

Queensland



TOWNSVILLE/ THURINGOWA WATER SUPPLY BOARD ACT 1987

**Reprinted as in force on 16 January 1996
(includes amendments up to Act No. 58 of 1995)**

Reprint No. 1

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the Office of the Queensland Parliamentary Counsel
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Information about this reprint

This Act is reprinted as at 16 January 1996. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (pt 4, div 2)
- update references (pt 4, div 3)
- express gender specific provisions in a way consistent with current drafting practice (s 24)
- use gender neutral office names (s 25)
- use different spelling consistent with current drafting practice (s 26(2))
- use standard punctuation consistent with current drafting practice (s 27)
- use conjunctives and disjunctives consistent with current drafting practice (s 28)
- use expressions consistent with current drafting practice (s 29)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (ss 37 and 39)
- omit the enacting words (s 42A)
- number and renumber provisions and references (s 43)
- make all necessary consequential amendments (s 7(1)(k)).

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including—**
 - **table of changed names and titles**
 - **table of changed citations and remade laws**
 - **table of obsolete and redundant provisions**
 - **table of renumbered provisions.**

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**TOWNSVILLE/THURINGOWA WATER
SUPPLY BOARD ACT 1987**

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TOWNSVILLE/THURINGOWA WATER SUPPLY BOARD ACT 1987

[as amended by all amendments that commenced on or before 16 January 1996]

An Act to consolidate and amend the law relating to the planning, further development, administration and operational control of bulk supply of water by Townsville/Thuringowa Water Supply Board to local governments and major consumers and for related purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Townsville/Thuringowa Water Supply Board Act 1987*.

Definitions

2. In this Act—

“**approved form**” see section 93.¹

“**board**” means the Townsville/Thuringowa Water Supply Board.

“**chairperson**” means the chairperson of the board.

“**dam**” means a barrier, together with its appurtenant works, for the storage, control or diversion of water.

“**financial arrangements**” shall have the meaning ascribed to it in the

¹ Section 93 (Approval of forms)

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Statutory Bodies Financial Arrangements Act 1982.

“headworks” means any dam (including any pipes in outlet works or laid under a dam), reservoir, structure, building, well, bore tank, aqueduct, tunnel, engine, pump or equipment used for or in connection with the storage, control or diversion of water.

“insurance”, in section 68, means the undertaking by a person to—

- (a) indemnify someone else against loss or liability for loss for a certain risk or peril, to which the object of the insurance may be exposed; or
- (b) pay a sum of money or other thing of value on the happening of a certain event.

“insurer”, in section 68, means a person who undertakes, agrees to undertake or offers to undertake any of the following—

- (a) a contract of marine insurance;
- (b) a CTP insurance policy under the *Motor Accident Insurance Act 1994*;
- (c) general insurance business.

“major consumer” means an individual or corporation or statutory authority to whom the board supplies or proposes to supply, under such terms and conditions as the board considers proper, bulk water in an amount in excess of 200 ML per annum.

“manager” means a person who is appointed by the board to be the manager of the board.

“operational area” means the operational area of the board as declared by part 2.

“reservoir” means an artificial lake, pond or basin formed by the construction of a dam.

“town planning scheme” means a planning scheme under the *Local Government (Planning and Environment) Act 1990*.

“treatment works” means any building, storage tank, mechanical and electrical equipment of every description or other part of any works that is used primarily for the quality control or purification of water and

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includes all mains contained therein or used in association therewith.

“trunk main” or **“main”** means any pipe, aqueduct, siphon or facility used in association therewith (including a pump, motor, a water storage structure, an air vessel, a water meter, structure, building, prechlorination equipment, mechanical and electrical equipment and other apparatus and equipment of every description) that is used for or in connection with the prechlorination or conveyance of water from headworks, or to or from treatment works.

PART 2—OPERATIONAL AREA OF THE BOARD

Establishment of area

3. The local government areas comprising Townsville City and Thuringowa City are hereby declared to be the operational area of the Townsville/Thuringowa Water Supply Board.

PART 3—TOWNSVILLE/THURINGOWA WATER SUPPLY BOARD

Division 1—Constitution of board

Townsville/Thuringowa Water Supply Board

4.(1) Subject to this Act, the body corporate duly established pursuant to an order in council dated 14 August 1986 and published in the gazette on 16 August 1986 on page 2569 as a joint local authority to which has been assigned the name and style of the Townsville/Thuringowa Water Supply Board is hereby preserved, continued in existence and constituted as a body corporate pursuant to the provisions of this Act under the name Townsville/Thuringowa Water Supply Board.

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(2) The board shall have the functions, authorities, powers and duties conferred or imposed on it by the several provisions of this Act.

(3) The board shall continue to have perpetual succession and a common seal and shall be capable in law of suing and being sued in its corporate name, and subject to this Act and for the purpose of discharging its functions pursuant to this Act, of taking, acquiring, holding and disposing of land and other property whether real or personal, moveable or immovable (which land and other property is vested or deemed to be vested in the board according to the nature of the estate and interest therein), of granting and taking leases of land and other property and of doing and suffering all such other acts, matters and things as bodies corporate may in law do or suffer.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal of the board affixed to any document and shall presume, unless the contrary is proved, that it was duly affixed.

(5) The board shall from time to time provide and maintain or contract for the use of a public office within the operational area for the purpose of transacting the business of the board.

Division 2—Composition of board

Constitution of the board under this Act

5. The members who are to first constitute the board under this Act shall be as follows—

- (a) the mayor and 1 other councillor of Townsville City Council, nominated by that council for appointment;
- (b) the mayor and 1 other councillor of Thuringowa City Council, nominated by that council for appointment;
- (c) a person nominated by the Minister who shall be chairperson.

Nominees' names to be furnished to Minister

6. As soon as possible after the day of commencement of this Act and

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thereafter, from time to time, within a reasonable time before the expiration of the term of appointment of members of the board, the Minister shall request in writing Townsville City Council and Thuringowa City Council to furnish to the Minister, within the time limited in the request, the names of its mayor and other nominee for appointment to the board.

Action upon default in complying with Minister's request

7. If, at any time, default is made by a local government in furnishing as duly requested by the Minister the names of persons nominated for appointment to the board or any of the persons nominated is not qualified as prescribed for such appointment, the Minister may, at the Minister's discretion, nominate such numbers of persons as are required by the nomination in respect of which default has been made and the Minister's nomination shall be deemed to have been made by that local government.

Date for nomination of local government's nomination

8. Where the Minister makes of a local government a request referred to in section 11 during the term of appointment of a board, the time limited therein for furnishing the names of the nominees of the local government shall be such that it will expire on a date later than the day on which is held the first meeting of the local government following the election by reference to which the term of appointment of its members of the board are, by this Act, expressed to expire.

Appointment of members of board

9. The members of the board shall be appointed by the Governor in Council, on the recommendation of the Minister, by gazette notice, and shall take office pursuant to the provisions of this Act.

Term of appointment

10.(1) An appointed member's appointment starts—

- (a) on the day notice of the appointment is published in the gazette; or
- (b) on a later day specified in the notice.

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(2) An appointed member's term ends on a day fixed by gazette notice.

(3) The day mentioned in subsection (2) must be not later than 6 months after the day prescribed under the *Local Government Act 1993* for holding the triennial election following the member's appointment.

Termination of membership of board

11.(1) A member of the board may resign office as such at any time, by writing furnished to the Minister.

(2) The Governor in Council may remove from office, as such, a member of the board if—

- (a) the member is made bankrupt or otherwise takes advantage of the laws relating to bankruptcy;
- (b) in the opinion of the Governor in Council—
 - (i) the member becomes incapable of discharging the duties of office;
 - (ii) the member is incompetent or unfit to hold office.

(3) A member of the board shall be deemed to have vacated the member's office—

- (a) in the event of the member's resignation, upon receipt by the Minister of the notice of resignation; or
- (b) in the event of the member's removal, upon issue by the Minister of notice of the removal; or
- (c) if, being the mayor or other councillor of a local government—
 - (i) the member ceases to be a councillor of that local government otherwise than by defeat at an election of councillors of that local government or by failure to contest such an election; or
 - (ii) the area of the local government of which the member is a councillor ceases to be within the operational area; or
 - (iii) that local government has informed the Minister in writing that by its resolution it no longer desires the member, other

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than the mayor to be its nominee on the board; or

- (d) if the member is convicted in the State of an indictable offence for which the member is liable to imprisonment for 1 year or more or is convicted elsewhere of an offence such that, if committed by the member in the State, would constitute an indictable offence upon conviction whereof the member would be so liable.

Delegate members of board

12.(1) A person may be nominated as a delegate member of the board to deputise for a member of the board.

(2) A nomination of a delegate member shall be of no effect unless—

- (a) the delegate member is nominated as prescribed by this section; and
- (b) in the case of a delegate of a member of the board who is a mayor or other councillor of a local government—the delegate is a councillor of that local government.

(3) The nomination of a delegate member—

- (a) shall, where it is for the purpose of 2 or more consecutive meetings of the board, be made by the local government of which the member for whom the delegate member is to deputise is a councillor; and
- (b) may, in any other case, be made by the member for whom the delegate member is to deputise.

(4) A nomination of a delegate member—

- (a) may be made only if the member for whom a delegate is sought will be absent from any meeting or meetings of the board because of illness or other unavoidable reason;
- (b) if it is to continue in effect for a period of 3 months or more—may be made only with the approval of the Minister first had and obtained.

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Persons deemed to be councillors of local government

13. If a local government that has nominated persons to be members of the board is dissolved pursuant to the *Local Government Act 1993* and an administrator is, under that Act, deemed to be the local government it shall be deemed for the purposes of this Act that the local government continues in being and has as its members the administrator and 1 further nominee whose name has been submitted by the administrator to the Minister and approved by the Minister.

Division 3—Control of board's affairs

Deputy chairperson

14.(1) The board shall from time to time appoint 1 of its members to be deputy chairperson.

(2) An appointment to the office of deputy chairperson shall be made as soon as practicable after the appointment of members of the board being the whole number of persons duly nominated for appointment.

(3) The deputy chairperson shall act in the office of chairperson during such time as the chairperson is prevented by absence, illness or otherwise from performing the duties of that office and during such time as a vacancy exists in that office, and while the deputy chairperson so acts, shall have and may exercise all the powers and authorities of the chairperson.

PART 4—FUNCTIONS AND POWERS OF THE BOARD

Division 1—General functions

Functions

15.(1) The board's functions are—

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- (a) to obtain, conserve, store and supply untreated water in bulk to points determined by the board to—
 - (i) local governments whose areas are within the operational area; and
 - (ii) major consumers within the operational area;
- (b) to obtain, conserve, store, treat and supply treated water in bulk to points determined by the board to—
 - (i) local governments whose areas are within the operational area; and
 - (ii) major consumers within the operational area;
- (c) to sell to its consumers water in bulk, whether treated or untreated, and under such terms and conditions as the board considers proper;
- (d) to investigate and plan for such future headworks, treatment works and trunk mains as, in the board's opinion, may be required to meet the requirements for the supply of water as a function of the board and to take all steps considered by the board to be practicable to implement plans and schemes accepted for such headworks, treatment works and trunk mains;
- (e) to take all steps adjudged by the board to be necessary or desirable to ensure and maintain the quality and quantity of present and future supplies of water in the operational area;
- (f) to construct, operate and maintain and, where necessary, to improve or extend headworks, treatment works and trunk mains under the board's control;
- (g) to provide such roads and communications, offices, stores, depots, houses and other accommodation as the board adjudges to be necessary to meet the requirements of its undertakings or any of them;
- (h) to administer and manage all property vested in the board;
- (i) to take such measures and to carry out such works as are incidental to the proper discharge of the functions of the board;

- (j) to provide, operate, protect and maintain such recreational facilities as the board sees fit at headworks or on any other land or property owned by or under the control of the board and to enter into commercial ventures incidental to the operation of those recreational facilities and to let out to other persons the operation of those facilities or ventures.

(2) The board may, with the approval of the Minister, supply water in bulk whether treated or untreated to points determined by the board to a part of the area of a local government whose area is outside the operational area or to a major consumer located outside the operational area.

Division 2—General powers

Construction by board

16. The board may construct such headworks, trunk mains, treatment works and other works as it considers to be necessary for the purposes of this Act.

General powers of board

17.(1) The board has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) appoint agents and attorneys; and
- (d) fix charges and other terms for services and facilities it supplies; and
- (e) engage consultants.

(2) Without limiting subsection (1), the board has the powers given to it under this or another Act.

(3) The board may exercise its powers outside Queensland and outside Australia.

(4) In this section—
“power” includes legal capacity.

Power of entry

18.(1) For the purpose of discharging any of its functions, the board may provide such works as are necessary on, through, across, under or over any road and into, through, across, under or over any land within or outside the operational area.

(2) For the purpose of discharging any of its functions the board, by its agents and servants, may at all reasonable times enter upon any land, structure or premises—

- (a) to carry any works into, through, across, under or over the land;
- (b) to undertake investigations and inspections, perform surveys, take levels, clear, excavate, dig and remove material on and from the land;
- (c) to execute any work in the structure or premises;
- (d) to ensure that the provisions of this Act or of the by-laws of the board are complied with.

(3) A person who claims to have suffered damage resulting from an exercise of power under subsection (1) or (2) may apply for and be awarded compensation in accordance with subsections (4) to (6).

(4) Every application for compensation on account of such damage shall be made and dealt within the manner prescribed by the *Acquisition of Land Act 1967* in relation to applications for compensation made under that Act and the entitlement to such compensation (including right of appeal in respect thereof) and the assessment of such compensation shall be as prescribed by that Act in so far as the provisions of that Act are appropriate to a claim for compensation made on account of damage and subject always to the provisions of this section.

(5) Compensation that may be payable on a claim made on account of damage resulting from an exercise of power under subsection (1) or (2) may include compensation in respect of—

- (a) damage of a temporary nature as well as of a permanent nature;

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and

- (b) the taking of clay, earth, gravel, sand, timber, wood and other material;

but shall not in any case exceed the amount that would have been payable under the *Acquisition of Land Act 1967* had the land in question been taken by the board.

(6) Where at the time when an application is made for compensation on account of damage resulting from an exercise of power under subsection (1) or (2) the works for or in connection with which the power is exercised are not completed a member of the Land Court may, on the application of the board, order that the matter of the application for compensation be deferred until the works are completed or for a time limited in the order and thereupon no further proceeding shall be had on the application for compensation (save an application hereinafter in this subsection referred to) until the completion of the works or, as the case may be, the expiration of the time so limited unless a member of the Land Court on the application of the applicant for compensation otherwise orders.

(7) Before an agent or servant of the board pursuant to a power conferred by this section enters a dwelling house or part of a dwelling house used exclusively for residential purposes, the agent or servant shall, save where he or she has the permission of the occupier or person in charge of that dwelling house or, as the case may be, part of a dwelling house to the entry, obtain from a justice a warrant to enter.

(8) In subsection (7), a dwelling house or part of premises used for residential purposes does not include the curtilage thereof.

(9) A justice who is satisfied that it is necessary for the purposes of this Act to enter premises may issue a warrant directed to an agent or servant of the board to enter the place specified in the warrant for the purpose of exercising or performing therein the powers and duties conferred upon the agent or servant under this Act.

(10) A warrant shall be, for a period of 1 month from the date of its issue, sufficient authority for the agent or servant of the board and all persons acting in aid of the agent or employee to—

- (a) enter the place specified in the warrant; and

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- (b) exercise and perform therein the powers and duties conferred upon the agent or servant by or under this Act.

(11) For the purposes of gaining entry to any place an agent or servant of the board may call to his or her aid such persons as the agent or servant thinks necessary and those persons, while acting in aid of an agent or servant of the board in the lawful exercise by the agent or servant of his or her power of entry, shall have a like power of entry.

(12) Before an agent or servant of the board enters upon any land, structure or premises to carry out works, investigations or surveys the agent or servant shall, where practicable or save where the agent or servant has the permission of the occupier or person in charge of that land, structure or premises to the entry, give to the occupier not less than 7 days written notice of the agent or servant's intention to enter to carry out such works, investigations or surveys.

Interference with roads

19.(1) For the purposes of constructing, maintaining, repairing, altering or extending any main or installation in a road within or outside the operational area, the board may open up and excavate such road but, in connection with the performance of such work, the board shall comply with this section.

(2) Save in the case of work to be performed in an emergency, the board shall give not less than 7 days notice in writing to the authority having the care and management of the road of its intention to perform the work in question.

(3) In the case of work to be performed in an emergency, the work may proceed without the prescribed notice having been given, but advice shall be given as soon as practicable to the authority referred to in subsection (2) that the work is in progress.

(4) When the board has opened and excavated a road it shall—

- (a) with all convenient speed and as little interference to traffic as is practicable, complete the work for which it is opened and excavated and shall fill in the ground and reinstate and make good the parts so opened and excavated and shall carry away all rubbish

occasioned by the work; and

- (b) at all times while the road is opened and excavated, cause the parts so opened and excavated to be fenced and guarded and a light sufficient for the warning of traffic to be set up and maintained against or near such parts every night during which the road is opened and excavated; and
- (c) keep the parts so opened and excavated in good repair for 3 months after reinstating and making good the same and for any further time not exceeding 12 months during which the soil opened and excavated continues to subside.

Board may take over or acquire local government undertakings

20.(1) Subject to this Act, the board may following agreement with a local government—

- (a) assume from a local government control of any headworks, treatment works or trunk mains in the operational area;
- (b) acquire from a local government property used for or in connection with any headworks, treatment works or trunk mains in the operational area;
- (c) assume from a local government its liabilities and obligations had by it in connection with any headworks, treatment works or trunk mains in the operational area.

(2) The powers conferred by subsection (1) do not extend to the assumption of control of headworks, treatment works and trunk mains, acquisition of property or assumption of liabilities or obligations of a local government that is not within the operational area of the board.

Board to instigate exercise of powers under s 20

21.(1) For the purpose of exercising its powers under section 20 the board may, by notice in writing given to a local government, require the local government to enter into negotiations for—

- (a) the assumption of control by the board of headworks, treatment works or trunk mains described in the notice; and

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- (b) the acquisition by the board of property described in the notice; and
- (c) the surrender to the board of books, documents, drawings, records and papers relating to such headworks, treatment works or trunk mains or property.

(2) Upon receipt of a notice referred to in subsection (1), the local government shall cause to be prepared schedules of the headworks, treatment works or trunk mains or property described in the notice and of property held by it in connection with the headworks, treatment works or trunk mains and of the liabilities and obligations had by it in relation to the headworks, treatment works or trunk mains or the property.

(3) As soon as practicable after the preparation of the schedules referred to in subsection (2), the board and the local government shall, if possible, agree upon—

- (a) what headworks, treatment works or trunk mains shall be controlled by the board; and
- (b) what property, liabilities and obligations of the local government shall be acquired or assumed by the board; and
- (c) what books, documents, drawings, records and papers shall be surrendered by the local government to the board.

No entitlement to compensation

22. Compensation shall not be payable—

- (a) to a local government on account of the board's assuming control of headworks, treatment works or trunk mains of the local government or acquiring property of the local government in the exercise of a power under this Act; or
- (b) to the board on account of its assuming any liability or obligation of a local government in the exercise of a power under this Act;

and the authority of the board to enter into negotiations for the purpose of exercising its powers under section 21 does not extend to its agreeing to pay or give or to its agreeing to receive or take that compensation.

Procedure for taking over control

23.(1) Upon the board and a local government agreeing on the assumption by the board of control of headworks, treatment works or trunk mains of the local government, they shall furnish to the Minister a joint notification that shall identify the headworks, treatment works or trunk mains concerned.

(2) The Governor in Council may by regulation declare a date on and from which control of the headworks, treatment works or trunk mains therein specified shall be assumed by the board.

(3) A date declared pursuant to subsection (2) may be before or after the date of notification of the regulation in the gazette.

(4) On and from the date so declared the board shall be responsible for the control, management and proper functioning of the headworks, treatment works and trunk mains so specified in the place of the local government concerned.

Procedure for acquisition of property or assumption of liabilities

24.(1) Upon the board and a local government agreeing with respect to—

- (a) the property of the local government to be acquired by the board;
or
- (b) the liabilities and obligations of the local government to be assumed by the board;

they shall furnish to the Minister a joint notification that shall particularise, in detail sufficient to enable its identification, such property or, as the case may be, such liabilities and obligations.

(2) The Governor in Council may by gazette notice declare a date on and from which—

- (a) the property therein specified shall be divested from the local government named therein and shall vest in the board; or
- (b) the liabilities and obligations therein specified shall be assumed by the board and shall cease to be liabilities or obligations of the local government named therein.

(3) A date declared pursuant to subsection (2) may be before or after the date of notification of the regulation in the gazette.

(4) Upon and after the date so declared—

- (a) the estate, right, title and interest in and to the property so specified shall by force of the regulation be divested from the local government so named and be vested in the board;
- (b) the board shall by force of the order be liable in respect of each of the liabilities and obligations so specified and the local government so named shall by force of the order cease to be liable in respect thereof.

Enforcement of existing claims

25. Subject to the express provisions of the regulation made in relation to a transfer of control or of property or of a liability or obligations from a local government to the board pursuant to section 23 or 24, such a transfer shall not prejudice the making or enforcement by the local government against any person or by any person against the local government of a claim, liquidated or unliquidated, that arose or was made before the date declared by regulation for such transfer to take effect.

Presumed privity of contract

26. Where property (being a chose in action) or a liability or obligation transferred from a local government to the board pursuant to section 24 arises by reason of a contract made between the local government and any person then for the purpose of enforcing by or against the board such chose in action, liability or obligation, it shall be deemed that such contract was made between the board and that person.

Board to be aided in securing property

27.(1) Upon the request of the board, a local government that is divested of property pursuant to section 24—

- (a) shall surrender to the board or its agent such documents of title and documents evidencing ownership of the property as are in its

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possession or under its control;

- (b) shall duly complete all transfers of right, title or interest and other documents that are required by the board with a view to its being recorded in any registry as proprietor, lessee or owner of the property;
- (c) shall do all such acts and take all such steps as are required by the board with a view to securing the property to the board.

(2) Where property vested in the board pursuant to section 24 consists of a chose in action the notification in the gazette of the relevant regulation shall be sufficient notice to all persons to the passing of the property.

Prescribed enactments inapplicable to dealings under this Act

28.(1) No stamp duty or other fees shall be chargeable on the following documents—

- (a) a notification evidencing an agreement between a local government and the board prepared for the purpose of section 24;
- (b) an instrument made to evidence the passing of an estate or interest in land from a local government to the board pursuant to section 24 or to secure the transfer of a title to such land;
- (c) a document made in connection with the transfer of property, liability or obligation from a local government to the board pursuant to section 24.

(2) The provisions of any Act or enactment that purport to restrict the capacity of a local government to enter into contracts do not apply in respect of the making of an agreement between a local government and the board with a view to the passing of property or the transfer of liabilities or obligations pursuant to section 24.

Apportionment of liability

29. Where for the purposes of this Act it becomes necessary to apportion between a local government and the board any liability or obligation of the local government such apportionment may be made and shall be sought by way of agreement between the local government and the board but should

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such agreement not be attained the Governor in Council may declare the apportionment of that liability or obligation considered by the Governor in Council to be just and thereupon—

- (a) the portion of that liability or obligation to be assumed by the board shall be the portion so declared; and
- (b) if the case requires it, it shall be deemed that such portion is particularised in a notification duly furnished pursuant to section 24 as the liability or obligation to be assumed by the board.

Local government may take over or acquire board undertakings

30.(1) Subject to agreement between the board and a local government, a local government may take over or acquire board undertakings.

(2) The procedure for a local government taking over or acquiring board undertakings shall with all necessary modifications and adaptations to ensure the effective operation of this Act be as provided in sections 20 to 29, as if a local government were taking over or acquiring board undertakings rather than the board taking over or acquiring local government undertakings as provided for.

Power of delegation

31. The board may delegate the board's powers under this Act to a member, officer or employee of the board.

PART 5—SUPPLY AND USE OF WATER

Division 1—Control of water

Board's entitlement to water

32.(1) Subject to this section the board may take water from any

headworks under its control or from any channel, river, creek or stream, whether or not subject to tidal influence, within or outside the operational area and for that purpose may construct, maintain, control and operate such headworks, treatment works and trunk mains as it considers necessary.

(2) The board shall not take water pursuant to subsection (1) unless—

- (a) it does so with the consent of the Governor in Council first had and obtained and subject to and in accordance with the terms and conditions of that consent; or
- (b) where the consent of the Governor in Council has been obtained by a local government to its taking water and the local government's entitlement to take that water has been divested from the local government and vested in the board pursuant to section 36, it does so subject to and in accordance with the terms and conditions of that consent.

Procedure for obtaining consent

33.(1) Application for the consent of the Governor in Council shall be made by the board to the chief executive of the department that deals with matters arising under the *Water Resources Act 1989*.

(2) The chief executive of the department that deals with matters arising under the *Water Resources Act 1989* shall cause an investigation to be made with respect to the application and shall make a report and recommendation for submission by the Minister to the Governor in Council.

(3) The Governor in Council may in the Governor in Council's absolute discretion grant or refuse an application and, if the Governor in Council grants it, may subject the consent to such terms and conditions as the Governor in Council thinks fit.

Board to control water storage

34.(1) The board shall have control of the water in any storage utilised in the board's undertaking and control of the use that may be made of the water therein from time to time.

(2) The power of the board to control the extraction and use for rural,

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industrial, mining or domestic purposes of water from any storage in the board's control shall be to the exclusion of any other person or authority.

(3) The power of the board to control the use for any recreational purpose of water in any storage in the board's control shall be additional to that of any other person or authority charged with control of such water.

(4) Where a by-law of the board is inconsistent with a regulation, by-law or rule administered by any other person or authority in respect of the use of water in any storage in the board's control the former shall prevail and the latter shall, to the extent of the inconsistency have no force or effect.

Protection of board upon taking water

35. No action or other proceeding shall be commenced or maintained against the board or any other person on account of—

- (a) the construction, maintenance, control or operation of headworks, or any part thereof, for the purpose of taking water pursuant to this Act;
- (b) any alleged obstruction of any river, creek or stream by such headworks or any part thereof;
- (c) any deprivation of access to or diminution of the quantity of water in any river, creek or stream occasioned by the exercise by the board of a power conferred by section 32.

Cessation of local government's entitlement to water

36.(1) Upon the board assuming control of headworks upon channels, rivers, creeks or streams, the entitlement then had by a local government to take water from such headworks or downstream from such headworks shall thereupon be divested from the local government and vest in the board.

(2) Save as is prescribed by subsection (1), neither this Act or anything done under this Act shall affect the entitlement of a local government to take water from any channel, river, creek, or stream or other source of supply.

Allocations of water

37.(1) Subject to this Act, the board may from time to time fix and declare an allocation of water to each local government and major consumer, to which it is empowered to supply water pursuant to this Act.

(2) Where an allocation of water has been fixed and declared the board may at any time, of its own motion, fix and declare afresh an allocation of water.

(3) In the matter of—

- (a) fixing and declaring allocations of existing supplies of water from headworks under the control of the board; and
- (b) planning headworks to meet increasing requirements for supply of water for urban and industrial use;

the board shall have regard to the need for water of the operational area as a whole and to all existing requirements for and commitment of water for urban and industrial use drawn from sources within the operational area or supplied within the operational area from sources outside the area.

(4) The board may make the matter of fixing and declaring an allocation of water to a local government dependent upon that local government satisfying the board by means of an agreement or agreements made or to be made with 1 or more other local governments that it is or will be bound to convey and to continue to convey, through mains within its area, to such other local government or local governments, being in any case an authority to which an allocation of water has been or is to be fixed and declared by the board, a determinate part of the allocation to the firstmentioned local government.

Exchange of information on water requirements

38.(1) Each local government and major consumer shall keep the board informed of—

- (a) anticipated requirements for water; and
- (b) all relevant facts concerning the proposed source of supply for such requirements for water and the anticipated dates when increased quantities of water to meet such requirements may be

required.

(2) The board shall from time to time inform each local government and major consumer of the likelihood of its requirements for water, as disclosed to the board, being met by the board.

Solution of disputes between board and local government

39.(1) If a dispute arises between the board and a local government as to—

- (a) the quantity of water that will be allocated to the local government;
or
- (b) the timing, source or other aspect of supply of water to the local government;

either party may refer the matter in issue to the Minister who may cause to be made such investigations as the Minister considers necessary and who shall make such recommendations with respect thereto as the Minister thinks fit to the Governor in Council who shall determine the issue by regulation.

(2) A determination of the Governor in Council pursuant to subsection (1) shall bind the board and the local government concerned, both of whom shall take all steps necessary to give effect to it.

Board may assist local government in distributing and treating water

40. If the board's assistance is sought by a local government in respect of the distribution or treatment of a supply of water within or through its area and within the operational area, the board may provide such assistance on such terms and conditions as are agreed.

Division 2—Protection of water quality

Regulation of use of catchment area

41.(1) For the purpose of protecting the quality of water stored or to be stored in a reservoir of which the board has assumed control or proposes to

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assume control or which it has constructed, is constructing or proposes to construct, the Governor in Council may make regulations pursuant to section 84 to regulate, control and prohibit—

- (a) the subdivision, use and management of use of land within a catchment area (as defined in the regulations) for that reservoir or within particular parts of that catchment area; and
- (b) the erection and use of buildings and structures on that land.

(2) Subject to consultation first had between the Minister, the board and each local government whose area includes land that is included in or is proposed to be included in the catchment area (defined or to be defined in the regulations), regulations made pursuant to the power conferred by subsection (1) may prescribe guidelines to be observed by the local government to whom the regulatory provision is directed in respect of the preparation or amendment of a town planning scheme, the making of local laws and the implementation of a town planning scheme or local laws, which in any case affects or is likely to affect land within that catchment area.

Effect of regulations under s 41 on powers etc.

42.(1) Subject to subsection (2), a power or authority had by the board, a local government or other person, independently of regulations referred to in section 41, to take steps to protect the quality of water stored or to be stored in any reservoir shall not be prejudiced by the conferring by section 41 of power to make regulations therein referred to or by such a regulation made.

(2) If a regulation made pursuant to the power conferred by section 41 is inconsistent with the continued existence, wholly or in part, of a power or authority or a description referred to in subsection (1), other than a power or authority conferred by or under the *Environmental Protection Act 1994*, the regulations shall prevail and, to the extent of the inconsistency, such power or authority shall be taken not to exist.

(3) Regulations made pursuant to the power conferred by section 41 shall bind the board, each local government whose area includes land to which the regulations relate and all other persons of a class that the regulations purport to bind.

Effect of regulations under s 41 on rights

43.(1) If a regulation made pursuant to the power conferred by section 41 is inconsistent with the continued existence, wholly or in part, of a right or entitlement to use or develop land within the catchment area to which the regulation relates, had by any person at the time the regulation takes effect, the regulation shall prevail and, to the extent of the inconsistency, such right or entitlement shall be taken to have terminated upon the taking effect of the regulation.

(2) A right or entitlement terminated under subsection (1) shall upon such termination and to the extent thereof, be converted into an entitlement to claim compensation in respect of injurious affection of an estate or interest in land as if the regulation were a lawful provision of a town planning scheme of the local government in whose area the land affected is situated.

Effect of regulations on town planning applications

44.(1) Notwithstanding the provisions of any other Act or of any town planning scheme or local law of a local government, which in any case affects land to which regulations made pursuant to the power conferred by section 41 relate, where application is made to a local government—

- (a) to amend its town planning scheme in a particular that affects that land; or
- (b) for its consent to the use of that land for a particular purpose; or
- (c) for a permit or licence to apply that land to a particular use; or
- (d) for its approval to a subdivision of that land;

the local government shall observe the guidelines prescribed by such regulations.

(2) Any approval, consent, permit or licence of a local government that is given in contravention of subsection (1) shall be of no force or effect.

Board's liability for certain injurious affection

45. Where a claim for compensation in respect of injurious affection of

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an estate or interest in land is made on a local government by reason of the existence of regulations made pursuant to the power conferred by section 41 or by reason of a decision or action of the local government taken in reliance on or obedience to such regulations and the local government is required or, with the prior approval in writing of the board, agrees to pay compensation to the claimant, the amount of that compensation together with the amount of taxed costs (if any) shall be met by the board and, if the case requires it, shall be refunded by the board to the local government.

Division 3—Discontinuance or lessening of supply of water

Board’s power over supply

46.(1) Where in the opinion of the board a breakdown of or damage, repairs, alterations or additions to the board’s headworks, treatment works, trunk mains, or drought or other natural occurrence, or an emergency of any description renders it necessary or expedient to discontinue or lessen the supply of water, the board may, on such notice as it thinks fit or without notice, direct such discontinuance or lessening of supply for such period as it considers necessary or expedient.

(2) It shall be lawful to give effect to a direction of the board given under this section.

Manner of exercising s 46 power

47.(1) The board’s power to discontinue or lessen the supply of water under section 46 shall be exercised—

- (a) by resolution of the board; or
- (b) where the board has, by its resolution, delegated authority in that behalf to the chairperson or an officer of the board or to a committee of the board, by decision of the chairperson or that officer or, as the case may be, by resolution of that committee.

(2) Notice of the exercise of power under section 46 shall be served forthwith on each local government and major consumer whose supply of

water is or is likely to be affected by the discontinuance or lessening of supply to which the notice relates.

PART 6—FINANCIAL PROVISIONS

Division 1—Power to charge for water

Terms of water supply

48. The supply of water by the board to a local government or a major consumer shall be made upon such terms, at such prices, with such guarantees and securities for payment, and generally upon such conditions as the board considers proper.

Division 2—Application of finance Acts

Board is statutory body

- 49.** The board is a statutory body under the following Acts—
- (a) the *Financial Administration and Audit Act 1977*;
 - (b) the *Statutory Bodies Financial Arrangements Act 1982*.

Division 3—Special financial arrangements

Board to recover charges and fees

50. The board may, in the exercise and performance of the functions authorised by this Act, make, levy, demand and recover charges and fees relating to those functions.

PART 7—TAKING AND HOLDING LAND BY THE BOARD

Board a constructing authority

51. For the purposes of taking land, the board is a constructing authority within the meaning of the *Acquisition of Land Act 1967*.

Acquisition of land

52.(1) The board as a constructing authority under the *Acquisition of Land Act 1967* may take, for the purpose of discharging its functions under this Act, land that is—

- (a) granted in fee simple; or
- (b) held from the Crown for an estate or interest less than fee simple.

(2) Land taken pursuant to subsection (1)(b), if it is to vest in the board, shall be vested in the board for an estate in fee simple.

(3) The Governor in Council is hereby authorised to grant in fee simple and vest in the board land taken pursuant to subsection (1)(b), subject to such reservations and conditions as are authorised or required by the *Land Act 1994*.

Application of Acquisition of Land Act 1967

53. The *Acquisition of Land Act 1967* shall apply in respect of every taking of land pursuant to section 52(1) and, if the case required it, in respect of the subsequent disposal of land so taken and shall be read with and subject to all such modifications and adaptations as are necessary to give operation and effect to section 52, including as respects the land in question, the reading of any reference therein to the registrar of titles as a reference to the person or authority charged with registering instruments evidencing title to an estate or interest in that land held from the Crown.

Taking additional land upon severance

54.(1) If the board proposes to acquire (by agreement or by taking) any land and the acquisition of that land will sever it from other land of the owner that is used together with the land which it is proposed to acquire the board may, with the approval of the Minister and the consent of the owner first had and obtained, acquire (by agreement or by taking) the whole or part of that other land.

(2) The acquisition of additional land pursuant to subsection (1) shall be deemed to be for a purpose incidental to the purpose for which the land firstmentioned in that subsection is proposed to be acquired.

(3) The board may sell or otherwise deal with additional land acquired by it pursuant to subsection (1) in such manner as it thinks fit without restriction prescribed by any other Act.

Acquisition of easements etc.

55.(1) The provisions of this part relating to acquisition of land shall apply in respect of the acquisition (by agreement or by taking) of an easement or other right in land.

(2) An easement may be created in favour of the board that is not acquired for the benefit of other land as a dominant tenement.

(3) An easement that is acquired by the board, pursuant to the provisions of this Act, otherwise than by creation in favour of the board, shall be taken to be and always to have been validly created notwithstanding that the easement was not acquired, whether by the board, or by any previous grantee who has subsequently transferred an easement to the board, for the benefit of other land as a dominant tenement.

(4) The registrar of titles is authorised to accept and register an easement of either or both of the classes of easements referred to in subsections (2) and (3) lodged with the registrar and drawn in a form acceptable to the registrar.

(5) An easement of either of the classes of easements referred to in subsections (2) and (3) created in favour of or acquired by the board pursuant to the provisions of the *Local Government Act 1993* or the repealed orders in council, that is valid in all other respects, shall not be held

to be invalid solely by reason of the fact that the easement was not acquired, whether by the board or by any previous grantee who has subsequently transferred an easement to the board, for the benefit of other land as a dominant tenement.

(6) The registrar of titles is authorised to accept and register an easement of either or both of the classes referred to in subsection (5) lodged with the registrar in a form acceptable to the registrar.

PART 8—CONDUCT OF THE BOARD’S AFFAIRS

Division 1—Proceedings and business of board

Meetings of board

56.(1) The first meeting of the board shall be held at a time and place appointed by the Minister and thereafter meetings shall be held at the times and places nominated when such meetings are called.

(2) Meetings of the board other than the first such meeting shall be called by the chairperson or, in the chairperson’s absence, the deputy chairperson or, in the absence of both of them, any 2 members of the board.

Presiding at meetings

57.(1) The chairperson shall preside at each meeting of the board at which the chairperson is present and the deputy chairperson, if the deputy chairperson is present, shall preside at any meeting of the board at which the chairperson is not present or if at any time there is no chairperson.

(2) If both the chairperson and deputy chairperson are absent from any meeting of the board the members who are present, if they constitute a quorum, may appoint one of their number to act as chairperson of the meeting and such appointee may preside at the meeting and exercise the powers of the chairperson.

Quorum at meetings

58. A quorum of the board shall consist of a majority of the number of members for the time being holding office.

Notice of meetings

59.(1) A notice of a meeting or an adjourned meeting of the board (other than of a meeting adjourned to a later hour of the day on which such meeting was held or appointed to be held or to the first day or second day following that day) shall be in writing and shall be delivered or sent by post otherwise to each member at each member's usual place of business or of residence last known to the manager 3 days at least prior to the meeting.

(2) If in the opinion of the chairperson an emergency exists, the chairperson may call a meeting of the board and the same may be validly held notwithstanding that subsection (1) is not or can not be complied with.

Adjournment of meetings

60.(1) The members present at a meeting of the board may adjourn the meeting from time to time.

(2) If a quorum is not present at a meeting within 30 minutes after the time appointed for the meeting to commence, the member or members present or the chairperson may adjourn the meeting to any time not later than 14 days from the date of the adjournment.

(3) No provision of subsection (2) shall be construed to prevent the adjournment of a meeting to a later hour of the same day on which such meeting was appointed to be held.

Conduct of board's affairs

61.(1) The board shall exercise or perform a power, function or duty by majority vote of the members present and voting at a duly convened meeting of the board.

(2) A member who, being present at a meeting and entitled to vote, abstains from voting shall be deemed to have voted in the negative.

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(3) The person who is duly presiding at a meeting, if the person is entitled to vote, shall have a deliberative vote and, in the event of any equality of votes, a casting vote.

(4) The board shall cause to be recorded in a book provided for the purpose (the “**minute book**”) and kept by the manager under the superintendence of the chairperson—

- (a) particulars of all proceedings of the board; and
- (b) the names of the members present at each meeting of the board.

(5) The minutes of each meeting shall be signed after confirmation of the board by the chairperson at the meeting next succeeding the meeting at which such proceedings have taken place.

(6) Every entry in a book kept by the manager purporting to relate to the proceedings of the board and to be signed by the chairperson and a certified copy of an extract from such an entry sealed with the seal of the board and signed by the chairperson and manager shall upon its production in any proceeding be received as evidence of the proceedings appearing by that entry to have been taken without proof of the due convening or holding of the meeting to which the entry relates, or of the membership of the board of the persons attending the meeting, or of the signatures of the chairperson or manager.

(7) The board may, from time to time—

- (a) appoint, out of its number, committees, either for general or special purposes;
- (b) delegate to a committee power to do any act or hold any inquiry or refer to a committee any matter for the purpose of receiving its advice or recommendations thereon;
- (c) fix the quorum of a committee.

(8) Every committee may, from time to time, appoint one of its members to be chairperson and shall report to the board.

(9) A committee may meet from time to time and may adjourn from place to place as it thinks proper, but no business shall be transacted at any meeting of the committee unless the quorum of members (if any) fixed by the board or, if no quorum is fixed, 2 members at least, are present.

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(10) At all meetings of a committee, if its chairperson is not present, one of its members present shall be appointed chairperson of the committee during the absence of its chairperson.

(11) All questions at any meeting shall be determined by a majority of the votes of the members present, including the chairperson of the meeting who, if the numbers are equally divided, shall have a second or casting vote.

Validity of proceedings

62. An act, proceeding or agreement of the board shall not be invalidated or in any way prejudiced by reason only of the fact that at the time such act was done, proceeding taken or agreement made there were vacancies in the membership of the board not exceeding one-half of the total number of members for the time being required to constitute the board or that all the members for the time being holding office were not present at the meeting at which such act or proceeding or the making of such agreement was done or authorised or that there was a defect in the membership or appointment of any 1 or more of the members who joined in doing such act or taking such proceeding or making such agreement or in authorising such act, proceeding or agreement or of any combination of such facts.

Disability on participation in business of board

63.(1) If a member of the board has a pecuniary interest, direct or indirect, in an agreement or proposed agreement or other matter and is present at a meeting of the board at which the agreement or proposed agreement or other matter is to be considered, the member shall at the meeting and before the agreement, proposed agreement or matter is considered, disclose the fact of the member's interest and shall not participate in the consideration of or vote on any question with respect to the agreement, proposed agreement or other matter.

(2) Subsection (1) does not apply to an interest which a member may have in common with the public or as a councillor of a local government.

(3) For the purposes of this section a person shall be taken to have an indirect pecuniary interest in an agreement or a proposed agreement or other matter if—

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- (a) the person or a nominee of the person is a member of a body corporate with which the agreement is made or proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- (b) the person is a partner or an employee of a person with whom the agreement is made or proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

(4) In the case of spouses living together the interest of one spouse shall, if it is known to the other, be deemed for the purposes of subsection (3) to be also the interest of that other spouse.

(5) For the purposes of this section a person shall not be taken to have a pecuniary interest in an agreement or a proposed agreement or other matter by reason only of the person's membership of or employment under a public body concerned with the agreement, proposed agreement or other matter.

(6) The manager shall record in a book to be kept for the purpose particulars of every disclosure of interest made at a meeting of the board and referred to in subsection (1) and the book shall be open at all reasonable times to inspection by any member.

(7) The Minister, subject to such conditions as the Minister thinks fit to impose, may remove from 1 or more members of the board a disability imposed by this section whenever the number of members so disabled at any time would in the Minister's opinion be such as to impede the conduct of business of the board, or if, in any other case, it appears to the Minister desirable that the disability should be removed.

(8) The board may by its resolution exclude any member from a meeting whilst any agreement, proposed agreement or other matter in which the member has an interest such as is referred to in subsection (1) is under consideration.

(9) A member of the board who has a pecuniary interest in an agreement, proposed agreement or other matter as prescribed by this section and who fails to comply with subsection (1) forfeits office as a member unless the member proves that the member did not know of the pecuniary interest at the time that the agreement, proposed agreement or other matter was the subject for consideration at the meeting in question of the board.

Division 2—Remuneration fees and expenses

Chairperson’s remuneration

64. The person who holds the office of chairperson unless the person be an officer of the public service may be paid such remuneration by way of an annual allowance as the Governor in Council on the recommendation of the Minister may determine.

Remuneration of other board members

65. Each member of the board shall be paid for attending meetings of the board and meetings of committees appointed by the board and performing at the direction of the board inspections or other duties as a member of the board, such fees and allowances as the Governor in Council may from time to time determine save that a member of the board who is an officer of the public service shall not receive fees or allowances for attendance at a meeting of the board during the officer’s ordinary hours of duty.

Expenses

66.(1) Every member of the board shall be paid expenses on account of the member attending meetings of the board and meetings of committees appointed by the board and, subject to the member obtaining the board’s approval before entering upon such performance, on account of the performance by the member of any duty as a member of the board.

(2) The expenses referred to in subsection (1) shall be in such amount or calculated at such rate or on such basis as the Governor in Council from time to time determines.

Other fees etc. not payable

67. A member of the board is not entitled to remuneration, fees or expenses as a member save as are provided for by this division.

Insurance of members

68.(1) The board may from time to time—

- (a) enter into contracts of insurance in respect of its members; or
- (b) otherwise provide for the insurance of its members by means of contracts of insurance;

with an insurer approved by the Minister so as to provide for the insurance of members of the board against personal injury, whether fatal or not, arising out of or in the course of the carrying out by such members of any business of the board or the performance by such members of any function in their capacity as members of the board.

(2) In respect of any contract of insurance referred to in subsection (1), the board shall be deemed to have an insurable interest.

(3) Any sum appropriated by the board for the insurance of any person insured under the provisions of this section, or any sum received by the board under any contract of insurance referred to in subsection (1), after deducting therefrom any expenses incurred in the recovery thereof, shall be paid by it to, or to the personal representatives of, the person in respect of whom the sum was appropriated or received.

(4) Every contract of insurance referred to in subsection (1) shall, as far as practicable, provide at least the same benefits for persons insured thereunder as are provided in the case of workers under the *Workers' Compensation Act 1990*.

(5) All expenditure by the board in respect of any contract of insurance under this section shall be deemed to be expenditure in respect of the management of the board.

(6) Notwithstanding anything contained in this Act, a person shall not by reason of the person being insured under this section be disqualified from taking part, at any meeting of the board, in the discussion of or voting on any matter relating to the insurance of members of the board under this section, not being a claim made by the person or on the person's behalf.

(7) No matter or thing done and no contract entered into by the board, and no matter or thing done by any member, officer or any person acting under the direction of the board shall, if the matter or thing was done or the contract was entered into bona fide and without negligence for the purpose

of executing any power or function of the board under this Act, subject any member of the board or any such officer or person to any personal liability in respect thereof and any expense incurred by any member, officer, or any person acting as last aforesaid shall be deemed to be an expense of the board.

Division 3—Employees of board

Employment of staff

69.(1) The board shall appoint on a full or part time basis a manager and such number of employees as it considers sufficient to enable it to properly perform its functions under this Act.

(2) Subject to any applicable industrial award or agreement, an employee of the board shall be paid a salary or wage at such rate and shall be employed on such terms and conditions as the board determines.

Staff and employees of board

70.(1) Upon the day of commencement of this Act all persons then employed by the board shall continue their employment with the board preserved, continued in existence and constituted by this Act on terms and conditions of employment at least equal to the terms and conditions previously enjoyed by those persons as employees of the board without loss of accrued leave rights or superannuation rights.

(2) All persons employed by the board pursuant to subsection (1) shall be subject to the by-laws and general governance of the board in relation to their employment.

Staff of works controlled by board

71.(1) Where the board assumes control of any headworks, treatment works or trunk mains of a local government it shall, save in a case where it covenants with the local government that the local government shall continue to operate the headworks, treatment works or trunk mains on its behalf and where that covenant continues to be performed, offer to all

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persons ordinarily employed by the local government on a full-time basis in and about the management, operation and maintenance of such headworks, treatment works or trunk mains to continue their employment thereon upon such duties as are determined by or on behalf of the board but otherwise on terms and conditions of employment at least equal to the terms and conditions enjoyed by those persons as employees of the local government.

(2) All persons who accept the board's offer made pursuant to subsection (1) within 2 months after the making of the offer shall be employed by the board and thereafter shall be subject to the by-laws and general governance of the board in relation to their employment.

Employees of local government prejudiced by board's control of works

72.(1) If, by reason of the board's assumption of control of any headworks, treatment works or trunk mains of a local government, persons then employed by the local government other than those taken into the board's employment pursuant to section 71 can not, in the opinion of the local government, be gainfully employed by it, the board and the local government shall agree with respect to the employment of those persons on terms and conditions of employment at least equal to the terms and conditions of employment enjoyed by them as employees of the local government.

(2) Where, pursuant to an agreement made under subsection (1), an offer of employment by the board is made to any person who accepts the offer within 2 months after it is made to the person, that person shall be employed by the board upon such duties as are determined by or on behalf of the board and thereafter shall be subject to the by-laws and general governance of the board in relation to the person's employment.

Employment details to be furnished to board

73. During negotiations between the board and a local government with a view to the assumption of control by the board of the local government's headworks, treatment works or trunk mains, the local government shall cause to be collated and furnished to the board full and accurate information as to its employees ordinarily employed on a full-time basis in and about the

management, operation and maintenance of the headworks, treatment works or trunk mains and as to its employees likely to be prejudiced by reason of the assumption of control together with full and accurate details as to the terms and conditions of their employment by the local government.

Retention of accrued leave rights by board's employees

74. A person who immediately prior to becoming an employee of the board was an officer or an employee of a local government taken into the board's employment pursuant to sections 71 and 72 shall, upon and by virtue of becoming an employee of the board, cease to be such an officer or employee of the local government but, nevertheless for as long as the person continues in the board's employment in a permanent capacity, shall retain and may claim against the board in respect of all entitlements as respects leave that have accrued or are accruing to the person as an officer or an employee of the local government at the time when the person becomes an employee of the board and for this purpose the person's service as an employee of the board and the person's service in employment terminated by becoming an employee of the board shall be deemed to be continuous service as an employee of the board.

Retention of superannuation rights by board's employees

75.(1) A person who becomes pursuant to sections 71 and 72 an employee of the board in a permanent capacity at any time and immediately prior to becoming such an employee is a contributor to a superannuation fund, superannuation scheme or provident fund as an employee of a local government, shall, for as long as the person remains such a contributor—

- (a) retain all entitlements which at the time when the person becomes an employee of the board have accrued or are accruing to the person as a contributor to the superannuation fund, superannuation scheme or provident fund, as the case may be; and
- (b) continue to contribute to the fund or scheme to which the person was contributing at the time when the person became an employee of the board and shall be entitled to receive therefrom in respect of himself or herself, his or her spouse and any child of

his or hers as if the person had remained an employee of the local government by which the person was employed immediately prior to becoming an employee of the board, and if the case requires it as if the person's service as an employee of the local government and the person's service as an employee of the board were continuous service as an employee of the local government.

(2) To facilitate the payment of contributions to any superannuation fund, superannuation scheme or provident fund by employees referred to in subsection (1) the board is hereby authorised to deduct from the weekly, fortnightly or other periodic salary or wage of such an employee an amount sufficient to meet the employee's contribution to that fund, scheme or provident fund and to remit such amount to the proper person authorised to receive contributions on behalf of that fund, scheme or provident fund.

Board to contribute as employer

76.(1) In respect of an employee of the board who pursuant to section 75 contributes to a superannuation fund, superannuation scheme or provident fund as set out therein the board shall pay to that fund, scheme or fund such sums as would have been payable by the local government concerned by way of contribution to the fund, scheme or fund had the contributor been an employee of the local government and had been paid salary or wages at the rate paid to the employee at the material time by the board.

(2) Moneys payable by the board under this section to any superannuation fund, superannuation scheme or provident fund and unpaid may be recovered by action in a court of competent jurisdiction by the trustees or managers of the fund, scheme or fund in question respectively as a debt due to, as the case may be, those trustees or managers.

Superannuation schemes

77.(1) The board may—

- (a) establish or amend superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or
- (c) take part in superannuation schemes.

(2) An employee of the board who continues to be a contributor to a superannuation or provident scheme mentioned in section 75 is not required to become a contributor to a scheme mentioned in subsection (1).

PART 9—MISCELLANEOUS PROVISIONS

Board's existence to be reviewed

78. Before the seventh anniversary of the commencement of this Act and thereafter, for so long as the board continues in existence before the seventh anniversary of the last preceding review, the Minister shall cause the operations of the board to be reviewed and shall recommend to the Governor in Council—

- (a) that the board shall continue to discharge its functions and exercise its powers in accordance with this Act; or
- (b) that the board should be dissolved and that for the purpose of exercising or performing the functions of local government in the operational area, there be constituted a joint local government pursuant to the provisions of the *Local Government Act 1993*.

Board not liable for short supply

79.(1) The board is not liable to any penalty or damages on account of a failure to supply water or a restricted supply of water if the failure or restriction is by reason of a lessening of supply by the board pursuant to section 46.

(2) The board shall not be obliged to supply or be compelled to supply water to a local government or major consumer at an hourly, daily or other periodic rate greater than is determined from time to time by the board as the maximum allocation or rate of supply that can prudently be made available to the local government or major consumer and advised to that local government or major consumer.

Extent of liability for escape of water

80. The board, a local government operating works on behalf of the board or any contractor of the board shall not be liable, absolutely or vicariously—

- (a) for flooding or sending water upon any land by reason of works performed by or for it or them, as the case may be; or
- (b) for escape of water from headworks, treatment works or trunk mains under its or their control or from works being performed by or for it or them, as the case may be;

unless it be shown that the flooding, sending of water or escape is due to or arose out of the negligence of the board or its servants or by a local government operating works on behalf of the board or its servants or a contractor of the board or its servants in the construction, maintenance, control or management of the works, headworks, treatment works or trunk mains or mains in question or of the flow of water therein.

Obstruction of board's agents

81. A person who obstructs or attempts to obstruct the board or any agent of the board in the performance of a function or the exercise of a power of the board commits an offence against this Act.

Assault on board's agents

82. A person who assaults or intimidates or attempts to assault or intimidate any agent of the board while the agent is exercising a power or performing a duty under or for the purposes of this Act commits an offence against this Act.

Interference with board's property

83. A person who takes down, removes or alters the position of any barricade erected by or on behalf of the board or extinguishes or moves any light placed by the board or on its behalf save under the authority of the board or damages any property of the board commits an offence against this Act.

Regulations

84.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made with respect to the management and use of catchment areas and reservoirs.

(3) A regulation may provide that contravention of a regulation is an offence and prescribe a maximum penalty, of not more than 20 penalty units, for the offence.

By-laws

85.(1) The board, with the approval of the Governor in Council, may make by-laws under this Act.

(2) A by-law may be made with respect to the following matters—

- (a) all matters and things necessary for the proper construction, maintenance, operation and control of its headworks, treatment works, trunk mains, works and undertakings;
- (b) supply of water from its headworks, treatment works and trunk mains;
- (c) taking and use of water in its control;
- (d) the use, good management and preservation of land owned by or in the control of the board;
- (e) recreational use of reservoirs and land owned by or in the control of the board and of the waters therein or thereon;
- (f) protection of its property from trespass and damage and access of the public to specified parts of the board's property and undertakings;
- (g) preservation of water in its control from pollution in any form and of banks of reservoirs from erosion;
- (h) the manner in which functions, powers and duties shall be discharged, exercised and performed by it or by any person for the purposes of this Act;
- (i) procedure and conduct of business at its meetings and the custody

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and use of the common seal of the board;

- (j) fees payable to it and the matters in respect of which those fees are payable;
- (k) matters that under this Act may be prescribed by by-laws of the board;
- (l) all matters that in its opinion are necessary or desirable for the proper and efficient performance of its functions.

(3) A by-law may provide for the recoupment to the board of expenses incurred by it in doing work—

- (a) required by the by-laws to be done where the person so required has failed to do the work; or
- (b) required to be done to remedy any damage occasioned by a breach of the by-laws;

by the person who has failed to do the work, or, as the case may be, has breached the by-laws.

(4) A by-law may provide that contravention of a by-law is an offence and prescribe a maximum penalty, of not more than 20 penalty units, for the offence.

Manner of making by-laws

86.(1) Every resolution making a by-law shall be passed at a special meeting of the board called for the purpose.

(2) After the passing of a resolution making a by-law, a copy of the by-law shall be kept available for public inspection at the board's office until the expiration of the time specified in accordance with subsection (3).

(3) As soon as practicable after the passing of a resolution making a by-law, the board shall cause to be published at least once in a newspaper that circulates generally within the operational area of the board a notice—

- (a) of the general purport of the by-law;
- (b) that a copy of the by-law is available for inspection by any person at the board's office up to and including a date specified in the notice being a date not less than 21 days after the publication or, if

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the notice is published more than once, after the first publication of the notice in the newspaper;

- (c) that a copy of the by-law may be procured from the board on or before the date so specified upon payment of a sum fixed by resolution of the board but not exceeding the cost of printing or otherwise reproducing the copy, which sum shall be specified in the notice;
- (d) that objections to the making of the by-law may be lodged with the board at its office on or before the date so specified and that any such objection shall be in writing and shall state the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds.

(4) A person—

- (a) who wishes to object to the making of a by-law may do so by lodging the objection at the board's office in accordance with the notice published under subsection (3) and not otherwise;
- (b) is entitled to procure from the board a copy of a by-law kept available for public inspection at the board's office upon tender of the sum specified for that purpose in the notice published under subsection (3).

(5) The board shall consider every objection duly made to the making of a by-law and if thereupon it resolves to proceed with the making of the by-law it shall cause to be forwarded to the Minister for submission to the Governor in Council—

- (a) a copy of the board's resolution to make the by-law; and
- (b) a copy of the by-law proposed to be made; and
- (c) a copy of the notice published under subsection (3); and
- (d) all objections duly made to the making of the by-law; and
- (e) the representations of the board in respect of all such objections; and
- (f) a certificate under the hand of the chairperson and manager that the requirements of this section have been complied with in connection with the making of the by-law in question.

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(6) The Governor in Council may approve or reject a by-law of the board submitted for approval or may approve of the by-law subject to such amendments as the Governor in Council thinks fit having regard to the objects of the by-law and of the objections to the by-law and representations of the board in respect of the objections.

(7) Where the requirements of this section have been complied with in connection with the making of a by-law that is approved by the Governor in Council subject to amendments it shall be deemed that the by-law as so amended is the by-law duly made by the board.

Intervention in board's affairs

87.(1) The Governor in Council may, by regulation—

- (a) repeal a by-law or any part of a by-law of the board;
- (b) suspend or rescind any resolution or order of the board;
- (c) prohibit the expenditure of money from any fund of the board upon work that the Governor in Council considers unnecessary or which, in the Governor in Council's opinion, will impose undue burden upon the inhabitants of or major consumers within the operational area of the board.

(2) The repeal of a by-law or part of a by-law by the Governor in Council under subsection (1)(a) does not limit any other way of repealing the by-law or part of the by-law.

(3) A resolution of the board rescinded by the Governor in Council shall be taken to be void ab initio unless the Governor in Council specifies a later date for that purpose, in which case the resolution shall be taken to be void on and from that specified date.

(4) Upon the coming into effect of a rescission of a resolution of the board—

- (a) the making by or on behalf of the board of a contract; or
- (b) the acceptance by or on behalf of the board of a tender; or
- (c) the doing by or on behalf of the board of any act or thing;

pursuant to or allegedly pursuant to authority conferred by such resolution

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shall be void—

- (d) on and from the date specified by the Governor in Council as the date on and from which such resolution shall be void; or
- (e) ab initio, where no such date is specified by the Governor in Council.

(5) Where any contract, acceptance, act or thing becomes void ab initio pursuant to subsection (3), no action, claim or demand shall lie or be made or allowed against the board or any member, servant or agent of the board for or in respect of any damage, loss or injury sustained or alleged to have been sustained or for or in respect of any other right or remedy conferred or alleged to have been conferred by reason of the making of the contract or the acceptance or the doing of the act or thing.

(6) Where a contract becomes void ab initio pursuant to subsection (3), if a party to the contract (other than the board) satisfies the Governor in Council that—

- (a) the party entered into the contract in good faith; and
- (b) prior to the rescission by the Governor in Council of the resolution that authorised the making by the board of the contract, the party had incurred expense in or for the purpose of performing the contract;

the Governor in Council may, in writing, direct the board to pay to that party the amount of that expense and the board shall comply in all respects with that direction.

(7) An amount so directed to be paid and unpaid shall constitute a debt due and owing by the board to the party concerned.

Proof of board's documents

88.(1) A document purporting to be issued or made by or under the direction of the board and signed by the chairperson or the manager shall be admitted in evidence in all courts and proceedings and shall be deemed to be issued or made by or under the direction of the board until the contrary is proved.

- (2) Evidence of a by-law made by the board may be given—

- (a) by production of the gazette purporting to contain it; or
- (b) by production of a document purporting to be a copy of it and to be printed by the government printer or by the authority of the Government of the State.

Search of titles without fee

89. The registrar of titles and every mining registrar shall permit the manager or other authorised agent of the board to make, free of charge, searches of, copies of and extracts from any book, plan or document in the registrar's charge that relates to the registration of land in the operational area of the board.

Reports to the Minister

90.(1) The Minister may from time to time request the board to furnish the Minister with its report on such matters as the Minister nominates and may fix a reasonable time within which the report is to be furnished.

(2) Where a report is furnished pursuant to the Minister's request made under subsection (1), a person appointed for the purpose by the Minister shall at any time have access to all records of the board and may examine the same with a view to verifying the accuracy of the report.

(3) If the board refuses or fails to furnish a report in compliance in all respects with the Minister's request or furnishes a report that is false in a material particular the board and each person who is privy to such refusal, failure or the making of the false report is liable to a maximum penalty of 2 penalty units.

(4) A person who obstructs or hinders any person referred to in subsection (2) in the exercise of the person's powers under that subsection commits an offence against this Act.

Maximum penalty—2 penalty units.

Offence provision

91.(1) A person who contravenes or fails to comply with any provision

of this Act commits an offence against this Act.

(2) A person who—

- (a) commits an offence against this Act; or
- (b) contravenes any provision of a by-law;

may be prosecuted in a summary way under the *Justices Act 1886* and, unless another penalty is specifically provided, is liable to a maximum penalty of 20 penalty units.

Appropriation of penalties

92. Unless otherwise expressly provided by this Act, all penalties under this Act recovered by the board or by a person authorised by the board for that purpose shall be paid to the board.

Approval of forms

93. The chief executive may approve forms for use under this Act.

Transitional provision about forms

94.(1) This section applies if—

- (a) immediately before the commencement of this section, there was a prescribed form for a matter; and
- (b) on the commencement of this section, there is to be an approved form for the matter or a form may be approved for the matter.

(2) Until there is an approved form for the matter, the form that was the prescribed form for the matter immediately before the commencement of this section is taken to be the approved form for the matter.

(3) This section expires 6 months after it commences.

Amounts held in funds

113.(1) On the commencement of this section—

- (a) the amount held in a relevant fund immediately before the commencement—*
 - (i) is an amount belonging to the board; and*
 - (ii) is to be accounted for in the accounts of the board; and*
- (b) the amount held in the Trust Fund is to be paid into a trust account kept by the board for the purpose.*

(2) In this section—

“relevant fund” means—

- (a) Operating Fund; or*
- (b) Reserve Fund; or*
- (c) Capital Works Fund; or*
- (d) any other fund prescribed under section 59(1)(e) (as in force immediately before the commencement of this section).*

(3) This section expires at the end of the day it commences.*

* This provision has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint. This provision has not been renumbered under section 115.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 16 January 1996. Future amendments of the Townsville/Thuringowa Water Supply Board Act 1987 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 List of legislation

Townsville/Thuringowa Water Supply Board Act 1987 No. 87

date of assent 1 December 1987

ss 1–2 commenced on date of assent (see s 2(1))

remaining provisions commenced 1 January 1988 (proc pubd gaz 26 December 1987 p 1902)

as amended by—

Acts Amendment and Construction Act 1988 No. 47 s 10 sch 2

date of assent 12 May 1988

commenced on date of assent

Public Service (Administrative Arrangements) Act (No. 2) 1990 No. 80 s 3 sch 7

date of assent 14 November 1990

commenced on date of assent (see s 2)

Primary Industries Corporation Act 1992 No. 15 ss 1–2, 13 sch

date of assent 13 May 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 30 September 1992 (1992 SL No. 271)

Local Government Act 1993 No. 70 ch 1 pt 1, ch 14 pt 3 sch

date of assent 7 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 26 March 1994 (see s 2(5))

Statute Law (Miscellaneous Provisions) Act 1994 No. 15 ss 1–3 sch 1

date of assent 10 May 1994
commenced on date of assent

**Statutory Authorities Superannuation Legislation Amendment Act 1995 No. 36
pts 1, 3 s 9 sch 2**

date of assent 16 June 1995
commenced on date of assent (see s 2)

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995
commenced on date of assent

5 List of annotations

Commencement

s 2 om R1 (see RA s 37)

Arrangement of Act

s 3 om 1992 No. 15 s 13 sch

Orders in Council inoperative and savings

s 4 om 1992 No. 15 s 13 sch

Governor in Council may make provision

s 5 om 1992 No. 15 s 13 sch

Definitions

prov hdg sub 1995 No. 58 s 4 sch 1

s 2 def “**approved form**” ins 1995 No. 58 s 4 sch 1
def “**board**” amd 1995 No. 58 s 4 sch 1
def “**Commissioner**” ins 1988 No. 47 s 10 sch 2
om 1992 No. 15 s 13 sch
def “**Director**” om 1988 No. 47 s 10 sch 2
def “**insurance**” ins 1995 No. 58 s 4 sch 1
def “**insurer**” ins 1995 No. 58 s 4 sch 1
def “**interim Board**” om 1992 No. 15 s 13 sch
def “**Land Court**” om 1992 No. 15 s 13 sch
def “**Local Authority**” om 1992 No. 15 s 13 sch
def “**Local Authority Area**” or “**Area**” om 1993 No. 70 s 804 sch
def “**manager**” sub 1995 No. 58 s 4 sch 1
def “**Minister**” sub 1990 No. 80 s 3 sch 7
om 1992 No. 15 s 13 sch
def “**town planning scheme**” sub 1993 No. 70 s 804 sch

Continuation of current Board members

s 9 om 1992 No. 15 s 13 sch

Date for nomination of local government’s nomination

s 8 amd 1995 No. 58 s 4 sch 1

Appointment of members of board

s 9 amd 1995 No. 58 s 4 sch 1

Term of appointment

s 10 sub 1994 No. 15 s 3 sch 1

Casual vacancy in membership of Board

s 17 om 1995 No. 58 s 4 sch 1

Delegate members of board

s 12 amd 1995 No. 58 s 4 sch 1

Functions

s 15 amd 1995 No. 58 s 4 sch 1

General powers of board

s 17 sub 1994 No. 15 s 3 sch 1

Provision affecting contractual powers of Board

s 24 om 1994 No. 15 s 3 sch 1

Procedure for taking over control

s 23 amd 1994 No. 15 s 3 sch 1

Procedure for acquisition of property or assumption of liabilities

s 24 amd 1994 No. 15 s 3 sch 1

Enforcement of existing claims

s 25 amd 1994 No. 15 s 3 sch 1

Board to be aided in securing property

s 27 amd 1994 No. 15 s 3 sch 1

Power of delegation

s 31 sub 1995 No. 58 s 4 sch 1

Procedure for obtaining consent

s 33 amd 1988 No. 47 s 10 sch 2; 1992 No. 15 s 13 sch; 1995 No. 58 s 4 sch 1

Solution of disputes between board and local government

s 39 amd 1994 No. 15 s 3 sch 1

Effect of regulations under s 41 on powers etc.

s 42 amd 1995 No. 58 s 4 sch 1

PART 6—FINANCIAL PROVISIONS**Division 2—Application of finance Acts**

div hdg sub 1994 No. 15 s 3 sch 1

Board is statutory body

s 49 sub 1994 No. 15 s 3 sch 1

Division 3—Investment of Surplus Board Funds

div hdg (ss 57–58) om 1994 No. 15 s 3 sch 1

Division 4—Funds of Board

div hdg (ss 59–63) om 1994 No. 15 s 3 sch 1

Division 5—Budgetary Provisions

div hdg (ss 64–65) om 1994 No. 15 s 3 sch 1

PART 7—TAKING AND HOLDING LAND BY THE BOARD**Division 1—Acquisition of Land**

div hdg om R1 (see RA s 5(d))

Division 2—Rateability of Land

div hdg (s 72) om 1993 No. 70 s 804 sch

Insurance of members

s 68 amd 1995 No. 58 s 4 sch 1

Superannuation schemes

s 77 sub 1995 No. 36 s 9 sch 2

Regulations

s 84 sub 1994 No. 15 s 3 sch 1

By-laws

s 85 amd 1994 No. 15 s 3 sch 1

Application of regulation or by-law and breaches thereof

s 104 om 1994 No. 15 s 3 sch 1

Publication and operation of by-laws

s 105 om 1994 No. 15 s 3 sch 1

Intervention in board's affairs

s 87 amd 1994 No. 15 s 3 sch 1

Service of documents

s 107 om 1994 No. 15 s 3 sch 1

Reports to the Minister

s 90 amd 1994 No. 15 s 3 sch 1

Offence provision

s 91 amd 1994 No. 15 s 3 sch 1

Amounts held in fund

s 113 ins 1994 No. 15 s 34 sch 1
exp 10 May 1994 (see s 113(3))

Approval of forms

s 93 ins 1995 No. 58 s 4 sch 1

Transitional provision about forms

s 94 ins 1995 No. 58 s 4 sch 1
exp 28 May 1996 (see s 94(3))

Numbering and renumbering of Act

s 115 ins 1995 No. 58 s 4 sch 1
om R1 (see RA s 37)

6 Table of changed names and titles

TABLE OF CHANGED NAMES AND TITLES
under the Reprints Act 1992 ss 23 and 23A

Old	New	Reference provision
by-law (of a local authority) (joint) board	local law (of a local government) joint local government	Local Government Act 1993 s 796(1)(l) Local Government Act 1993 s 796(1)(c)
local authority	local government	Local Government Act 1993 s 772(1)(a)
member (of a local authority)	councillor (of a local government)	Local Government Act 1993 s 796(1)(i)
registrar (of dealings)	registrar (of titles)	Land Title Act 1994 s 208

7 Table of changed citations and remade laws

TABLE OF CHANGED CITATIONS AND REMADE LAWS
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Land Act 1962	Land Act 1994	Land Act 1994 s 511(j)
Local Government Act 1936	Local Government Act 1993	Local Government Act 1993 s 796(1)(o)
Workers' Compensation Act 1916	Workers' Compensation Act 1990	Workers' Compensation Act 1990 s 206

8 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS under the Reprints Act 1992 s 39

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references to provisions of law inclusive	Acts Interpretation Act 1954 s 35D
references to Queensland implied	Acts Interpretation Act 1954 s 35

9 Table of renumbered provisions

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