

COUNTRY AREAS WATER SUPPLY.

No. 81 of 1976.

AN ACT to amend the Country Areas Water Supply Act, 1947-1974.

[Assented to 14th October, 1976.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Country Areas Water Supply Act Amendment Act, 1976*.

Short title
and
citation.

(2) In this Act the Country Areas Water Supply Act, 1947-1974, is referred to as the principal Act.

Reprinted as
approved for
reprint 8th
July, 1971
and
amended by
Acts Nos. 94
of 1972 and 78
of 1974.

(3) The principal Act as amended by this Act may be cited as the Country Areas Water Supply Act, 1947-1976.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Long title
amended.

3. The long title to the principal Act is amended by deleting the passage "areas;"; in line three, and substituting the passage "areas, to safeguard water supplies,".

Section 2
amended.

4. Section 2 of the principal Act is amended by inserting after the reference to Part II the passage—

PART IIA.—ss. 12A to 12F—CONTROL OF CATCHMENT
AREAS.

Section 5
amended.

5. Section 5 of the principal Act is amended by inserting in the appropriate alphabetical sequence a new definition, as follows—

"the Under Secretary" means the person holding or acting in the office of Under Secretary to the Department; .

New
heading
added.

6. The principal Act is amended by inserting after section 12 a new heading as follows—

PART IIA.—CONTROL OF CATCHMENT AREAS.

Section 12A
added.

7. The principal Act is amended by inserting after section 12 a new section, to stand as section 12A, as follows—

Application.

12A. (1) The provisions of this Part of this Act apply to and in relation to land comprised within the boundaries of the Wellington Dam Catchment Area as defined pursuant to section nine of this Act, but not to or in relation to land elsewhere.

(2) Where the exercise of the powers conferred by this Part of this Act would be inconsistent with the provisions of any Agreement to which the State is a party and

which, or the execution of which, is or has been ratified or approved by an Act, the Governor, by Order in Council published in the *Gazette*, may declare that any or all the provisions of this Part of this Act—

- (a) shall not apply; or
- (b) shall apply subject to the restrictions, limitations or conditions specified in that Order,

in respect of any land to which that agreement relates and effect shall be given to that Order. .

8. The principal Act is amended by inserting after section 12 a new section, to stand as section 12B, as follows—

Section 12B added.

12B. (1) Subject to any Order made pursuant to subsection (2) of section twelve A of this Act, a person who causes or permits the indigenous undergrowth, bush or trees on land to which this Part of this Act applies to be removed or destroyed, or so damaged as to eventually be destroyed, or who causes any such land to be cleared of vegetation not under cultivation, commits an offence.

Clearing to be controlled.

(2) A person guilty of an offence against subsection (1) of this section shall be liable to a fine not exceeding one thousand dollars and, if the Department so requests, the court before which he is convicted may order that person to restore the land by establishing on that land a tree cover to the satisfaction of the Minister within the time specified in that order and in the manner recommended by the Department.

(3) Where an order is made for the restoration of any land and—

- (a) the order is not complied with within the time or in the manner specified in the order; or

- (b) the order is complied with but the tree cover is subsequently destroyed, or is not maintained to the satisfaction of the Minister,

officers of the Department may enter upon the land with such persons and things as may be necessary to ensure that the land is restored and may thereon carry out such works as are necessary for that purpose and the Minister may recover any expenses thereby reasonably incurred as a debt due from any person in default under the order or who caused or permitted the circumstances to occur which gave rise to the necessity for the expenditure. .

Section 12C
added.

9. The principal Act is amended by inserting after section 12 a new section, to stand as section 12C, as follows—

Clearing
licences.

12C. (1) A person shall not be guilty of an offence by virtue of subsection (1) of section twelve B of this Act if the removal, destruction, damage or clearance of vegetation is carried out—

- (a) under, and in accordance with the conditions of, a clearing licence granted under this Part of this Act; or
- (b) as a reasonably necessary emergency measure in order to avoid danger to persons or property, where, as soon as is reasonably practicable, the land is restored to the satisfaction of the Minister,

or is attributable to events none of which that person could reasonably have been expected to prevent.

(2) Any person, in the prescribed manner, if any, may apply to the Department for a clearing licence and on payment of such fees or charges as may be prescribed the Under Secretary may grant, renew or transfer any

such licence, but where such an application is made and no decision is given within six months thereafter, or within such further period as the applicant may agree, then the application shall be deemed to have been refused and thereupon, unless the applicant wishes to proceed initially by way of appeal, a claim for compensation arises under this Part of this Act.

(3) The Under Secretary may refuse any application for the grant, renewal or transfer of a clearing licence and shall do so where the clearing that would otherwise be authorized would result in less than one-tenth part of the land in question being left under indigenous trees.

(4) The grant of a licence may be made subject to such reasonable conditions as the Under Secretary thinks fit, which conditions shall be endorsed upon or referred to in the licence when granted.

(5) The Under Secretary, from time to time during the currency of a licence, by notice in writing given to the holder of the licence, may—

- (a) vary or add to the conditions of the licence; or
- (b) provide that an unconditional licence shall be subject to the conditions specified in the notice, or that a conditional licence shall cease to be subject to any condition,

but a licence shall otherwise take effect according to its tenor and for the period specified therein.

(6) Where the holder of a licence contravenes or fails to comply with any condition endorsed on or referred to in the licence—

- (a) he commits an offence and is liable for his act or omission to the extent that it was not authorized by the licence;

- (b) the court may, in addition to any other penalty or order, cancel that licence without compensation; and
- (c) the Under Secretary may, by notice in writing given to the holder of the licence, revoke the licence or suspend the operation of it for such period as he thinks fit. .

Section 12D
added.

10. The principal Act is amended by inserting after section 12 a new section, to stand as section 12D, as follows—

Appeals.

12D. A person who is aggrieved—

- (a) by a refusal of the Under Secretary to grant, renew or transfer a clearing licence;
- (b) by the revocation of a licence or the suspension of the operation of a licence;
- (c) by a condition imposed in relation to a licence,

may, within the time and in the manner prescribed, appeal against the decision of the Under Secretary to the Minister who, after causing such inquiry, if any, to be made as he thinks fit, may determine the appeal and may uphold, reverse, or vary, the decision of the Under Secretary. .

Section 12E
added.

11. The principal Act is amended by inserting after section 12 a new section, to stand as section 12E, as follows—

Compensa-
tion.

12E. (1) In assessing any claim for compensation under this Part of this Act regard shall be had to the requirement that not less than one-tenth part of the land should, in the interests of good agricultural and conservation practice, be left under tree cover and in so far as any land has been, or is proposed to be,

cleared of trees to any greater extent no claim for compensation arises in respect of that excess.

(2) A claim for compensation under this Part of this Act may extend not only to the land the subject of the application for a clearing licence but also to any other land in the same occupation or ownership which is shown to have been rendered unproductive, or uneconomic, or to have been otherwise injuriously affected, by the operation of the provisions of this Part of this Act, whether or not that land is situate within the area to which this Part of this Act applies.

(3) Where an application in respect of a clearing licence is refused, or is deemed to be refused, or is granted subject to conditions that are unacceptable to the applicant, any owner or occupier of the land in question, or of an estate or interest in that land, may claim compensation for injurious affection in accordance with the provisions of this Part of this Act, but in lieu of paying compensation the Minister may at his option purchase that land, estate or interest by agreement or may take or resume it pursuant to the Public Works Act, 1902, if he gives written notice within three months of the receipt of the claim that he wishes so to do.

(4) Where any land, estate or interest is taken or resumed pursuant to subsection (3) of this section that land shall thereafter be so dealt with, by restoration if necessary, as to conserve the water resources, and for the purposes of the Public Works Act, 1902, that use shall be regarded as a public work for the conservation of water notwithstanding that the object of conserving the water resources may be achieved without any restoration or other works being required or carried out, and that Act shall accordingly apply to such taking or resumption.

(5) A claim for compensation shall be made in the prescribed manner to the Department, but in relation to any land, or any interest of a particular nature, may only be claimed once and where the land in question is not purchased by the Minister no further claim shall lie notwithstanding any subsequent applications or decisions affecting that land made under this Part of this Act unless it is shown that the claim paid did not take into account the nature of any subsequent injurious affection.

(6) Any question as to whether any land, or any estate or interest in land, is injuriously affected or as to the amount or manner of payment of the sum which is to be paid as compensation for such injurious affection shall be determined by arbitration under and in accordance with the Arbitration Act, 1895, unless the parties agree on some other method of determination. .

Section 12F
added.

12. The principal Act is amended by inserting after section 12 a new section, to stand as section 12F, as follows—

Regulations.

12F. The Governor may make such regulations as may be necessary to give effect to the provisions of this Part of this Act. .
