

Western Australia

## **Water Agencies (Powers) Act 1984**

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As at 01 Feb 2008

Version 03-c0-06

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## Water Agencies (Powers) Act 1984

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Western Australia

## **Water Agencies (Powers) Act 1984**

**An Act to give the Minister functions and powers, to give the Water Corporation powers, to make other provision in respect of their functions, to establish the Water Resources Ministerial Body and the Water Resources Council, and for related and other purposes.**

*[Long title inserted by No. 73 of 1995 s. 4; amended by No. 67 of 2003 s. 62; No. 38 of 2007 s. 104.]*

## **Part I — Preliminary, and other matters**

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

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

### **1. Short title**

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

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

### **2. Commencement**

The provisions of this Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

### **3. Interpretation**

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

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

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

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

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

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

***Department*** means the department of the Public Service principally assisting in the administration of this Act;

***drain*** means —

- (a) a conduit on or under any land; or

(b) a channel,

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

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

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

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

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

**functions** include powers, duties and authorities;

**government department** or **department** includes any branch of the Public Service of the State established as a department within the meaning of that term as defined in the *Public Sector Management Act 1994*<sup>2</sup>, but also means any other body established by an Act being a body that —

- (a) administers or carries out in the State functions in the public interest on behalf of the Crown in right of the State, or which carries out the function of a public utility; and

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- (b) is declared by the Governor, by Order in Council, to be deemed to be a government department for the purposes of this Act or a relevant Act;

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

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

**local authority** means —

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

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

**Ministerial Body** means the Water Resources Ministerial Body established by section 11;

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

**officer**, in relation to the Corporation, means a member of the staff of the Corporation engaged under section 15 of the *Water Corporation Act 1995*;

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

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

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

**premises** means any land, street, structure or other place;

**property sewer** means a conduit, through, on or under any street or other land, whether public or private, laid wholly or partly by or at the expense of the owner or occupier of any premises for the carriage therefrom of any sewage or wastewater to any sewer, and any part of such a conduit;

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

**reservoir** means a reservoir, dam, tank or cistern;

**road** has the same meaning as street;

**sewage** has the same meaning as wastewater;

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

**statutory authority** means —

- (a) a Minister of the Crown in right of the State when acting in the capacity of a body corporate; or
- (b) any person or body, corporate or unincorporate, other than a Minister of the Crown in right of the State,

who or which administered or administers, or carried out or carries out on behalf of the Crown in right of the State functions in the public interest (being functions which the Minister, the CEO or the Corporation, as the case requires, is by this Act authorised to administer) pursuant to, a relevant Act;

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

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

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

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

**waste** includes solid, liquid and gaseous waste;

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

**watercourse** has the meaning given to that term in section 2(1) of the *Rights in Water and Irrigation Act 1914*;

**water resources** includes —

- (a) watercourses, reservoirs, wetlands, estuaries and inlets, together with their beds and banks;
- (b) aquifers and underground water; and
- (c) drainage, surface and surplus water;

**water services** means water supply, sewerage, drainage or irrigation services;

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

**wetland** has the meaning given to that term in section 2(1) of the *Rights in Water and Irrigation Act 1914*;

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

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

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

*[Section 3 amended by No. 25 of 1985 s. 3; No. 110 of 1985 s. 4; No. 24 of 1987 s. 3<sup>3</sup>; No. 113 of 1987 s. 32; No. 73 of 1995 s. 8 and 42; No. 14 of 1996 s. 4; No. 67 of 2003 s. 62; No. 38 of 2007 s. 105.]*

*[4. Deleted by No. 73 of 1995 s. 9.]*

## **5. Relevant Acts**

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

*Metropolitan Water Authority Act 1982.*

*Metropolitan Water Supply, Sewerage, and Drainage Act 1909.*

*Rights in Water and Irrigation Act 1914.*

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

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

*Country Areas Water Supply Act 1947.*

*Country Towns Sewerage Act 1948.*

*Land Drainage Act 1925<sup>3</sup>.*

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

*[(2) deleted]*

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

*[Division 2 (s. 6) deleted by No. 73 of 1995 s. 11<sup>4</sup>.]*

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

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

*[7. Deleted by No. 73 of 1995 s. 14.]*

**8. Vesting interest in land in the Corporation or the Minister**

*[(1), (2) deleted]*

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



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

*[Section 8 amended by No. 110 of 1985 s. 5; No. 73 of 1995 s. 15; No. 31 of 1997 s. 137(1); No. 38 of 2007 s. 106.]*

## **Part II — The Minister and the Water Resources Ministerial Body**

*[Heading inserted by No. 38 of 2007 s. 107.]*

### **Division 1 — General functions and powers of the Minister**

*[Heading inserted by No. 38 of 2007 s. 107.]*

#### **9. General functions and powers of the Minister**

- (1) The Minister has the general functions of —
  - (a) conserving, protecting and managing water resources;
  - (b) assessing water resources;
  - (c) planning for the use of water resources;
  - (d) promoting the efficient use of water resources;
  - (e) promoting the efficient provision of water services;
  - (f) developing plans for and providing advice on flood management.
- (2) The Minister has power to do all things necessary or convenient to be done for or in connection with the performance of the Minister's functions.
- (3) Without limiting subsection (2), the Minister may acquire, hold, manage, improve, develop, dispose of and otherwise deal in real and personal property, including for the general purposes of the Department.
- (4) In performing the Minister's functions under this section —
  - (a) the Minister is to have regard to water recycling and efficient water use measures when planning the development of new water resources; and
  - (b) the Minister, where appropriate, is to promote decision making processes that involve public consultation.

*[Section 9 inserted by No. 38 of 2007 s. 107.]*

**10. Functions and powers of the Minister — relationship to other functions and powers and to the Corporation**

- (1) A function or power given to the Minister by this Act is in addition to any other function or power of the Minister.
- (2) If the Corporation has a function or power under this Act that corresponds to a function or power that the Minister has under this Act, the Minister is not to perform that function or exercise that power in substitution for the Corporation performing that function or exercising that power, unless the contrary intention appears or the context otherwise requires.

*[Section 10 inserted by No. 38 of 2007 s. 107.]*

**Division 2 — The Water Resources Ministerial Body**

*[Heading inserted by No. 38 of 2007 s. 107.]*

**11. The Water Resources Ministerial Body**

- (1) The Water Resources Ministerial Body is established.
- (2) The Ministerial Body is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Ministerial Body in its corporate name.
- (4) The Ministerial Body is to be governed by the Minister.
- (5) The Ministerial Body is an agent of the Crown and has the status, immunities and privileges of the Crown.

*[Section 11 inserted by No. 38 of 2007 s. 107.]*

**12. Purpose and nature of the Ministerial Body**

- (1) The Ministerial Body is established to provide a body corporate through which the Minister can perform any of the Minister's functions under this Act, a relevant Act, the *Land Administration Act 1997* or the *Public Works Act 1902* that can

more conveniently be performed by a body corporate than an individual.

- (2) Despite the employment under the *Public Sector Management Act 1994* of ministerial officers for the purpose of assisting the Minister to perform functions that the Minister performs through the Ministerial Body, the Ministerial Body and those officers are not an organisation for the purposes of that Act.

*[Section 12 inserted by No. 38 of 2007 s. 107.]*

**13. Execution of documents by the Ministerial Body**

- (1) The Ministerial Body is to have a common seal.
- (2) A document is duly executed by the Ministerial Body if —
- (a) the common seal of the Ministerial Body is affixed to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Ministerial Body by the Minister; or
  - (c) it is signed on behalf of the Ministerial Body, as authorised under subsection (5), by the CEO or another officer of the Department.
- (3) The common seal of the Ministerial Body is not to be affixed to a document except as authorised by the Ministerial Body.
- (4) The common seal of the Ministerial Body is to be affixed to a document in the presence of the Minister, and the Minister is to sign the document to attest that the common seal was so affixed.
- (5) The Ministerial Body may, by writing under its seal, authorise the CEO or another officer of the Department to sign documents on behalf of the Ministerial Body, either generally or subject to any conditions or restrictions specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.

- (7) A document executed by the CEO or another person under this section without the common seal of the Ministerial Body is not to be regarded as a deed unless it is executed as a deed as authorised under subsection (5).
- (8) When a document is produced bearing a seal purporting to be the common seal of the Ministerial Body, it is to be presumed that the seal is the common seal of the Ministerial Body until the contrary is shown.
- (9) For the purposes of this Act, a facsimile of —
  - (a) the Ministerial Body's seal; or
  - (b) the signature of the Minister or a person authorised under subsection (5) to execute deeds or other documents,

may be used, and a deed or other document purporting to be endorsed with such a facsimile is, until the contrary is shown, to be regarded as bearing the facsimile under this subsection.

*[Section 13 inserted by No. 38 of 2007 s. 107.]*

**Division 3 — Minister to have access to certain information**

*[Heading inserted by No. 38 of 2007 s. 107.]*

**14. Minister to have access to certain information**

- (1) The Minister may direct a water service licensee to give the Minister specified information, or information relevant to a specified matter, that the Minister considers is relevant to the Minister's functions under, or relating to, this Act or a relevant Act.
- (2) The direction must be in writing, must specify the time period (in days) within which it must be complied with and may specify the form and manner in which the information is to be provided.

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- (3) The licensee must comply with the direction even though the direction requires the licensee to give the Minister information that is confidential or commercially sensitive.
- (4) If the licensee objects to the direction the licensee is to notify the Minister, in writing within 7 days of receipt of the direction, of its objection and any reasons for it.
- (5) If the licensee gives a notice to the Minister under subsection (4) —
  - (a) the Minister is to consult with the ERA Minister and, having regard to those consultations, is to cancel or confirm the direction; and
  - (b) the licensee is not required to comply with the direction unless it is confirmed.
- (6) If the Minister confirms a direction —
  - (a) the Minister must notify the licensee; and
  - (b) the time period within which the direction must be complied with commences on the day on which it is confirmed.
- (7) The licensee, a subsidiary of the licensee or a person performing functions for or on behalf of the licensee or subsidiary incurs no civil or criminal liability as a result of complying with the direction, and is not to be regarded for any purpose as being in breach of any duty of confidentiality.
- (8) A water services licensee that does not comply with a direction that has not been objected to or that has been confirmed commits an offence.  
Penalty: \$5 000.
- (9) The Minister must cause a copy of a direction under subsection (1) (other than a direction that has been cancelled) to be laid before each House of Parliament, or dealt with under section 110, within 14 days after the day on which the direction is given or confirmed (which ever is the later).

(10) The annual report submitted by the accountable authority of the Department under Part 5 of the *Financial Management Act 2006* is to list each direction under subsection (1) in the year (other than a direction that has been cancelled).

(11) For the purposes of subsection (9) or (10), the Minister or the accountable authority (which ever is relevant) may obliterate or omit so much of the direction as is necessary to avoid disclosing confidential or commercially sensitive material.

(12) In this section —

***ERA Minister*** means the Minister administering the *Economic Regulation Authority Act 2003*;

***water services licensee*** means a licensee as defined in section 3 of the *Water Services Licensing Act 1995*.

[Section 14 inserted by No. 38 of 2007 s. 107.]

**15. Use or disclosure of information obtained under section 14**

(1) This section applies to the Minister, a ministerial officer assisting the Minister, an officer of the Department and a person who was such a person.

(2) Despite anything else in this Act or a relevant Act, a person to whom this section applies must not disclose information obtained, whether directly or indirectly, under section 14 unless —

- (a) it is disclosed in the course of duty to a person who is an officer of the Department; or
- (b) the Minister considers the disclosure to be in the public interest; or
- (c) it is disclosed under a written law.

Penalty: \$12 000 and imprisonment for one year.

(3) If the Minister proposes to disclose information under subsection (2)(b), the Minister must notify the person who gave the information under section 14, unless the Minister considers

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that it would be contrary to the public interest to delay the disclosure.

- (4) The Minister must take into account any comments or objections received, within 7 days of giving the notification, from the person notified.
- (5) This section 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 a person or a particular commercial operation to be ascertained; or
  - (c) the disclosure of the information is authorised by the person who gave the information under section 14.
- (6) In this section —

*ministerial officer* has the meaning given to that term in the *Public Sector Management Act 1994*.

*[Section 15 inserted by No. 38 of 2007 s. 107.]*



## **Part IIA — The Water Resources Council**

*[Heading inserted by No. 38 of 2007 s. 107.]*

### **16. Water Resources Council established**

The Minister is to appoint 6, 7 or 8 persons to be the members of a body called the Water Resources Council.

*[Section 16 inserted by No. 38 of 2007 s. 107.]*

### **17. Membership of the Council**

- (1) The Minister is, to the extent practicable, to choose the members of the Council in such a way that its membership covers or includes —

- (a) expertise or experience in water resources management; and
- (b) expertise or experience in conservation; and
- (c) expertise or experience in economic development; and
- (d) expertise or experience in community interests; and
- (e) expertise or experience in law (in the natural resources field); and
- (f) expertise or experience in mining; and
- (g) expertise or experience in agriculture; and
- (h) an indigenous person; and
- (i) a person who lives in regional Western Australia.

- (2) The Minister is to designate one of the members as the chairman.

*[Section 17 inserted by No. 38 of 2007 s. 107.]*

### **18. Functions of the Council**

- (1) The Council has the following functions —

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- (a) advising the Minister in relation to the management of water resources generally and on any matter that the Minister refers to it for advice;
- (b) consulting with persons, or bodies, having functions under, or related to the purposes of, a water resources Act;
- (c) advising the Minister on whether the objectives of each water resources Act are being achieved.

(2) In this section —

**water resources Act** means an Act that the Minister administers, to the extent to which the Act relates to water resources.

*[Section 18 inserted by No. 38 of 2007 s. 107.]*

**19. Term of office**

- (1) The term for which a person is appointed to be a member of the Council is to be fixed in the instrument of appointment and is not to exceed 3 years.
- (2) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.

*[Section 19 inserted by No. 38 of 2007 s. 107.]*

**20. Casual vacancy**

- (1) A member of the Council may at any time resign from office by notice in writing given to the Minister.
- (2) The Minister may remove a person who is a member of the Council from office on the grounds of —
  - (a) mental or physical incapacity to carry out the person's duties in a satisfactory manner; or
  - (b) the person being an insolvent under administration within the meaning of that term in the *Corporations Act 2001* of the Commonwealth; or

- (c) neglect of duty; or
- (d) misconduct.

- (3) If a member of the Council dies, resigns, or is removed from office, the office of the member becomes vacant.

*[Section 20 inserted by No. 38 of 2007 s. 107.]*

**21. Remuneration and allowances**

Members of the Council are entitled to any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Minister for Public Sector Management.

*[Section 21 inserted by No. 38 of 2007 s. 107.]*

**22. Quorum**

A quorum for a meeting of the Council is any 4 members.

*[Section 22 inserted by No. 38 of 2007 s. 107.]*

**23. Presiding at meetings**

- (1) The chairman, if present, is to preside at a meeting of the Council.
- (2) If the chairman is not presiding under subsection (1), the members present at the meeting are to appoint one of their number to preside.

*[Section 23 inserted by No. 38 of 2007 s. 107.]*

**24. Disclosure of interests by Council members**

- (1) A member of the Council who has a direct or indirect pecuniary interest in a matter that is before a meeting of the Council must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Council members who are at that meeting.

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- (2) If a member of the Council has, in the opinion of the person presiding at a meeting of the Council, a direct or indirect pecuniary interest in a matter before that meeting, the person presiding may call on the member to disclose the nature of that interest and, in default of any such disclosure, may determine that that interest exists.
- (3) A disclosure by a member of an interest in a matter or a determination that a member is interested in a matter must be recorded in the record of the meeting concerned.
- (4) A member who has made a disclosure of an interest in a matter, or in respect of whom a determination has been made in relation to a matter, may take part in the consideration or discussion of the matter, but not in advising, or any decision related to advising, the Minister on the matter.
- (5) An interest need not be disclosed under this section if it is an interest common to a significant number of persons in the State.

*[Section 24 inserted by No. 38 of 2007 s. 107.]*

**25. Procedure at meetings**

Except as otherwise stated in this Act, the Council is to determine its own meeting procedures.

*[Section 25 inserted by No. 38 of 2007 s. 107.]*

**26. Minutes**

The Council is to cause accurate minutes to be kept of the proceedings at its meetings.

*[Section 26 inserted by No. 38 of 2007 s. 107.]*

**27. Staff and other resources of the Council**

- (1) There is to be an executive officer of the Council.

- (2) The executive officer and any other staff whose assistance the executive officer needs are to be made available by the CEO on terms agreed to by the chairman of the Council and the CEO.
- (3) The Council may make use of the services and facilities of the Department on terms agreed to by the chairman of the Council and the CEO.

*[Section 27 inserted by No. 38 of 2007 s. 107.]*

**28. Application of the *Financial Administration and Audit Act 1985***

Acts or things done by or for the Council under this or a relevant Act are to be regarded —

- (a) as services under the control of the Department for the purposes of section 52 of the *Financial Management Act 2006*; and
- (b) as part of the operations of the Department for the purposes of Part 5 of that Act.

*[Section 28 inserted by No. 38 of 2007 s. 107.]*

## **Part IIB — Regulations and by-laws**

*[Heading inserted by No. 38 of 2007 s. 107.]*

*[29-32. Deleted by No. 73 of 1995 s. 17.]*

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

### **34. By-laws**

- (1) The Minister may make by-laws prescribing all matters that are required or permitted by this Act or any relevant Act to be prescribed, or are necessary or convenient to be prescribed, for the purposes of the performance by the Minister or the Corporation of their respective functions under this Act or any relevant Act.
- (2) By-laws made under subsection (1) shall be subject to any regulations made under this Act or a relevant Act and where any such by-law is in any respect inconsistent with or repugnant to any such regulation the regulation shall prevail and the by-law shall be read and be construed and have effect accordingly.
- (3) Without limiting subsection (1), by-laws made under that subsection may —
  - (a) amend by-laws made under a relevant Act; or provide that those by-laws shall be deemed to have been made under this Act, or do both;
  - (b) provide for the due management and use of water, works, water services, water resources and property of the Minister or the Corporation;
  - (c) include measures for the protection of works, water services or water resources, and for preventing or remedying the waste, misuse, undue consumption, fouling or contamination of, water;
  - (d) regulate or prohibit the deposit of anything likely to cause fouling or contamination in, or within a prescribed

- distance of, any works, water services, watercourse, surface water or underground water;
- (e) provide for the construction, provision, maintenance, repair and cleansing of works and water services;
  - (f) control or limit the use of, or interference with, any watercourse or the flow of water;
  - (fa) prohibit, impose restrictions on or otherwise regulate the use of water;
  - (g) regulate the flow or require the disinfection, cleansing or other treatment of wastewater or other substances, discharged into or otherwise entering any works, reservoir, water services or watercourse;
  - (h) regulate, require or prohibit, the construction, provision, use, alteration, arrangement or repair of any drains, pipes, property sewers, fixtures or fittings, and make provision for the purposes for which, and the extent to which, they may be used, and prohibit interference therewith;
  - (i) empower the Corporation to effect repairs to pipes, drains, property sewers, fixtures and fittings —
    - (i) so as to prevent waste or fouling; or
    - (ii) in the case of damage to property of the Corporation,and to recover the cost thereof from the owner or occupier of the land;
  - (j) provide for the inspection of premises and things provided with, or used for the purposes of, water services;
  - (k) regulate the inspection, testing, stamping, marking and authorisation of materials, fittings and fixtures intended to be connected with the Corporation's works;
  - (l) provide for systems of notification, certification, inspection and authorisation of plumbing work, as defined in section 59I of the *Water Services Licensing*

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*Act 1995, connected with or to be connected with the Corporation's works;*

*[(m) deleted]*

- (n) prescribe the entitlements, if any, arising from the payment of any charges by way of a rate or otherwise.

*[Section 34 amended by No. 25 of 1985 s. 10; No. 110 of 1985 s. 8; No. 24 of 1987 s. 6<sup>3</sup>; No. 73 of 1995 s. 20<sup>5</sup> and 41; No. 32 of 1997 s. 18; No. 57 of 1997 s. 126(1); No. 39 of 1999 s. 11(7); No. 67 of 2003 s. 62; No. 38 of 2007 s. 108 and 135.]*

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

**36. Regulations and by-laws generally**

- (1) Regulations or by-laws made for the purposes of this Act or a relevant Act may be so made —
- (a) as to apply —
- (i) generally, or in a specified class of case or in a specified case;
  - (ii) at all times, or at specified times or at a specified time; and
  - (iii) throughout the State, or in specified parts of the State or in a specified place;
- or
- (b) as to adopt, by reference to the text as amended and for the time being in force at the time of adoption of the by-law, unless a particular text is otherwise specified —
- (i) such rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act, or under any Act of the Parliament of the Commonwealth or of the Parliament of the United Kingdom; or



- (ii) such standards, rules, codes or specifications issued by Standards Australia, the British Standards Institution, or other specified body, either wholly or in part or with modifications, as are specified; or
  - (c) as to provide that where, by reason of the unavailability of materials or any other reason that the Minister or the Corporation considers valid, any requirement imposed by the Minister or the Corporation cannot be conformed to in any particular case, the Minister or the Corporation may in writing dispense with that requirement and instead require the use of materials or any other matters which the Minister or the Corporation considers to be appropriate; or
  - (d) as to provide that, in a specified case or a specified class of case, whether on specified conditions or unconditionally, a person or thing or a class of persons or things, may be exempted from the provisions of those regulations or by-laws either wholly or to such extent as is specified; or
  - (e) as to require a matter affected by them to be in accordance with a specified standard, specification or requirement or to be as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body, or so as to confer on a specified person or body or a specified class of person or body a discretionary authority.
- (2) Where regulations or by-laws, or any provision of regulations or by-laws, made under and for the purposes of a relevant Act are necessary or convenient for other purposes under this Act regulations or by-laws made under this Act may adopt, by reference to the text as from time to time amended and for the time being in force, any such regulation, by-law or provision, either wholly or in part or with modifications, as may be specified.

- (3) The Governor, a Minister or a statutory authority may, for the purposes of the Minister or the Corporation under this Act, exercise a power conferred by a relevant Act to make, or to grant dispensation from the observance of, regulations or by-laws under that Act as though the power to do so had been conferred by the relevant Act.
- (4) Regulations or by-laws made under this Act —
- (a) may provide that contravention or failure to comply constitutes an offence;
  - (b) may make provision for penalties not exceeding \$2 000 for any such offence and if the offence is a continuing one a further penalty not exceeding \$200 for every day or part of a day during which the offence continues after notice of the offence has been given by or on behalf of the Minister or the Corporation to the offender;
  - (c) may provide that, in addition to the penalty, any expense, loss or damage incurred by the Minister or the Corporation in consequence of the offence shall be payable by the offender;
  - (d) may provide for fees to be payable to the Minister or the Corporation in relation to specified matters and make provision as to the recovery of any such fees; and
  - (e) may prescribe forms and other documents for the purposes of this Act or a relevant Act, and for the circumstances in which they are required and the manner in which information required is to be provided or verified.
- (5) In this section, *specified* means specified in the regulation or by-law in relation to which the term is used.
- (6) The court, when convicting a person for an offence constituted by a contravention of a regulation or by-law which provides that any expense, loss or damage incurred by the Minister or the Corporation in consequence of the offence shall be payable by the offender shall, if requested by an officer of the Department

or the Corporation or a person authorised by the Minister or the Corporation, assess the amount of the expense, loss or damage so incurred and payable by the person convicted and make an order for payment of the total amount assessed, and the amount specified in the order is recoverable in the same manner as it would be recoverable if it were a fine.

- (7) Nothing in subsection (6) prejudices or affects the right of the Minister or the Corporation to institute any civil action or proceeding for the recovery of damages in any other court of competent jurisdiction against the person convicted.

*[Section 36 amended by No. 25 of 1985 s. 11; No. 24 of 1987 s. 7<sup>3</sup>; No. 73 of 1995 s. 42; No. 74 of 2003 s. 125(2); No. 38 of 2007 s. 109 and 135.]*

**37. Regulations**

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

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

**38. Revocation or amendment of local laws and local planning schemes**

- (1) Where any local law has been or is made by a local government under the *Local Government Act 1995* or any other Act, or any local planning scheme is in force under the *Planning and Development Act 2005*, and that local law or scheme, or any provision of such a local law or scheme, is on the advice of the Minister determined by the Governor to be repugnant to or inconsistent with the provisions of this Act or a relevant Act the Governor may, by Order published in the *Government Gazette*, revoke or amend that local law or scheme, or the relevant provision, in so far as it is so repugnant or inconsistent and effect shall be given to any such revocation or amendment but

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without affecting the validity, or curing the invalidity, of any thing done, or of the omission of any thing, in the meantime.

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

*[Section 38 amended by No. 73 of 1995 s. 23; No. 14 of 1996 s. 4; No. 67 of 2003 s. 62; No. 38 of 2005 s. 15; No. 38 of 2007 s. 110.]*

## **Part III — Financial provisions**

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

### **Division 1A — Certain provisions as to charges**

*[Heading inserted by No. 24 of 1987 s. 8<sup>3</sup>.]*

#### **41. By-laws relating to charges**

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

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

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

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

*[Section 41 inserted by No. 24 of 1987 s. 8<sup>3</sup>; amended by No. 73 of 1995 s. 25 and 41; No. 25 of 2005 s. 57.]*

*[41A. Deleted by No. 25 of 2005 s. 58.]*

*[41B. Deleted by No. 25 of 2005 s. 59.]*

**41C. Certain valuations may be indexed**

- (1) Except where a value was assigned to the land pursuant to a general valuation under the *Valuation of Land Act 1978* that was expressed by a notice under section 21 or 22 of that Act to come



into force, and came into force for the purposes of this Act, at the commencement of the period for which the charge is to be imposed, the by-laws may, subject to this Act, impose a charge by reference to the value assigned to the land under that Act increased by such factor as is prescribed in the by-laws.

- (2) No objection or appeal lies in respect of any increase under this section.

*[Section 41C inserted by No. 24 of 1987 s. 8<sup>3</sup>.]*

**41D. Phasing-in of certain valuations**

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

*[Section 41D inserted by No. 24 of 1987 s. 8<sup>3</sup>; amended by No. 17 of 1993 s. 13<sup>6</sup>.]*

**41E. Interim valuations**

- (1) Where the value assigned to land under the *Valuation of Land Act 1978* is increased or decreased pursuant to an interim

valuation under that Act, the Corporation may, in the case of an increase, and shall, in the case of a decrease, re-assess any charge in respect of the land made for a period during which the interim valuation comes into force that is based on the value that has been changed and make such additional charge, or give such rebate or refund, for the period as is appropriate by reason of the change in value.

- (2) Except to the extent expressly provided in subsection (1), that subsection does not limit the generality of section 41(1)(h).
- (3) Where, in accordance with subsection (1), a charge for a year may be reassessed by reason that an increased gross rental value has been assigned to land pursuant to an interim valuation under the *Valuation of Land Act 1978*, and the value assigned pursuant to the interim valuation exceeds the value (in this section referred to as ***the notional value***) that would have been assigned to that land immediately before the last general valuation in respect of gross rental values if it had then been developed and used as it is at the time the value was in fact assigned pursuant to the interim valuation, the amount of the charge may be assessed —
  - (a) if the last general valuation affecting the gross rental value of that land came into force at the commencement of the year for which the charge is made, by reference to the value assigned pursuant to the interim valuation reduced by two-thirds of the amount of the notional increase in value as defined in subsection (4);
  - (b) if the last general valuation affecting the gross rental value of that land came into force one year before the commencement of the year for which the charge is made, by reference to the value assigned pursuant to the interim valuation reduced by one-third of the amount of the notional increase in value as defined in subsection (4).
- (4) For the purposes of subsection (3), the notional increase in value of land referred to in that subsection is the amount by which the

value assigned pursuant to the interim valuation exceeds the notional value.

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

*[Section 41E inserted by No. 24 of 1987 s. 8<sup>3</sup>; amended by No. 17 of 1993 s. 13<sup>6</sup>; No. 73 of 1995 s. 41.]*

**41F. Postponement of effect of general valuation**

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

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

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

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

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

*[Section 41F inserted by No. 24 of 1987 s. 8<sup>3</sup>; amended by No. 73 of 1995 s. 41.]*

**41G. Incomplete general valuation**

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

*[Section 41G inserted by No. 24 of 1987 s. 8<sup>3</sup>; amended by No. 73 of 1995 s. 41.]*

**41GA. Concession on certain charges after subdivision**

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

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- (a) the lot is not serviced and is not a habitable lot;
  - (b) it was created to be used solely or principally for residential purposes; and
  - (c) its area is not more than 2 000 m<sup>2</sup> or, if its area is more than 2 000 m<sup>2</sup>, it is to be used for a building or group of buildings that —
    - (i) is solely for residential purposes; and
    - (ii) contains a number of separate residential units.
- (2) The concession period for the lot is the period from when the subdivisional plan or diagram is approved until —
- (a) the ownership of the lot changes as a result of an agreement for the sale of land;
  - (b) the lot becomes serviced or becomes a habitable lot; or
  - (c) one year passes after the approval.

(3) For the purposes of this section a lot is serviced if it has a connection to a water service.

(4) This section does not affect a water charge for any time after the concession period ends.

(5) In this section —

**concession period** has the meaning given by subsection (2);

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

**lot** does not include a lot depicted on a strata plan unless it is a lot in a survey-strata scheme;

**subdivision** refers to the creation of 2 or more lots;

**water charge** means a charge under section 41 relating to the provision by the Corporation of a water service and does not include an amount required to be paid by way of a contribution to headworks or for extending a water service or providing a connection to it.

*[Section 41GA inserted by No. 12 of 1996 s. 10<sup>7</sup>.]*

**41H. Apportionment between joint owners or occupiers**

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

*[Section 41H inserted by No. 24 of 1987 s. 8<sup>3</sup>; amended by No. 73 of 1995 s. 41.]*

**41J. Accounts based on estimated quantities**

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

*[Section 41J inserted by No. 24 of 1987 s. 8<sup>3</sup>; amended by No. 73 of 1995 s. 41.]*

**41K. Certain information to be made available**

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

*[Section 41K inserted by No. 24 of 1987 s. 8<sup>3</sup>; amended by No. 73 of 1995 s. 41.]*

**41L. Interest on overdue amounts**

- (1) Where the payment of the amount of a charge, whether by way of a rate or otherwise, or an instalment of such a charge, including any interest payable under this subsection, is not made by the time when it is due or such time thereafter as may be prescribed for the purposes of this section in the by-laws, interest calculated at the rate and in the manner prescribed shall be payable in accordance with the by-laws.
- (2) Where, in accordance with the by-laws, the amount of a charge that is payable has been increased by reason that payment is made in instalments or that it was not paid in full by the time when it was due or such time thereafter as was prescribed, subsection (1) applies in respect of the total amount outstanding, including the amount of any such increase.

*[Section 41L inserted by No. 24 of 1987 s. 8<sup>3</sup>.]*

**41M. Corporation may waive or reduce certain amounts**

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

*[Section 41M inserted by No. 24 of 1987 s. 8<sup>3</sup>; amended by No. 73 of 1995 s. 41.]*

**41N. Charges payable notwithstanding liability to prosecution**

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

*[Section 41N inserted by No. 24 of 1987 s. 8<sup>3</sup>.]*



## **Division 2 — Agreements as to charges**

*[Heading inserted by No. 25 of 2005 s. 60(1).]*

### **42. Agreements for different liability**

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

- (4) In this section —

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

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

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

*[Section 42 inserted by No. 25 of 2005 s. 60(1).]*

*[43. Deleted by No. 73 of 1995 s. 26.]*

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

*[Divisions 3-5 (s. 49-60) deleted by No. 73 of 1995 s. 26.]*

**Division 6 — Liability, indemnity, etc.**

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

**62. Liability for physical damage to land, etc.**

- (1) In the exercise of the Minister's or the Corporation's powers of entry on to land or to carry out works under this Act or any relevant Act, except where the Act or an agreement relating to the exercise of the power otherwise provides, the Minister or the Corporation shall, in so far as that is practicable, forthwith make good or pay for the making good of, and, in so far as the making good is not practicable pay compensation for, the physical damage done to that land, or any premises or thing on that land, by the Minister or the Corporation in the course and at the time of, and the proximate cause of which is, the exercise or purported exercise of such a power, whether that damage is of a temporary character or a permanent character.
- (2) Any dispute as to the manner of making good of, or the amount of any payment in respect of, damage under subsection (1), shall be referred to the State Administrative Tribunal and dealt with as if it had come before the Tribunal under Part 10 of the *Land Administration Act 1997*.
- (3) The Crown or the Corporation shall not be liable to pay to any person any amount in respect of damage under subsection (1) unless —
  - (a) within 3 months after the damage is sustained, or within such further period as the Minister may allow, the person delivers in writing to the Minister or the Corporation a claim, or notice of intention to make a claim, for such amount; and
  - (b) where there is no agreement with the Minister or the Corporation on the claim within 12 months after delivery of the claim or the notice, the person, within that time, brings an action against the Crown or the

Corporation to establish the requirement for, and entitlement to, payment.

- (4) In calculating the amount payable under this section regard shall be had to any compensation received for the damage by the claimant pursuant to any other Act, and the amount payable under this section shall be adjusted accordingly.
- (5) In calculating compensation payable under any other Act regard shall be had to any amount received for the damage by the claimant pursuant to this section, and the body or court so calculating is hereby authorised to take such amount, if any, into account.

*[Section 62 amended by No. 25 of 1985 s. 14; No. 73 of 1995 s. 42; No. 31 of 1997 s. 137(2); No. 55 of 2004 s. 571; No. 38 of 2007 s. 111 and 135.]*

**63. Actions for damages generally**

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

*[Section 63 amended by No. 73 of 1995 s. 42; No. 38 of 2007 s. 112.]*

## **Part IV — Agreements relating to works and water services**

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

### **64. Application**

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

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

### **65. Interpretation of this Part**

For the purposes of this Part —

(a) unless the context otherwise requires —

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

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

***planning condition*** means a condition affixed —

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

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

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

**reticulation** means the system of works necessary to provide services to particular land, being works connecting headworks to the point at which the service is provided;

(b) a reference to —

**development** includes a reference to, a redevelopment, or a proposed development or redevelopment;

**subdivision** includes a reference to re-subdivision or amalgamation;

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

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

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

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

## **66. Advice and guidelines**

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

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

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

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*[Section 66 inserted by No. 15 of 1985 s. 15; amended by No. 73 of 1995 s. 29; No. 67 of 2003 s. 62; No. 38 of 2007 s. 113.]*

**67. Agreements**

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

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

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

reference to that notice under the Act in pursuance of which the proposal was submitted, and any approval under the Act imposing the planning condition shall not be taken to be effective until —

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

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



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

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

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

**67A. Deferring headworks payments for certain subdivisions**

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

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

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

(10) In this section —

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

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

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

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

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

*[Section 67A inserted by No. 12 of 1996 s. 11<sup>7</sup>.]*

**67B. Transfer of land restricted until deferred amount paid**

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

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

- (9) In this section —

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

***Registrar*** means the Registrar of Titles.

*[Section 67B inserted by No. 12 of 1996 s. 11<sup>7</sup>.]*

## **Part V — Access to land and information for rating purposes**

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

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

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

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

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

Penalty: \$1 000.

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

### **69. Provision of information as to rating, etc.**

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

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

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

Penalty: \$50.

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

commits an offence.

Penalty: \$1 000.

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

**69A. Rating records**

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

- (c) the assessment number;
  - (d) where it is relevant to the making of any charge in respect of the land, the gross rental value, the unimproved value, or the area of the land, as the case requires;
  - (e) the classification, if any, of the land for the purpose of the application of any charge in respect of the land;
  - (f) any other information that the Corporation requires for the assessment of any charge in respect of the land;
  - (g) the amount of any charge that has been assessed in respect of the land for a current period; and
  - (h) such other information, if any, as may be prescribed in the by-laws.
- (2) Where the name or address of the owner of any land the subject of a charge under this Act is not known to the Corporation or the Corporation is otherwise authorised by or on behalf of the owner, the Corporation may —
- (a) record the fact that the name or address is unknown;
  - (b) record the name and address of a person occupying, or responsible for the management of, the land or authorised to accept service of notices or demands on behalf of the owner; and
  - (c) assess a charge in respect of the land and, in connection therewith, serve notice and make demand upon either —
    - (i) the owner or occupier, by that designation pursuant to this Act or a relevant Act; or
    - (ii) a person authorised to accept service on behalf of the owner.
- (3) The record for any land shall at all reasonable times be made available for inspection by any person without payment, and the Corporation shall, on request by any person who satisfies the Corporation that he has a material interest in any portion of the

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

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

*[Section 69A inserted by No. 110 of 1985 s. 10; amended by No. 24 of 1987 s. 9<sup>3</sup>; No. 73 of 1995 s. 41; No. 14 of 1996 s. 4.]*

**69B. Records to be basis of assessment**

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



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

*[Section 69B inserted by No. 24 of 1987 s. 10<sup>3</sup>; amended by No. 73 of 1995 s. 41.]*

## **Part VI — Entry onto land**

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

### **70. The power of entry**

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

continue to have effect for so long as that requirement subsists, and successive entries for that purpose shall be taken to be entries to which the notice relates.

*[Section 70 inserted by No. 25 of 1985 s. 17; amended by No. 73 of 1995 s. 42; No. 31 of 1997 s. 137(3) and 142; No. 38 of 2007 s. 114 and 135.]*

## **71. Inspection**

- (1) For the purposes of this Act and any relevant Act, the Minister or the Corporation —
  - (a) may, subject to section 72(1), enter and re-enter at all reasonable times any land, premises or thing —
    - (i) to which water services are supplied by the Corporation; or
    - (ii) in, on, over or under which any works of the Minister or the Corporation are lawfully situate, for the purpose of routine inspection, or routine maintenance and no notice under this Act is required unless an agreement in writing entered into by the owner or occupier of the land, premises or thing with the Minister or the Corporation in relation thereto otherwise provides; and
  - (b) may, without notice, enter at all reasonable times any land, premises or thing and take such measures as may be necessary to ascertain whether any offence against this Act or a relevant Act has been or is being committed.
- (2) Notwithstanding that the powers conferred by Subdivision 2 of Division 3, or Division 4, of Part 9 of the *Land Administration Act 1997* or section 82 or 83A of the *Public Works Act 1902* may in any particular case not be applicable, the Minister or the Corporation may enter upon any land if, in the opinion of the Minister or the Corporation, entry upon that land is necessary for the purposes of inspecting or examining the land to

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determine the feasibility of the use of that land for the purposes of this Act or a relevant Act, or as preliminary to any prospective or intended acquisition of the land or any estate or interest in that land.

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

*[Section 71 inserted by No. 25 of 1985 s. 17; amended by No. 73 of 1995 s. 31, 41 and 42; No. 31 of 1997 s. 137(4); No. 38 of 2007 s. 115 and 135.]*

**72. Notice of entry**

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

Corporation relating thereto, shall be given to the owner or occupier of the land affected.

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

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warrant shall continue to have effect until the purpose for which it was granted has been satisfied.

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

*[Section 72 inserted by No. 25 of 1985 s. 17; amended by No. 73 of 1995 s. 42; No. 14 of 1996 s. 4; No. 31 of 1997 s. 137(5); No. 38 of 2007 s. 116 and 135.]*

**73. Rights as to entry in emergency**

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

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

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

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

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make good any damage, or effect restoration, rehabilitation or restitution and section 62 has effect as though a reference in that section to the Minister or the Corporation included a reference to a person exercising powers pursuant to this section.

*[Section 73 inserted by No. 25 of 1985 s. 17; amended by No. 73 of 1995 s. 32 and 42; No. 38 of 2007 s. 117 and 135.]*



## **Part VII — Acquisition of land or interests in land**

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

### **74. Estates and interest in land**

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

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

### **75. Partial interests in land**

- (1) Where, whether by way of agreement or by way of a compulsory taking under Part 9 of the *Land Administration Act 1997*, the Minister or the Corporation seeks the acquisition of an estate or interest in or relating to any land that is less than is held by the person from whom the acquisition is sought, the lesser estate or interest may, subject to section 81(11), be acquired instead of acquiring the whole of the estate or interest held by that person.
- (2) Where an estate or interest of the Minister or the Corporation of the kind referred to in subsection (1) is recorded on, or by way of memorial in the register relating to, the title to the land —
  - (a) that estate or interest shall enure for the benefit of the Minister or the Corporation and run with the land notwithstanding any sale, subdivision or other dealing

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with that land by the owner or occupier for the time being, but any such estate or interest may be relinquished by the Minister or the Corporation; and

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

*[Section 75 inserted by No. 25 of 1985 s. 18; amended by No. 73 of 1995 s. 34 and 42; No. 31 of 1997 s. 137(7); No. 25 of 2005 s. 61; No. 38 of 2007 s. 135.]*

*[76. Deleted by No. 73 of 1995 s. 35.]*

**77. Agreements incidental to land matters**

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

- (b) any interest in or right to use that land or any part of the land,

to any other person (subject to the provisions of subsection (3) and of Division 5 of Part 9 of the *Land Administration Act 1997*), and where the lease, licence or other interest or right so granted is stated in that grant as being given by way of consideration for the acquisition of the land by the Minister or the Corporation then that lease, licence, interest or right shall not be revoked without compensation unless the parties otherwise agree.

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

*[Section 77 inserted by No. 25 of 1985 s. 18; amended by No. 73 of 1995 s. 42; No. 31 of 1997 s. 137(8); No. 38 of 2007 s. 135.]*

**78. Power to dispose of land**

- (1) Subject to subsection (2) and to section 12EB(2) of the *Country Areas Water Supply Act 1947* but otherwise in accordance with Part 9 of the *Land Administration Act 1997*, the Minister or the Corporation may sell or otherwise deal with any land, or any estate or interest in land, acquired by a former Minister, a statutory authority, the former Commission, the Minister or the Corporation and vested in the Minister or the Corporation for

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the purposes of this Act or a relevant Act and no longer required for such purposes.

- (2) Where any such land, estate or interest acquired by a former Minister, a statutory authority, the former Commission, the Minister or the Corporation was not acquired under this Act or any other Act by way of compulsory taking for any public work, sections 187, 188, 189, 190, and 191 of the *Land Administration Act 1997* shall not have effect in relation thereto.

*[Section 78 inserted by No. 25 of 1985 s. 18; amended by No. 73 of 1995 s. 42; No. 31 of 1997 s. 137(9) and 142; No. 38 of 2007 s. 118.]*

**79. Planning approval**

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

*[Section 79 inserted by No. 25 of 1985 s. 18; amended by No. 84 of 1994 s. 46; No. 73 of 1995 s. 42; No. 38 of 2005 s. 15; No. 38 of 2007 s. 119.]*

*[80. Deleted by No. 73 of 1995 s. 35.]*

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

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

any change in the aesthetic environment, alleged to be occasioned by the placing of works of the Minister or the Corporation on any land.

- (3) No claim lies against the Crown or the Corporation by reason only of the placing of any works of the Minister or the Corporation upon, in, over or under any land, other than a claim —
- (a) pursuant to section 62; or
  - (b) under Part 10 of the *Land Administration Act 1997*, as read with this Act, where the Minister or the Corporation —
    - (i) is by this or any other Act required; or
    - (ii) by reason of the nature of the works there placed, the nature of the locality in which the works are placed, the safeguarding of particular works, public safety, future development proposals, or otherwise, elects,to acquire the land or an estate or interest in the land,
- but this subsection does not affect any liability of the Crown or the Corporation where negligence is established for the purposes of section 63.
- (4) Notwithstanding the powers conferred on the Minister by Part VI, the Minister is required to acquire, where practicable by agreement but otherwise pursuant to Part 9 of the *Land Administration Act 1997* as read with this Act, such land, estate, or interest as may in the opinion of the Minister be appropriate to the Minister's needs in respect of —
- (a) major works, other than works in relation to which the Minister has decided that this subsection is not to have effect; and
  - (b) such other works as may be prescribed by regulation under this Act as works to which this subsection shall apply,

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and regulations made under this Act may make provision for such restriction of any use of the land thereby affected by other persons.

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

- (a) to the relevant Minister, may be read for the purposes of this Act or a relevant Act as a reference to the Minister; and
- (b) to the department of the Public Service principally assisting the relevant Minister in the administration of that Act or those Parts, may be read for the purposes of this Act or a relevant Act as a reference to the Department,

and that Act or those Parts may be construed accordingly.

- (9) Subsection (8) does not prevent the relevant Minister from exercising the relevant Minister's powers under the *Public Works Act 1902* or Parts 9 and 10 of the *Land Administration Act 1997* on behalf of the Minister when requested by the Minister to do so.

*[(10) deleted]*

- (11) A written objection served pursuant to section 175 of the *Land Administration Act 1997* in relation to any proposed taking for the purposes of the Minister may request —
  - (a) that instead of the whole estate or interest in the land being acquired, such a lesser estate or interest as is sufficient for the purposes of the Minister be acquired; or
  - (b) that instead of an estate or interest less than the whole being acquired, the whole estate or interest in the land be acquired,

and the Minister may vary the taking accordingly.

- (12) Where any land is compulsorily acquired under Part 9 of the *Land Administration Act 1997* for the purposes of the Minister under this Act or any other Act that land shall, on the registration of the relevant taking order made under section 177 of that Act, be vested in the Minister for the purpose of the public work for which the land is acquired, by force of section 179 of that Act as read with this subsection, save that the

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Land Administration Minister may, by that taking order, declare that any specified estate, interest, right or privilege of any person to the use, occupation or enjoyment of the land so acquired by the Minister, or any specified part of that land, may continue for the period therein specified or until terminated by the Land Administration Minister by a subsequent order under that Act, and may provide that such continued use, occupation or enjoyment shall not be taken to be in satisfaction or part satisfaction of the compensation claimed, and effect shall be given thereto.

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

- (14) In this section —

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

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

*[Section 81 inserted by No. 25 of 1985 s. 18; amended by No. 73 of 1995 s. 36 and 42; No. 31 of 1997 s. 137(10)-(17) and 142; No. 25 of 2005 s. 62(1)<sup>8</sup>; No. 38 of 2007 s. 120 and 135.]*



## **Part VIII — Works**

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

### **Division 1 — Carrying out of works under this Part**

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

#### **82. Power to carry out works under this Part**

- (1) Subject to this Act and any relevant Act, the Minister may carry out works for the purposes of this Act or any relevant Act that are related to the conservation, protection or management of water resources.
- (1aa) The conservation, protection or management of water resources is to be regarded as a public work for the purposes of this Act and Part 9 of the *Land Administration Act 1997*, even though the conservation, protection or management of water resources may be achieved on or in relation to an area of land without any works being carried out on the land.
- (1a) Subject to this Act, any relevant Act and the terms and conditions of any operating licence granted to it under the *Water Services Licensing Act 1995*, the Corporation may carry out —
  - (a) works for the purposes of this Act or any relevant Act that are intended to provide, or are related to the provision of, water services; and
  - (b) such other works as are requested by, and undertaken wholly or in part at the expense of, any other person being works of a kind that are related to the provision of water services.
- (2) The provisions of this Part have effect in relation to works carried out under and for the purposes of a relevant Act, except in so far as that relevant Act contains provisions inconsistent with the provisions of this Part in which case effect shall be given to the provisions of the relevant Act.

*[Section 82 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 37; No. 67 of 2003 s. 62; No. 38 of 2007 s. 121 and 135.]*

**83. Powers relating to works**

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

- (a) enter upon any land, street, premises or thing and acquire, provide or construct wells, reservoirs, dams and such other works as in the Minister's opinion may be required for the purposes of the conservation or management of water; and
  - (b) carry out such other works including the construction of premises and provision of facilities as may be necessary for the purposes of this Act or any relevant Act.
- (2) Without limiting the generality of subsections (1) and (1a) the Minister or the Corporation, for the purposes of this Act or a relevant Act, may —
- (a) exercise the powers conferred by sections 82, 83A, 93, and 94 of the *Public Works Act 1902* and Division 4 of Part 9 of the *Land Administration Act 1997*, save that those sections shall be read and construed as though —
    - (i) a reference therein to the Minister administering that Act or that Part were a reference to the Minister or the Corporation; and
    - (ii) the provisions of this Act relating to entry on to land and the giving of notice had effect in substitution for the provisions of the *Land Administration Act 1997* and the *Public Works Act 1902* relating to those matters,  
and the powers conferred by those sections shall be deemed to include the power to carry out general or specific investigations, tests, borings, explorations and other surface or underground studies —
  - (iii) to ascertain the existence, nature and extent of water resources including underground water resources;
  - (iv) to formulate schemes for the provision, extension or alteration of water services;
  - (v) to determine the feasibility and requirements of works or proposed works; and

- (vi) to survey or demarcate land;
- (b) for the purposes of this section —
  - (i) drain, pump, excavate or otherwise remove any water, soil or obstruction;
  - (ii) remove or use any earth, rock, trees and other things taken from any land;
  - (iii) take water, soil or other samples;
  - (iv) acquire, provide, remove or reconstruct buildings, pumps and other structures or plant;
  - (v) open, or alter the position of, any pipe, sewer, drain, channel, tunnel, wire or other fitting or apparatus within or under any land, including any street or premises; or
  - (vi) remove, or make a gate in, or erect, any fence (taking all reasonable steps to notify the owner and occupier of the land on which, or on the boundary of which, the fence is, or is to be, erected).
- (3) In the exercise of the powers conferred by this section the Minister or the Corporation shall ensure that so far as is reasonable and practicable —
  - (a) the free use of any land, street or premises is not obstructed; and
  - (b) as little detriment or inconvenience is caused and as little damage is done as is possible,

and section 62 applies in respect of damage thereby occasioned.

*[Section 83 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 38, 41 and 42; No. 31 of 1997 s. 137(18); No. 38 of 2007 s. 122 and 135.]*

**84. Property in works**

- (1) Where the Corporation places or has placed, or causes or permits or has caused or permitted any works or other things to

be placed upon, in, over or under any land in the exercise or purported exercise of a power conferred by this Act or a relevant Act those works or other things shall be taken to have been lawfully so placed.

- (1a) Where the Minister places or has placed, or causes or permits or has caused or permitted any works or other things to be placed upon, in, over or under any land for the purposes of this Act or a relevant Act those works or other things shall be taken to have been lawfully so placed.
- (2) Those works or other things shall at all times continue to be the property of the Minister or the Corporation, unless the Minister or the Corporation has otherwise agreed or may otherwise determine, and the Minister or the Corporation shall be deemed to have a right of access thereto for the purposes of this Act and any relevant Act.
- (3) The Minister or the Corporation may remove from, or demolish or destroy on, any land which is or has been occupied by the Minister or the Corporation, any plant, buildings, road, or other works placed or caused to be placed thereon by the Minister or the Corporation or by permission of the Minister or the Corporation.
- (4) In this section, a reference to the Minister or the Corporation includes a reference to a former Minister, to the former Authority, to the former Commission and to a statutory authority.

*[Section 84 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 39 and 42; No. 38 of 2007 s. 123 and 135.]*

**85. Local government works constructed with borrowed money**

- (1) Notwithstanding that —
  - (a) any water works and works relating to the procuring of a water supply;
  - (b) any sewers and works connected with sewerage; and

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

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

### **Division 2 — Preliminaries to works**

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

#### **Subdivision A — Interpretation**

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

## **86. Interpretation**

In this Part and in Part VII —

***exempt works*** means —

- (a) the maintenance, repair, minor alteration, reinstatement or replacement of existing works;
- (b) the construction or provision of other works —

- (i) not being major or general works;
  - (ii) being works in, on, under or over private land, which are constructed or provided on, and at the request of the owner of, the land served or to be served by the water services in respect of which the works are required; or
  - (iii) being works in, on, under or over Crown land or road reserves and required to link other exempt works to existing works;
- (c) alterations to general works and additions or extensions to general works in, on, under or over land vested in the Minister or the Corporation;
  - (d) alterations, extensions or additions to major works where section 91 does not apply; and
  - (e) such other works of the nature specified in the Order as the Governor may, from time to time by Order in Council, declare to be exempt works for the purposes of this Act or a relevant Act, notwithstanding that such works may form part of or be related to general works or major works;

***general works*** means the construction or provision of —

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

- (c) works in, on, under or over private land, other than exempt works;

**major works** means the construction or provision of —

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

*[Section 86 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 42; No. 38 of 2007 s. 124.]*

#### **Subdivision B — Major works**

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

### **87. Power to carry out major works**

- (1) The Corporation may carry out, or undertake the construction or provision of, major works, if the Corporation has complied with sections 88 and 89 and the Minister has thereupon authorised the carrying out of such works and a notice of such authorisation has been published in the *Government Gazette*, but not otherwise.
- (2) The Minister may carry out, or undertake the construction or provision of, major works, if —
  - (a) the Minister has complied with sections 88 and 89; and
  - (b) the Minister is satisfied that any objections or comments lodged under section 89 have been met by amendment



of the proposal for the major works or that it is not in the public interest to amend the proposal; and

- (c) a notice of the decision to carry out, or undertake the construction of or provide, the works has been published in the *Government Gazette*.

*[Section 87 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 42; No. 38 of 2007 s. 125.]*

**88. Advertisements and notices**

- (1) The Minister must, before carrying out, construction or provision of major works, and the Corporation must, before submitting proposals to the Minister for the carrying out, construction or provision of major works —
  - (a) cause to be prepared plans of the area affected together with the current proposals for the works, and cause those plans and proposals, or certified copies, to be deposited in the office of the Department or Corporation nearest to the locality in which the proposed works are to be situated; and
  - (b) cause an advertisement to be published in the *Government Gazette*, and in one or more newspapers generally circulating in the locality in which the proposed works are to be situate, specifying —
    - (i) a description of the proposed works;
    - (ii) the localities in which they will be situate;
    - (iii) the purposes for which they are required; and
    - (iv) the times when, and places at which, the plans and proposals may be inspected;and
  - (c) cause a notice specifying the details referred to in paragraph (b) to be served on —
    - (i) the owner and occupier of any land which is to be entered for the purposes of the proposed

works or which is, in the opinion of the Minister or the Corporation, likely to be affected; and

- (ii) any local government in the area of which the proposed works will be situate or which, in the opinion of the Minister or the Corporation, has a material interest in the proposal or the services to be provided by the works.
- (2) The plans and proposals referred to in subsection (1) shall be open to inspection by any person interested, at the times and places specified in the advertisement.

*[Section 88 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 42; No. 14 of 1996 s. 4; No. 38 of 2007 s. 125 and 135.]*

**89. Objections and comments**

- (1) Any local government or person interested may, in writing, object to or comment on the carrying out, construction or provision of proposed major works.
- (2) Every such objection or comment shall be lodged with the Minister or the Corporation within one month from the date of the publication of the advertisement referred to in section 88(1).
- (3) Where the Minister or the Corporation so determines, and whether or not by reason of objections or comments received, the Minister or the Corporation may amend the proposal by making alterations to the plans or proposals so deposited and advise the persons who are, in the opinion of the Minister or the Corporation, likely to be affected by such alterations, and, in the case of the Corporation, when submitting the proposal to the Minister for authorisation, the Corporation shall indicate the nature and extent of the alterations effected.

*[Section 89 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 42; No. 14 of 1996 s. 4; No. 38 of 2007 s. 127 and 135.]*

**90. Submission for authorisation — proposals of the Corporation**

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

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

- (d) direct that any amended proposal shall be re-advertised;
- (e) direct that further or other notices be served in respect of the proposal;
- (f) authorise the carrying out, construction, or provision of the proposed major works; or
- (g) decline to authorise the proposed major works.

*[Section 90 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 42; No. 38 of 2007 s. 128.]*

**91. Alteration or extension of major works**

- (1) Where the Corporation proposes substantially to alter or extend any major works it shall notify the Minister of the proposal and shall furnish to the Minister such plans, description,

specifications, estimates or other information as the Minister may require relating thereto.

- (2) After considering the proposal the Minister may —
  - (a) direct that the procedures set forth in sections 88, 89 and 90, or such procedures as are specified by the Minister, be carried out in relation to the alteration or extension as if the proposed alteration or extension were a proposal for the initial provision of major works;
  - (b) authorise the proposed extension or alteration; or
  - (c) decline to authorise the proposed extension or alteration.
- (3) In considering a proposal notified to him under subsection (1) the Minister may have regard to any earlier proposal relating to the same or like works and any earlier objections or comments received by the Corporation relating to that proposal.
- (4) If the Minister proposes that major work be substantially altered or extended, the Minister must decide whether the procedures in sections 88 and 89 should be complied with in relation to the alteration or extension.
- (5) If the Minister decides that the procedures in sections 88 and 89 should be complied with in relation to the alteration or extension, section 87(2) applies in relation to the alteration or extension as if the references to major works were references to the alteration or extension.

*[Section 91 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 42; No. 38 of 2007 s. 129.]*

#### **Subdivision C — General works**

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

### **92. Power to carry out general works**

The Minister or the Corporation may carry out, or undertake the construction or provision of, general works, if the Minister or

the Corporation has complied with sections 93, 94 and 95, but not otherwise.

*[Section 92 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 42; No. 38 of 2007 s. 135.]*

**93. Notices**

- (1) The Minister or the Corporation shall —
- (a) cause to be prepared plans and a description of proposed general works and cause those plans and that description, or certified copies, to be deposited in the office of the Department or Corporation nearest to the locality in which the proposed works are to be situated; and
  - (b) cause a notice, and an extract or illustration of the plans and a copy of the description referred to in paragraph (a) sufficient to indicate the nature and extent of the proposed general works, to be served on —
    - (i) the owner and the occupier of any land which is to be entered for the purposes of the proposed works or is, or the use of which is, in the opinion of the Minister or the Corporation, likely to be adversely affected; and
    - (ii) any local government in the area of which the proposed works will be situate or which, in the opinion of the Minister or the Corporation, has a material interest in the proposal or the services to be provided by the works,specifying the details set forth in section 88(1)(b)(i), (ii), (iii) and (iv) and nominating a date, which shall be a date not earlier than 7 days after service of the notice, by which all objections to, or comments upon, the proposal must be received by the Minister or the Corporation.
- (2) The plans and description referred to in subsection (1) shall be made available by the Minister or the Corporation for inspection

by any person or local government upon whom or which a notice has been served pursuant to subsection (1)(b), at the times and places specified in the notice.

*[Section 93 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 42; No. 14 of 1996 s. 4; No. 57 of 1997 s. 126(3); No. 38 of 2007 s. 130 and 135.]*

**94. Objections and comments**

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

*[Section 94 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 42; No. 14 of 1996 s. 4; No. 38 of 2007 s. 135.]*

**95. Authorisation for general works**

- (1) Where —
  - (a) the Corporation has complied with the requirements of sections 93 and 94 and —
    - (i) no objections or comments have been received by the time specified in the notices served pursuant to section 93(1); or
    - (ii) any objection or comment material to the proposal has been met;

and

- (b) the Corporation does not require the authorisation of the Minister to a deviation from the plan pursuant to section 97(4),

the Corporation is authorised to proceed to carry out, construct or provide the general works.

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

the Minister is authorised to proceed to carry out, construct or provide the general works.

*[Section 95 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 42; No. 38 of 2007 s. 131.]*

#### **Subdivision D — Exempt works**

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

#### **96. Minister or the Corporation to carry out exempt works**

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

*[Section 96 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 42; No. 38 of 2007 s. 135.]*

#### **Subdivision E — Deviation and modification**

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

#### **97. Deviation and modification**

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



- (a) the change is of a nature not inconsistent with the general proposal; and
  - (b) where the proposed works are to be constructed or provided on land other than —
    - (i) unoccupied Crown land; or
    - (ii) a road reserve,the deviation is agreed in writing by the owner and occupier of the affected land.
- (3) The Minister or the Corporation may, during the carrying out, construction or provision of works, depart from any description, proposal or plans of authorised works, and may make such modifications as are required by the circumstances, if the departure is agreed in writing by the owner and occupier of the affected land.
- (4) Where the Minister is satisfied that a deviation or modification of a kind to which subsection (1), subsection (2) or subsection (3) does not apply is not inconsistent with the general proposal, is necessary in the public interest, and does not adversely affect the interest of any person who is the owner or occupier of the land where the works are to be situate, the Minister may —
- (a) in the case of works of the Corporation — authorise the carrying out of the works as so varied; or
  - (b) in the case of works of the Minister — carry out the works as so varied,

despite the provisions of sections 88, 89 and 90, or 93, 94 and 95, not having been complied with.

*[Section 97 inserted by No. 25 of 1985 s. 19; amended by No. 73 of 1995 s. 42; No. 38 of 2007 s. 132 and 135.]*

### **Division 3 — Street works**

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

**98. Alterations to fittings in streets**

Subject to section 99, where the Corporation considers it necessary at any time to alter the position of any pipes, wires or other fittings or apparatus which are laid on, in, over or under any street and are under the control or management of any person, local government or department then the Corporation may by notice in writing request any such person, local government or department concerned to effect the alterations in such manner and within such reasonable time as is specified in that notice, and —

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

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

**99. Street levels and widths**

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

level, width or surfacing of any street in which any works of the Corporation have been placed.

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

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

**100. Breaking up of streets**

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

- (a) has given to the local government or department having the control and management of the street not less than 48 hours notice of its intention; or
- (b) is of the opinion that the circumstances are such that an emergency situation exists.

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

**101. Streets broken up to be reinstated**

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

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

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

**Division 4 — Provision of information as to works**

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

**102. Records and plans**

- (1) The Corporation shall cause to be kept records or plans of each area in respect of which water services are provided, in such form, and with such particulars of mains, sewers, drains and other works, as the Corporation may think expedient, and cause those records or plans to be from time to time revised, and such additions made thereto as will show the works as they exist from time to time.

- (2) The records and plans shall, during the office hours of the Corporation, be open to the inspection of any interested person who may, where the records have been stored by means of a mechanical, electronic or other device, request that the information be compiled and be available to be inspected by him in the form of a plan.
- (3) A copy of the records or plans, or an extract therefrom, shall be supplied by the Corporation upon payment of the prescribed fee.

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

## **Part IX — Infringement notices**

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

### **103. Infringement notices**

(1) In this section —

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

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

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

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

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

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

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

(2) An authorised person who has reason to believe that a person has committed an offence against this Act or a relevant Act that is prescribed to be an offence that may be dealt with under this section and is an offence in respect of which the person is authorised to give a notice under this section may give to that person a notice in the prescribed form informing him that if he does not wish to be prosecuted for the alleged offence in a court he may, within a period of 21 days after the giving of the notice,

pay to a person specified in the notice, other than the person giving the notice, the amount of money specified in the notice as being the modified penalty for that offence.

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

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

*[(10) deleted]*

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

*[Section 103 inserted by No. 25 of 1985 s. 20; amended by No. 110 of 1985 s. 11; No. 73 of 1995 s. 40; No. 78 of 1995 s. 130; No. 84 of 2004 s. 80; No. 38 of 2007 s. 133.]*



## **Part X — Administrative provisions**

*[Heading inserted by No. 38 of 2007 s. 134.]*

### **104. 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 a provision of this or a relevant Act (other than this section and sections 14 and 106).
- (2) Without limiting the things that may be delegated to the CEO under subsection (1), they include things that are to be done in the course of governing the affairs of the Ministerial Body under section 11(4).
- (3) The delegation must be in writing signed by the Minister.
- (4) A person to whom a power or duty is delegated under subsection (1)(b), (c) or (f) cannot delegate that power or duty.
- (5) 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.
- (6) 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.

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- (7) 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.
- (8) 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.
- (9) In this section, “**department**”, “**employing authority**” and “**organisation**” each have the meaning given to them in section 3 of the *Public Sector Management Act 1994*.

*[Section 104 inserted by No. 38 of 2007 s. 134.]*

**105. 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 an 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 or a relevant Act.
- (2) The delegation must be in writing signed by the CEO.
- (3) Except in the case of an officer of the Department, a power or duty can only be delegated to a person or body under subsection (1) if the person or body has been approved, or is in a class of person or body approved, by the Minister for the purposes of this section.

- (4) A person to whom a power or duty is delegated under subsection (1)(a), (c) or (d) cannot delegate that power or duty.
- (5) A delegation under subsection (1)(b) may expressly authorise the delegate to further delegate the power or duty but only to an officer or employee of the department or organisation.
- (6) A person or body exercising or performing a power or duty that has been delegated to the person or body under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of —
  - (a) the CEO to perform a function through an officer or agent; and
  - (b) an employing authority to whom a power or duty is delegated under this section from exercising that power or performing that duty through an officer or agent.
- (8) In this section, “**department**”, “**employing authority**” and “**organisation**” each have the meaning given to them in section 3 of the *Public Sector Management Act 1994*.

*[Section 105 inserted by No. 38 of 2007 s. 134.]*

**106. Directions about Government policy**

- (1) The Minister may, in writing, direct the Water Corporation or a water board to have regard to a general policy of the Government relating to water resources, to the extent specified in the direction.
- (2) The Minister must cause a copy of a direction under subsection (1) to be laid before each House of Parliament, or dealt with under section 110, within 14 days after the day on which the direction is given.
- (3) The text of a direction under subsection (1) is to be included in the annual report submitted by the accountable authority of the

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Department under Part 5 of the *Financial Management Act 2006*.

(4) In this section —

**water board** means a water board constituted under section 6 of the *Water Boards Act 1904*;

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

*[Section 106 inserted by No. 38 of 2007 s. 134.]*

**107. Non-public sector staff**

(1) The CEO may engage persons as wages staff otherwise than under the *Public Sector Management Act 1994*.

(2) Persons referred to in subsection (1) are to be employed, subject to any relevant industrial award, order or agreement, on such terms and conditions as the CEO determines.

(3) Nothing in subsection (2) affects the operation of the *Workplace Agreements Act 1993* or Part VID of the *Industrial Relations Act 1979* or section 100 of the *Public Sector Management Act 1994*.

*[Section 107 inserted by No. 38 of 2007 s. 134.]*

**108. Provision of staff, services and facilities**

(1) The CEO may arrange with a related entity to provide it with the use of —

(a) the services of any officer or employee of the Department; and

(b) any services or facilities of the Department,

that are necessary for the entity to perform its functions.

(2) This section does not limit any power the related entity has to engage its own staff or provide its own facilities, or to enter into

any other arrangement for the provision to it of staff, services or facilities.

(3) In this section —

***related entity*** means —

- (a) a body (whether incorporated or not); or
- (b) the holder of an office; or
- (c) a person,

established by or under, or having functions under, this Act or a relevant Act.

*[Section 108 inserted by No. 38 of 2007 s. 134.]*

**109. Advisory committees**

- (1) The Minister may establish committees for the purpose of advising the Minister on any aspect of the administration of this or a relevant Act, with terms of reference in each case determined by the Minister.
- (2) A member of a committee is entitled to the remuneration and allowances (if any) determined by the Minister, on the recommendation of the Minister for Public Sector Management.
- (3) The terms and conditions, other than those referred to in subsection (2), applicable to or in relation to a person appointed to a committee are to be determined by the Minister, from time to time either generally or with respect to a particular appointment.
- (4) This section does not limit the Minister's power to establish committees for any other purpose.

*[Section 109 inserted by No. 38 of 2007 s. 134.]*

**110. Laying documents before Parliament**

- (1) If a provision of this Act requires the Minister to cause a document to be laid before each House of Parliament, or be dealt with under this section, within a period and —

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- (a) at the commencement of the period, a House of Parliament is not sitting; and
- (b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a document that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

*[Section 110 inserted by No. 38 of 2007 s. 134.]*

**111. Protection from liability for wrongdoing**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this or a relevant 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 or the relevant 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) Subsection (1) does not apply in respect of the Corporation.
- (5) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

*[Section 111 inserted by No. 38 of 2007 s. 134.]*

**112. Confidentiality**

- (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 or a relevant Act commits an offence.  
Penalty: \$12 000 and imprisonment for one year.
- (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 or a relevant Act or any other written law; or
  - (c) with the written permission 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 circumstances prescribed by the regulations.
- (3) This section does not apply —
  - (a) to or in respect of the Corporation; or
  - (b) to information to which section 15 applies.
- (4) In this section —

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

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

*[Section 112 inserted by No. 38 of 2007 s. 134.]*

**Notes**

<sup>1</sup> This is a compilation of the *Water Agencies (Powers) Act 1984* and includes the amendments made by the other written laws referred to in the following table <sup>1a, 12</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Water Authority Act 1984</i> <sup>9</sup>	3 of 1984	18 May 1984	1 Jul 1985 (see s. 2 and <i>Gazette</i> 7 Jun 1985 p. 1931)
<i>Acts Amendment and Repeal (Water Authorities) Act 1985</i> Pt. II	25 of 1985	6 May 1985	1 Jul 1985 (see s. 2 and <i>Gazette</i> 7 Jun 1985 p. 1931)
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Water Authorities) Act 1985</i> Pt. II	110 of 1985 (as amended by No. 24 of 1987 s. 156; No. 74 of 2003 s. 24)	17 Dec 1985	s. 3-7, 9-11 and 13: 14 Mar 1986 (see s. 2 and <i>Gazette</i> 14 Mar 1986 p. 726); s. 8: 1 Feb 1990 (see s. 2 and <i>Gazette</i> 5 Jan 1990 p. 38); s. 12 repealed by No. 74 of 2003 s. 24
<i>Acts Amendment (Water Authority Rates and Charges) Act 1987</i> Pt. I <sup>3</sup>	24 of 1987	25 Jun 1987	14 Jul 1987 (see s. 2 and <i>Gazette</i> 14 Jul 1987 p. 2647)
<i>Water Authority Amendment Act 1987</i>	48 of 1987	3 Oct 1987	13 Nov 1987 (see s. 2 and <i>Gazette</i> 13 Nov 1987 p. 4141)
<i>Acts Amendment (Public Service) Act 1987</i> s. 32	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Acts Amendment (Land Administration) Act 1987</i> Pt. XVII	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and <i>Gazette</i> 16 Sep 1988 p. 3637)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11 and 15	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Annual Valuations and Land Tax) Act 1993</i> s. 13 <sup>6</sup>	17 of 1993	29 Nov 1993	29 Nov 1993 (see s. 2)



<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<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)
<i>Water Authority Amendment Act 1994</i>	34 of 1994	8 Jul 1994	8 Jul 1994 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Planning Legislation Amendment Act (No. 2) 1994 s. 46(4)</i>	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 Pt. 2<sup>4, 5, 10</sup></i>	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 Pt. 80</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<b>Reprint of the Water Agencies (Powers) Act 1984 as at 30 Apr 1996</b> (includes amendments listed above except those in the <i>Acts Amendment (Water Authorities) Act 1985 s. 12</i> and the <i>Sentencing (Consequential Provisions) Act 1995</i> )			
<i>Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996 Pt. 3<sup>7</sup></i>	12 of 1996	28 Jun 1996	28 Jun 1996 (see s. 2)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Acts Amendment (Land Administration) Act 1997 Pt. 64 and s. 142</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Water Legislation Amendment Act 1997 Pt. 5</i>	32 of 1997	3 Oct 1997	15 Apr 1998 (see s. 2 and <i>Gazette</i> 15 Apr 1998 p. 2041)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 126</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))

## Water Agencies (Powers) Act 1984

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*Water Services Coordination Amendment Act 1999* s. 11(7)      39 of 1999      9 Nov 1999      19 Jun 2000 (see s. 2 and *Gazette* 16 Jun 2000 p. 2939)

**Reprint of the *Water Agencies (Powers) Act 1984* as at 4 Jan 2000** (includes amendments listed above except those in the *Acts Amendment (Water Authorities) Act 1985* s.12 and the *Water Services Coordination Amendment Act 1999* )

*Economic Regulation Authority Act 2003* s. 62      67 of 2003      5 Dec 2003      1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5723)

*Statutes (Repeals and Minor Amendments) Act 2003* s. 125      74 of 2003      15 Dec 2003      15 Dec 2003 (see s. 2)

*State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 571<sup>11</sup>      55 of 2004      24 Nov 2004      1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)

*Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 80      84 of 2004      16 Dec 2004      2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))

*Water Legislation Amendment (Competition Policy) Act 2005* Pt. 7<sup>8</sup>      25 of 2005      12 Dec 2005      3 Jun 2006 (see s. 2 and *Gazette* 2 Jun 2005 p. 1985)

*Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 15      38 of 2005      12 Dec 2005      9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078)

**Reprint 3: The *Water Agencies (Powers) Act 1984* as at 4 Aug 2006** (includes amendments listed above)

*Water Resources Legislation Amendment Act 2007* Pt. 6      38 of 2007      21 Dec 2007      1 Feb 2008 (see s. 2(2) and *Gazette* 31 Jan 2008 p. 251)

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<sup>2</sup> Under the *Public Sector Management Act 1994* s. 112(1) a reference to the *Public Service Act 1978* is to be read as a reference to the *Public Sector Management Act 1994*. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

<sup>3</sup> The *Acts Amendment (Water Authority Rates and Charges) Act 1987* s. 4 reads as follows:

“

#### 4. Application of Part

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

”.

<sup>4</sup> The *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* s. 11(2) and (3) read as follows:

“

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

”.

<sup>5</sup> The *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* s. 20(2) reads as follows:

“

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

”.

<sup>6</sup> The *Acts Amendment (Annual Valuations and Land Tax) Act 1993* s. 3 reads as follows:

“

### **3. Application**

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

”.

<sup>7</sup> The *Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996* s. 9 reads as follows:

“

**9. Application**

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

”.

<sup>8</sup> The *Water Legislation Amendment (Competition Policy) Act 2005* s. 62(2) and (3) read as follows:

“

- (2) Any procedure that —
  - (a) has begun under the *Water Agencies (Powers) Act 1984* section 81 in relation to —
    - (i) the acquisition by the Corporation of land or an estate or interest in land; or
    - (ii) the claiming, determination, assessment or recovery of compensation payable by the Corporation in relation to such an acquisition;
  - and
  - (b) has not been completed immediately before the commencement of this section,may be continued and completed under section 81 of that Act as if subsection (1) had not been enacted.
- (3) In subsection (2) —  
**Corporation** has the meaning given to that term in the *Water Agencies (Powers) Act 1984* section 3(1).

”.

<sup>9</sup> Now known as the *Water Agencies (Powers) Act 1984*; short title changed (see note under s. 1).

<sup>10</sup> The *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* Pt. 14 contains transitional provisions relating to the replacement of the Water Authority and Waterways Commission with the Water Corporation, Water and Rivers Commission and the Coordinator of Water Services.

- <sup>11</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.
- <sup>12</sup> The *Water Resources Legislation Amendment Act 2007* Pt. 11 deals with certain transitional issues some of which may be relevant for this Act.