(5)(a) is amended as follows:
 - (a) by deleting subparagraph (i) and inserting instead —

“

- (i) a conservation and land management officer, forest officer, wildlife officer or ranger, under the *Conservation and Land Management Act 1984*; or

”;

- (b) by deleting subparagraphs (iii) and (iv).

176. Section 62 amended

- (1) Section 62(1) is repealed.
- (2) Section 62(2) is amended by deleting all of the words from and including “, but” to and including “for that area”.

177. Section 63 amended

- (1) Section 63(1)(a) and (b) are deleted.
- (2) Section 63(5) is amended by deleting “Commission or a specified Management Authority” and inserting instead —

“ Minister ”.

178. Section 64 amended

Section 64 is amended by deleting “Commission or to the Management Authority for the area concerned” and inserting instead —

“ Minister ”.

179. Sections 66 and 67 repealed

Sections 66 and 67 are repealed.

180. Heading to Division 3 inserted

Before section 68 the following heading is inserted —

“

Division 3 — General offence and procedural provisions

”

181. Section 69 amended

Section 69(3) is amended as follows:

- (a) by deleting “Commission or the relevant Management Authority” and inserting instead —
“ Minister ”;
- (b) by deleting “Commission or that Authority” and inserting instead —
“ Minister ”.

182. Section 71 amended

Section 71(2)(c) is amended by deleting “Commission or a Management Authority on behalf of the Commission” and inserting instead —

“ Minister ”.

183. Section 75 amended

- (1) Section 75(1) is repealed and the following subsection is inserted instead —

“

- (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) Section 75(2) is amended by deleting “land or waters under the control or management of the Commission or a Management Authority” and inserting instead —

“ waters or associated land to which this Act applies ”.

-
- (3) Section 75(3)(a) and (b) are amended by deleting “Commission or a Management Authority” and inserting instead —
“ Minister ”.
- (4) Section 75(4)(b) and (5) are amended by deleting “chief executive officer of the Commission” and inserting instead —
“ CEO ”.
- (5) Section 75(7) is amended by deleting “, the Chairman of a Management Authority, or the chief executive officer or other authorised officer of the Commission or of a Management Authority” and inserting instead —

“

, 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

”.

- (6) Section 75(8) is repealed.
- (7) Section 75(9) is amended by deleting “section 36(2) of the *Interpretation Act 1918*” and inserting instead —
“ section 42(2) of the *Interpretation Act 1984* ”.

184. Heading to Division 4 and sections 76 to 81 inserted

After section 75 the following heading and sections are inserted —

“

Division 4 — Administrative provisions

76. Delegation by the 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*.

77. Delegation by the 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*.

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.

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.

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.

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.

”.

185. Section 76 renumbered

Section 76 is renumbered as 82.

186. Section 76 (as renumbered) amended

- (1) Section 76(1) (as renumbered) is repealed and the following subsection is inserted instead —

“

- (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) Section 76(2) (as renumbered) is amended as follows:
- (a) in paragraph (a) by deleting “land and waters under the control or management of the Commission or a Management Authority” and inserting instead —
“ waters or associated land to which this Act applies ”;
 - (b) in paragraph (f) by deleting “for the form and use of the seal of the Commission and the conduct of proceedings of the Commission and of the Management Authorities,”.

187. Schedule repealed

The Schedule is repealed.

188. Various references to “Commission” changed to “Minister”

Each provision of the Act listed in the Table to this section is amended by deleting “Commission” in each place where it occurs and inserting instead —

“ Minister ”.

Table

s. 5(3)	s. 47(1), (3), (4), (5), (6), (7),
s. 8(1) and (2)	(8) and (9)
s. 36(2), (3), (4) and (5)	s. 48(7) and (8)
s. 37(2)	s. 51
s. 38(2)	
s. 46(3), (4), (5), (6), (7), (8),	
(9), (10) and (11)	

Note: The heading to section 32 will be altered by deleting “Commission” and inserting instead “**Minister**”.

”

¹² On the date as at which this compilation was prepared, the *Petroleum Amendment Act 2007* s. 108 had not come into operation. It reads as follows:

“

108. Waterways Conservation Act 1976 amended

- (1) The amendments in this section are to the *Waterways Conservation Act 1976*.

- (2) Section 5(4)(b) is amended by deleting “*Petroleum Act 1967*,” and inserting instead —

“ *Petroleum and Geothermal Energy Resources Act 1967*; ”.

”.