

Queensland



WATER RESOURCES ACT 1989

**Reprinted as in force on 9 November 2000
(includes amendments up to Act No. 34 of 2000)**

Warning—see last endnote for uncommenced amendments

Reprint No. 4E

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Information about this reprint

This Act is reprinted as at 9 November 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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WATER RESOURCES ACT 1989

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WATER RESOURCES ACT 1989

[as amended by all amendments that commenced on or before 9 November 2000]

An Act to consolidate and amend the law relating to rights in water, the measurement and management of water, the construction, control and management of works with respect to water conservation and protection, irrigation, water supply, drainage, flood control and prevention, improvement of the flow in or changes to the courses of watercourses, lakes and springs; protecting and improving the physical integrity of watercourses, lakes and springs; the safety and surveillance of referable dams; and for purposes incidental thereto and consequential thereon

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Water Resources Act 1989*.

Interpretation

- 2.(1) In this Act—

“**announced allocation**” means a water allocation arrived at by increasing or decreasing the quantity of water apportioned under a nominal allocation according to the seasonal availability of water.

“**approved form**” see section 250.¹

“**area**” means an area of land by whatever name called constituted or deemed to be constituted an area under this Act for the purposes of

¹ Section 250 (Approval of forms)

water conservation and protection, water supply, irrigation, drainage, prevention of floods or control of flood waters and the improvement of underground water supplies.

“artesian bore” includes an artesian well and all works constructed in connection with an artesian bore or artesian well from which water flows or has flowed naturally to the surface.

“authorised officer” means an officer appointed by the chief executive, or of a board, authorised generally or for a particular purpose under this Act.

“barrage” means an artificial structure that stores water or that hinders or obstructs the flow of water in a river, creek, stream or lake or the access of tidal water to a part of a river, creek, stream or lake.

“bed and banks”, with reference to a watercourse or lake, means land over which the water of that watercourse or lake normally flows or that is normally covered by that water whether permanently or intermittently, but does not include land abutting or adjacent to the bed or banks that is from time to time covered by floodwater.

For the purposes of this definition “bed” means the relatively flat and “banks” the relatively steep portions of the firstmentioned land.

“board” means a board constituted or deemed to be constituted under this Act as a water supply board or drainage board.

“catchment” means an area of land from which rainwater that falls thereon flows naturally or is directed into a watercourse, lake or other water storage.

“catchment area” see section 27.

“channel” includes any ditch, drain, bench flume, elevated flume or pipeline.

“construct” includes provide, set up, dig, excavate, erect, lay down, install or maintain.

“controlled quarry material” means quarry material declared under this Act to be and remain the property of the Crown.

“controlled works” means works within a designated area, whether constructed before or after its constitution including any drain, earthworks, embankment, formation, landfill or levee bank that

control, prevent, regulate or reduce or that in the opinion of the chief executive are likely to control, prevent, regulate or reduce the flow of water, including flood water, onto or from land or the inundation of land by water, including flood water, but does not include works authorised by or under any other Act or enactment, or works declared under a regulation not to be controlled works.

“Crown holding” means a lease within the meaning of the *Land Act 1994*, and includes land held under any lease, licence or other authority granted by the Crown under any other Act.

“Crown land” means all land in Queensland except land that is, for the time being—

- (a) lawfully granted or contracted to be granted in fee simple by the Crown;
- (b) reserved and set apart for or dedicated to public purposes;
- (c) subject to a lease or licence, other than an occupation licence, lawfully granted by the Crown;
- (d) set apart and declared as a State forest, national park, recreation area, scenic area or timber reserve or deemed so to be;
- (e) reserved and set apart as an environmental park.

“declared subartesian area” means a locality in the State prescribed under a regulation as a declared subartesian area.

“designated area” see section 104.

“domestic purposes” includes all purposes for which water is used ordinarily in or in connection with a dwelling house or land appurtenant thereto or any horticultural or agricultural garden thereon not exceeding in any case 0.25 ha in extent used solely in connection with a dwelling house, but does not include business, commercial or manufacturing purposes carried on, in or in connection with a dwelling house or irrigation purposes or purposes for or in connection with the generation of electricity by the use of water.

“drainage” means the removal of water including floodwater from land by means of works or gravitation and includes the removal by those means of water from a lake.

“drainage area” means an area of land constituted or deemed to be

constituted under this Act as a drainage area.

“drainage works” includes works constructed or used for the purposes of drainage.

“driller’s licence” means a licence to drill boreholes for the construction of artesian or subartesian bores, to construct artesian or subartesian bores and for carrying out work in relation to existing bores.

“fitting” means any pipe, valve, meter or other apparatus or appliance used for or in connection with water supply.

“floodwater” means water overflowing or erupting or that has overflowed or erupted from a watercourse or lake onto or over riparian land that is not submerged when the watercourse or, as the case may be, lake flows between or is contained within its bed and banks.

“full supply level” means the level of the water surface when the water storage is at maximum operating level when not affected by flood.

“hazardous waste” means any substance, whether liquid, solid or gaseous, derived by or resulting from the processing of minerals that tends to destroy life or impair or endanger health.

“headworks” means any dam, weir, barrage or reservoir and all works appurtenant thereto, channel, structure, building, well, bore, tunnel or machinery used for or in connection with the storage, control, conveyance or distribution of water.

“improvements” include works, structures, machinery, plantations and crops constructed, installed or grown on land under the authority of this Act.

“irrigable”, when used in relation to land, means land that due to its situation or quality is capable of being irrigated within an irrigation area.

“irrigation area” means an area of land constituted or deemed to be constituted as an irrigation area under this Act.

“irrigation undertaking” includes all works and operations necessary for and incidental to carrying into effect the objects and purposes of part 9 within and in connection with an irrigation area.

“lake” includes—

- (a) a lagoon, swamp, marsh or other natural collection of water, whether permanent or intermittent; and
- (b) in a provision about the exercise of the right to the use, flow and control of water or the control of quarry material—
 - (i) the bed and banks; and
 - (ii) the elements that confine or contain the water.

“levee bank” means any embankment or other structure within or without or partly within or without the bed and banks of a watercourse for the purpose of—

- (a) keeping wholly or partly within a channel the water, including floodwater, of that watercourse; or
- (b) preventing, regulating or controlling in any manner the flow of water out of that watercourse.

“licence” means a licence or renewal of a licence under this Act in force at the material time.

“licensee” means the holder of a licence under this Act.

“machinery” includes any apparatus, appliance, instrument, equipment or fitting for use in carrying into effect the objects and purposes of this Act.

“nominal allocation” means the quantity of water apportioned under a water allocation at the time that allocation is first granted or apportioned under a subsequent amendment thereof.

“occupier” means the person in actual occupation of land at the material time or, where there is no person in actual occupation, the person entitled to possession of the land at that time.

“owner”—

- (a) when used in relation to land generally means—
 - (i) the registered proprietor thereof;
 - (ii) the lessee or licensee from the Crown in respect thereof;
 - (iii) the person or body of persons who, for the time being, has lawful control thereof, on trust or otherwise;

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- (iv) the person who is entitled to receive the rents and profits thereof;
- (b) when used in relation to a referable dam, means the owner of the land on which the referable dam is constructed or to be constructed and includes the Crown or a person representing the Crown;
- (c) includes the occupier of land.

“permit” means a permit under this Act in force at the material time.

“permittee” means the holder of a permit under this Act.

“person” includes any partnership or other association or body, corporate or unincorporate.

“pipe” includes any main pipe, water meter, stop tap, water tap, siphon, plug, sluice valve, gate valve, hydrant, branch or similar apparatus.

“quarry material” means material other than a mineral within the meaning of any Act relating to mining and without limiting or affecting in any way this definition, includes stone, gravel, sand, rock, clay, earth and soil.

“rate” means a rate or charge made and levied by the chief executive or a board in accordance with this Act or a by-law made under this Act.

“ratepayer” means a person named in the books or records of the chief executive or a board as a person liable to pay rates or charges.

“referable dam” means—

- (a) works or proposed works that include or would include a barrier whether permanent or temporary that does or could or would impound, divert or control water, which barrier—
 - (i) is more than 8 m in height and has a storage capacity of more than 500 ML; or
 - (ii) is more than 8 m in height and has a storage capacity of more than 250 ML and a catchment area that is more than 3 times its maximum surface area at full supply level;
- (b) works—
 - (i) that consist of or include or would consist of or include a

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barrier whether permanent or temporary that does or could or would impound, divert or control water or hazardous waste, other than a barrier defined in paragraph (a);

- (ii) other than a barrier whether permanent or temporary that does or could or would impound, contain, divert or control hazardous waste;

declared by the chief executive by notification published in the gazette to be a referable dam by reason of the danger to life or property that could or would eventuate upon the collapse or failure of or the escape of hazardous waste from those works;

and includes the storage area created by the works but does not include a tank constructed of steel or concrete or a combination of those materials.

The term does not include a weir, other than a weir that has a variable flow control structure on the crest of the weir.

“reservoir” includes a bore, tank or well.

“road” means any highway, bridge, culvert, street, public place, lane, footway, square, court, alley, passage (whether or not a thoroughfare), public wharf, jetty or boat ramp open to or used by the public, and includes—

- (a) any bridge, culvert or other structure and the approaches thereto constructed or deemed to be constructed by the State or permitted by it to be constructed on, over, under, through or across a channel or land set aside or reserved for a channel to provide a means of access to a road within the meaning of this definition from land from which that road is separated by that channel or land so set aside or reserved; and
- (b) the roadway or pavement comprising a road within the meaning of this definition.

“spring” means water naturally rising to and flowing over the surface of land.

“structure” includes any building, wall, fence, or anything affixed thereto or projecting therefrom.

“subartesian bore” includes any shaft, well, gallery, spear or excavation and all works constructed in connection with any subartesian bore,

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shaft, well, gallery, spear or excavation which intersects an underground source of water and from which water does not flow naturally to the surface.

“subdivision”, of land, includes reconfiguring a lot under the *Integrated Planning Act 1997*.

“swamp land” means land that is, due to natural causes, covered with water or whose soil is ordinarily so saturated with water as to be unfit for culture.

“underground”, when used in relation to water, means water that occurs naturally or is introduced artificially below ground level.

“water”, when used in relation to a referable dam, includes any other liquid or a mixture that includes water or any other liquid or suspended solid.

“water allocation” means an allocation by whatever name called determined for a specified period of a quantity of water out of the water available for allocation, and includes additional water approved to be taken from time to time.

“water available for allocation” means—

- (a) water available for irrigation or another purpose, from works of the State or a board; or
- (b) water from watercourses, lakes or springs; or
- (c) underground water.

“water management plan” means a plan made by the Minister under part 3A, division 2.

“watercourse” means a river, creek or stream in which water flows permanently or intermittently—

- (a) in a natural channel;
- (b) in a natural channel artificially improved;
- (c) in an artificial channel that has changed the course of the watercourse;

but, in any case, only at every place upstream of the point to which the spring tide normally flows and reflows therein whether due to a natural cause or an artificial barrier therein or, when the chief executive has

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declared by notification under this Act a downstream limit then, during the continuance in force of that notification, only at every place upstream of that limit.

“works” means operations of any kind and all things constructed, erected or installed for or in connection with the purposes of this Act, all sources of water supply and land reserved or set apart, occupied, held or used for or in connection with those operations or those sources, and includes a quarry or gravel pit vested in the State or under the control of the State or the chief executive.

(2) The terms set forth in this subsection, when used in relation to a weir, barrage or dam, have the meanings respectively assigned to them—

“height” means the measurement equivalent to the difference in level between the natural bed of the watercourse at the downstream toe of the barrier (or if the barrier is not across a watercourse between the lowest elevation of the outside limit of the barrier) and the top of the barrier.

“storage capacity” means the measurement (expressed in cubic measure) equivalent to the total storage capacity up to the level at which water is ordinarily retained therein.

“top of the barrier” means the level of the top of the barrier exclusive of any parapet or ancillary structure or, where the barrier includes a spillway section, the level of the top of the abutment walls adjoining the spillway section exclusive of any parapet or ancillary structure.

(3) The words ‘alterations’, ‘repairs’, ‘maintenance’ and ‘operations’, when used in relation to a referable dam, mean only such alterations, repairs, maintenance or operations as, in the opinion of the chief executive, ensure the safety of the referable dam and the protection of life or property that would or could be endangered by the uncontrolled loss or release of water or hazardous waste caused by the collapse or failure of the referable dam.

(4) In provisions of this Act that concern—

- (a) the exercise of the right to the use, flow and control of water; and
- (b) the control of quarry material; and
- (c) limiting the destruction of watercourse vegetation and otherwise protecting or improving the physical integrity of watercourses;

“**watercourse**” includes bed and banks and any other element of a river, creek or stream that confines or contains water.

(5) Water supplied under this Act for domestic purposes, whilst it remains in the state or quality in which it is supplied, must not be taken by reason only of its supply to be water of a quality suitable for drinking or use in cooking.

PART 2—VESTING OF RIGHTS IN CERTAIN WATER IN CROWN AND DECLARATION RE BED AND BANKS

PART 3—ADMINISTRATION

Division 1—General

Delegation by Minister

6. The Minister may delegate to an officer or employee of the public service the Minister’s powers under this Act.

Appointment of authorised officers

6A.(1) The chief executive may appoint persons as authorised officers.

(2) The chief executive officer may appoint a person as an authorised officer only if—

- (a) in the chief executive’s opinion, the person has the necessary expertise or experience to be an authorised officer; or
- (b) the person has satisfactorily finished training approved by the chief executive.

Limitation of authorised officer's powers

6B. The powers of an authorised officer may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice of the chief executive given to the authorised officer.

Authorised officer's identity card

6C.(1) The chief executive must give each authorised officer an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the authorised officer; and
- (b) be signed by the authorised officer; and
- (c) identify the person as an authorised officer under this Act.

(3) A person who ceases to be an authorised officer must return the person's identity card to the chief executive as soon as practicable (but within 21 days) after the person ceases to be an authorised officer, unless the person has a reasonable excuse for not returning it.

Maximum penalty—10 penalty units.

(4) This section does not prevent the giving of a single identity card to a person under this Act and for other Acts or purposes.

Production or display of authorised officer's identity card

6D.(1) An authorised officer may exercise a power under this Act in relation to someone else only if the authorised officer—

- (a) first produces his or her identity card for the person's inspection; or
- (b) has the identity card displayed so it is clearly visible to the person.

(2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

Powers of authorised officer

7.(1) For the purposes of this Act, an authorised officer, without prior notice and any authority other than this Act, may, at all reasonable times, enter and re-enter any road, land, premises other than a dwelling house or premises being used at the material time as a dwelling house, or other place and may—

- (a) make such investigation, inquiry, inspection or examination as is necessary to ascertain that this Act or any requisition, order, notice or direction is being complied with;
- (b) execute, fix, remove, replace, renew, substitute, alter, repair, clean or examine any plant, equipment, works or machinery;
- (c) take account of the quantity of water taken and used and compare that quantity with the quantity entitled to be taken and used in accordance with the terms of a licence, permit, other authority or water allocation under this Act;
- (d) regulate the supply of water under a licence, permit, other authority or water allocation under this Act so as to comply with the quantity entitled to be taken and used;
- (e) take all steps and do all acts and things with respect to a watercourse, lake, spring or underground source of water supply as are necessary for—
 - (i) the purpose of taking measurements and making records of the natural water resources of Queensland;
 - (ii) the conservation and regulation of water therein;
 - (iii) the prevention of the undue, excessive, illegal or improper use, diversion or waste of water therein;
 - (iv) the preservation of water therein from pollution and the prevention of pollution thereof;
 - (v) the protection of and prevention of interference with the bed, banks, channels and works thereof over or within which the water therein flows or is contained;
- (f) call to the authorised officer's aid another authorised officer or any other person who in the authorised officer's opinion is competent to assist in the exercise of the authorised officer's

powers and authorities or the performance of the authorised officer's functions and duties and a person so acting in aid, while so doing, has and may exercise and perform the same powers, authorities, functions and duties as are conferred or imposed on the authorised officer by or under this Act;

- (g) use such force as is reasonably necessary in the exercise of the powers and authorities or the performance of the functions and duties conferred on the authorised officer by or under this Act;
- (h) take all steps and do all acts and things as are necessary in the exercise of the powers and authorities or the performance of the functions and duties conferred or imposed on the authorised officer by or under this Act;
- (i) exercise such other powers and authorities and perform such other functions and duties as are prescribed or delegated to the authorised officer.

(2) For the purposes of gaining entry to any premises or other place, an authorised officer may call to the authorised officer's aid any person the authorised officer thinks necessary and that person, while acting in aid of an authorised officer in the lawful exercise by authorised officer of the authorised officer's power of entry, has a like power of entry.

Division 2—Powers of chief executive

Powers with respect to works etc.

9.(1) Subject to this Act, the State may exercise the powers and authorities and perform the functions and duties conferred or imposed by this Act and may take all steps and do all acts and things ancillary to or consequent upon the exercise or performance of those powers, authorities, functions or duties.

(2) For the purposes of this Act the State may—

- (a) investigate, design, construct, acquire, provide, extend, renew and improve, maintain, alter and repair works and things and discontinue those works and things which in its opinion are obsolete or of no further use;

- (b) construct works—
 - (i) to measure and record the natural water resources of Queensland, both surface and underground;
 - (ii) in, under, across, along or against a road, land or premises or under a railway or tramway in any manner it thinks necessary or proper;
 - (iii) for the supply of water to land or premises or to measure and ascertain the extent of that supply;
- (c) use water from any watercourse, lake or other source in or in connection with works or land vested in or under its control;
- (d) obtain from a watercourse or lake and its water storages and works an adequate supply of water for the purposes of this Act or any other Act;
- (e) divert, intercept and store water in or coming from any watercourse, lake or other source and for that purpose alter the course of any watercourse or other source;
- (f) divert water from one source to another;
- (g) take, for the purposes of this Act or any other Act, water found under or on land;
- (h) where reasonably practicable, provide other watering places and channels for the use of adjoining land instead of those taken away or interrupted in the exercise of a power or authority conferred or the performance of a function or duty imposed on it by this section.

Entry upon land

11.(1) Subject to this Act, the chief executive or any officer, employee or agent of the department in the exercise or performance of powers, authorities, functions and duties under this Act and upon giving to the authority or owner concerned at least 7 days notice in writing of intention to do so may—

- (a) enter upon a road or land or premises other than a dwelling house or premises being used at the material time as a dwelling house

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for the purposes of this Act or any other Act that confers or imposes powers, authorities, functions or duties;

- (b) without limiting the generality of paragraph (a), enter for the purposes of—
- (i) making or carrying out inspections, tests, investigations, surveys, experiments, boring or drilling operations, explorations; or
 - (ii) constructing, maintaining, operating or altering works that are authorised or empowered by law to be constructed or operated; or
 - (iii) taking all steps and doing all acts and things connected with or incidental to the exercise or performance of the powers, authorities, functions or duties conferred or imposed.

(2) For the purposes of subsection (1), the chief executive or any officer, employee or agent of the department may—

- (a) make surveys, take measurements or levels or place survey marks;
- (b) set out such works as it thinks fit;
- (c) break up land;
- (d) erect fences;
- (e) take, get and remove and use any quarry material or other material and things;
- (f) carry out blasting operations;
- (g) take all steps and do all acts and things as are necessary for or in connection with the performance of the operations specified in this subsection.

(3) The power under this section to enter upon a road or land or premises includes power to—

- (a) re-enter from time to time;
- (b) remain for the time necessary to achieve the purposes for which the original entry was made;
- (c) take and keep upon the original entry or re-entry the assistants,

vehicles, materials, machinery, equipment and other things necessary to achieve the purposes of the original entry.

(4) A person who enters or re-enters upon a road or land or premises under the authority of and for the purposes specified in subsection (1) must—

- (a) do no more damage than is reasonably necessary having regard to the circumstances;
- (b) make good as far as practicable all damage caused by any entry and any subsequent re-entry or by the doing of any act or thing or the carrying out of any purpose specified in subsection (1).

(5) Where the chief executive considers it necessary to alter the location of train rails, pipes of any kind, electric or telephone lines or other works laid in, over or under a road or land, the chief executive, by notice in writing given to the authority concerned or the owner of the works in question, may require the authority or owner to alter their location in the manner and time specified in the notice.

(7) Where the authority or owner concerned fails to comply with a requisition contained in a notice under subsection (5), the necessary alterations may be undertaken by the State.

Power to supply water by agreement

15.(1) This section applies despite section 38.²

(2) The State may supply water to a local government or another person (the “**consumer**”), for any purpose, under an agreement with the consumer.

(3) However, the terms of the agreement must—

- (a) for a secondary supply agreement—comply with terms approved by the Governor in Council for that type of secondary supply agreement; or
- (b) otherwise—be approved by the Governor in Council.

(4) The agreement may, for example, include the following—

² Section 38 (Offences about constructing works etc. and otherwise taking water without the authority of a licence)

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- (a) the term for which water is to be supplied;
- (b) the charge to be paid for water supplied;
- (c) the quantity of water to be supplied in each period specified in the agreement or the nominal allocation the subject of the agreement;
- (d) the minimum quantity of water that is to be paid for in each specified period;
- (e) that the consumer agrees to pay—
 - (i) during the term of the agreement, the charge agreed upon for water;
 - (ii) at the time specified in the agreement, the charge specified with respect to the minimum quantity of water specified in the agreement to be paid for in each period.

(5) This Act or an agreement made under this section is not to be construed or operate to create on the part of the State an obligation to supply a fixed quantity of water in the event of an insufficiency in the supply of water from any cause requiring a discontinuance or lessening thereof in accordance with subsection (6).

(6) Where water upon which the State relies for maintenance of supply under this section has been or is likely in the opinion of the chief executive to be diminished, the State may—

- (a) discontinue or lessen, as it thinks fit, the quantity of water to be supplied;
- (b) give directions determining and regulating—
 - (i) priorities with respect to consumers entitled to the supply of water; and
 - (ii) the quantities of water to be supplied to consumers.

(7) Reasonable notice must be given by the State of its intention to take action under subsection (6).

(8) The chief executive, at the beginning of a period decided by the chief executive in each year or from time to time during that period, may, in respect of a nominal allocation to which a person is entitled by an agreement made or entered into under this section, determine an announced allocation and may alter, amend or vary an announced allocation so determined.

(9) In this section—

“**secondary supply agreement**” means an agreement, between the State and a consumer, for the supply of water to the consumer from works owned by—

- (a) the State; or
- (b) someone else other than the consumer.

Division 4—Financial and other general provisions

PART 3A—WATER MANAGEMENT PLANS

Division 1—Preliminary

**PART 4—REGULATION AND CONTROL OF
WATER, WATERCOURSES AND CERTAIN QUARRY
MATERIALS**

Division 1—General provisions

Certain quarry material to be and remain property of Crown

28. Notwithstanding the *Forestry Act 1959* or any other Act quarry material within that part of a watercourse or lake within the meaning of this Act that is—

- (a) the property of or deemed to be the property of the Crown;
- (b) situated in or on—
 - (i) Crown land;
 - (ii) land reserved for or dedicated to public purposes within the meaning of the *Land Act 1994*;

(iii) a Crown holding;

is and remains the property of the Crown.

Wastage of water from artesian or subartesian bore

29.(1) Where the chief executive is satisfied after due inquiry that water from an artesian bore or a subartesian bore is—

- (a) being used for an improper purpose or a purpose other than a purpose authorised by a licence; or
- (b) being wasted by negligence or the failure to effect repairs or alterations reasonably necessary for the proper repair and maintenance thereof or from any other cause; or
- (c) being utilised otherwise than to the best advantage;

the chief executive may, by notice in writing given to the licensee, direct that the licensee, within 30 days after the date of the notice—

- (d) close a part of the works specified in the notice; and
- (e) take those precautions, including repairs and alterations specified in the notice, as the chief executive thinks necessary to prevent the improper or unauthorised use of the water or to provide for better utilisation thereof.

(2) A person who fails to comply with a direction given under this section commits an offence against this Act.

Maximum penalty—200 penalty units.

(3) Upon the failure by a person to whom a notice under subsection (1) is given to comply with the notice within the time specified, the chief executive or an authorised officer, with all necessary assistants, agents or workers and vehicles, machinery and equipment may enter upon the land in question and take steps and do all acts and things necessary to comply with the direction.

(4) The powers and authorities conferred by subsection (3) may be exercised whether or not proceedings have been instituted for an offence under subsection (2).

(5) Costs and expenses incurred by the chief executive in exercising the powers and authorities conferred on the chief executive by subsection (3)

may be recovered, in the name of the chief executive, as a debt due to the Crown, in a court of competent jurisdiction.

Supply of surplus water from artesian or subartesian bore

30.(1) Where the chief executive is satisfied after due inquiry that—

- (a) the quantity of water flowing from an artesian bore or supplied from an artesian bore or a subartesian bore is surplus to the reasonable requirements of the owner of the land on which the bore is situated after making due allowance for the distribution of the water through that land by a proper and effective scheme of drains or by other methods of supply; and
- (b) the surplus of the water in question could, under a reasonable scheme of distribution, be supplied to other land insufficiently watered, the property of or occupied by any other person;

the chief executive may, by a notice in writing, to the owner, require that the owner of the land on which the artesian bore or subartesian bore is situated, within a time determined by the chief executive and specified in the notice, to enter into an agreement with—

- (c) an owner or occupier of other land referred to in paragraph (b); or
- (d) in an appropriate case—an owner or occupier of land intervening between the land on which the artesian bore or subartesian bore is situated and the land to be supplied with water;

for the supply and distribution through that land of the surplus water.

(2) Where an owner of land on which the artesian bore or subartesian bore is situated fails within the time determined to enter into an agreement in accordance with subsection (1), the chief executive may give to that owner and to each owner of other land in question a notice in writing containing all directions the chief executive considers are necessary for the purpose.

(3) A notice under subsection (2) must set forth terms as the chief executive thinks fit with respect to—

- (a) the supply and distribution of the water in question;
- (b) the construction and maintenance of necessary works in connection with the supply and distribution of the water in

question;

- (c) the costs and expenses of or in connection with the construction, maintenance and management of those necessary works and the persons by whom and to whom those costs and expenses are payable;
- (d) the payment to be made to the owner of the land on which the artesian bore or subartesian bore is situated for water supplied and distributed.

(4) A notice given under subsection (2) has the same force and effect as if it were an agreement duly made and entered into by and between the parties and may be enforced accordingly.

(5) Where for the purposes of this section it is necessary to convey surplus water on, through, over or across land intervening between the land on which the artesian bore or subartesian bore is situated and the land to be supplied with that water, the chief executive may include in a notice given under subsection (1) such terms as the chief executive considers necessary or expedient for the construction of works on the intervening land and the maintenance of those works, notwithstanding that an easement or a right to enter or use that land has not been granted or acquired.

(6) A person who fails to comply with a term imposed by the chief executive under subsection (5) commits an offence against this Act.

Maximum penalty for subsection (6)—50 penalty units.

Ordinary riparian rights to use water

36.(1) Subject to section 57, an owner or occupier of land abutting a watercourse, lake or spring or a weir, barrage or dam vested in the State or under the control of the chief executive may, without applying for or obtaining a licence or permit in that behalf, use for—

- (a) domestic purposes;
- (b) watering stock;

the water, at the material time, in that watercourse, lake or spring or weir, barrage or dam.

(2) For the purposes of this section—

“**stock**” means stock of a number not exceeding the number depastured ordinarily on the land having regard to seasonal fluctuations in the carrying capacity of the land and not held in close concentration for a purpose other than grazing.

Control of certain quarry material

37. (1) Notwithstanding the *Forestry Act 1959* or any other Act or law, controlled quarry material for the purposes of this Act is and remains under the control of the chief executive.

(2) The chief executive may, under, subject to and in accordance with this Act, authorise by a permit in writing the taking, getting or removal of controlled quarry material.

(3) Quarry material in a watercourse or lake, other than controlled quarry material, remains under the control of the chief executive to the extent that the taking, getting or removal must be subject always to the terms of a permit granted and issued under this Act.

Division 1A—Certain specific provisions about subartesian bores

Act applies to subartesian bores in declared subartesian areas

37A. The provisions of this Act about subartesian bores apply only to subartesian bores in declared subartesian areas.

Exemptions for small bores in declared subartesian areas

37B. Section 38(1)(i) does not apply to a person in a declared subartesian area who, on the person’s land—

- (a) constructs or uses a bore that is declared, under a regulation, a small bore for the declared subartesian area; or
- (b) enlarges, deepens or alters in any way a bore that is declared, under a regulation, a small bore for the declared subartesian area and the bore as enlarged, deepened or altered remains a small bore for the declared subartesian area.

Example of regulation prescribing a bore a small bore for a declared subartesian area—

For the declared subartesian area constituted by the Shire of Clifton, a bore is a small bore if it is to be used for domestic purposes and has a casing size less than 150 mm in diameter.

Division 2—Licences

Offences about constructing works etc. and otherwise taking water without the authority of a licence

38.(1) Subject to sections 56 and 57 a person who, except under the authority of a licence under this Act—

- (a) constructs on the person's land a referable dam or alters, repairs, maintains, uses, operates, abandons or removes a referable dam already constructed; or
- (b) constructs works or uses works already constructed in or on a watercourse, lake or spring—
 - (i) to conserve water; or
 - (ii) to take water therefrom or water contained in or conserved by a weir, barrage or dam; or
- (c) constructs works or uses works already constructed in or on a watercourse, lake or spring or on or in connection with land that abuts any of them—
 - (i) for the purpose of drainage; or
 - (ii) for the prevention of flooding of land by water or the erosion of banks; or
 - (iii) for improvement in the flow of water in or changes to the course of any of them; or
- (d) takes water from a channel constructed by or vested in the State outside an irrigation area; or
- (e) constructs—
 - (i) in that part of a river, creek or stream downstream of the point at which the river, creek or stream becomes a

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watercourse within the meaning of this Act and upstream of the point at which the river, creek or stream ceases to be capable of navigation by vessels ordinarily employed in that river, creek or stream for the purpose of carrying goods; or

(ii) in a lake;

works in the nature of a barrage; or

- (f) uses works in the nature of a barrage constructed in that part of a river, creek or stream or in a lake specified in paragraph (e) and in existence immediately prior to the commencement of the *Water Act Amendment Act 1979*;³ or
- (g) constructs on the person's land a levee bank or uses a levee bank so constructed; or
- (h) constructs on the person's land an artesian bore or uses an artesian bore so constructed or enlarges, deepens or alters in any manner an artesian bore; or
- (i) in a declared subartesian area—constructs on the person's land a subartesian bore or uses a subartesian bore so constructed or enlarges, deepens or alters in any manner a subartesian bore; or
- (j) constructs in a designated area controlled works; or
- (k) keeps or uses, in a designated area, controlled works constructed before the constitution of the designated area;

commits an offence against this Act.

Maximum penalty—

- (a) 400 penalty units, if the person is convicted of an offence in relation to matters mentioned in subsection (1)(a); or
- (b) 200 penalty units, in any other case.

(2) The provisions of this Act that require a licence to be applied for with respect to works specified in subsection (1)(g) do not apply with respect to a levee bank constructed or proposed to be constructed in accordance with an approved plan within the meaning of the *Soil Conservation Act 1986*.

(3) An application for a licence for the following works in a designated

³ The *Water Act Amendment Act 1979* has been repealed, as from 1 February 1990.

area must be made within 90 days after the constitution of the designated area, or any longer period decided by the chief executive in a particular case—

- (a) controlled works, specified under a regulation under section 104 as acceptable proposed works, being constructed when the designated area is constituted;
- (b) controlled works constructed before the designated area is constituted.

(4) If subsection (1)(j) or (k) takes effect in relation to particular controlled works mentioned in subsection (3), a person who immediately before it took effect was constructing, keeping or using the controlled works may continue to do so—

- (a) for the time allowed by subsection (3) to make an application for a licence; and
- (b) pending a decision on the application and any appeal that may result from the decision.

(5) Subsection (4) stops applying to a person constructing, keeping or using controlled works mentioned in the subsection if the person does not apply for a licence for the works in the time allowed by subsection (3).

(6) The chief executive may require in a case where the proposal is for the construction or use of combined works a separate application in respect of each of the works comprised in those works.

(7) Where, in compliance with a requirement of the chief executive, a separate application has been made in respect of works comprised in a proposal for the construction or use of combined works, the chief executive, in dealing with applications in respect of those works, may determine which of those works are to be included in each licence.

(8) A person who is the holder of a licence granted and issued with respect to works to which subsection (1)(e) applies is not, by reason only of the commencement, construction or placement by the person of works under the authority of that licence without the sanction of the Governor in Council, liable to—

- (a) a penalty under the *Harbours Act 1955* section 86;⁴
- (b) any claim, demand or action for nuisance, trespass, encroachment, obstruction or otherwise.

(9) The *Harbours Act 1955*, section 86 does not apply to works the subject of a licence granted and issued in respect of works to which subsection (1)(e) or (f) applies.

(10) For the purposes of this section—

“**to use works**” includes to take and use water contained in works or obtained by means of works whether for the use of—

- (a) the owner of the land on which the works are constructed; or
- (b) the person who constructed or is using the works; or
- (c) an owner of land in the vicinity of the site of the works.

Rights of non-riparian owner to licence

39.(1) Subject to this section, an owner of land that does not abut a watercourse, lake or spring or water contained in or conserved by a weir, barrage or dam constructed by or vested in the State, any local government, other statutory body or person may make application as prescribed for a licence to construct and use works or to use works already constructed as specified in section 38.

(2) The applicant may make, with owners or occupiers of land intervening between the subject land and the watercourse, lake or spring, or the water contained in or conserved by a weir, barrage or dam, in respect of which the application is proposed to be made, arrangements in writing signed by all parties with respect to the construction, use and maintenance on, in, over or under those intervening lands of works necessary to carry out the purposes for which the application is made.

(3) The application must be accompanied by—

⁴ The *Harbours Act 1955* has been repealed. However, section 86 of that Act continues to have effect under the *Transport Infrastructure Act 1994*, section 236 (Continuation of certain provisions of Harbours Act requiring approval for certain matters).

- (a) a copy of the document incorporating the arrangements so made;
or
- (b) where the applicant is unable to make the arrangements—
 - (i) a statement in writing to that effect; and
 - (ii) evidence in writing that notice of the applicant's intention to apply for a licence has been given by the applicant to the owners or occupiers in question.

(4) Where the applicant is unable to make arrangements under subsection (2), the chief executive after due investigation, except in the case of a dam constructed by a local government or other statutory authority, may, by writing, authorise the applicant to enter and re-enter from time to time land that in relation to the application is intervening land and to construct, use and maintain on, in, over or under that land works specified in the authority.

(5) An authority under subsection (4)—

- (a) may be subject to any terms the chief executive thinks fit including, without limiting the generality of this provision, a term for payment by the applicant—
 - (i) by way of compensation or rent or both; and
 - (ii) for the right of entry or re-entry into the land in question, of an amount determined by the chief executive;
- (b) must continue in force during the period for which the licence in accordance with section 44 continues in force and no longer.

(6) Sections 42 to 51 and 54, with and subject to all necessary adaptations, apply and extend to all matters and things with respect to—

- (a) applications under this section;
- (b) notices with respect to those applications;
- (c) objections to the grant of those applications;
- (d) appeals from decisions of the chief executive upon those applications and objections thereto;
- (e) licences granted upon those applications.

(7) The terms of an authority under subsection (4) have force and effect

as if they formed part of an agreement under this section by the parties concerned and may be enforced accordingly.

(8) Subsections (9) to (11) apply where a right of a licensee under this section or a right to which a proposed transferee of a licence under this section may become entitled has been or is likely to be adversely affected by a dealing with a parcel of intervening land within the meaning of this section in respect of which arrangements have been made and entered into or by any other occurrence.

(9) A licensee under this section or a proposed transferee of a licence under this section may advise the chief executive by signed notice of the dealing with land or other occurrence affecting any of the licensee's or proposed transferee's rights or, as the case may be, any of the rights to which the proposed transferee may become entitled and the chief executive may thereupon cause such investigation and inquiry as the chief executive considers necessary to be carried out.

(10) Where upon investigation and inquiry the chief executive finds that a right of the licensee under this section or a right to which a proposed transferee of a licence under this section may become entitled has been or is likely to be adversely affected by the dealing with land or other occurrence in question, the chief executive may by writing authorise the continuance in existence of that right or any other right enjoyed by that licensee prior to the date of the dealing or other occurrence or for the benefit of a proposed transferee of that licence pending the making of a new application and the finalisation thereof in accordance with this Act or, as the case may be, the negotiation and completion of new arrangements.

(11) Where the chief executive is satisfied that a licensee under this section or a proposed transferee of the licence under this section has failed to make the appropriate application within a reasonable time fixed by the chief executive, the chief executive may determine forthwith the continuance in existence of the right or rights in question.

Power of court upon conviction for an offence against s 38

40.(1) Upon conviction for an offence against section 38, the court, in addition to imposing a penalty, may make an order which it considers appropriate including an order for—

- (a) the removal or modification of works;

- (b) the filling in of an artesian bore or a subartesian bore;
- (c) the dismantling and removal of all plant, machinery and equipment installed or erected;
- (d) the making good of all damage caused.

(2) Upon the failure of the offender, within the time specified, to comply in all respects with an order under this section, the chief executive or an authorised officer may enter upon the land in question with all assistants, agents or workers and vehicles, machinery and equipment necessary for the purpose and take all steps and do all acts and things as specified in the order.

(3) Costs and expenses incurred by the chief executive or an authorised officer in the exercise of the powers or authorities conferred on the chief executive or authorised officer by subsection (2) may be recovered in the name of the chief executive as a debt due to the Crown in a court of competent jurisdiction.

Alterations other than for repair or maintenance of works prohibited

41. During the currency of a licence, a person who—

- (a) effects alterations other than those necessary for repairs or maintenance or following any sudden or unforeseen emergency to works the subject of the licence; or
- (b) uses the water supplied from works the subject of the licence for purposes other than those authorised by the licence;

commits an offence against this Act.

Maximum penalty—

- (a) 400 penalty units, if the person is convicted of an offence about effecting alterations to a referable dam or using the water supplied from a referable dam; or
- (b) 200 penalty units, in any other case.

Application for licence

42.(1) An application for a licence must—

- (a) be in writing and signed by the applicant;

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- (b) contain particulars and other information determined by the chief executive;
- (c) be accompanied by the prescribed fee;
- (d) be furnished to the chief executive.

(2) An applicant for a licence for a referable dam must also pay the fee prescribed under a regulation for an assessment of the application.

(3) The chief executive may require an applicant to give to the chief executive further information, plans and other documents relevant to the application.

(4) The chief executive may not deal with the application until the requisition has been complied with in all respects or the information requested has been otherwise furnished.

(5) Two or more persons who desire to construct or use jointly works to which this Act applies and extends may make application for a licence and the application may be dealt with as if it were an application by an individual person.

(6) Upon receipt of an application for a licence other than—

- (a) a licence for an artesian bore or a subartesian bore the supply of water from which is to be used in either case for domestic purposes or watering stock but only where the number of stock does not exceed the number ordinarily depastured on the land in question having regard to the seasonal fluctuations in the carrying capacity of the land and where those stock are not held in close concentration for a purpose other than grazing;
- (b) a licence for a referable dam constructed or to be constructed by any government department, local government or other statutory body;
- (c) a driller's licence;
- (d) a licence for works specified under a regulation under section 104 as acceptable existing works;

the chief executive must cause notice thereof to be published in a newspaper circulating in the locality in which the land the subject of the application is situated.

(7) The chief executive is not required to publish the notice if—

- (a) the licence application is for an artesian bore or subartesian bore; and
- (b) the chief executive receives, from each owner of land entitled to object to the granting of the application under subsection (9), a signed statement, in the form approved by the chief executive, that the owner does not object to the granting of the application.

(8) The notice must specify—

- (a) the place at which;
- (b) the time and date, being a date not more than 60 days after the date on which the notice was last published, before which;

objections to the application may be lodged.

(9) On or before the date specified in the notice, an owner of land situated as prescribed or, as the case may be, of intervening land referred to in section 39(2) or, in the case of an application for a licence in respect of works specified in section 38(1)(j) or (k), the person specified in subsection (12) may, by signed notice and addressed to the chief executive, object to the granting of the application and submit to the chief executive the grounds of his or her objection.

(10) For the purposes of subsection (9), land is to be taken to be situated as prescribed where the provisions set forth below apply with respect to that land—

- (a) if the application is about works constructed or to be constructed in or on a watercourse or spring—
 - (i) the land is situated so that—
 - (A) the nearest part of the land upstream of the applicant's land or the land to which the application relates (the **“affected land”**) is within a radius of 8 km of the affected land; or
 - (B) the nearest part of the land downstream of the affected land is within a radius of 24 km of the affected land; and
 - (ii) if the land does not abut the watercourse or spring—the

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owner of the land holds a licence granted on an application under section 39; or

- (b) if the application is about works constructed or to be constructed on a lake—
 - (i) the nearest part of the land to the applicant's land or the land to which the application relates (the **"affected land"**) is within a radius of 8 km of the affected land; and
 - (ii) if the land does not abut the lake—the owner of the land holds a licence granted on an application under section 39; or
- (c) if the application is about works other than controlled works or an artesian bore or a subartesian bore constructed or to be constructed elsewhere than in or on a watercourse, lake or spring—the land is so situated that any point on its boundary nearest to the affected land is within a radius of 8 km measured from a point on the affected land nearest to the land; or
- (d) if the application is about an artesian bore or a subartesian bore—the land is so situated that any point on its boundary nearest to the affected land is within a radius of 0.5 km measured from a point on the affected land nearest to that land.

(11) A distance specified in subsection (10)(a), (b), (c) or (d) by reference to a radius is a minimum distance and the chief executive may, generally or in a particular case, extend a distance so specified.

(12) In the case of an application for a licence in respect of works specified in section 38(1)(j) or (k), the persons eligible to object to the granting of the application are—

- (a) owners or occupiers of land;
- (b) associations or bodies, corporate or unincorporate, representative of persons;

who consider that their rights or interests will or may be affected by the granting of the application.

(13) A right under this section to lodge an objection does not arise unless the application for a licence is one that is required to be advertised in accordance with subsection (6) and has been so advertised.

Inquiry by chief executive and grant or refusal of application

43.(1) Upon an application under section 42, the chief executive must cause inquiry to be made into anything the chief executive considers appropriate, including any of the following that are relevant to the application—

- (a) if the application relates to water other than underground water—
 - (i) the availability and sufficiency of water to supply the requirements of—
 - (A) riparian owners; and
 - (B) licensees; and
 - (C) permittees; and
 - (D) the applicant; and
 - (E) persons specified in section 4(a);
 - (ii) the effect that the granting of the application will have or is likely to have on entitlements of riparian owners, licensees and permittees;
- (b) if the application relates to underground water—
 - (i) the availability and sufficiency of water to satisfy the requirements of—
 - (A) licensees; and
 - (B) the applicant;
 - (ii) the effect that the granting of the application will have or is likely to have on the requirements of owners of neighbouring land and licensees;
- (c) if the application relates to an existing or proposed referable dam—
 - (i) the sufficiency of the dam to prevent the uncontrolled loss or release of the water or hazardous waste contained by the dam; and
 - (ii) the risk to life or property that would or could be endangered by the uncontrolled loss or release of water or hazardous waste caused by the collapse or failure of the referable dam;

and

(iii) the matters mentioned in paragraph (a) or (b), if either paragraph applies to the application.

(d) if the application is for a driller's licence—the suitability of the applicant to hold a driller's licence of the type stated in the application, including, for example, the applicant's skills in different aquifer systems and knowledge and proficiency in different drilling techniques.

(1A) If an application relates to an existing or proposed referable dam situated, or to be situated, neither on a watercourse, lake or spring nor in a designated area, the chief executive need only cause inquiry to be made into—

- (a) the matters mentioned in subsection (1)(c)(i) and (ii); and
- (b) anything else the chief executive considers relevant, excluding the matters mentioned in subsection (1)(a) and (b).

(2) Upon the inquiry, the chief executive subject to this section—

- (a) may grant the application—
 - (i) absolutely; or
 - (ii) subject to any modifications or variations determined by the chief executive in a particular case; or
- (b) may refuse the application.

(3) If the chief executive grants the application, the chief executive is to issue to the applicant a licence in respect of—

- (a) so much of the land, watercourse, lake, spring or water storage specified in the application;
- (b) the use of so much of the quantity of water applied for;
- (c) the referable dam specified in the application modified or varied;
- (d) the works specified in the application modified or varied;
- (e) the type of driller's licence stated in the application modified or varied;

as the chief executive thinks fit.

(4) For the purposes of an inquiry under this section, the chief executive or a person duly appointed by the chief executive in that behalf has and may exercise all the powers, authorities, protection and jurisdiction of the chairperson of a commission under the *Commissions of Inquiry Act 1950* except those by that Act reserved to a chairperson of a commission who is a judge of the Supreme Court.

Certain decisions of the chief executive to be published in newspapers

43A.(1) This section applies to a decision, made by the chief executive under section 43, about which a person may, under section 51,⁵ appeal to the Land Court, other than a decision about constructing or using an artesian or subartesian bore.

(2) Notice of each decision must be published in a newspaper circulating generally throughout the locality to which the application, about which the decision was made, relates.

(3) The notice must state if the application was granted absolutely, granted subject to modifications or variations or refused.

Notice of decision about constructing or using artesian or subartesian bores

43B.(1) This section applies to a decision, made by the chief executive under section 43, about constructing or using an artesian or subartesian bore.

(2) The chief executive must promptly give notice of the chief executive's decision about the application to the applicant.

(3) If the decision is other than a decision to grant the application absolutely, the notice must also state—

- (a) the reasons for the decision; and
- (b) that the applicant may, under section 51, appeal against the

⁵ Section 51 (Appeal to Land Court) states the persons who may appeal against decisions of the chief executive to the Land Court, the process for making the appeal, the way the matter must be heard and determined by the Land Court and other matters.

decision to the Land Court within 42 days after the day the notice is received by the applicant.

(4) Also, if there is another person who is, or may be, a dissatisfied person under section 51(1) in relation to the decision, the chief executive must promptly give notice of the chief executive's decision, and the reasons for the decision, to the person.

Licences

44.(1) A licence under this Act—

- (a) is subject to the terms decided by the chief executive and endorsed on, or attached to, the licence, including, for example, payment of any fee, charge or other amount the licensee is required to pay under this Act; and
- (b) without limiting the generality of paragraph (a), may be subject to any of the following terms determined by the chief executive generally or in a particular case, endorsed thereon or attached thereto namely—
 - (i) the licensee must construct the works with respect to which the application is granted by a specified date or within a period, not less than 12 months after the date of issue of the licence, determined by the chief executive;
 - (ii) the licensee must give to the chief executive in writing 30 days notice of the licensee's intention to commence construction of the works;
 - (iii) the licensee must modify works in existence at the date on which the application is granted, within a period determined by the chief executive;
 - (iv) during the currency of the licence, the licensee must maintain to the satisfaction of the chief executive works constructed or modified in accordance with subparagraph (i) or (iii);
 - (v) the licensee in the case of works to enable the taking or use of water, must upon their construction beneficially use the water that the licensee is entitled to take or use under the licence to the satisfaction of the chief executive;

Water Resources Act 1989

- (vi) the licensee, in the case of a referable dam, must lodge with the chief executive a security deposit or enter into a bond for a period determined by the chief executive with an insurer approved by the chief executive or make such other arrangements satisfactory to the chief executive in such amount as the chief executive determines to ensure—
 - (A) compliance by the licensee with the terms of the licence;
 - (B) rectification, to the satisfaction of the chief executive, of damage done to the extent and in respect of any area in the locality of the referable dam in question the chief executive determines;
 - (vii) the chief executive may at any time require the licensee to give notice to the chief executive of the licensee's intention to take water to which the licensee is entitled under the licensee's licence and including information as to the quantity of water required and the period during which the quantity is to be taken;
 - (viii) the licensee in a case to which subparagraph (vii) applies must notify the chief executive forthwith of any variation in those requirements; and
- (ba) without limiting paragraph (a), may include—
- (i) terms that are designed to protect the access (including future access) of persons other than the licensee to water, including because of the combined effect of the licence and other licences held by the licensee; and
 - (ii) terms that have regard to other licences held by the licensee, including, for example, terms that apply having regard to the combined effect of the licence and the other licences; and
- (c) where applicable, entitles the licensee to the grant of a nominal allocation; and
 - (d) operates for the benefit of the owner for the time being of the land on which the works the subject of the application are constructed or proposed to be constructed or of the person whose proposal it is; and
 - (e) remains in force, unless sooner cancelled, revoked or suspended,

for a period determined by the chief executive in a particular case or class of cases, specified therein; and

- (g) must authorise the holder, during the period of the licence, to do all acts and things necessary for and incidental to the purposes for which the licence is granted and issued; and
- (h) must, subject to this Act, entitle the holder during the period of the licence to the quiet enjoyment and sole occupation of works constructed under the authority thereof as against all other persons but so far only as those works are constructed or maintained on the land occupied by the holder or the subject of an arrangement or an authority made or granted under section 39; and
- (i) must not prejudice or affect in any way the operation of any other Act or law that applies to works the subject of the licence except that for the purposes of ensuring the safety of a referable dam and the protection of life or property that would or could be endangered by the uncontrolled loss or release of water or hazardous waste caused by the collapse or failure of a referable dam, this Act and the terms of the licence prevail.

(2) The chief executive, of the chief executive's own motion or upon application duly made, may, during the currency of a licence, amend, modify, vary or revoke a term to which that licence is subject or add thereto a further term.

(3) The powers conferred on the chief executive by subsection (2) do not include the power—

- (a) to increase of the chief executive's own motion a benefit to which the licensee is entitled under the licensee's licence; or
- (b) to grant of the chief executive's own motion to a licensee a further benefit.

(4) Sections 42 and 43 apply and extend to an application by a licensee under subsection (2) that relates to or includes an increase of a benefit to which the licensee is entitled under the licensee's licence or a further benefit.

(5) The chief executive, at the beginning of a period determined by the chief executive in each year or from time to time during that period may, in respect of each nominal allocation to which a licensee has become entitled

under the licensee's licence determine an announced allocation and may alter, amend or vary an announced allocation so determined.

Amended licence

45.(1) A licensee, during the currency of the licensee's licence, may make application for an amended licence providing for alterations in or extensions to the works (including increased entitlements to water thereunder) the subject of the licence as specified in the application.

(2) An application under this section must be dealt with in the same manner as if it were an application for a licence in the first instance under section 42.

Renewal of licence

46.(1) A licensee may apply for renewal of the licence.

(1A) An application for the renewal of a licence must be in writing signed by the applicant, accompanied by the prescribed fee (if any) and furnished to the chief executive on or before the date of expiration of the licence or, at the discretion of the chief executive in a particular case, within 4 months after that date.

(1B) The chief executive may—

- (a) grant the application in a way mentioned in subsection (3)(a)(i) or (ii); or
- (b) refuse to grant the application.

(2) A licence in respect of which an application for renewal has been furnished to the chief executive remains in force until the applicant has been notified of the chief executive's decision on the application or where the application is refused and the applicant has appealed against that decision until the date on which notification of the final outcome of the appeal has been provided to the applicant.

(3) The chief executive, upon consideration of an application for renewal of a licence, must notify the applicant in writing that—

- (a) the application is granted—
 - (i) absolutely;

- (ii) subject to variation of the licence by—
 - (A) the amendment, modification or revocation of a term to which it is subject or the addition of a further term; or
 - (B) the reduction of the amount of water that the holder thereof is entitled to take and use under the licence; or
 - (C) the reduction of the area of land to which the licence applies; or
 - (D) a combination of 2 or more of those variations specified in sub-subparagraphs (B) and (C);
- (b) the application is refused.

(4) The chief executive, upon the renewal of a licence, must issue to the licensee a renewal with respect to that licence.

(5) The terms to which the renewal of a licence has been made subject are to be endorsed on or attached to the renewal.

Transferring licences

47.(1) On application, the chief executive may transfer a licence from an existing holder to someone else to take into account a change in ownership of land to which the licence relates.

(2) The application must be in a form approved by the chief executive.

(3) The application must be accompanied by the fee that may be prescribed under a regulation.

(4) The chief executive may amend the terms of a licence for the purpose of its transfer.

Surrender of licence

48.(1) Subject to this Act, a licensee, during the currency of a licence, may surrender the licence by furnishing to the chief executive a notice of surrender by signed notice.

(2) A surrender under this section—

- (a) subject to paragraph (b) takes effect on and from the date on

which the notice is received by the chief executive;

- (b) may be made subject to a condition that the licensee must remove, to the satisfaction of the chief executive and prior to a date determined by the chief executive and notified to that licensee, all works constructed or used under the authority of the licence and in that event will take effect on and from the date on which notification has been given by the chief executive that the works have been removed to the chief executive's satisfaction;
- (c) does not derogate from or affect in any way a duty with respect to works imposed on the licensee by or under this Act prior to the surrender of the licence.

Holder of driller's licence to keep certain information about boreholes and give it to the chief executive

48A.(1) The holder of a driller's licence must keep information prescribed under a regulation about the boreholes drilled by the holder.

(2) The holder must keep the information about a borehole as the driller is drilling the borehole.

(3) Subject to subsection (4), the holder must give to the chief executive a copy of the information about a borehole within 60 days of completing the drilling of the borehole.

(4) However, a regulation may prescribe an area in relation to which a holder of a driller's licence need not give to the chief executive a copy of the information about boreholes drilled within the area.

(5) The chief executive may issue a document containing forms suitable for use for keeping the information mentioned in subsection (1) to each holder of a driller's licence and, if the chief executive issues a document to a holder, the holder must use the forms.

Effect of disposal of subdivided land

49.(1) This section applies if—

- (a) a licence, authorising water to be taken, is in force for land; and
- (b) the land is subdivided, whether before or after the issue of the

licence; and

- (c) a separate parcel of land comprising the subdivision is disposed of while the licence is in force.

(2) On the disposal, the licence ceases to exist and section 50(3) and (5) apply as if the licence had been cancelled or revoked under that section.

(3) However, if a parcel of land not exceeding in area 1 ha is excised from land referred to in subsection (1) and—

- (a) the land remaining that is capable of being irrigated exceeds the area authorised to be irrigated under the licence;
- (b) in the opinion of the chief executive, the quantity of water that would be taken for irrigation of the land remaining that is capable of being irrigated bears a reasonable relationship to the quantity of water allocated under the licence;

the licence remains in force unless it is sooner cancelled, revoked or suspended or unless the chief executive, in the exercise of the chief executive's discretion in a particular case, otherwise determines.

Amendment, variation, cancellation, revocation or suspension of licence

50.(1) The chief executive, where the chief executive is satisfied or believes on reasonable grounds that—

- (a) a licence was granted, issued or renewed in error or in consequence of a false or fraudulent document, statement or representation;
- (b) there has been since the date of grant or renewal of the licence a change in circumstances necessitating amendment of a term of that licence or the imposition of a further term;
- (c) the licensee—
 - (i) has been convicted of an offence against this Act in relation to the licence in question;
 - (ii) has contravened or failed to comply with a term of the licensee's licence or of an arrangement or authority under section 39 given in relation to that licence;

- (iii) has not complied with a requirement made by the chief executive, under this Act, about the works the subject of the licence;

may by notice in writing given to the licensee call upon the licensee to show cause within the time specified in the notice, why the licence should not be amended, varied, cancelled, revoked or suspended.

(2) Where the licensee fails to show sufficient cause, the chief executive—

- (a) may amend, vary, cancel or revoke;
- (b) may suspend for a period not longer than the period stated in the notice; as the chief executive thinks fit not exceeding in any case the balance of the term thereof;

the licence in question.

(3) An amendment, a variation or a cancellation, revocation or suspension of a licence under this section does not confer upon the licensee a right to compensation.

(4) Where a licence is suspended, it is of no force or effect during the period of suspension and thereafter remains in force only for the period during which it would have remained in force but for the suspension.

(5) Where a licence is cancelled or revoked, it is of no force or effect on and from the date of cancellation or revocation.

Procedure for internal review of decision about driller's licences

50A.(1) This section applies to each of the following decisions (an “**original decision**”) if the decision is made by a person other than the chief executive personally—

- (a) a decision under section 43(2) in relation to a driller's licence, other than a decision to grant the application absolutely;
- (b) a decision under section 50(2) to amend, vary, cancel, revoke or suspend a driller's licence.⁶

⁶ Sections 43 (Inquiry by chief executive and grant or refusal of application) and 50 (Amendment, variation, cancellation, revocation or suspension of licence)

(2) Each of the following (an “**affected person**”) may apply for a review of the original decision—

- (a) the applicant for a driller’s licence;
- (b) a holder of a driller’s licence, or person who was a holder of a driller’s licence, affected by a decision under section 50(2).

(3) The application must—

- (a) be made in the approved form to the chief executive within—
 - (i) 14 days after the day on which the affected person receives notice of the original decision; or
 - (ii) the longer period the chief executive in special circumstances allows; and
- (b) be supported by enough information to enable the chief executive to decide the application.

(4) The chief executive must, within 14 days after receiving the application—

- (a) review the original decision; and
- (b) make a decision (the “**review decision**”) to—
 - (i) confirm or revoke the original decision; or
 - (ii) vary the original decision in a way the chief executive considers appropriate.

(5) The application does not stay the original decision.

(6) If the application is not dealt with by the chief executive personally, it must not be dealt with by—

- (a) the person who made the original decision; or
- (b) a person in a less senior office than the person who made the original decision.

(7) Within 14 days after making the review decision, the chief executive must give written notice of the decision to the applicant.

(8) The notice must include the reasons for the review decision.

(9) If the chief executive does not comply with subsection (7), the chief executive is taken to have made a decision confirming the original decision.

(10) Subsection (6) applies despite the *Acts Interpretation Act 1954*, section 27A.⁷

Stay of operation of original decisions

50B.(1) If an application is made under section 50A for review of an original decision, the applicant may immediately apply for a stay of the decision to a Magistrates Court.

(2) The court may stay the decision to secure the effectiveness of the review.

(3) A stay may be given on conditions the court considers appropriate and has effect for the period stated by the court.

(4) The period of a stay must not extend past the time when the chief executive reviews the decision.

Appeal to Land Court

51.(1) A dissatisfied person may appeal to the Land Court against a decision of the chief executive with respect to—

- (a) an application for—
 - (i) a licence;
 - (ii) the renewal of a licence;
 - (iii) the transfer of a licence;
- (b) an objection duly lodged to an application for a licence;
- (c) any amendment, variation, cancellation, revocation or suspension of a licence;
- (d) an application for an authority under section 39(4) to construct or use works on intervening land.

(2) A person who had a right to object, and objected, under section 84⁸

⁷ *Acts Interpretation Act 1954*, section 27A (Delegation of powers)

⁸ Section 84 (Persons who are eligible to give objections) was omitted by 2000 No. 34.

about a notice of intention to sell or under section 87⁹ about an amendment of the notice may, within 42 days after the subsequent sale proposal is last published under section 88,¹⁰ appeal to the Land Court about the proposal.

(3) Notwithstanding subsection (1), an appeal does not lie from a decision of the chief executive with respect to—

- (a) an application to which section 42(6)(a) to (d) refers;
- (b) an application for a licence for works specified under a regulation under section 104 as acceptable proposed works;
- (c) a referable dam, that is about the safety of the referable dam and the protection of life or property that would or could be endangered by the uncontrolled loss or release of water or hazardous waste caused by the collapse or failure of the referable dam;
- (d) an objection to an application for a licence to construct or use an artesian bore or a subartesian bore;
- (e) a licence granted and issued under section 121;
- (f) a driller's licence.

(4) An appeal under this section is instituted by filing a notice of appeal in the registry of the Land Court within 42 days after—

- (a) if the decision relates to an application about constructing or using an artesian or subartesian bore—the day the notice under section 43B is received by the applicant; or
- (b) in any other case—the day notification of the decision is first published in the newspaper.

(5) The notice of appeal must state the grounds upon which the appellant intends to rely and the appellant is not entitled to raise on the appeal a ground not stated in the notice.

(6) The appellant must, within 14 days after filing it, serve on the chief executive a copy of the notice of appeal.

(7) The Land Court must hear and determine the appeal and may

⁹ Section 87 (Objections to amendment) was omitted by 2000 No. 34.

¹⁰ Section 88 (Steps to be taken after inquiry) was omitted by 2000 No. 34.

confirm, vary or revoke the decision of the chief executive the subject of the appeal.

(8) So far as they may be made applicable, the rules and practice of the Land Court apply to an appeal under this section and the court may, where it considers it necessary to do so in a particular case, give directions as to the procedure, practice and other matters and things with respect to the appeal.

(9) The burden of proof of a ground stated in the notice of appeal lies on the appellant.

(11) The decision on an appeal under this section is to be certified by the registrar of the Land Court and a copy thereof furnished to the appellant and the chief executive.

(12) The parties to the appeal must give effect to the decision.

(13) In subsection (1)—

“dissatisfied person” means—

- (a) for a decision about an application for a licence or for the renewal of a licence—the applicant; or
- (b) for a decision about the amendment, variation, cancellation, revocation or suspension of a licence—the person who was the licensee when the decision was made; or
- (c) for a decision about an application for the transfer of a licence—the transferor and the transferee; or
- (d) for a decision about an application under section 39¹¹—the owner of intervening land mentioned in section 39(4); or
- (e) a person who, on or before the date specified in a notice under section 42(8),¹² had a right to object, and objected, to an application; or
- (f) a person who is the purchaser of land from another person who, on or before the date specified in a notice under section 42(8), had a right to object to an application, but only if the purchase was settled after the date specified in the notice.

¹¹ Section 39 (Rights of non-riparian owner to licence)

¹² Section 42 (Application for licence)

Application for reduction in water entitlement or area of land

52.(1) A licensee, at any time during the currency of the licensee's licence, may make application in writing signed by the licensee to the chief executive for a reduction of—

- (a) the quantity of water the licensee is entitled to take and use under the licence;
- (b) the area of land the subject of the licence at the material time.

(2) The application must specify details of the reduction sought.

(3) The chief executive must notify the licensee of the chief executive's decision on the application and where the chief executive grants the reduction, must forward to the licensee an amended licence.

Requirement as to licensing and employment of drillers

53.(1) A person who operates as a driller with respect to an artesian bore or a subartesian bore, not being the holder of a driller's licence that authorises the drilling operation, commits an offence against this Act.

Maximum penalty—200 penalty units.

(2) A person who employs as a driller a person who is not the holder of a driller's licence for the drilling operations for which the person is employed as a driller, commits an offence against this Act.

Maximum penalty for subsection (2)—200 penalty units.

Licence in substitution

54. Where the chief executive—

- (a) amends a licence under section 45, 50 or 52;
- (b) renews a licence under section 46;
- (c) transfers a licence under section 47;

the amended, renewed or, as the case may be, transferred licence is in substitution for the licence that the chief executive has amended under section 50 or in respect of which the application under section 45, 46, 47 or 52 is made.

Duplicate or copy of lost or destroyed licence, permit or authority

55. The chief executive, upon application duly made in that behalf, payment of the prescribed fee and proof to the chief executive's satisfaction that a licence, permit or authority under this Act has been lost or destroyed, may issue to a licensee or, as the case may be, holder of the permit or authority, a duplicate or copy of that licence, permit or authority.

Division 3—Permits**Power to issue permit to government department, other person or body to take water**

56.(1) The chief executive, upon application in writing by or on behalf of—

- (a) the chief executive of a department of the government of the State;
- (b) a person or a body other than a department of the government of the State, or a person or body referred to in section 57;

may grant that department, person or body a permit in writing authorising the taking of water from a watercourse, lake or spring and, in the case of a department, underground water.

(2) A permit under subsection (1) is subject to terms determined by the chief executive generally or in a particular case including, without limiting the generality of this provision, a term—

- (a) in the case of a permit issued to a department of the government—that it remain in force for a specified period determined by the chief executive and that water so taken must be used solely for a purpose of or in connection with the operations of that department;
- (b) in the case of a permit issued to a person or a body other than a department of the government—that it remain in force only for a period not exceeding in any case 1 year and that water so taken must be used solely for a purpose specified in the permit.

Power to issue permit to construct or use works in the exercise of a right to use water under s 36

57.(1) An owner or occupier of land who uses water in a watercourse, lake or spring, in accordance with section 36 must, where the owner or occupier desires to construct or use works to take water in connection with that use, make a signed written application for a permit.

(2) The application must be accompanied by the prescribed fee (if any) and furnished to the chief executive and must contain particulars of the works proposed to be constructed or to be used.

(3) The chief executive must consider each application received by the chief executive and may—

- (a) grant;
- (b) in a case where the chief executive is satisfied that there is available for use by the applicant an alternative water supply—refuse;

the application.

(4) The chief executive must notify the applicant of the chief executive's decision upon the application and where the chief executive grants the permit, must issue a permit in writing.

(5) A permit under subsection (3)—

- (a) is subject to this Act and any terms determined by the chief executive, endorsed thereon or attached thereto;
- (b) may authorise the construction of the proposed works or the use of the works in question in respect of which the application is made either absolutely or subject to any amendment, variation or modification determined by the chief executive;
- (c) may, notwithstanding section 56(2)(b), be issued for a period exceeding 90 days.

(6) A person, other than a permittee under this section, who constructs or uses works to which this section applies, commits an offence against this Act.

Maximum penalty for subsection (6)—50 penalty units.

Application for and issue of permit in respect of quarry material

58.(1) An application for a permit to take, get, remove or otherwise interfere with—

- (a) controlled quarry material;
- (b) quarry material other than controlled quarry material;

in or from a watercourse or lake must be—

- (c) made by the applicant in writing signed by the applicant and accompanied by the prescribed fee; and
- (d) furnished to the chief executive.

(2) However, an application under subsection (1) about quarry material, other than controlled quarry material, may only be made by—

- (a) the owner of the land through or past which the watercourse flows or on which part of the lake is situated; or
- (b) a person who makes the application with the written consent of the owner and includes a copy of the consent in the application.

(3) The chief executive may, by written notice to the applicant, require the applicant to give to the chief executive further documents, information or particulars about the proposed operation as stated in the notice.

(4) The chief executive must consider each application made under subsection (1) and may grant, absolutely or with any modifications or variations the chief executive thinks fit, or refuse the application.

(5) Where the application relates to controlled quarry material that is in or on a watercourse or lake in or on a Crown holding, the chief executive must have regard to section 59.

(6) An application under this section relating to controlled quarry material that is in or on that part of a watercourse or lake that flows through or past or is situated in or on land the subject of a mining tenement, licence or other authority under the *Mineral Resources Act 1989* or any other Act relating to mining must not be granted without the prior consent of the Minister responsible at the material time for the administration of those Acts or any of them.

(7) Where the chief executive grants the application, the chief executive must issue a permit authorising the applicant to take, get, remove or

otherwise interfere with the quarry material specified in the permit from or in the watercourse or lake, so specified.

(8) A decision of the chief executive under subsection (4) is final and not further justiciable.

(9) A permit under subsection (7)—

- (a) is subject to terms determined by the chief executive endorsed on or attached to the permit including a term that the permittee furnish to the chief executive in writing within 7 days after the end of each month a return of all controlled quarry material taken, got or removed by the permittee, during that month;
- (b) remains in force unless sooner cancelled, revoked or suspended for a period, not exceeding in any case 3 years, determined by the chief executive;
- (c) authorises the permittee during the period for which it is in force to do all acts and things necessary for or incidental to the purposes for which it is issued;
- (d) may be subject to a term that the permittee pay to the chief executive an amount determined by the chief executive by way of contribution towards the costs of research and investigations rendered necessary by the application.

(10) Without limiting the generality of subsection (9)(a) or (d), a permit may be subject to a term that the permittee—

- (a) lodge with the chief executive a security deposit; or
- (b) enter into a bond with an insurer approved by the chief executive; or
- (c) make other arrangements satisfactory to the chief executive;

in an amount determined by the chief executive to ensure—

- (d) compliance by the permittee in every respect with the terms to which the permit is subject;
- (e) reinstatement of the watercourse or lake to a situation satisfactory to the chief executive;
- (f) rectification to the satisfaction of the chief executive to the extent and for the distance determined by the chief executive prior to the

issue of the permit of damage done to the watercourse or lake by the operations authorised by the permit or caused upstream or downstream of the locality in respect of which the permit is issued.

(11) A security deposit must be retained and a bond or other arrangement entered into under subsection (10) must continue in force until all matters and things specified in subsection (10)(d) to (f) are complied with, reinstated or rectified to the satisfaction of the chief executive.

(12) The chief executive, of the chief executive's own motion or upon application duly made in that behalf, may, during the currency of a permit, modify, vary or revoke a term to which a permit is subject or add a further term.

(13) Where there is an inconsistency between a provision of a regulation, rule, local law or other subordinate legislation of a local government with respect to an extractive industry and a term of a permit under this section that relates directly to the actual removal of quarry material from a watercourse or lake, then to the extent of that inconsistency, that term prevails.

(14) Except to the extent set forth in subsection (13), the grant of a permit under this section does not release a permittee from compliance by the permittee with local laws of a local government that relate to an extractive industry or to town planning.

Procedure before dealing with controlled quarry material on Crown holding

59.(1) A person (whether or not the lessee thereof) who desires to take, get or remove controlled quarry material that is in a watercourse or lake in or on a Crown holding must make application as prescribed to the chief executive for a permit.

(2) The application must be in writing accompanied by the prescribed fee and, where the applicant is a person other than the lessee of the Crown holding in question and successful negotiations have been entered into by the applicant and the lessee, written evidence that the lessee offers no objection to the proposal.

(3) Upon receipt of an application under subsection (1) and, where

applicable, the written evidence in support, the chief executive must consider the matter and where the chief executive is in agreement with the proposal contained in the application with respect to the material in question, may issue a permit to the applicant subject to terms determined by the chief executive including where applicable the terms agreed upon by and between the applicant and the lessee.

(4) Where the applicant is a person other than the lessee of the Crown holding in question and written evidence as to agreement between the applicant and the lessee with respect to the proposal relating to the material in question has not been furnished with the application, the chief executive must give to the lessee in question a notice in writing of the proposal.

(5) A notice in writing under subsection (4) must—

- (a) include or be accompanied by a diagram, description or other sufficient identification of the land comprised in the Crown holding in question or the part whereon or wherein the controlled quarry material the subject of the proposal is situated;
- (b) require the lessee to lodge with the chief executive in writing, within the time specified in the notice being not less than 14 days from the date thereof, objections that the lessee may have to the proposal.

(6) Subsections (4) and (5) do not apply if the controlled quarry material is required—

- (a) for the construction or altering of roads, by or for—
 - (i) a local government; or
 - (ii) the chief executive of the department in which the *Transport Infrastructure Act 1994* is administered; or
- (b) by or for Queensland Rail for the construction or maintenance of a railway or other transportation system.

(7) Where objections are not lodged in accordance with subsection (5), the chief executive may proceed with the application notwithstanding that the lessee concerned has not consented thereto.

(8) Where objections are lodged in accordance with subsection (5), the chief executive must submit to the Minister all objections received by the chief executive together with the chief executive's report and

recommendations on the proposal and all objections.

(9) The Minister, upon receipt by the Minister of the report and recommendations of the chief executive must consider the matter and may determine whether or not the material in question should be dealt with in accordance with the proposal.

(10) Where the Minister determines that the material in question should be so dealt with, the Minister may require that the proposal be implemented subject to terms as determined by the Minister.

(11) Where the Minister determines that the material in question should not be so dealt with, the Minister must notify the chief executive accordingly and the chief executive must then advise all persons having an interest in the matter.

(12) The Minister's determination under subsection (10) or (11) is final and effect must be given to it.

Rights to enter and remain on Crown land or holding under permit

60.(1) A permit granted under this Act with respect to controlled quarry material in a watercourse or lake in or on Crown land or land comprised in a Crown holding confers upon the permittee during the period it remains in force, subject to this Act and the terms contained in or endorsed on the permit—

- (a) the right to enter and re-enter, with employees, agents, assistants, plant, vehicles and equipment as necessary, Crown land or a Crown holding into, over, upon or out of which it is necessary to pass for the purpose of exercising the right;
- (b) the right to remain on the land in question and do therein or thereon all acts and things and carry out all operations necessary to effect the purposes for or in respect of which the permit is granted.

(2) The lessee or holder of land, other than the part thereof in respect of which the permit is granted, may give to the permittee directions regarding the route or track by or over which the permittee must pass for the purpose of exercising the rights conferred on the permittee under subsection (1) and the permittee must comply in all respects with every direction given until the direction is altered or cancelled by a determination of the Minister made

under subsection (6).

(3) Where a dispute arises as to the necessity of entry upon land for the purpose of giving effect to this section or as to the route or track by or over which the right of entry is to be exercised, the parties must give notice in writing to the chief executive and refer the dispute to the chief executive.

(4) The chief executive, upon the reference, must inquire into the matters relating to the dispute, and must make and submit to the Minister the chief executive's report and recommendations thereon.

(5) Upon receipt of the report and recommendations in accordance with subsection (4), the Minister may determine whether or not entry upon the land in question is necessary for the purposes of giving effect to this section and, where the Minister determines that entry upon the land in question is necessary or, if the matter of necessity is not in dispute, the Minister may then proceed to determine matters in connection with the route or track over which the right of entry may be exercised.

(6) Where the Minister determines in accordance with subsection (5) that entry upon the land in question and a route or track over which entry may be effected are necessary, the Minister may—

- (a) determine the route or track over which entry may be effected;
- (b) require that entry and use of the route or track be made subject to terms as the Minister determines.

(7) The Minister's determination on a question submitted to the Minister under this section is final and conclusive and effect is to be given to it by the parties to the dispute.

(8) Subject to this Act, a permittee is liable at law for any injury, loss or damage done to land or crops, cultivations or improvements of any kind thereon, the property of any person, arising out of any act, matter or thing done or any step taken by that permittee or the permittee's employees or agents or any of them in the exercise of a right conferred on the permittee by this section.

Sale of controlled quarry material

61.(1) The chief executive may, in accordance with this Act sell, on behalf of the Crown, controlled quarry material.

(2) A sale pursuant to this section—

- (a) may be by auction, or after tender at the price the chief executive accepts;
- (b) is subject to terms that the purchaser—
 - (i) pays the price determined by auction or accepted after tender; and
 - (ii) applies for and obtains a permit under this Act; and
 - (iii) complies in all respects with the terms of that permit.

Sale of controlled quarry materials to fossicker

62.(1) This section applies to a person who collects controlled quarry materials while fossicking under a licence under the *Fossicking Act 1994*.

(2) If the person collects not more than 1 m³ of controlled quarry materials in a year, the State is taken to have sold the controlled quarry materials to the person at no cost.

(3) No royalty is payable for controlled quarry materials mentioned in subsection (2).

Royalty or price

63.(1) Subject to this Act, royalty at the prescribed rates or, as the case may be, the price determined or accepted under section 61 is payable to the Crown in the manner and at the times prescribed with respect to controlled quarry material taken, got or removed by a person under the authority of this Act.

(2) Royalty or the price payable under this Act and not paid may be recovered—

- (a) by way of a summary proceeding under the *Justices Act 1886* on complaint by the chief executive or a person authorised in writing by the chief executive in that behalf; or
- (b) by action as for a debt due to the Crown in a court of competent jurisdiction brought in the name of the chief executive or a person authorised in writing by the chief executive in that behalf.

(3) A person who fails to pay royalty or the price determined or accepted under section 61 that the person is liable to pay under this Act commits an offence against this Act.

Maximum penalty—50 penalty units.

(4) A person who is convicted of an offence against subsection (3) is, in addition to the penalty that may be imposed upon the person for that offence, liable to pay to the chief executive the amount of the royalty or price determined or accepted in respect of which the person is convicted.

Amendment, variation, cancellation, revocation or suspension of permit

64.(1) The chief executive may—

- (a) amend or vary;
- (b) cancel or revoke;
- (c) suspend for a period as the chief executive determines not exceeding in any case the balance of the term thereof;

a permit under this Act where the chief executive is satisfied or believes on reasonable grounds that—

- (d) the permit was granted, issued or renewed in error or in consequence of a false or fraudulent document, statement or representation;
- (e) the holder of the permit—
 - (i) is convicted of an offence against this Act;
 - (ii) has contravened or failed to comply with a term thereof;
 - (iii) in the case of a permit to take, get, remove or otherwise interfere with quarry material—the circumstances require the permittee to cease to take, get, remove or otherwise interfere with quarry material from or in the watercourse or lake specified in the permit and that quarry material may be obtained from another source.

(2) An amendment, variation, cancellation, revocation or suspension of a permit under this section does not confer upon the holder thereof a right to compensation.

(3) Where a permit is suspended, it is of no force or effect during the period of suspension and thereafter remains in force only for the period during which it would have remained in force but for the suspension.

(4) Where a permit is cancelled or revoked, it is of no force or effect on and from the date of that cancellation or revocation.

(5) Where a permit is amended or varied, notification and particulars thereof must be given to the permittee and the amendment or variation takes effect on and from the date specified in the notification.

Notice to stop unauthorised quarrying activities etc.

64A.(1) This section applies if—

- (a) it appears to the chief executive that a person is engaging in, or is about to engage in, taking, getting, removing or otherwise interfering with quarry material in or from a watercourse or lake, including controlled quarry material; and
- (b) a permit under this division is required, but has not been obtained, for the activity.

(2) The chief executive may give written notice to the person requiring the person to stop, or not to engage in, the activity.

(3) The person must not contravene a notice under subsection (2).

Maximum penalty—200 penalty units.

(4) A penalty may be imposed under this section in relation to an activity even if—

- (a) a penalty is imposed under section 223¹³ in relation to the activity; or
- (b) an enforcement injunction is obtained under part 11, division 1B.¹⁴

¹³ Section 233 (Unlawful construction of works or interference with works)

¹⁴ Under part 11, division 1B an injunction may be obtained if a person contravenes a notice under section 76(1).

Division 4—Limitation on taking and use of water—unauthorised works

Limitation of times during which water may be taken under licence or permit

65.(1) The chief executive—

- (a) by a notice published in a newspaper circulating in the locality in question; or
- (b) where the circumstances in a particular case so warrant—by a notice in writing given by the chief executive;

may determine and notify—

- (c) the times during which water may be taken by a licensee or permittee during a period of time and for a purpose specified therein;
- (d) the quantity of water measured or estimated that may be taken by a licensee or permittee for a specified purpose during a period of time specified therein;
- (e) the area of land under crop and the type of crop that may be irrigated by a licensee or permittee in a period of time specified therein;

from a watercourse, lake or spring or part thereof or an artesian bore or a subartesian bore situated in a locality declared by regulation under section 31.

(2) A notice pursuant to subsection (1) remains in force for the period of time specified therein or, where no period is so specified, until it is revoked by the chief executive.

(3) A person who—

- (a) takes water or a quantity of water;
- (b) irrigates an area of land or a type of crop;

in contravention of a notice specified in subsection (1) commits an offence against this Act.

Maximum penalty for subsection (3)—200 penalty units.

Offences as to dealing with water

66.(1) A person who, otherwise than under the authority of this Act—

- (a) uses, diverts, appropriates, takes, disposes of, wastes, pollutes, interferes with or obstructs the water or the flow of water in;
- (b) interferes with the bed or banks of;

a watercourse, lake, spring, channel, underground or other source of supply of water commits an offence against this Act.

Maximum penalty—200 penalty units.

(2) For the purposes of subsection (1), but without limiting that subsection, a person interferes with or obstructs water or a flow of water if the person does something that either by itself or in conjunction with other acts (whether or not done by the person), or happenings (whether or not caused by the person), is likely to result in the future in interference with or obstruction of water or the flow of water.

(3) The chief executive or an authorised officer, at any time prior to or instead of taking proceedings for an offence against subsection (1), may give to the offender a notice in writing requiring the offender within the time specified in the notice to discontinue the commission of the offence, to make good any injury, loss or damage caused thereby and to take all steps and do all acts and things as are necessary for those purposes.

(4) The giving of a notice under subsection (3) does not by reason only thereof act as a bar to the taking of proceedings against the person in question for an offence against subsection (1).

(5) A person who fails to comply with a notice given under subsection (3) to the satisfaction of the chief executive commits an offence against this Act.

Maximum penalty—200 penalty units.

(6) The chief executive or an authorised officer, upon conviction for an offence against subsection (1) or failure by a person to comply to the satisfaction of the chief executive with a notice given under subsection (3) within the time specified, may enter upon the land in question with assistants, agents or workers and vehicles, machinery and equipment as necessary for the purpose and may withdraw or otherwise discontinue the obstruction or interference in question, make good any injury, loss or

damage caused thereby and take all steps and do all acts and things necessary for those purposes.

(7) Costs and expenses incurred by the chief executive or an authorised officer in the exercise of any power or authority conferred by subsection (6) may be recovered as a debt due to the Crown by action in a court of competent jurisdiction brought in the name of the chief executive.

Powers of chief executive with respect to unauthorised works

67.(1) Where works have been or are being constructed or used for a purpose of this Act otherwise than under the authority of a licence or permit, the chief executive or an authorised officer may give to the owner of those works or any person responsible for the construction thereof a notice in writing requiring the owner within the time specified in the notice to remove or modify those works or parts thereof as are specified and to take all steps and do all acts and things necessary for that purpose.

(2) A person who fails to comply with a notice given under subsection (1) to the satisfaction of the chief executive within the time specified commits an offence against this Act.

Maximum penalty—

- (a) 400 penalty units, if the person is convicted of an offence of failing to comply with a notice about a referable dam; or
- (b) 200 penalty units, in any other case.

(3) The chief executive or an authorised officer, upon conviction for an offence against subsection (2) or failure by a person to comply with a notice given under that subsection, may enter upon the land in question with assistants, agents or workers and vehicles, machinery and equipment as necessary for the purpose and may remove or modify the works in question or any part thereof specified in the notice, in accordance with the notice, make good any injury, loss or damage caused thereby and take all steps and do all acts and things necessary for those purposes.

(4) Costs and expenses incurred by the chief executive or an authorised officer in the removal or modification of works in the exercise of a power or authority conferred by this section may be recovered as a debt due to the Crown by action in a court of competent jurisdiction brought in the name of the chief executive.

Division 5—Protecting and improving the physical integrity of watercourses

Definitions

68. In this division—

“**destruction**” of vegetation means the removing, clearing, killing, cutting down, felling, ringbarking, digging up, pushing over, pulling over or poisoning of vegetation.

“**fill**” means any kind of material in solid form (whether or not naturally occurring) capable of being deposited at a place.

“**placing of fill**” in a watercourse, lake or spring includes doing something that, in conjunction with other acts (regardless of who does those acts) or happenings (regardless of who, if anyone, causes those happenings) is likely to result in the depositing of fill in the watercourse, lake or spring.

“**vegetation**” means any native plants, and includes any native trees, shrubs, bushes, seedlings, saplings and reshoots.

Division binds the Crown

69.(1) This division binds the Crown.

(2) Nothing in this division renders the Crown liable to be prosecuted for an offence.

(3) However, subsection (2) does not prevent an officer, employee or agent of the Crown from being prosecuted for an offence.

Destruction of vegetation, excavation or placing of fill

70.(1) A person must not—

- (a) destroy vegetation in a watercourse, lake or spring; or
- (b) excavate in a watercourse, lake or spring; or
- (c) place fill in a watercourse, lake or spring;

unless—

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- (d) the destruction, excavation or placing of fill is authorised by a permit under section 71; and
- (e) the person complies with the terms of the permit.

Maximum penalty—400 penalty units.

(2) Subsection (1) does not apply to—

- (a) destruction of vegetation, excavation or placing of fill, in a lake or spring by a person if the lake or spring—
 - (i) is wholly contained in the person's land; and
 - (ii) for a lake—does not have a watercourse flowing into or from the lake, that passes through or past the land owned or occupied by someone else; or
- (b) destruction of vegetation, excavation or the placing of fill—
 - (i) that is permitted or required, or happens as a necessary and unavoidable part of some other activity that is permitted or required, under a licence, permit, notice or other authority under another section of this Act; or
 - (ii) that is permitted or required under the *River Improvement Trust Act 1940*; or
 - (iii) that happens as a necessary and unavoidable part of the extraction of quarry materials or forest products under the *Forestry Act 1959*; or
 - (iv) in a watercourse, lake or spring prescribed under a regulation; or
 - (v) in a watercourse, lake or spring in an area prescribed under a regulation; or
 - (vi) in the case of excavation or the placing of fill—happening within prescribed quantity limits; or
 - (vii) that is permitted under the regulations; or
- (c) destruction of vegetation—
 - (i) that is required under a requisition concerning the reduction

- of fire risk given under the *Fire Service Act 1990*¹⁵ or
- (ii) that is permitted or required to be carried out under the *Electricity Act 1994* to prevent—
 - (A) obstruction of, or interference with, an electric line; or
 - (B) creation of an electrical hazard; or
 - (iii) that happens as a necessary part of works that are carried out under this Act other than under a licence, permit or notice; or
 - (iv) if the vegetation is regrowth, and does not consist of mulga or other fodder trees—following destruction under a permit given under section 71 less than 2 years previously; or
 - (v) if the vegetation has been lawfully planted for woodlot, fodder, agriculture, forestry, garden or horticultural purposes; or
 - (vi) that is necessary—
 - (A) to prevent personal injury or property damage; or
 - (B) to provide for emergency access.

(3) On the conviction of a person for an offence against subsection (1), the court may order the person to pay to the State, in addition to any penalty imposed, the cost of any remedial work or rehabilitation necessary or desirable because of the commission of the offence.

Permit to destroy vegetation or to excavate or fill

71.(1) A person may apply to the chief executive for a permit to do any or all of the following activities—

- (a) destroy vegetation in a watercourse, lake or spring;
- (b) excavate in a watercourse, lake or spring;
- (c) place fill in a watercourse, lake or spring.

(1A) If the applicant is not the owner of land that wholly contains the

¹⁵ Now see *Acts Interpretation Act 1954*, s 14I (References to changed short titles and citations) and *Fire Service Amendment Act 1996*, s 5 (Replacement of s 1 (Short title)).

watercourse, lake or spring or that part of the watercourse, lake or spring where the activity is to take place, the application must include the written consent of all owners of land—

- (a) wholly containing a length of the watercourse in which the activity is to take place, or a part of the lake or spring where the activity is to take place; or
- (b) abutting the watercourse, lake or spring, where the activity is to take place.

(2) The application must—

- (a) be made in writing; and
- (b) specify the proposed activity and the purpose of the activity; and
- (c) be accompanied by the prescribed fee.

(3) The chief executive, by written notice to the applicant, may require the applicant to give to the chief executive further documents, information or particulars about the proposed activity as stated in the notice, including, for example, a statement of environmental effects and, if subsection (1A) applies, copies of the written consents of all the relevant owners.

(4) The chief executive may—

- (a) issue a permit; or
- (b) issue a permit on terms specified in the permit; or
- (c) refuse to issue a permit.

(5) If the chief executive issues a permit on terms specified in the permit, the permit is to be accompanied by a notice stating the reasons for the inclusion of the terms.

(6) The chief executive must give written notice to an applicant of a refusal to issue a permit.

(7) The notice is to state the reasons for the refusal.

(8) The permit is to specify how long it is to stay in force.

(9) No compensation is payable because of—

- (a) a refusal to issue a permit; or
- (b) the terms on which a permit is issued.

Matters to be considered by chief executive

72.(1) In deciding whether to issue a permit, and in deciding the terms to be specified in a permit, the chief executive must first consider—

- (a) the effects of the proposed activity on water quality; and
- (b) the quantity of—
 - (i) vegetation to be destroyed; or
 - (ii) material to be excavated or placed; and
- (c) the type of—
 - (i) vegetation to be destroyed; or
 - (ii) material to be excavated or placed; and
- (d) the seasonal factors that influence the watercourse, lake or spring from time to time; and
- (e) the position in the watercourse, lake or spring of—
 - (i) the vegetation to be destroyed; or
 - (ii) the proposed excavation or placing of fill; and
- (f) the reasons given by the applicant for wishing to carry out the activity; and
- (g) any other matters the chief executive considers to be relevant.

(2) The chief executive must then consider—

- (a) whether, and to what extent, the activity that the permit would allow may have an adverse effect on the physical integrity of the watercourse, lake or spring; and
- (b) the implications of granting the permit for the long-term sustainable use of the river systems of Australia, and especially the cumulative effect of granting the application and likely similar applications.

Cancellation of permit or amendment of terms of permit

73.(1) The chief executive may cancel a permit issued under this division, or amend the terms of a permit, if—

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- (a) the terms of the permit are not being complied with or have been contravened; or
- (b) it becomes evident that any adverse effect of the permitted activity on the physical integrity of the watercourse, lake or spring is greater than was anticipated when the permit was issued.

(2) Before deciding whether a permit should be cancelled or whether the terms of a permit should be amended, the chief executive must issue a written notice calling on the holder of the permit to show cause why—

- (a) the permit should not be cancelled; or
- (b) the terms of the permit should not be amended as set out in the notice.

(3) The notice must—

- (a) specify a day, time and place when and where cause may be shown; and
- (b) be given to the holder of the permit.

(4) In choosing the day, time and place specified in a notice to show cause, the chief executive may take into consideration the degree of urgency involved.

(5) The holder of a permit to whom a notice to show cause is given may be heard on the matter of the cancellation of the permit or the amendment of the terms of the permit.

(6) If, at the day, time and place specified in the notice to show cause, or to which the matter is adjourned, sufficient cause is not shown to the satisfaction of the chief executive, the chief executive may by written order cancel the permit or amend the terms of the permit.

(7) An order cancelling the permit or amending the terms of the permit—

- (a) is to be given to the holder of the permit; and
- (b) takes effect immediately the order is given to the holder of the permit, unless the chief executive specifies a later time in the order.

Suspension of permit in exceptional circumstances

74.(1) In addition to giving to the holder of a permit a written notice under section 73(2), the chief executive may give to the holder a written notice that immediately suspends the permit.

(2) A notice may be given under subsection (1) only if the chief executive is satisfied that exceptional circumstances exist in relation to the permit to cause the chief executive reasonable concern for the physical integrity of a watercourse, lake or spring.

(3) The holder of the permit must comply with a notice under this section.

Maximum penalty—400 penalty units.

(4) A notice given under subsection (1) stays in force until the chief executive has decided whether the permit should be cancelled or whether the terms of the permit should be amended.

Limited nature of permit

75. A person who is issued with a permit under this division to carry out an activity must nevertheless comply with any other Act or law concerning the activity.

Notice to stop, or not engage in, a stated activity

76.(1) This section applies if—

- (a) it appears to the chief executive or an authorised officer that a person is engaging in, or is about to engage in—
 - (i) destroying vegetation in a watercourse, lake or spring; or
 - (ii) excavating in a watercourse, lake or spring; or
 - (iii) placing fill in a watercourse, lake or spring; and
- (b) a permit under this division is required, but has not been obtained, for the activity.

(2) The chief executive or authorised officer may give written notice to the person requiring the person to stop, or not to engage in, the activity stated in the notice.

(3) The person must stop, or not engage in, the activity stated in the notice.

Maximum penalty—200 penalty units.

(4) A penalty may be imposed under subsection (3) for an activity even if—

- (a) a penalty is imposed under section 70 for the activity; or
- (b) an enforcement injunction is obtained under part 11, division 1B.¹⁶

Notice to remove vegetation etc.

77.(1) If—

- (a) there is on any land vegetation, litter, refuse or other matter; and
- (b) it appears to the chief executive or an authorised officer that—
 - (i) the vegetation, litter, refuse or matter—
 - (A) has obstructed, or may obstruct, the flow of water in a watercourse, lake or spring; or
 - (B) has had, or may have, an adverse effect on the physical integrity of a watercourse, lake or spring; or
 - (C) has adversely affected, or may adversely affect, the quality of water in a watercourse, lake or spring; and
 - (ii) it is necessary or desirable that action be taken in relation to the vegetation, litter, refuse or matter to protect or restore the flow of water in the watercourse, lake or spring, the physical integrity of the watercourse, lake or spring or the quality of water in the watercourse, lake or spring;

the chief executive or the authorised officer may give written notice to the occupier of the land or, if there is no occupier, the owner of the land requiring the person to take the action within the time and in the way (if any) specified in the notice.

¹⁶ Section 70 creates offences for destroying vegetation etc. Under part 11, division 1B an injunction may be obtained if a person contravenes a notice under section 76(1).

(2) If the person contravenes the notice, the person commits an offence.

Maximum penalty—200 penalty units.

(3) If the person contravenes the notice, the chief executive or authorised officer may take such action (whether on the land or elsewhere) as is reasonably necessary or desirable, because of the vegetation, litter, refuse or matter, to protect or restore the flow of water in the watercourse, lake or spring, the physical integrity of the watercourse, lake or spring or the quality of water in the watercourse, lake or spring.

(4) For the purpose of enabling action to be taken under subsection (3), the chief executive or authorised officer may authorise persons, with or without vehicles, machinery, plant and equipment (of any description), to enter and remain on the land.

(5) The person is liable for all costs reasonably incurred by the chief executive or authorised officer in taking action under subsection (3).

(6) The amount of the costs is recoverable as a debt due by the person to the State.

(7) If the person is convicted of an offence against subsection (2), the court may, in addition to any penalty imposed, order the person to pay the amount of the costs to the State.

(8) In this section—

“**vegetation**” includes non-native vegetation of any kind.

Appeals

78.(1) If the chief executive decides under this division—

- (a) to refuse to issue a permit; or
- (b) to issue a permit, but on terms that the applicant objects to; or
- (c) to cancel a permit; or
- (d) to amend the terms of a permit;

the applicant or holder may appeal to a Magistrates Court against the decision.

(2) The Magistrates Court that has jurisdiction to hear the appeal is the court exercising jurisdiction at or nearest the place of the activity for

which—

- (a) a permit was applied for and refused; or
- (b) a permit was granted.

(3) If the chief executive gives a notice to a person under section 76 or 77, the person may appeal to a Magistrates Court against the decision to give the notice.

(4) The Magistrates Court that has jurisdiction to hear the appeal is the court exercising jurisdiction at or nearest the place of the activity, proposed activity or land concerned.

(5) An appeal is started by—

- (a) filing with the clerk of the court a written notice of the appeal within 30 days after being notified by the chief executive of the decision; and
- (b) giving a copy of the notice to the chief executive within 14 days after the filing.

(6) The notice of appeal must specify fully the grounds of appeal and the facts relied on.

(7) An appeal is to be by way of rehearing.

(8) The magistrate hearing the appeal may give such directions in relation to the hearing of the appeal as the magistrate considers appropriate.

(9) For the purposes of the appeal, the Magistrates Court has all the powers and functions of the chief executive.

(10) If, on appeal, the Magistrates Court upsets or varies the decision of the chief executive, the Magistrates Court's decision is taken, for the purposes of this Act, to be that of the chief executive.

PART 5—SALE OF WATER ENTITLEMENTS

PART 6—REFERABLE DAMS

Control of referable dams

91.(1) Notwithstanding this Act or any other Act or law, for the purposes of ensuring the safety of a referable dam and the protection of life or property that would or could be endangered by the uncontrolled loss or release of water or hazardous waste caused by the collapse or failure of the referable dam, the chief executive has control of the design, construction, alteration, repair, maintenance, operation, abandonment and removal of a referable dam and for the proper exercise of that control has and may exercise the powers and authorities and perform the functions and duties conferred or imposed on the chief executive by or under this Act with respect to a referable dam.

(2) The chief executive has and may exercise the power of control conferred on the chief executive by subsection (1) irrespective of—

- (a) the situation or proposed situation of the referable dam;
- (b) the ownership of the referable dam;
- (c) the source of supply of the water contained in or by or to be contained in or by the referable dam.

Power of chief executive to declare certain works or proposed works to be a referable dam

92.(1) For the purposes of ensuring the safety of certain works and the protection of life or property that would or could be endangered by the uncontrolled loss or release of water or hazardous waste caused by the collapse or failure of the works the chief executive, by notification published in the gazette, may declare to be a referable dam works or proposed works specified and defined in the notification—

- (a) that consist of or include or would consist of or include a barrier whether permanent or temporary that does or could or would impound, divert or control water or hazardous waste;

- (b) other than a barrier whether permanent or temporary that do or could or would contain, divert or control hazardous waste;

and that would not but for this section constitute a referable dam within the meaning of this Act.

(2) During the continuance in force of a notification under this section, the works or proposed works specified and defined are a referable dam.

Requirements by chief executive as to referable dam

93.(1) The chief executive—

- (a) may, from time to time in respect of a specified referable dam, require that the preparation of designs, plans and specifications for the initial construction or subsequent alteration, repair, maintenance, operation, removal or abandonment of the referable dam so specified and the supervision of work in progress in connection therewith be under the direction and control of a suitably qualified person experienced in the design and construction of dams to the satisfaction of the chief executive and assisted where necessary by persons suitably qualified and experienced to the chief executive's satisfaction;
- (b) may by a notice in writing given to the owner require the owner of a referable dam to—
 - (i) cause to be carried out by persons suitably qualified and experienced to the satisfaction of the chief executive and in accordance with procedures and at intervals of time determined by the chief executive, periodical inspections of the referable dam specified in the notice and cause to be furnished to the chief executive reports of inspections so carried out;
 - (ii) cause to be carried out by persons suitably qualified and experienced to the satisfaction of the chief executive and in accordance with procedures determined by the chief executive a review of the design, construction and operating procedures of the referable dam specified in the notice and cause to be furnished to the chief executive with respect to the review so carried out, information as specified in the

notice;

- (iii) carry out any repairs or take any measures as specified in the notice to ensure the safety of the referable dam and the protection of life or property that would or could be endangered by the uncontrolled loss or release of water or hazardous waste caused by the collapse or failure of the referable dam.

(1A) The notice attaches to the land and binds the owner and the owner's successors in title.

(1B) If the chief executive gives an owner of a referable dam a notice under subsection (1)(b), the chief executive must give a copy of the notice to the Registrar of Titles.

(1C) The Registrar of Titles must maintain records in a way that a search of the register maintained by the registrar under any Act relating to the land will show that a notice has been given under subsection (1)(b) for the land and that particulars of the notice may be obtained from the chief executive.

(2) The chief executive may also require the owner of a referable dam to give to the chief executive information, plans and other documents about the dam.

(3) The owner of a referable dam must pay the fee prescribed under a regulation for—

- (a) a periodical inspection of the dam by the chief executive; or
- (b) an assessment of documents about the dam given to the chief executive; or
- (c) another activity performed by the chief executive under this section in relation to the dam.

(4) The owner of a referable dam must comply with a requirement under this section unless the owner has a reasonable excuse for not complying with it.

Maximum penalty for subsection (4)—400 penalty units.

Exemption of owner of referable dam from provisions of Act

94.(1) The chief executive, where the chief executive considers for any

reason that the collapse or failure of a referable dam would not endanger life or property, may, by a notice in writing given to the owner, grant exemption to the owner of the referable dam specified in the notice from any provisions of this Act so specified except those provisions that relate to the licensing of a referable dam.

(2) An exemption granted under subsection (1) remains in force for the period and is subject to the terms the chief executive determined, specified in the notice.

(3) The chief executive by a further notice in writing given to the owner of a referable dam may—

- (a) revoke an exemption granted under subsection (1); or
- (b) during the period of and currency thereof, alter, amend, modify or vary—
 - (i) the period for which the exemption is granted;
 - (ii) a term to which the exemption is subject.

(4) An owner of a referable dam to whom an exemption is granted under this section, during the period for which it remains in force or any extension thereof—

- (a) is exempted from the application of such provisions of this Act as are specified in the notice or further notice given in relation to the exemption;
- (b) must comply in every respect with the terms to which the exemption is, at the material time, subject.

Protection against liability for failure or collapse of referable dam

95. Notwithstanding this Act, liability does not attach to the Crown, the Minister, chief executive, any authorised officer or other officer, any member of the advisory council or an advisory committee appointed under this Act or a person acting under the authority of the Minister, chief executive, any authorised officer or other officer for injury, loss or damage caused by or resulting from the total or partial failure or collapse of or the escape of hazardous waste from a referable dam by reason only of—

- (a) an approval of the chief executive of a proposal submitted by the

owner of land on which the referable dam is constructed or to be constructed with respect to the design, construction, alteration, repair, or maintenance, operation, abandonment and removal of the referable dam;

- (b) an exemption granted to the owner of the referable dam under section 94.

PART 7—SPECIAL WORKS

Meaning of special works

96. For the purposes of this part—

“**special works**” means works other than a referable dam that include—

- (a) diversion of a watercourse; or
- (b) reclamation of a watercourse, lake or swamp land or part thereof; or
- (c) works associated with a mining development or mining operations; or
- (d) other works;

declared by the Governor in Council by notification published in the gazette to be special works.

Recommendation re certain works

97.(1) Where it has come to the notice of the chief executive that certain works are proposed or have been constructed and in the chief executive’s opinion the works are of a nature as to so warrant, the chief executive may recommend to the Minister that those works be dealt with under this part.

(2) The Minister, upon a recommendation of the chief executive under this section, may recommend to the Governor in Council that the proposed or constructed works be declared special works.

Power of Governor in Council

98. The Governor in Council may declare proposed or constructed works referred to in section 97 to be special works for the purposes of this Act.

Application with respect to special works

99.(1) Upon the declaration by the Governor in Council that proposed or constructed works referred to in section 97 are special works, the person proposing or having control of the works must make application to the chief executive for approval of the works.

(2) An application under subsection (1) must be accompanied by the prescribed fee and must set forth details of the applicant's proposal for the works including particulars with respect to—

- (a) land lawfully held by the applicant and proposed to be used or operated;
- (b) land to be acquired for use or operation;
- (c) easements to be acquired, in connection with the works the subject of the application;
- (d) agreements or arrangements entered into or proposed to be entered into with owners of land to be affected or likely to be affected by the works the subject of the application;
- (e) other information required to be furnished upon notification in writing by the chief executive.

(3) The application must be accompanied by appropriate plans, drawings and specifications containing information satisfactory to the chief executive.

(4) Upon receipt by the chief executive of the application and material required to be furnished under subsections (2) and (3), the chief executive must examine the proposal and must make a report and recommendations thereon and must submit to the Minister that report and those recommendations together with the application and material furnished therewith.

(5) The Minister may seek further information with respect to or in clarification of any aspect of the application, report, recommendations or material furnished as the Minister thinks fit and must submit to the

Governor in Council the Minister's recommendations thereon.

(6) The Governor in Council acting on the recommendations of the Minister may approve the proposal.

(7) The chief executive must notify the applicant of the decision of the Governor in Council and upon approval being given, the chief executive, on behalf of the Minister, and the applicant must enter into negotiations with a view to making and entering into an agreement embodying all matters and things necessary for or incidental to the execution and performance of the proposal as approved.

Authority of Minister to make and enter into agreement

100. The Minister is authorised to make and enter into on behalf of the government of the State an agreement for the purposes of this part.

Approval of agreement

101.(1) An agreement under this part has effect only if it is approved by regulation.

(2) A regulation approving an agreement must—

- (a) include a copy of the agreement; or
- (b) provide for the agreement to be made available for inspection at a specified place by anyone, free of charge, during office hours.

Effect of agreement

102. Every provision of an agreement made and entered into under this part is deemed to be a covenant running with each parcel of land specified in the agreement and, without any authority other than this section, binds that land and each successive owner or occupier thereof during the term of the agreement.

Recording agreement

103.(1) As soon as practicable after a regulation is made under section 101, the chief executive must give full details of the regulation and

the agreement to the registering authority concerned

(2) The registering authority must record details of the order and agreement in the appropriate register in the land registry.

(3) If an agreement ends, the chief executive must give full details of the ending of the agreement to the registering authority concerned.

(4) In this section—

“**registering authority**” means the person responsible for keeping a register for dealings in land.

PART 8—DESIGNATED AREAS

PART 9—IRRIGATION UNDERTAKINGS AND AREAS

Division 1—Irrigation undertakings

Division 3—Water allocations in irrigation areas

Grant of water allocation

120.(1) The chief executive may grant a nominal allocation for specified land within an irrigation area on a basis decided by the chief executive.

(2) The chief executive may amend or revoke a nominal allocation granted for specified land within an irrigation area.

(3) The chief executive may also, for specified land granted a nominal allocation, decide an announced allocation.

(4) The chief executive may amend or revoke an announced allocation.

Licence for water allocation for land

121.(1) If the chief executive grants a nominal allocation for specified land under section 120, the chief executive must grant and issue a licence to the owner of the land without application.

(2) The licence must specify the particulars the chief executive decides, including particulars of—

- (a) the land for which the licence is issued; and
- (b) the nominal allocation granted for the land.

(3) Without limiting the generality of subsection (2), the following provisions of part 4, division 2 apply to licences under this section—

- (a) section 44(1)(a), (b)(vii) and (viii), (d) to (g), (2) and (5);
- (b) sections 47, 48, 50, 54 and 55.

Surrender of nominal allocation

122.(1) Subject to section 230, the owner of land for which a nominal allocation has been granted may surrender the nominal allocation, or a part of the nominal allocation, by giving written notice to the chief executive.

(2) A surrender under this section takes effect upon the payment of the charge made and levied in accordance with section 230 or, when no charge is made and levied, on and from the date on which notice of the surrender is received by the chief executive.

Chief executive's power if nominal allocation land is subdivided

123.(1) This section applies if—

- (a) a nominal allocation has been decided for land that is subdivided before the nominal allocation is granted; or
- (b) land for which a nominal allocation has been granted is subdivided after the grant.

(2) The chief executive may—

- (a) with or without the construction of any further works of supply,

decide a nominal allocation for each part of the land subdivided;
and

- (b) make and levy charges towards the costs of the supply of water to each part of the land subdivided.

PART 10A—BULK WATER SUPPLY IN SOUTH-EAST QUEENSLAND

Division 1—Preliminary

Definitions for pt 10A

215A. In this part—

“**asset**”, of the board, does not include water.

“**board**” means the South East Queensland Water Board established under the repealed Act.

“**committee**” see section 215C.

“**company**” means the company within the meaning of the *South East Queensland Water Board (Reform Facilitation) Act 1999*, schedule 2.¹⁷

“**company reservoir**” means a reservoir controlled by the company.

“**flood mitigation manual**” see section 215D.

“**repealed Act**” means the repealed *South East Queensland Water Board Act 1979*.

¹⁷ *South East Queensland Water Board (Reform Facilitation) Act 1999*, schedule 2—

“**company**” means a company—

- (a) wholly owned by the State and the following local governments, in whatever proportions—
- (i) Brisbane, Gold Coast, Ipswich, Logan and Redcliffe city councils;
 - (ii) Beaudesert, Caboolture, Esk, Gatton, Kilcoy, Laidley and Pine Rivers shire councils; and
- (b) formed or to be formed under the Corporations Law.

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

“**settlement day**” means the settlement day under the *South East Queensland Water Board (Reform Facilitation) Act 1999*.

“**undertaking**”, of the board, means all the board’s assets and liabilities at the settlement day.

Application of pt 10A

215B. This part applies if the board transfers its undertaking to the company.

Division 4—Protection of existing water allocations

Purpose of div 4

215K. The purpose of this division is to protect existing entitlements to water from a reservoir transferred by the board to the company.

Existing entitlements to water continue

215L. If a person had an entitlement to water under this Act or the repealed Act immediately before the settlement day, the entitlement is unaffected by the transfer.

PART 11—MISCELLANEOUS PROVISIONS

Division 1—Proceedings for offences—offences

Proceedings for offences

216.(1) Except where it is otherwise expressly provided, a prosecution for an offence against this Act—

- (a) must be taken by way of summary proceeding under the Justices

Act 1886 within 12 months after the offence is committed or within 12 months after the commission of the offence first comes to the knowledge of the complainant, whichever period is the later to expire;

- (b) may be instituted by the chief executive or an officer authorised in writing in that behalf by the Minister or chief executive.

(2) Notwithstanding this Act or any other Act or law, in a proceeding on a complaint under this Act, the court may make an order on a matter within its jurisdiction though no application or complaint is made in respect of that matter.

Saving of other proceedings and recovery of moneys

217.(1) Subject to this Act, the conviction of a person for an offence against this Act and the imposition of a penalty upon that conviction or the payment of a penalty so imposed is not a bar to or does not affect in any way the right of recovery by the State or, as the case may be, chief executive of—

- (a) a sum of money by way of damages for injury sustained by the act or default of the defendant;
- (b) costs and expenses incurred in modifying or removing works unlawfully constructed or in making good injury, loss or damage sustained by the act or default of the defendant;
- (c) the monetary value of water wasted, misused or unduly consumed or unlawfully diverted, intercepted, taken or removed by the defendant.

(2) Sums of money specified in subsection (1) may be recovered—

- (a) by way of summary proceeding under the *Justices Act 1886* in the proceeding taken upon the complaint as for the offence in question; or
- (b) by action as for a debt due to the Crown in a court of competent jurisdiction by the chief executive or a person authorised in writing in that behalf by the Minister or chief executive.

Obstruction of officer or other person

218. A person who assaults, obstructs or attempts to obstruct, threatens, abuses, insults, intimidates or attempts to intimidate the chief executive or other officer or a person acting with the authority of the Minister or chief executive in the exercise of any power or authority or the performance of a function or duty conferred or imposed on the Minister, chief executive, other officer or person by or under this Act commits an offence against this Act.

Maximum penalty—200 penalty units.

Protection of information and reports

219. In a proceeding for an offence against this Act—

- (a) a witness on behalf of the prosecution must not be compelled to disclose the fact that the witness received information, the nature of the information received or the name or place of residence of the person who furnished the information;
- (b) an authorised officer must not be compelled to produce a report made or received by the authorised officer in the authorised officer's official capacity or containing confidential information.

Restriction on liability for offence by employee or agent

220. A person is not liable to be convicted for an offence against this Act committed by the person as an employee or agent if the person satisfies the court that the offence was committed while the business of the person's employer or principal was being conducted under the personal superintendence of that employer or principal or of a manager or any other representative of that employer or principal and that the offence was committed with the knowledge of that employer, principal, manager or representative.

Liability for offence by body corporate

221.(1) Where a body corporate commits an offence against this Act, then, without derogating from the Criminal Code, section 7, each of the following persons is deemed to have committed the offence and,

notwithstanding the Criminal Code, section 23 or any other rule of law or practice, to be responsible for the act or omission concerned therein and may be charged with the offence and punished accordingly—

- (a) the person who at the time the offence is committed was the chairperson of directors, managing director or other governing officer by whatever name called or other member of the governing body thereof by whatever name called;
- (b) every person who, at the time the offence is committed, manages or acts or takes part in the management, administration or government of the business in Queensland thereof.

(2) This section applies so as not to limit or affect in any way the liability of a body corporate to be proceeded against and punished for an offence against this Act committed by it.

(3) It is a defence to a charge for an offence against this Act brought against a person specified in subsection (1)(a) or (b) to prove that the offence was committed without that person's consent or connivance and that the person exercised due diligence to prevent the commission of the offence.

Prohibition as to taking water on non-payment of charges therefor

222.(1) Where a person fails to pay charges for water supplied pursuant to this Act and is in arrears in respect of those charges for a period prescribed for the charges under a regulation or, as the case requires, section 229, the chief executive may give to that person a notice in writing.

(2) The notice must—

- (a) set forth the period in respect of which charges are due and owing and in arrears and the total amount of the arrears including interest; and
- (b) require payment of the arrears and interest or the making of arrangements satisfactory to the chief executive for the payment thereof within the time specified in the notice; and
- (c) prohibit the further taking of water by the person in question, on or from the date of issue of the notice until payment or satisfactory arrangements in accordance with this section for

payment has or have been made or entered into.

(3) A person who, having failed to pay the charges due at the date of the notice or to make satisfactory arrangements for payment within the time specified in the notice given pursuant to this section, takes and continues to take water in contravention of the notice commits an offence against this Act.

Maximum penalty for subsection (3)—200 penalty units.

Unlawful taking, getting or removal of quarry material

223.(1) A person who otherwise than under the authority of—

- (a) this Act or the terms of a permit under this Act;
- (b) any other Act or enactment;

takes, gets or removes on or from—

- (c) that part of a watercourse or lake the property of or deemed to be the property of the Crown or situated on land specified in section 28(b) or land vested in the State, controlled quarry material;
- (d) any part of a watercourse or lake other than a part specified in paragraph (c), quarry material;

commits an offence against this Act.

Maximum penalty—400 penalty units.

(2) Upon a conviction for an offence defined in subsection (1), the court in addition to imposing a penalty may order that the offender pay to the chief executive royalty at the prescribed rate on the controlled quarry material taken or got and removed in contravention of that subsection.

(3) On conviction for an offence against subsection (1), the court may order the offender to pay to the chief executive, in addition to any penalty imposed, the cost of any remedial work or rehabilitation necessary or desirable because of the commission of the offence.

Contravention of licences and certain permits

224.(1) A person must not contravene a licence.

Maximum penalty—

- (a) 400 penalty units, if the person is convicted of an offence about contravening a licence involving a referable dam; or
- (b) 200 penalty units, in any other case.

(2) A person must not contravene a permit under section 58 or 71.

Maximum penalty—200 penalty units.

(3) A person must not contravene a permit under section 56(1) or 57.

Maximum penalty for subsection (3)—50 penalty units.

Division 1A—Enforcement powers of authorised officers and police officers

Power to require name and address

224A.(1) An authorised officer may require a person to state the person's name and address if the authorised officer—

- (a) finds the person committing an offence against this Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the authorised officer to suspect on reasonable grounds that the person has committed an offence against this Act.¹⁸

(2) When making the requirement, the authorised officer must warn the person that it is an offence against this Act to fail to state the person's name and address, unless the person has a reasonable excuse.

(3) The authorised officer may require the person to give evidence of the correctness of the person's name or address if the authorised officer suspects on reasonable grounds that the name or address given is false.¹⁹

¹⁸ It is an offence against section 224D(1) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

¹⁹ It is an offence against section 224D(2) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

Power to require answers to questions

224B.(1) This section applies if an authorised officer suspects, on reasonable grounds, that—

- (a) an offence against this Act has happened; and
- (b) a person may be able to give information about the offence.

(2) The authorised officer may require the person to answer a question about the offence.²⁰

(3) When making the requirement, the authorised officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

Power to require production of documents

224C.(1) An authorised officer may require a person to produce a document required to be held or kept by the person under this Act to the authorised officer for inspection.²¹

(2) The authorised officer may keep a produced document to take an extract from, or make a copy of, the document.

(3) The authorised officer must return the document to the person as soon as practicable after taking the extract or making the copy.

Failure to give name and address etc.

224D.(1) A person who is required by an authorised officer under section 224A(1)²² to state the person's name or address must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

²⁰ It is an offence against section 224E(2) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

²¹ It is an offence against section 224F to fail to comply with the requirements unless the person has a reasonable excuse for not complying with it.

²² Section 224A (Power to require name and address)

(2) A person who is required by an authorised officer under section 224A(3) to give evidence of the correctness of a name or address must give the evidence, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

- (3) A person does not commit an offence against this section if—
- (a) the authorised officer required the person to state the person's name and address on suspicion of the person having committed an offence against this Act; and
 - (b) the person is not proved to have committed the offence.

Failure to answer questions

224E.(1) This section applies if an authorised officer requires a person under section 224B(1) to answer a question.

(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(3) It is a reasonable excuse for the person to fail to answer the question if complying with the requirement might tend to incriminate the person.

(4) The person does not commit an offence against this section if the information sought by the authorised officer is not in fact relevant to the offence.

Failure to produce documents

224F. A person who is required under section 224C²³ to produce a document must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

²³ Section 224C (Power to require production of documents)

False, misleading or incomplete documents

224G.(1) A person must not give to the chief executive or an authorised officer a document containing information that the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the chief executive or authorised officer of the extent to which the document is false, misleading or incomplete; and
- (b) gives the correct information to the chief executive or authorised officer if the person has, or can reasonably obtain, the correct information.

(3) It is enough for a complaint for an offence against subsection (1) to state the document was false, misleading or incomplete to the person's knowledge.

False or misleading information

224H.(1) A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was false or misleading to the person's knowledge.

Impersonation of authorised officer

224I. A person must not pretend to be an authorised officer.

Maximum penalty—200 penalty units.

Division 1B—Enforcement of certain notices**Definitions for div 1B**

224J. In this division—

“compliance section” means section 64A, 76 or 93.

“court” means the Supreme Court.

“enforcement injunction” means an injunction under section 224K.

“involved person”, for a contravention, means a person involved in the contravention who—

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced the contravention (whether through threats, promises or another way); or
- (c) has been in any way (directly or indirectly) knowingly concerned in, or a party to, the contravention; or
- (d) has conspired with others to effect the contravention.

Orders to enforce notice under compliance section

224K.(1) This section applies if, on the application of the chief executive or an authorised officer, the court is satisfied that a person has engaged, is engaging, or proposes to engage, in conduct constituting a contravention of a notice under a compliance section.

(2) The court may make all or any of the following orders—

- (a) an order granting an injunction, on terms the court considers appropriate—
 - (i) restraining the person from engaging in the conduct; or
 - (ii) if the conduct involves failing to do something—requiring the person to do the thing;
- (b) an order directing the person to compensate the State for loss or damage suffered because of the contravention;
- (c) another order the court considers appropriate.

(3) If the court has power under subsection (2) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the court may make any other order (including granting an injunction) it considers appropriate against an involved person for the contravention concerned.

Consent injunctions

224L. On an application for an enforcement injunction, the court may grant the injunction by consent of all of the parties to the proceeding (whether or not the court is satisfied that the section under which the application is made applies).

Interim injunctions

224M.(1) The court may grant an interim injunction pending determination of an application for an enforcement injunction.

(2) However, the court must not require the chief executive, authorised officer or another person, as a condition of granting an interim injunction, to give an undertaking as to damages.

Factors relevant to granting restraining injunction

224N. The court may grant an enforcement injunction restraining a person from engaging in conduct whether or not—

- (a) it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) the person has previously engaged in conduct of that kind; or
- (c) there is an imminent danger of substantial damage—
 - (i) to someone else if the person fails to do the thing; or
 - (ii) to a watercourse, lake or spring, or to vegetation, if the person engages in conduct of that kind.

Factors relevant to granting mandatory injunction

224O. The court may grant an enforcement injunction requiring a person to do a thing whether or not—

- (a) it appears to the court that the person intends to fail again, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do the thing; or
- (c) there is an imminent danger of substantial damage—
 - (ii) to a watercourse, lake or spring, or to vegetation, if the person engages in conduct of that kind.

Discharge or variation of injunction or order

224P. The court may discharge or vary an injunction or order granted or made under this division.

*Division 2—Trespass and removal of trespassers***Trespass and unlawful occupation**

225.(1) For the purposes of this section and section 226—

“land under the control of the State” includes—

- (c) land leased to, acquired or held in fee simple by the State for the purposes of this Act;
- (d) land reserved and set apart under the *Land Act 1994* and placed under the control of the State as trustee;
- (e) land acquired by the State under this Act.

(2) A person, not lawfully claiming under—

- (a) an existing lease or licence or otherwise under this Act or any other Act or law; or
- (b) the prior authority of the State;

who—

- (c) occupies;

- (d) erects, constructs, places or maintains any structure, other improvement or thing of any kind on;
- (e) depastures stock on;
- (f) clears, destroys trees on, digs up, encloses or cultivates;
- (g) uses for a purpose connected with the use by that person of other land (whether or not land adjoining land under the control of the State);

land vested in or under the control of the State commits an offence against this Act.

Maximum penalty—50 penalty units.

(3) A person convicted of an offence against this section with respect to clearing, digging up or cultivating the land in question is liable for all injury, loss or damage caused by or arising out of the act constituting the offence and, in addition to the penalty imposed upon the conviction, the court may order the offender to pay an amount with respect to that injury, loss or damage proved to the satisfaction of the court.

(4) Evidence proving or tending to prove the injury, loss or damage in question is admissible in the proceedings and may include the value of each tree destroyed which is the sale price of the tree if it were then and there standing, ordinarily obtainable at the material time.

(5) Upon a conviction for an offence against this section, the court whether or not it imposes a penalty, may, upon the application of the complainant, order the issue of a warrant in terms of section 226(2) to remove the offender from the land in respect of which the offence was committed and, where the case so requires, an order in terms of section 226(5) requiring the offender to remove from the land every structure, other improvement or thing of any kind erected, constructed, placed or maintained thereon or any crop planted thereon.

Removal of trespassers

226.(1) A person duly authorised by the State who believes on reasonable grounds that a person—

- (a) is in unlawful occupation of land vested in or under the control of the State; or

- (b) is in possession of land vested in or under the control of the State under colour of a purchase, lease or licence that has been terminated by forfeiture, cancellation or otherwise;

may make a complaint before a justice and that complaint is to be heard and determined by way of summary proceeding under the *Justices Act 1886*.

(2) The court, upon being satisfied of the truth of the complaint, must order the issue of a warrant addressed to the complainant or to a police officer requiring the police officer forthwith to remove the person in question from the land and to take possession of the land on behalf of the State.

(3) The person to whom a warrant issued under subsection (2) is addressed must within 21 days after the date of receipt by the person execute that warrant in accordance with its terms.

(4) Where any structure, improvement or other thing is erected, constructed, placed or maintained or a crop of any kind is planted upon land vested in or under the control of the State, and—

- (a) the person claiming ownership of the structure, improvement, other thing or crop fails on demand duly made in that behalf to produce any lease, licence, permit or other authority entitling the person to possession of that land issued under this Act or any other Act or law; or
- (b) the owner of the structure, improvement, other thing or crop can not be found, after reasonable inquiry by or on behalf of the State;

a person duly authorised in that behalf by the State may make a complaint before a justice and that complaint must be heard and determined by way of summary proceeding under the *Justices Act 1886*.

(5) The court upon being satisfied of the truth of the complaint must order that the structure, improvement, other thing or crop the subject of the complaint be removed from the land within the time specified in the order by and at the expense of the person found by the court to be the owner thereof.

(6) Where the person alleged in a complaint under subsection (4) to be the owner of the structure, improvement, other thing or crop the subject of the complaint has not been served with the complaint and the summons issued thereon and is not present at the hearing, the court, if it is satisfied

that the State, after having made or caused to be made reasonable inquiry with a view to locating the owner, has been unable to locate the owner—

- (a) may proceed to hear and determine the matter of the complaint in the absence of the owner; or
- (b) may make an order as to substituted service by public advertisement or otherwise as the court thinks fit in the circumstances and may enter, for the purpose of enabling substituted service to be effected, all necessary adjournments.

(7) Substituted service, if ordered by the court, is sufficient service of the complaint and summons issued thereon for the purposes of the hearing and determination thereof.

(8) An order of the court made under subsection (6), in a case where after due inquiry made by or on behalf of the State, the owner of the structure, improvement, other thing or crop in question has not been identified or can not be found, may be fixed on some conspicuous part of the land in question and evidence of action taken in accordance with this subsection is for all purposes sufficient evidence of the making of the order and the service thereof.

(9) Any structure, improvement, other thing or crop that is not removed from the land in question in compliance with an order made by the court under subsection (5) is forfeited to the Crown and thereupon vests in the State and may be sold for removal or otherwise disposed of in the manner decided by the chief executive.

(10) Where the amount received upon the sale of any structure, improvement, other thing or crop forfeited to the Crown under subsection (9) is insufficient to defray the costs and expenses incurred by the State with respect to the removal or other disposal thereof, the State may recover from the person (if any) who claimed ownership of the structure, improvement, other thing or crop in question the amount of the insufficiency as a debt due to the Crown by action in a court of competent jurisdiction brought in the name of an authorised officer.

(11) The powers conferred on the State or an authorised officer on its behalf by this section are in addition to and not in derogation of or substitution for the powers of trustees of reserves under the *Land Act 1994* to take action for legal proceedings.

Division 3—General provisions**Power to supply water in excess of entitlement under announced allocation**

229.(1) A person may make application in writing to the chief executive for a supply of water in excess of the quantity to which the person is entitled under the person's announced allocation.

(2) The chief executive must consider each application so made and, where the chief executive is satisfied that sufficient water is available, may authorise the supply to the applicant of an additional quantity of water for a period and subject to any term as the chief executive determines.

(3) Water taken under an authority granted under subsection (2) must be charged for at the rate determined, according to the quantity taken.

(4) The chief executive, after the expiration of each month during the term of the authority, must issue to the holder of the authority, an advice in writing, setting forth the quantity of water taken, the charges for the month last preceding and other particulars as the chief executive determines.

(5) Charges so advised become due and payable upon the date of issue of the advice and must be paid within 30 days next following that date.

(6) Interest at the prescribed rate calculated from and including the date of issue of the advice up to and including the date of payment is payable on any amount of charges payable under this section and remaining unpaid after the expiration of 30 days after the date of issue of the advice.

Rights of chief executive upon surrender of nominal allocation

230.(1) Where the owner of land to or in respect of which a nominal allocation has been granted surrenders that nominal allocation, or a part thereof, granted to or in respect of that land, the chief executive may make and levy on that owner a charge determined by the chief executive consisting of a contribution towards the costs and expenses incurred by the chief executive in the operation and maintenance of the works of the State that supply water to or otherwise benefit the land in question, capitalised in respect of a period of time determined by the chief executive and a proportion of the capital costs of the headworks in question determined by

the chief executive.

(2) Despite subsection (1), the chief executive may make and levy a charge on the owner of land, other than land for which a nominal allocation has been granted, only if the Governor in Council has declared the headworks that supply water to, or otherwise benefit, the land to be subject to this section.

Agreements as to transfer of water under allocation

231.(1) An owner of land to or in respect of which a water allocation has been granted may, with the approval of the chief executive and subject to this section, enter into an agreement with the owner of other land to allow the secondmentioned owner to use the water allocated under that allocation or a proportion thereof.

(2) The owner firstmentioned in subsection (1) of land who proposes to enter into an agreement in accordance with that subsection must submit the proposal in writing to the chief executive together with the prescribed fee and furnish to the chief executive the following information—

- (a) personal particulars of the other party to the proposed agreement;
- (b) description of the other land to which water is to be supplied under the agreement;
- (c) the proportion of the quantity of water allocated that is to be the subject of the agreement;
- (d) the period of time during which the agreement is to remain in force and other terms agreed upon.

(3) The chief executive must consider the proposal and may, by writing, require the owner in question to furnish to the chief executive such further information as the chief executive determines and specifies in the requisition.

(4) The chief executive—

- (a) may approve the proposal absolutely;
- (b) may approve the proposal subject to terms as the chief executive determines and specifies in the approval;
- (c) may refuse the proposal.

- (5) An approval granted under subsection (4)—
- (a) must be limited in the first instance to a period not exceeding in any case 12 months from the date of the approval;
 - (b) may be renewed from time to time for a period as the chief executive determines;
 - (c) does not absolve the owner in question from paying to the chief executive the prescribed charges for water under the nominal allocation granted to the owner.
- (6) In considering the proposal, the chief executive may have regard to—
- (a) the capability of the system to supply the additional water to the other land the subject of the proposed agreement;
 - (b) other matters and things as the chief executive determines taking into account the objects and purposes of this Act.

(7) Upon receipt of an approval granted under subsection (4), the owners may enter into negotiations and cause to be prepared an agreement incorporating matters in respect of which agreement has been reached and the terms imposed by the chief executive and thereupon submit to the chief executive the draft agreement for perusal and upon being satisfied that this agreement incorporates the terms imposed by the chief executive, the chief executive must advise the parties accordingly.

(8) The parties must upon execution furnish to the chief executive a copy of the agreement as executed.

(9) Upon the expiration of the term of an agreement under this section, the water allocation or the proportion thereof in question reverts to the owner of the land to which the allocation has been granted.

(10) The chief executive, in a case where the chief executive is satisfied that a party to an agreement under this section has failed to comply with a term imposed by the chief executive and incorporated in the agreement, may discontinue the supply of water the subject of the agreement during the period for which the non-compliance continues.

Unlawful construction of works or interference with works

233.(1) A person who—

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- (a) without the consent of the chief executive constructs or causes to be constructed works or anything for the purpose of connecting with works the property of the State or under the control of the State or chief executive;
- (b) without the consent of a board, constructs or causes to be constructed works or anything for the purpose of connecting with works the property of that board;

commits an offence against this Act.

Maximum penalty—200 penalty units.

(2) A person who without lawful excuse the proof of which shall lie on the person—

- (a) destroys, injures, damages or removes or attempts to destroy, injure, damage or remove works the property of the State or under the control of the State or chief executive or the property of a board;
- (b) does an act calculated to render a part of machinery or works the property of the State or under the control of the State or chief executive or the property of a board inoperative or defective or whereby water is or may be lost, wasted, misused or its supply interrupted in any way;

commits an offence against this Act.

Maximum penalty—200 penalty units.

(3) A person who, except under the authority of this Act or any other Act, the proof of which authority lies on the person—

- (a) takes up, removes, demolishes or otherwise interferes with works the property of the State or under the control of the State or chief executive or the property of a board;
- (b) does an act whereby the supply of water by the State or chief executive or a board may be obstructed or lessened;
- (c) knowingly erects or puts a structure or an obstruction, annoyance or encroachment in, upon, over or under works the property of the State or under the control of the State or chief executive or the property of a board;

commits an offence against this Act.

Maximum penalty—200 penalty units.

(4) It is a defence to a charge for an offence defined in subsection (3) for a person to prove that the act constituting the offence was committed without the person's authority, direction or connivance and that the person exercised due diligence to prevent the commission of the offence.

(5) Upon a conviction for an offence defined in subsection (1), the court, in addition to imposing a penalty may order that—

- (a) the works unlawfully constructed constituting the offence be removed by the offender within the time specified by the court;
- (b) the works of the board or State or under the control of the State or chief executive injuriously affected by the offence be restored by the offender within a time specified by the court to the condition in which they were prior to the commission of the offence.

(6) Upon the failure of the offender, within the time specified to comply in all respects with an order made under subsection (5)(a) or (b), the chief executive or, as the case may be, board or an authorised officer thereof may enter upon the land in question with assistants, agents or workers and vehicles, machinery and equipment as are necessary for the purpose and therein take all steps and do all acts and things as are necessary to comply with the order.

(7) Costs and expenses incurred by the chief executive or board or an authorised officer thereof in the exercise of the powers and authorities conferred on the chief executive or the board by this subsection are a debt due and owing to the chief executive or, as the case may be, board and may be recovered by the chief executive or the board action in a court of competent jurisdiction.

(8) The chief executive or, as the case may be, board may, notwithstanding this Act, discontinue the supply of water to the offender for so long as an order of the court made under subsection (5) remains unsatisfied.

(9) Upon a conviction for an offence defined in subsection (2) or (3), the court, in addition to imposing a penalty, may order that the offender pay to the chief executive or board in question the amount of money assessed by

the court to cover the cost attributable to the injury, loss or damage done by the offender in committing the offence.

Powers of chief executive where obstruction causes collection of water on railway, tramway or public road or public nuisance

234.(1) Where the chief executive is of the opinion that an obstruction or interference whether or not authorised by or under this Act to or with the water in any watercourse, lake or spring, has caused or is likely to cause, whether permanently, temporarily or intermittently, a collection of water that hinders, obstructs or interferes with a railway, tramway or public road or traffic thereon or is likely to do so or is or causes or is likely to cause a public nuisance or consequences contrary to the public interest or the interests of the Crown, the chief executive may cause an authorised officer with assistants, agents or workers and vehicles, machinery and equipment as are necessary for the purpose to enter upon land on or through which the watercourse, lake or spring is situated or flows and therein take all steps and do all acts and things as the chief executive considers necessary or desirable to reduce or prevent the collection of that water.

(2) Before exercising the powers conferred on the chief executive by subsection (1), the chief executive, where the chief executive is of the opinion that the circumstances in a particular case so warrant, may give to the owner of land on or through which the watercourse, lake or spring is situated or flows or to any person responsible for the obstruction or interference thereto or therewith a notice in writing requiring the person to take within the time specified in the notice all remedial measures the chief executive considers necessary to reduce or prevent the collection of the water in question specified in the notice.

(3) A person who fails to comply with a notice given under subsection (2) to the satisfaction of the chief executive within the time specified therein commits an offence against this Act.

Maximum penalty—200 penalty units.

(4) Upon the failure by a person to whom a notice under subsection (2) is given to comply therewith, the chief executive or an authorised officer may enter upon the land in question and therein exercise the powers and authorities conferred upon the chief executive by subsection (1).

(5) Costs and expenses incurred by the chief executive or an authorised

officer in exercising the powers and authorities conferred by subsection (1) whether before or after notice in writing is given under subsection (2) may be recovered as a debt due to the Crown by action in a court of competent jurisdiction brought in the name of the chief executive.

(6) The giving of a notice under subsection (2) does not derogate from or affect in any way the powers and authorities conferred on the chief executive by or under this Act or the provisions of this section with respect to the commission of offences.

Warrant to enter land or premises

235.(1) Where the chief executive, a board, an authorised officer or other officer or agent of the chief executive or board is authorised by or under this Act to enter land or premises for the purposes of this Act and the occupier of the land or premises in question or, if there is no occupier, the owner thereof refuses to allow the chief executive, board, authorised officer, other officer or agent to so enter, an authorised officer may make complaint on oath before a justice setting forth the matters of complaint.

(2) Where the justice to whom the complaint is made is satisfied that—

- (a) the chief executive, board, authorised officer, other officer or agent is authorised by or under this Act to enter the land or premises in question for the purposes of this Act;
- (b) the chief executive, board, authorised officer, other officer or agent has prior to the proposed entry upon the land or premises complied with this Act;
- (c) the occupier or, as the case may be, owner has refused to allow the chief executive, board, authorised officer, other officer or agent to enter upon the land or premises;

the justice may issue a warrant directed to an authorised officer to enter the land or premises named in the warrant for the purpose of exercising therein the powers and authorities conferred upon the chief executive, board, authorised officer, other officer or agent under this Act.

(3) A warrant is, for the period of 30 days from the date of its issue, sufficient authority for the authorised officer named therein—

- (a) to enter the land or premises specified in the warrant; and

- (b) to exercise therein the powers and authorities conferred by this Act upon the chief executive, board, authorised officer, other officer or agent with respect to the land or premises so specified.

(4) For the purposes of gaining entry to land or premises, the authorised officer may call to the authorised officer's aid other persons as the authorised officer thinks necessary and those persons, while acting in aid of the authorised officer in the lawful exercise of the authorised officer's powers of entry, have a like power of entry.

Appeal to Minister

237.(1) A person aggrieved by—

- (a) a decision of the chief executive under section 30;
- (b) a decision of the chief executive under section 119(10);
- (c) a decision under section 120(1) or (2);

may appeal to the Minister.

(2) An appeal under this section is instituted by giving to the Minister notice in writing within 30 days after the date of notification to the person aggrieved of the determination in question and no later.

(3) The appellant must within 14 days after giving the notice serve on the chief executive a copy of the notice of appeal.

(4) The notice of appeal must state the grounds of appeal.

(5) The Minister must determine the appeal and may dismiss it or, where it appears to the Minister that there is sufficient cause for so doing, may uphold it and grant the relief to the appellant the Minister considers just having regard to other nominal allocations determined within the irrigation area.

(6) The decision of the Minister on an appeal under this section is final and conclusive and all parties must give effect thereto.

Compensation for injury, loss or damage

238.(1) Except where this Act otherwise provides—

- (a) the State;

(b) a board;

must pay compensation in accordance with this Act to a person who sustains injury, loss or damage to property arising out of the exercise of a power or authority or the performance of a function or duty conferred or imposed by or under this Act or any other Act—

(c) by the chief executive or an officer, or person acting under the authority of the chief executive;

(d) by a board or an officer, employee or agent thereof acting under the authority of the board;

in relation to any act, matter or thing in connection with the exercise or performance in respect of which that person is not in default.

(2) Compensation payable by the State or a board under subsection (1), except that payable by reason of the taking of land subject to and in accordance with the *Acquisition of Land Act 1967*, is the sum agreed upon by and between the parties or, in the case of a dispute, determined by the Land Court or on appeal the Land Appeal Court.

Claim for compensation

239.(1) A claim for compensation under this Act must—

(a) be in writing and furnished to the chief executive or board in question;

(b) set forth—

(i) the name and place of residence of the claimant and the name and place of business of the claimant's solicitor (if any);

(ii) the nature of the injury, loss or damage in respect of which the claim is made;

(iii) the total amount of compensation claimed and particulars detailing how that amount is arrived at and specifying in each case the amount claimed under each separate heading constituting the claim;

(c) be furnished within 1 year after the occurrence of the act, matter or thing out of which the claim for compensation arose.

(2) The claimant must, upon a requisition in that behalf duly given by the

claimant, furnish to the chief executive or, as the case may be, board the further information and particulars with respect to the claimant's claim specified in the requisition.

Procedure upon failure to reach agreement as to amount of compensation

240.(1) Where the chief executive or, as the case may be, board and the claimant fail to reach agreement as to the amount of compensation payable under this Act, the claimant, chief executive or board may refer to the Land Court for hearing and determination the matter of the amount of the compensation.

(2) The jurisdiction of the Land Court to hear and determine a reference under this section is vested in 1 member only.

(3) A reference under this section may be made at any time after the expiration of 90 days next following the date on which the claimant furnished to the chief executive or board the claimant's claim for compensation.

(4) A reference under this section is made by filing in the office of the registrar of the Land Court a copy of the claim for compensation furnished by the claimant to the chief executive or board and within 14 days after filing giving to the chief executive or board or, as the case may be, claimant notice of the reference.

(5) A claim for compensation so filed may be amended only after leave of the Land Court has been granted subject to any terms as the Land Court determines including terms as to payment of costs.

(6) The Land Court, upon the application of the chief executive or board in question, may order the claimant to file in the office of the registrar of the Land Court within the time specified in the order further or other particulars with respect to the claim for compensation as, having regard to the claim, the court thinks fit.

(7) Where a claimant fails to comply with an order of the Land Court under subsection (6), the court may strike out the reference.

Jurisdiction of Land Court

241. The Land Court must hear and determine the claim for compensation and must cause its decision to be certified in writing by the registrar of the Land Court to the parties and they must give effect thereto.

Appeal from Land Court re compensation

242. A person aggrieved by a decision of the Land Court as to the amount of compensation payable under this Act may appeal to the Land Appeal Court against the decision in the manner and subject to the procedure prescribed by the *Land Act 1994* with respect to appeals to the Land Appeal Court.

Notice of transfer of land

244.(1) A person who sells or otherwise disposes of land in respect of which a licence has been granted and issued or to which the State has agreed to supply water must give to the chief executive notice in writing of the sale or other disposal, specifying the name and address of the purchaser or other person taking the disposition.

(2) The owner of land in respect of which a licence has been granted and issued or to which the State has agreed to supply water that is subdivided must, forthwith upon the approval by the local government of that subdivision, give to the chief executive notice in writing accompanied by an approved plan of that subdivision.

(3) Upon the sale of a parcel of land following a subdivision referred to in subsection (2), the owner must forthwith give to the chief executive a notice in writing of the sale specifying the name and address of the purchaser.

(4) A person who is liable for the payment of moneys under part 4 or 9 who, having sold the land in question or a part thereof, fails to give notice in accordance with this section continues to be liable for the payment of moneys after the sale in the same manner and to the same extent as if the person were still the owner.

Searches in public offices

245.(1) Where a right conferred by the *Land Title Act 1994*, section 35 is exercised by a person acting on behalf of the chief executive, a fee must not be charged for a service rendered upon the exercise of that right.

(2) An authorised officer may at all reasonable times and without payment of a fee inspect records in the office of a registrar of the Supreme Court for the purpose of ascertaining the names of corporations and joint stock companies, trustees with respect to estates or trusts, and executors and administrators of estates and may make and take all copies of or extracts from records as the authorised officer thinks fit.

Continuation in operation of notice, order and the like

246. Any notice, order, requisition or other document or writing required under this Act to be given to or served on an owner or occupier is, if due service thereof has been made, binding on all persons claiming through, from or under the owner or occupier on whom or which it has been served to the same extent as if it had been served on those lastmentioned persons respectively.

Service of documents

247.(1) Any notice, direction, requisition, order, assessment of rates or charges or other document or writing relating to the business of—

- (a) the chief executive;
- (b) a board;

required or authorised by this Act to be given to or served on a person is duly given or served if—

- (c) it is delivered personally to the person to whom it is directed;
- (d) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (e) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (f) where it is addressed to the owner or occupier of land or

premises—it is left with some adult person on the land or premises, or if there is no such person, it or a true copy of it is fixed on some conspicuous part of the land or premises;

- (g) where it is addressed to the chief executive—it is left with some person at any office of the department or forwarded by post to the chief executive;
- (h) where it is addressed to a board—it is left with the secretary thereof or some other person at the office of the board or other place determined by the board or forwarded by post to the secretary thereof.

(2) A document or writing within the meaning of this section directed to an owner or occupier of land whose name is not known may be addressed to the owner or occupier by the description ‘owner’ or, as the case may be, ‘occupier’ of the land in question without further name or description.

(3) Subject to subsection (2), a document or writing within the meaning of this section that is directed to a person whose name and address are unknown may be given or served by publishing that document or writing 3 times in a newspaper circulating generally in the locality in question at intervals of not less than 1 week between each publication.

Protection against liability

248.(1) Any act, matter, thing, recommendation or decision done or made by or any agreement, arrangement or contract entered into by—

- (a) the Minister;
- (c) the chief executive;
- (d) any authorised officer or other officer;
- (e) a person acting with or under the authority of the Minister, chief executive, any authorised officer or other officer;

for the purpose of carrying out or giving effect to this Act or done in good faith and purporting to be for the purposes of this Act must not subject them or any of them or the Crown to any action, liability, claim or demand.

(2) Except where it is expressly provided by this Act with respect to the payment of compensation, any action, liability, claim or demand does not lie

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against or attach to the Crown, the Minister, chief executive, or any officer, employee, worker or other person for or in respect of—

- (a) an obstruction of the navigation of a navigable river; or
- (b) the diminution of the quantity of water in a watercourse by reason of the execution of works authorised by or under this Act; or
- (c) any injury, loss or damage occasioned or alleged to be occasioned or in any way arising out of or in connection with the exercise of the powers and authorities or the performance of the functions and duties conferred or imposed by or under this Act.

(3) Notwithstanding this Act, any action, liability, claim or demand does not lie against or attach to the to the State, its employees or agents for—

- (a) any injury, loss or damage sustained by a person that is caused directly or indirectly by reason or in consequence of—
 - (i) the escape of water from any works of the State in a case where the escape is not attributable to the negligence or default of the State, chief executive, officers, workers or agents or any of them;
 - (ii) the withdrawal into works of the State or into drives, tunnels or other excavations constructed by the State in connection therewith of surface or subsoil water from or the distortion of the soil or particles thereof or other material in, on or under, land adjacent to or in the vicinity of those works, drives, tunnels or other excavations where they are constructed and maintained without negligence and proceeded with without undue delay;
- (b) any injury, loss or damage sustained by a person during the progress of the construction of works by or on behalf of the State that is caused directly or indirectly by reason of or in consequence of the following acts, matters or things done in connection therewith, namely—
 - (i) the performance of preparatory or ancillary work;
 - (ii) the temporary closure of or obstruction to, or the temporary placement of any material, structure, plant, earth or spoil or any construction or other thing of any kind, in or on any road, lane, footpath, gateway, doorway or other opening;

- (iii) the discharge onto a road, lane, footpath or gateway of water;
- (iv) noise or vibration;

where those works are constructed without negligence and proceeded with without undue delay.

(4) Subsection (3) does not affect or in any way limit the liability of the State to pay damages for personal injury to a person where the State would be, but for this Act, so liable.

Evidentiary provisions

249.(1) In a proceeding for the purposes of this Act—

- (a) it is not necessary to prove—
 - (i) the appointment of the chief executive or other officer or the authority of the chief executive or other officer to do an act, take a proceeding or give any direction or order;
 - (ii) the limits of an area, land vested in or under the control of the State or catchment area subject always to the rights of the defendant to prove the contrary;
- (b) a signature purporting to be that of the Minister, chief executive, any authorised officer or other officer is to be taken to be the signature it purports to be until the contrary is proved;
- (c) the production of a map or plan purporting to have been made on behalf of the State and sealed with its seal or purporting to have been issued or published by a department of the Government or an officer thereof is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters stated or delineated therein;
- (d) copies of plans, specifications and books of reference with respect to matters arising under this Act and of any alteration or correction thereof or extract therefrom certified by an authorised officer to be true and correct copies is, upon their production in that proceeding, conclusive evidence of the contents thereof;
- (e) a copy of an extract from a newspaper purporting to be a newspaper circulating in a certain locality consisting of or

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including an advertisement purporting to be made and inserted in that newspaper by, or on behalf or under the direction of the chief executive with respect to matters arising under this Act is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence—

- (i) that the newspaper is one circulating in the locality in question;
 - (ii) that the advertisement was made and inserted in that newspaper by, on behalf or under the direction of the chief executive;
 - (iii) of the contents of that advertisement;
- (f) a document or writing purporting to be made or issued by, on behalf or under the direction of the State or chief executive and purporting to be under the seal of the State or signed by the Minister, chief executive or a person authorised in that behalf by the State or chief executive is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that document or writing;
- (g) a certificate purporting to be signed by an authorised officer that works, matters or things specified therein have been constructed, done or supplied by the State pursuant to the requirements of or for or on behalf of any person and setting forth the costs and expenses incurred (with interest if any) in connection therewith is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
- (h) the production of a deed of grant, certificate of title, memorandum of transfer or other instrument creating an interest in land or of a duly certified copy thereof is evidence and, in the absence of evidence to the contrary, conclusive evidence that the person named therein as registered proprietor or as entitled to the interest is the owner of or person entitled to the interest in the land;
- (i) a certificate purporting to be signed by an authorised officer stating that a certain quantity of water is shown by the index or register of a meter authorised by the chief executive to have

passed through that meter during an interval of time specified in the certificate is upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence that the quantity of water so stated has in fact passed through that meter and been supplied;

- (j) a certificate purporting to be signed by an authorised officer stating that during the time specified therein a certain quantity of water specified therein has been supplied to a person specified therein and that that quantity has been measured—
 - (i) by a method other than the use of the index or register of a meter authorised by the chief executive (setting forth the method); or
 - (ii) by estimation or assessment (setting forth the method), is upon its production in that proceeding evidence and, in the absence of evidence to the contrary, conclusive evidence that the quantity of water specified so measured or, as the case may be, estimated or assessed has in fact been supplied during the interval of time so specified to the person so specified;
- (k) wherever it is necessary to mention or refer to a person as the owner or occupier of land or premises, it is sufficient for the purposes of that proceeding to designate that person as the owner or occupier of the land or premises without reference to the person's name or further or other description;
- (l) a document purporting to be a copy of any record, licence, registration, permit, approval, certificate, order, notice, requisition or authority under this Act is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence of that licence, registration, permit, approval, certificate, order, notice, requisition or authority;
- (m) a certificate purporting to be signed by a person authorised to grant it is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate;
- (n) a certificate purporting to be signed by the chief executive or an authorised officer certifying the receipt or otherwise of any notice,

application or payment or that any amount of fees or other moneys specified in the certificate is payable under this Act by a specified person and has not been paid is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate;

- (o) a certificate or document relating to a motor vehicle purporting to be issued under the *Transport Infrastructure (Roads) Act 1991* is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate or document and that the person named therein as the person in whose name the motor vehicle is registered was the person using the motor vehicle at the material time or during the material period;
- (p) an allegation or averment in a complaint—
 - (i) that a place is, or that any act, matter or thing was done or omitted, within any specified district or area;
 - (ii) that any person was or was not, at the material time, licensed, permitted, registered, authorised or approved under this Act;
 - (iii) that any licence, registration, permit, approval, certificate or authority required under this Act to be obtained was not duly obtained by the person required to obtain it;
 - (iv) of the date on which the commission of the offence first came to the knowledge of the complainant;is evidence and, in the absence of evidence to the contrary, conclusive evidence of that allegation or averment;
- (q) an allegation in a complaint or like document by means of which legal proceedings of any kind are initiated that an item named therein is or is not the property of the State or the chief executive is evidence and in the absence of evidence to the contrary conclusive evidence of the matters alleged.

(2) Wherever it is proved in a proceeding for the purposes of this Act that water is being or has been wrongfully taken or used or illegally diverted or taken onto or into land owned or occupied by any person, it is deemed that

the taking, use or diversion of that water has been effected by or by the direction of that person, unless that person satisfies the court that the taking, use or diversion of the water onto, on or into the land in question was effected without the person's knowledge, direction or connivance.

(3) This section does not prejudice or in any way affect other means of proving the elements of an alleged offence.

Delegation by chief executive

249A.(1) The chief executive may delegate the chief executive's powers under this or another Act to an appropriately qualified officer or employee of the department.

(2) In subsection (1)—

“appropriately qualified” includes having the qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

A person's classification level in the public service.

Approval of forms

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

Regulation-making power

250A.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may confer powers and functions for this Act on the State, a chief executive, a department, public authority or local government.

(3) A regulation may make provision for a purpose mentioned in the schedule.

(4) Without limiting subsection (3), a regulation may—

- (a) fix the water allocation for an entity; and
- (b) impose conditions on the allocation, including, for example, the volume of water the entity must make available to another entity

each year from the allocation, and the period for which the allocation is made.

References to repealed Act

251. A reference in an Act or document to the *Water Act 1926* is taken to be a reference to this Act.

PART 12—TRANSITIONAL AND VALIDATION

Transitional provision for Natural Resources Amendment Legislation Act 1997

252.(1) Despite the repeal of sections 227 and 228²⁴ by the *Natural Resources Legislation Amendment Act 1997*, those sections apply, as if they had not been repealed, to a charge made and levied under section 227 before its repeal.

(2) Subsection (1) does not limit the *Acts Interpretation Act 1954*, section 20.²⁵

Validation of terms

256.(1) This section applies to a term of a licence if the licence was in force, or purportedly in force, immediately before the commencement of section 44(1)(ba)²⁶ (the “**paragraph**”), and—

- (a) the licence was issued under part 4, division 2;²⁷ and

²⁴ Sections 227 (Water charges) and 228 (Payment of water charge, interest thereon and recovery thereof) were omitted by 2000 No. 34.

²⁵ *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

²⁶ Section 44 (Licences)

²⁷ Part 4 (Regulation and control of water, watercourses and certain quarry materials), division 2 (Licences)

(b) had the licence been issued after the commencement of the paragraph, the term would be a term authorised under this Act.

(2) The term is taken to have always been validly included in the licence.

Areas continued in existence

257. To remove any doubt, it is declared that an area, other than an irrigation area or drainage area, constituted under section 1.3(g)²⁸ of this Act as originally enacted, is, and always was, constituted as a water supply area.

Transitional provisions for Water Act 2000

258.(1) Subsection (2) applies to a referable dam if a licence was granted under section 43 for the dam and the dam is not—

- (a) more than 8 m in height and does not have a storage capacity of more than 500 ML; or
- (b) more than 8 m in height and does not have a storage capacity of more than 250 ML and a catchment area that is not more than 3 times its maximum surface area at full supply level.

(2) On the commencement of this section, the referable dam conditions applying to the licence no longer apply.

(3) Subsection (4) applies if before the commencement of this section, an application made under section 43 for a referable dam has not been decided, and the dam is not—

- (a) more than 8 m in height and does not have a storage capacity of more than 500 ML; or
- (b) more than 8 m in height and does not have a storage capacity of more than 250 ML and a catchment area that is not more than 3 times its maximum surface area at full supply level.

(4) The application—

- (a) if it is for a dam on a watercourse—must be decided under the Act as an application for a dam; or

²⁸ Section 1.3 (Repeals and savings) of the Act as originally enacted

(b) if it is for a dam that is not on a watercourse—lapses.

(5) In this section—

“**referable dam**” does not include works that contain hazardous waste.

Delegations continue until revoked

259. A delegation made by the chief executive under the *Primary Industries Corporation Act 1992*, section 10, before the commencement of this section—

- (a) is taken to have been made by the chief executive under this Act;
and
- (b) continues to have effect until revoked by the chief executive.

SCHEDULE

SUBJECT MATTER FOR REGULATIONS

section 250A(3)

Officers and other persons

1. The powers, authorities, functions and duties of officers and other persons administering this Act; the conduct, discipline, regulation and control of other persons.

Inspections

2. Provision for inspections of works, machinery, equipment and services and all matters and things in connection therewith or incidental thereto.

Terms and implied terms in contracts and the like

3. The terms to be inserted or implied in contracts, agreements, leases and other instruments; the forms of contracts, agreements, leases and other instruments.

Notices and the like

4. The signing, giving, serving and enforcement of notices, requisitions and other documents or writings under this Act.

Applications and grants etc.

5. Applications (including criteria to be considered under section 43) for and the grant, issue, revocation, cancellation, suspension or surrender of licences, amended licences, registrations, permits, approvals, certificates and authorities under this Act and transfers, renewals and duplicates thereof; the terms subject to which licences, amended licences, registrations, permits,

SCHEDULE (continued)

approvals, certificates and authorities may be granted, issued, revoked, cancelled, suspended, surrendered, transferred or renewed; the records to be kept in relation thereto.

Proof of matters and things and documents

6. The manner in which matters and things required to be proved under this Act and any application, recommendation, report, order, notice, requisition or other document under this Act may be proved for any purpose and the procedures to be followed in connection therewith.

Mode of execution

7. The manner in which any act, matter or thing under or for the purposes of this Act may be executed, done or performed and the procedures to be followed in connection therewith.

Materials for works or things

8. Requiring any works or thing under or for the purposes of this Act to be executed, done or constructed with the use of materials, within the time or in the manner the chief executive or officer or other person directs or approves generally or for a class of cases or in a particular case; requiring works to be executed or constructed only by designated qualified persons.

Management of works

9. The due management and use of works and other property of the Crown under the control of the State or chief executive and the construction, maintenance, extension, cleaning, repair and management of the works in connection therewith.

Straying stock

10. The prevention of the straying of stock on roads, reserves or other land vested in the State or under the control of the State or chief executive.

SCHEDULE (continued)

Preservation of watercourses and the like, catchment areas against injury, damage, etc.

11. The preservation and protection of watercourses, lakes, springs, underground and other sources of water supply and catchment areas against injury, damage, trespass or pollution the prohibition of the doing or continuance of any act that causes or is likely to cause pollution thereof or of the water supply therein or thereon.

Traffic

12. Regulation and control of traffic on roads and other localities on or in land vested in the State or under the control of the State or chief executive.

Demonstration farms, experiment stations

13. The establishment and the regulation and control of the operation and management of demonstration farms and experiment stations.

Improvements

14. The construction of improvements on land for which a nominal allocation has been granted; the fixing of prices or charges for the acquisition or use of improvements on land for which a nominal allocation has been granted effected by or under the authority of the State or chief executive.

Protection of water and works

15. Protection of the water, works, surveys, fittings and other property of the State or under the control of the State or chief executive and every part thereof from trespass, diversion, pollution, defilement, obstruction, injury, loss or damage.

Nuisances

16. Prevention of encroachment of nuisances on and removal of

SCHEDULE (continued)

nuisances from land and works vested in the State or under the control of the State or chief executive.

Structures

17. The construction, control and regulation of structures within an irrigation area and the height and design of and materials to be used in and all other matters and things in or in connection with the construction of structures within the area.

Provision etc. of recreational or tourist facilities

18. Regulation and control of the provision, operation, maintenance, protection, lease, sale or other disposal of recreational or tourist facilities and the grant to persons of ancillary rights in connection therewith at headworks or on other land vested in the State or under the control of the State or chief executive.

Recreational activities

19. Regulation and control of recreational activities in, on or over watercourses, lakes, other water storages, dams, weirs, barrages or catchment areas or land vested in the State or under the control of the State or chief executive including, without limiting the generality of this provision, regulation and control of the use therein, thereon or thereover of watercraft or motorised land vehicles of every type and description; prohibition or restriction of certain recreational activities.

Supply of water

20. Regulation and control of the supply and distribution of water; prescription of the terms on or subject to which water may be allocated, supplied or distributed; the methods to be adopted for measuring water entitlements and quantities of water; quantities of water that consumers are entitled to receive and the names or descriptions that may be applied to different entitlements under licences or permits; determination of the time, order and manner of the delivery of water.

SCHEDULE (continued)

Use of water for irrigation, domestic purposes, watering stock and other purposes

21. The terms, subject to which water may be used by consumers for irrigation, domestic purposes, watering stock or industrial, mining, urban or other specified purposes.

Insufficiency in water supply

22. The provision of methods and procedures to meet the contingency of any insufficiency in the general water supply in any area.

Charges for water

23. The making and levying, and the fixing of the scale or structure of, charges to be paid for water allocated, supplied to or taken by consumers under a licence, permit, contract or agreement or water allocation or otherwise allocated or supplied including, without limiting the generality of this provision, the fixing of a minimum amount to be paid in specified cases and different charges for water according to the purposes for which it is allocated, supplied or taken; providing for a variation in the price of water supplied in excess of a specified quantity; determination of the times at which charges for water are payable whether in advance or otherwise.

Recovery of charges for water

23A. For charges levied under item 23—

- (a) persons required to pay the charges; and
- (b) notification to persons required to pay the charges, including what is taken to be sufficient notification; and
- (c) discounts; and
- (d) conditions of payment of charges; and
- (e) recovery of unpaid charges; and
- (f) under item 36, interest that must be paid if the charges are not

SCHEDULE (continued)

paid as required, conditions of payment and recovery of unpaid interest.

Drainage rates and charges

24. The making and levying of rates and charges in respect of drainage works in irrigation areas; fixing the basis or bases upon which those rates and charges may be made and levied; prescription of other matters incidental thereto.

Local services and charges therefor

25. The supply and regulation of stormwater drainage and other drainage, sanitary, sewerage and garbage systems, the suppression of nuisances, the removal and disposal of garbage, nightsoil, filth and other refuse with respect to land vested in the State or under the control of the State or chief executive; the fixing, payment, collection and recovery by the chief executive of charges for the rendering of services specified in this section.

Riparian owners and occupiers

26. Regulation and control of the exercise of rights for the purpose of securing the distribution of water partly or wholly supplied from works of the State to owners or occupiers of land adjoining the banks of a watercourse or lake who have purchased or may thereafter purchase water from those works and to all other purchasers of water from those works, without any diversion or interference by an intermediate owner or occupier of land adjoining those banks; preservation of the rights of intermediate owners or occupiers to water as they would be entitled to receive but for the existence of the works of the State.

Prevention of waste and the like of water

27. The prevention of and provision of remedies for the waste, misuse, undue or unauthorised consumption or pollution of water contained in or supplied from water storages or works of the State or underground sources of water supply.

SCHEDULE (continued)

Water allocations

28. Provision for all matters and things with respect to water allocations, the surrender, transfer or termination thereof, agreements as to use of water thereunder and the apportionment thereof and for all matters and things in connection therewith or incidental thereto and the regulation and control thereof; methods of and procedures for applying water to land within an area that may be permitted.

Carryovers and forward draws of water allocations

28A. For any nominal allocation—

- (a) the carryover of unused water from 1 period for which there is an announced allocation to the next period; and
- (b) the forward draw of water from 1 period for which there is or will be an announced allocation into the previous period; and
- (c) conditions, including charges under item 23, for the carryover or forward draw of water.

Furnishing information and returns re works

29. The furnishing of information and returns by owners and occupiers on those matters and things prescribed with respect to artesian and sub-artesian bores and other works for water supply or quests for water, commenced, constructed or abandoned whether before or after the commencement of this Act; the forms of returns; the manner of and procedures for verifying information and returns.

Furnishing of information and returns re controlled quarry material

30. The information and returns to be furnished by a person with respect to controlled quarry material or other material taken and removed by the person on or from the bed and banks of a watercourse or lake; the times when and the persons by and to whom information and returns are to be furnished; the forms of returns; the manner of verifying information and returns.

SCHEDULE (continued)

Sale of controlled quarry material by auction and the like

31. Prescription, regulation and control of the methods and procedures for the sale whether by auction or after tender of controlled quarry material; fixing upset prices or charges with respect to sales; drawing up price lists for various classes of controlled quarry material.

Designated areas, catchment areas

32. The regulation and control of designated areas (including preparation or approval of plans of preferred development thereof) and catchment areas and works thereon and the use of the land and water therein or thereon.

Fees and the like

33. Fees, charges, allowances, royalty, costs and expenses payable to or to be paid by the State or chief executive or other persons under or for the purposes of this Act and the fixing thereof; matters and things in respect of which they are payable or to be paid; methods of collection thereof; manner, time and place of payment thereof; persons by whom and to whom they are payable; all matters and things with respect to the recovery thereof.

Control of bores

34. Regulation and control in the public interest of the flow of water from an artesian bore or a subartesian bore.

Penalties

35. Penalties that may be imposed for a contravention of or failure to comply with any of the regulations, not exceeding in each case 40 penalty units; providing for different penalties in cases of successive breaches; providing that in addition to imposing a penalty, the court may order that costs and expenses incurred by the State or chief executive consequent upon a contravention of or failure to comply with a regulation must be paid by the offender.

SCHEDULE (continued)

Interest

36. Providing that moneys payable to the State or chief executive must be subject to the payment of interest on amounts thereof remaining unpaid; fixing the classes of charges on which and the date from which interest becomes payable and the rate of interest; all matters and things with respect to the recovery thereof.

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 9 November 2000. Future amendments of the Water Resources Act 1989 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
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 70 of 1994	26 May 1994
2	to Act No. 10 of 1995	1 June 1995
3	to Act No. 57 of 1995	20 December 1995
3A	to Act No. 54 of 1996	4 December 1996
3B	to Act No. 68 of 1996	21 February 1997
3C	to Act No. 78 of 1997	24 February 1998
4	to Act No. 25 of 1998	20 July 1998
4A	to Act No. 48 of 1998	18 December 1998
4B	to Act No. 86 of 1999	11 February 2000
4C	to Act No. 5 of 2000	31 March 2000
4D	to Act No. 26 of 2000	21 July 2000

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1, 2, 3
Changed names and titles	1, 2, 3
Corrected minor errors	1, 2, 4
Obsolete and redundant provisions	1, 2
Renumbered provisions	1, 2

6 List of legislation

Water Resources Act 1989 No. 112

date of assent 31 October 1989

ss 1–1.2 commenced on date of assent

pts 6 and 7 commenced 18 May 1991 (proc pubd gaz 18 May 1991 p 258)

remaining provisions commenced 1 February 1990 (proc pubd gaz 25 November 1989 p 2248)

as amended by—

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

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)

Water Resources Amendment Act 1993 No. 7

date of assent 26 March 1993

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1993 No. 32 ss 1–3 sch 1

date of assent 3 June 1993

commenced on date of assent

Local Government Act 1993 No. 70 ss 1–2, 804 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))

Fossicking Act 1994 No. 63 ss 1–2, 110(2) sch

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1994 (1994 SL No. 465)

Land Act 1994 No. 81 ss 1–2, 527 sch 5 (as amd 1995 No. 10 s 37 (as from 5 April 1995))

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (1995 SL No. 185)

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 ss 1–3 sch 2

date of assent 1 December 1994

commenced on date of assent

Water Resources Amendment Act 1995 No. 10

date of assent 5 April 1995

s 3 sch amdts 8, 9, 47–49, 72 commenced 1 July 1995 (see s 2 and 1995 SL No. 185)

remaining provisions commenced on date of assent

Statutory Authorities Superannuation Legislation Amendment Act 1995 No. 36 ss 1–2, 9 sch 2

date of assent 16 June 1995

commenced on date of assent

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1 (as amd 1995 No. 58 ss 1–2, 4 sch 1 (as from 28 November 1995 (see s 2(1) sch 1)))

date of assent 28 November 1995

commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

Natural Resources Legislation Amendment Act 1996 No. 68 pts 1, 3

date of assent 9 December 1996

commenced on date of assent

Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997 No. 17 ss 1–2, 74 sch

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

Natural Resources Legislation Amendment Act 1997 No. 41 ss 1, 2(2) pt 4

date of assent 25 August 1997

ss 30, 31, 33 commenced 5 December 1997 (see s 2(2) and 1997 SL No. 421)

remaining provisions commenced on date of assent (see s 2(2))

Natural Resources and Other Legislation Amendment Act 1997 No. 78 pts 1, 12

date of assent 5 December 1997
commenced on date of assent

Water Resources Amendment Act 1998 No. 25

date of assent 14 May 1998
s 9 commenced 17 July 1998 (see s 2 and 1998 SL No. 207)
remaining provisions commenced on date of assent

Valuation of Land and Other Legislation Amendment Act 1998 No. 48 pt 1 s 17 sch

date of assent 27 November 1998
ss 1–2 commenced on date of assent
remaining provisions commenced 18 December 1998 (1998 SL No. 364)

South East Queensland Water Board (Reform Facilitation) Act 1999 No. 46 ss 1–2, pt 4

date of assent 17 September 1999
ss 1–2, 14 commenced on date of assent
remaining provisions commenced 17 March 2000 (see ss 2(2), 8 and notice pubd gaz 16 March 2000 p 989)

Sugar Industry Act 1999 No. 51 ss 1, 2(2), 228 sch 1

date of assent 18 November 1999
ss 1–2 commenced on date of assent
remaining provisions commenced on 1 January 2000 (see s 2(2))

Water Resources Amendment Act 1999 No. 86

date of assent 14 December 1999
s 14 commenced 17 March 2000 (see s 2(1), 8 and notice pubd gaz 16 March 2000 p 989)
remaining provisions commenced on date of assent (see s 2(2))

Land Court Act 2000 No. 1 ss 1–2, 86 sch 1

date of assent 8 March 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2000 (2000 SL No. 165)

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 373 sch 3

date of assent 23 March 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2

date of assent 8 June 2000
ss 1–2, 590 commenced on date of assent (see s 2(1))
remaining provisions not yet proclaimed into force

Primary Industries and Natural Resources Legislation Amendment Act 2000 No. 26 ss 1, 12 sch 1

date of assent 27 June 2000
commenced on date of assent

Water Act 2000 No. 34 ss 1–2, 1145 sch 3

date of assent 13 September 2000

ss 1–2, sch 3 amdts 1–6, 11 commenced on date of assent (see s 2(2))

sch 3 amdts 7–8 commenced 1 October 2000 (2000 SL No. 257)

remaining provisions not yet proclaimed into force

7 List of annotations

This reprint has been renumbered—see table of renumbered provisions in endnote 8.

Title

amd 1992 No. 15 s 13 sch; 1993 No. 7 s 3; 1996 No. 68 s 5; 1997 No. 41 s 13; 1997 No. 78 s 134

Commencement

s 1.2 om R2 (see RA s 37)

Repeals and savings

s 1.3 om 1992 No. 15 s 13 sch

Interpretation

s 2 amd 1992 No. 15 s 13 sch; 1993 No. 7 s 4(2); 1997 No. 41 s 14
 def **“approved form”** ins 1995 No. 57 s 4 sch 1
 def **“Assistant Commissioner”** om 1992 No. 15 s 13 sch
 def **“authorised officer”** amd 1992 No. 15 s 13 sch
 def **“catchment area”** sub 1995 No. 10 s 4(1)–(2)
 def **“chief executive”** ins 1992 No. 15 s 13 sch
 om R1 (see RA s 39)
 def **“Commission”** om 1992 No. 15 s 13 sch
 def **“Commissioner”** om 1992 No. 15 s 13 sch
 def **“controlled works”** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 4(3)
 def **“corporation”** ins 1992 No. 15 s 13 sch
 om 2000 No. 26 s 12 sch 1
 def **“Crown holding”** amd 1994 No. 81 s 527 sch 5
 def **“declared subartesian area”** ins 1997 No. 78 s 135(1)
 def **“Deputy Commissioner”** om 1992 No. 15 s 13 sch
 def **“designated area”** sub 1995 No. 10 s 4(1)–(2)
 def **“Director-General”** ins 1990 No. 80 s 3 sch 7
 om 1992 No. 15 s 13 sch
 def **“driller’s licence”** ins 1997 No. 78 s 135(1)
 def **“full supply level”** ins 2000 No. 34 s 1145 sch 3
 def **“holding”** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch
 def **“irrigation undertaking”** amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
 def **“lake”** sub 1995 No. 10 s 3 sch
 def **“land”** om 1992 No. 15 s 13 sch
 def **“Land Administration Commission”** om 1995 No. 10 s 4(1)
 def **“Land Appeal Court”** 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 “**Minister**” om 1992 No. 15 s 13 sch
 def “**rate**” amd 1992 No. 15 s 13 sch
 def “**ratepayer**” amd 1992 No. 15 s 13 sch
 def “**referable dam**” amd 1992 No. 15 s 13 sch; 2000 No. 34 s 1145 sch 3
 def “**road**” amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
 def “**subdivision**” amd 1995 No. 10 s 3 sch
 sub 1998 No. 48 s 17 sch
 def “**Treasurer**” om 1992 No. 15 s 13 sch
 def “**water allocation**” amd 1992 No. 15 s 13 sch; 1997 No. 78 s 135(2)
 def “**water available for allocation**” ins 1997 No. 78 s 135(1); 2000
 No. 26 s 12 sch 1
 def “**water management plan**” ins 1996 No. 68 s 6
 def “**watercourse**” amd 1992 No. 15 s 13 sch; 1993 No. 7 s 4(1)
 def “**works**” amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1

Rights in certain water to vest in Crown

s 3 om 2000 No. 34 s 1145 sch 3

Restrictions on rights in water vested in Crown

s 4 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 2000 No. 26 s 12 sch 1
 om 2000 No. 34 s 1145 sch 3

Declaration as to property in bed and banks of watercourse or lake

s 5 om 2000 No. 34 s 1145 sch 3

Division 1—General

div hdg sub 1992 No. 15 s 13 sch

Delegation by Minister

s 6 amd 1990 No. 80 s 3 sch 7
 prev om 1992 No. 15 s 13 sch
 pres ins 1995 No. 10 s 3 sch

Appointment of authorised officers

s 6A ins 1996 No. 68 s 7

Limitation of authorised officer’s powers

s 6B ins 1996 No. 68 s 7

Authorised officer’s identity card

s 6C ins 1996 No. 68 s 7

Production or display of authorised officer’s identity card

s 6D ins 1996 No. 68 s 7

Water Resources Commission

s 3.2 om 1992 No. 15 s 13 sch

Appointment of officers

s 3.3 amd 1990 No. 80 s 3 sch 7
 om 1992 No. 15 s 13 sch

Qualifications of commissioner and deputy commissioner

s 3.4 om 1992 No. 15 s 13 sch

Continuance in office of certain persons

s 3.5 om 1992 No. 15 s 13 sch

Power of delegation by commission

s 3.6 om 1992 No. 15 s 13 sch

Property to vest in commission

s 3.7 om 1992 No. 15 s 13 sch

Authentication of documents

s 3.9 om 1992 No. 15 s 13 sch

Application of s 28A of Acts Interpretation Act

s 3.10 om 1995 No. 10 s 3 sch

Division 2—Powers of chief executivediv hdg sub 1992 No. 15 s 13 sch
amd 2000 No. 26 s 12 sch 1**General powers**prov hdg amd 1992 No. 15 s 13 sch
sub 2000 No. 26 s 12 sch 1s 8 amd 1992 No. 15 s 13 sch; 1993 No. 7 s 5; 1995 No. 10 s 3 sch;
1997 No. 78 s 136; 2000 No. 26 s 12 sch 1
om 2000 No. 34 s 1145 sch 3**Duty of commissioner to advise Minister and make recommendations**

s 3.12 om 1992 No. 15 s 13 sch

Powers with respect to works etc.prov hdg amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
s 9 amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1**Powers etc. of corporation as to ancillary works and the like**prov hdg amd 1992 No. 15 s 13 sch
s 10 amd 1992 No. 15 s 13 sch
om 2000 No. 26 s 12 sch 1**Entry upon land**

s 11 amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1

Grant of land to Commission

s 3.16 om 1992 No. 15 s 13 sch

Acquisition of land by corporationprov hdg amd 1992 No. 15 s 13 sch
s 12 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch
om 2000 No. 26 s 12 sch 1**Power of corporation to lease or dispose of land or works**prov hdg amd 1992 No. 15 s 13 sch
s 13 amd 1992 No. 15 s 13 sch
om 2000 No. 26 s 12 sch 1

Powers of chief executive where water supply area or drainage area not constituted or proposed to be abolished

- prov hdg** amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
s 14 amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
om 2000 No. 34 s 1145 sch 3

Power to supply water by agreement

- prov hdg** amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
s 15 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 5; 1997 No. 41 s 15; 2000 No. 26
s 12 sch 1

General power to make and enter into contracts

- s 3.21** om 1992 No. 15 s 13 sch

Mode of making or entering into contracts or agreements

- s 3.22** om 1992 No. 15 s 13 sch

Declaration as to downstream limit along a watercourse above which the chief executive may exercise powers etc.

- prov hdg** amd 1992 No. 15 s 13 sch
s 16 amd 1992 No. 15 s 13 sch
om 2000 No. 34 s 1145 sch 3

Power of chief executive to carry out investigations, prepare estimates etc. on behalf of person

- prov hdg** amd 1992 No. 15 s 13 sch
s 17 amd 1992 No. 15 s 13 sch
om 2000 No. 34 s 1145 sch 3

Power of chief executive with respect to pipes etc. to be used for certain purposes

- prov hdg** amd 1992 No. 15 s 13 sch
s 18 amd 1992 No. 15 s 13 sch
om 2000 No. 34 s 1145 sch 3

Division 3—Advisory council and advisory committees

- div hdg** om 2000 No. 34 s 1145 sch 3

Establishment and functions

- s 19** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 2000 No. 26 s 12 sch 1
om 2000 No. 34 s 1145 sch 3

Membership

- s 20** amd 1995 No. 10 s 3 sch
om 2000 No. 34 s 1145 sch 3

Further matters about the operation of a council or committee

- prov hdg** amd 1995 No. 10 s 6(1)
s 21 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 6(2)–(5)
om 2000 No. 34 s 1145 sch 3

Duty of chief executive

- prov hdg** amd 1992 No. 15 s 13 sch
s 22 amd 1992 No. 15 s 13 sch
 om 2000 No. 34 s 1145 sch 3

Corporation is statutory body

- s 23** amd 1992 No. 15 s 13 sch
 sub 1996 No. 54 s 9 sch
 om 2000 No. 26 s 12 sch 1

Stamp duty

- s 24** amd 1992 No. 15 s 13 sch
 sub 2000 No. 26 s 12 sch 1
 om 2000 No. 34 s 1145 sch 3

Power to remit payment of charges or interest thereon

- s 25** amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
 om 2000 No. 34 s 1145 sch 3

PART 3A—WATER MANAGEMENT PLANS**Division 1—Preliminary**

- div hdg** ins 1996 No. 68 s 8

Definitions for pt 3A

- 25A** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Division 2—Preparation and approval of water management plans

- div hdg** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Water management plans may be made

- s 25B** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Content of water management plans

- s 25C** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Public notice of proposal to prepare draft water management plan

- s 25D** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Principles and policies for draft water management plan

- s 25E** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Public notice inviting submissions on draft water management plan

- s 25F** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Submissions to be considered before water management plan made

- s 25G** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Draft plan must be readvertised if changed

- s 25H** ins 1996 No. 68 s 8
 amd 1999 No. 86 s 4
 om 2000 No. 34 s 1145 sch 3

Approval of water management plan

- s 25I** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Notice of intention not to proceed further toward making water management plan

- s 25J** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Amendment of water management plan

- s 25K** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Public inspection and purchase of plans

- s 25L** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Regulatory impact statements

- s 25M** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Division 3—Effect of notice of proposal to prepare plan

- div hdg** ins 1996 No. 68 s 8
 om 2000 No. 34 s 1145 sch 3

Effect of notice under s 25D on applications, agreements, sales, etc.

- s 25N** ins 1996 No. 68 s 8
 amd 1999 No. 86 s 5; 2000 No. 26 s 12 sch 1
 om 2000 No. 34 s 1145 sch 3

Exceptions to s 25N

- s 25O** ins 1996 No. 68 s 8; 2000 No. 26 s 12 sch 1
 om 2000 No. 34 s 1145 sch 3

Division 4—Compliance with plan

- div hdg** ins 1996 No. 86 s 8
 om 2000 No. 34 s 1145 sch 3

Actions must not be inconsistent with water management plan

- s 25P** ins 1996 No. 68 s 8
 amd 1999 No. 86 s 6
 om 2000 No. 34 s 1145 sch 3

Annual report

- s 3.33** om 1992 No. 15 s 13 sch

Power of Governor in Council to vest in the Crown bed and banks of a watercourse or lake not forming boundary of a parcel of land at commencement of this Act

- s 26 amd 1995 No. 10 sch
 om 2000 No. 34 s 1145 sch 3

Control over catchment area

- s 27 amd 1992 No. 15 s 13 sch
 sub 1995 No. 10 s 7
 om 2000 No. 34 s 1145 sch 3

Wastage of water from artesian or subartesian bore

- s 29 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 137

Supply of surplus water from artesian or subartesian bore

- s 30 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 138

Operation of the Act about subartesian bores

- s 31 sub 1995 No. 10 s 3 sch
 om 1997 No. 78 s 139

Exemption of subartesian water supplies for domestic purposes

- s 32 amd 1995 No. 10 s 3 sch
 om 1997 No. 139 s 139

Prohibition as to diversions and appropriations of water

- s 33 om 2000 No. 34 s 1145 sch 3

Right of owner or occupier of land abutting a watercourse or lake to access for water and grazing and to right of action for trespass

- s 34 om 2000 No. 34 s 1145 sch 3

Right to take water by prescription or use prohibited

- s 35 amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
 om 2000 No. 34 s 1145 sch 3

Ordinary riparian rights to use water

- s 36 amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1

Control of certain quarry material

- s 37 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 139A

Division 1A—Certain specific provisions about subartesian bores

- div 1A (ss 37A–37B) ins 1997 No. 78 s 140

Offences about constructing works etc. and otherwise taking water without the authority of a licence

- prov hdg sub 1997 No. 78 s 141(1)
s 38 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 1997 No. 78 s 141(2)–(7);
 2000 No. 26 s 12 sch 1

Rights of non-riparian owner to licence

- s 39 amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1

Power of court upon conviction for an offence against s 38

- s 40 amd 1992 No. 15 s 13 sch

Alterations other than for repair or maintenance of works prohibited

s 41 amd 1997 No. 78 s 142

Application for licence

s 42 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 9

Inquiry by chief executive and grant or refusal of application

prov hdg amd 1992 No. 15 s 13 sch

s 43 amd 1992 No. 15 s 13 sch; 1996 No. 68 s 9; 1997 No. 41 s 16; 1997 No. 78 s 143

Certain decisions of the chief executive to be published in newspapers

prov hdg sub 1997 No. 78 s 144(1)

s 43A ins 1996 No. 68 s 10
amd 1997 No. 78 s 144(2)

Notice of decision about constructing or using artesian or subartesian bores

s 43B ins 1997 No. 78 s 145
amd 2000 No. 1 s 86 sch 1

Licences

s 44 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 10; 1997 No. 41 s 17; 1998 No. 25 s 4; 1999 No. 86 s 7

Renewal of licence

s 46 amd 1992 No. 15 s 13 sch; 1999 No. 86 s 8

Transferring licences

s 47 amd 1992 No. 15 s 13 sch
sub 1995 No. 10 s 11

Surrender of licence

s 48 amd 1992 No. 15 s 13 sch

Holder of driller's licence to keep certain information about boreholes and give it to the chief executive

s 48A ins 1997 No. 78 s 146

Effect of disposal of subdivided land

s 49 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 12

Amendment, variation, cancellation, revocation or suspension of licence

s 50 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 13; 1997 No. 78 s 147

Procedure for internal review of decision about driller's licences

s 50A ins 1997 No. 78 s 148

Stay of operation of original decisions

s 50B ins 1997 No. 78 s 148

Appeal to Land Court

s 51 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 14; 1996 No. 68 s 11; 1997 No. 41 s 18; 1997 No. 78 s 149; 2000 No. 1 s 86 sch 1

Application for reduction in water entitlement or area of land

s 52 amd 1992 No. 15 s 13 sch

Requirement as to licensing and employment of drillers

s 53 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 150

Licence in substitution

s 54 amd 1992 No. 15 s 13 sch

Duplicate or copy of lost or destroyed licence, permit or authority

s 55 amd 1992 No. 15 s 13 sch

Power to issue permit to government department, other person or body to take water

s 56 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 151

Power to issue permit to construct or use works in the exercise of a right to use water under s 36

s 57 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 152

Application for and issue of permit in respect of quarry material

s 58 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 153

Procedure before dealing with controlled quarry material on Crown holding

s 59 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 151

Rights to enter and remain on Crown land or holding under permit

s 60 amd 1992 No. 15 s 13 sch

Sale of controlled quarry material

s 61 amd 1992 No. 15 s 13 sch

Sale of controlled quarry materials to fossicker

s 62 ins 1994 No. 63 s 110(2) sch
 amd 2000 No. 26 s 12 sch 1

Royalty or price

s 63 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 154

Amendment, variation, cancellation, revocation or suspension of permit

s 64 amd 1992 No. 15 s 13 sch

Notice to stop unauthorised quarrying activities etc.

s 64A ins 1997 No. 78 s 155

Limitation of times during which water may be taken under licence or permit

s 65 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 1997 No. 78 s 156

Offences as to dealing with water

s 66 amd 1992 No. 15 s 13 sch; 1993 No. 7 s 6; 1997 No. 78 s 157

Powers of chief executive with respect to unauthorised works

prov hdg amd 1992 No. 15 s 13 sch

s 67 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 158

Division 5—Protecting and improving the physical integrity of watercourses

div hdg ins 1993 No. 7 s 7

Definitions

s 68 ins 1993 No. 7 s 7
amd 1997 No. 78 s 159

Division binds the Crown

s 69 ins 1993 No. 7 s 7

Destruction of vegetation, excavation or placing of fill

s 70 ins 1993 No. 7 s 7
amd 1997 No. 78 s 160

Permit to destroy vegetation or to excavate or fill

s 71 ins 1993 No. 7 s 7
amd 1997 No. 78 s 161

Matters to be considered by chief executive

s 72 ins 1993 No. 7 s 7
amd 1997 No. 78 s 162

Cancellation of permit or amendment of terms of permit

s 73 ins 1993 No. 7 s 7
amd 1997 No. 78 s 163

Suspension of permit in exceptional circumstances

s 74 ins 1993 No. 7 s 7
amd 1997 No. 78 s 164

Limited nature of permit

s 75 ins 1993 No. 7 s 7

Notice to stop, or not engage in, a stated activity

s 76 ins 1993 No. 7 s 7
sub 1997 No. 78 s 165

Notice to remove vegetation etc.

s 77 ins 1993 No. 7 s 7
amd 1997 No. 78 s 166

Appeals

s 78 ins 1993 No. 7 s 7
amd 1995 No. 10 s 16

PART 5—SALE OF WATER ENTITLEMENTS

pt hdg ins 1995 No. 10 s 17

Purpose of this part

s 79 ins 1995 No. 10 s 17
amd 1997 No. 41 s 19; 2000 No. 26 s 12 sch 1
om 2000 No. 34 s 1145 sch 3

Definitions for pt 5

prov hdg amd 1997 No. 41 s 20(1)
s 80 ins 1995 No. 10 s 17
om 2000 No. 34 s 1145 sch 3

def **“agreement party”** ins 1997 No. 41 s 20(2)

amd 2000 No. 26 s 12 sch 1

def **“entitlement”** amd 1997 No. 41 s 20(3); 2000 No. 26 s 12 sch 1

def **“entitlement information”** amd 1997 No. 41 s 20(4); 2000 No. 26 s 12 sch 1 (amendment could not be given effect)

def **“potential agreement”** ins 1997 No. 41 s 20(2)

amd 2000 No. 26 s 12 sch 1 (amendment could not be given effect)

Chief executive may publish notice

s 81 ins 1995 No. 10 s 17
om 2000 No. 34 s 1145 sch 3

Where notice must be published

s 82 ins 1995 No. 10 s 17
om 2000 No. 34 s 1145 sch 3

Inquiry before publication of notice of intention to sell

s 83 ins 1995 No. 10 s 17
amd 1997 No. 41 s 21
om 2000 No. 34 s 1145 sch 3

Persons who are eligible to give objections

s 84 ins 1995 No. 10 s 17
amd 1997 No. 41 s 22
om 2000 No. 34 s 1145 sch 3

Chief executive must inquire into objections

s 85 ins 1995 No. 10 s 17
amd 1997 No. 41 s 23
om 2000 No. 34 s 1145 sch 3

Chief executive may amend notice of intention to sell

s 86 ins 1995 No. 10 s 17
amd 1997 No. 41 s 24
om 2000 No. 34 s 1145 sch 3

Objections to amendment

s 87 ins 1995 No. 10 s 17
om 2000 No. 34 s 1145 sch 3

Steps to be taken after inquiry

s 88 ins 1995 No. 10 s 17
om 2000 No. 34 s 1145 sch 3

Chief executive may sell entitlements after notice is published

s 89 ins 1995 No. 10 s 17
om 2000 No. 34 s 1145 sch 3

Issue of licence on sale of entitlement

s 90 ins 1995 No. 10 s 17
amd 1997 No. 41 s 25
om 2000 No. 34 s 1145 sch 3

Entering into agreement on sale of entitlement

s 90A ins 1997 No. 41 s 26; 2000 No. 26 s 12 sch 1
 ins 1995 No. 10 s 17
 om 2000 No. 34 s 1145 sch 3

Control of referable dams

prov hdg amd 1997 No. 41 s 27(1)
s 91 amd 1992 No. 15 s 13 sch; 1997 No. 41 s 27(2)

Power of chief executive to declare certain works or proposed works to be a referable dam

prov hdg amd 1992 No. 15 s 13 sch
s 92 amd 1992 No. 15 s 13 sch; 1997 No. 41 s 28

Requirements by chief executive as to referable dam

prov hdg amd 1992 No. 15 s 13 sch
s 93 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 18; 1997 No. 41 s 29; 1997 No. 78 s 167; 2000 No. 34 s 1145 sch 3

Exemption of owner of referable dam from provisions of Act

s 94 amd 1992 No. 15 s 13 sch

Protection against liability for failure or collapse of referable dam

s 95 amd 1990 No. 80 s 3 sch 7; 1992 No. 15 s 13 sch

Meaning of special works

s 96 amd 1998 No. 25 s 5

Recommendation re certain works

s 97 amd 1992 No. 15 s 13 sch; 1998 No. 25 s 6

Power of Governor in Council

s 98 amd 1998 No. 25 s 7

Application with respect to special works

s 99 amd 1992 No. 15 s 13 sch; 1998 No. 25 s 8

Approval of agreement

s 101 sub 1995 No. 10 s 3 sch

Effect of agreement

prov hdg amd 1995 No. 10 s 3 sch
s 102 amd 1995 No. 10 s 3 sch

Recording agreement

s 103 amd 1992 No. 15 s 13 sch
 sub 1994 No. 81 s 527 sch 5 (as amd 1995 No. 10 s 37)
 amd 1995 No. 10 s 3 sch

Non-application of part

s 7.1 om 1993 No. 70 s 804 sch

Constitution of designated area

s 104 amd 1995 No. 10 s 19
 om 2000 No. 34 s 1145 sch 3

Procedure before making regulation about designated area

- s 105** amd 1992 No. 15 s 13 sch
 sub 1995 No. 10 s 20
 om 2000 No. 34 s 1145 sch 3

General powers of chief executive

- prov hdg** amd 1992 No. 15 s 13 sch
s 106 amd 1992 No. 15 s 13 sch
 om 2000 No. 34 s 1145 sch 3

Power of chief executive to control levee banks to which s. 47(24) of the Local Government Act applies

- prov hdg** amd 1992 No. 15 s 13 sch
s 7.5 amd 1992 No. 15 s 13 sch
 om 1993 No. 70 s 804 sch

Licence for controlled works

- s 107** amd 1992 No. 15 s 13 sch
 om 2000 No. 34 s 1145 sch 3

Levee banks under Local Government Act not controlled works

- s 108** ins 1993 No. 70 s 804 sch
 om 2000 No. 34 s 1145 sch 3

No right to compensation

- s 109** amd 1992 No. 15 s 13 sch
 om 2000 No. 34 s 1145 sch 3

Irrigation undertaking to be approved by Governor in Council

- s 110** amd 1995 No. 10 s 3 sch
 om 2000 No. 34 s 1145 sch 3

Procedure on proposal for irrigation undertaking

- s 111** amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
 om 2000 No. 34 s 1145 sch 3

Minister to provide report to Governor in Council

- s 112** sub 1995 No. 10 s 21
 om 2000 No. 34 s 1145 sch 3

Establishing the irrigation undertaking

- s 113** sub 1995 No. 10 s 22
 om 2000 No. 34 s 1145 sch 3

Power to construct works and do necessary acts and things in connection with irrigation undertaking

- s 114** amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
 om 2000 No. 34 s 1145 sch 3

Division 2—Irrigation areas

- div hdg** om 2000 No. 34 s 1145 sch 3

Constitution of area

- s 115** amd 1995 No. 10 s 3 sch
 om 2000 No. 34 s 1145 sch 3

Drainage works

s 116 amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
om 2000 No. 34 s 1145 sch 3

Assessment on owners of sugar mills and other premises

s 117 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 1999 No. 51 s 228 sch 1;
2000 No. 26 s 12 sch 1
om 2000 No. 34 s 1145 sch 3

Powers of chief executive with respect to treatment, destruction or removal of trees, other vegetation, litter or refuse in irrigation area

prov hdg amd 1992 No. 15 s 13 sch
s 118 amd 1992 No. 15 s 13 sch
om 2000 No. 34 s 1145 sch 3

Subdivision of freehold land within irrigation area

s 119 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 1998 No. 48 s 17 sch
om 2000 No. 34 s 1145 sch 3

Determination of holding

s 8.11 amd 1992 No. 15 s 13 sch
om 1995 No. 10 s 23

Grant of water allocation

s 120 amd 1992 No. 15 s 13 sch
sub 1995 No. 10 s 24

Licence for water allocation for land

prov hdg sub 1995 No. 10 s 25(1)
s 121 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 25(2)–(3)

Surrender of nominal allocation

s 122 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch

Chief executive's power if nominal allocation land is subdivided

prov hdg amd 1992 No. 15 s 13 sch
s 123 amd 1992 No. 15 s 13 sch
sub 1995 No. 10 s 26

Power to discontinue water supply upon non-payment of charges

s 124 amd 1992 No. 15 s 13 sch
om 2000 No. 34 s 1145 sch 3

Division 4—Administration

div hdg om 2000 No. 34 s 1145 sch 3

Crown land in irrigation area may be set apart

s 125 om 2000 No. 34 s 1145 sch 3

Chief executive may authorise construction of channels

prov hdg prev prov hdg amd 1992 No. 15 s 13 sch
pres prov hdg sub 2000 No. 26 s 12 sch 1
s 126 amd 1992 No. 15 s 13 sch
sub 2000 No. 26 s 12 sch 1
om 2000 No. 34 s 1145 sch 3

Access across irrigation channel

s 127 amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
om 2000 No. 34 s 1145 sch 3

Access where land is resumed

s 128 amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
om 2000 No. 34 s 1145 sch 3

PART 10—WATER SUPPLY AREAS AND DRAINAGE AREAS

pt hdg om 2000 No. 34 s 1145 sch 3

Division 1—Constitution of area

div hdg om 2000 No. 34 s 1145 sch 3

Constitution of area and establishment of board

prov hdg sub 1995 No. 10 s 27(1); 1999 No. 86 s 9(1)

s 129 amd 1995 No. 10 s 27(2)–(7); 1996 No. 68 s 12; 1999 No. 86 s 9(2)–(3)
om 2000 No. 34 s 1145 sch 3

Procedure for preliminary advertisement of proposal for water supply or drainage area and establishment of steering committee

s 130 amd 1992 No. 15 s 13 sch
om 2000 No. 34 s 1145 sch 3

Procedure before making regulation

prov hdg sub 1995 No. 10 s 28(1)

s 131 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 28 (2)–(4); 1999 No. 86 s 10
om 2000 No. 34 s 1145 sch 3

Division 2—Membership of boards

div hdg sub 1999 No. 86 s 11
om 2000 No. 34 s 1145 sch 3

Membership

prov hdg sub 1999 No. 86 s 12

s 132 sub 1995 No. 10 s 29
om 2000 No. 34 s 1145 sch 3

Term of office

s 133 ins 1995 No. 10 s 29
om 2000 No. 34 s 1145 sch 3

Appointment of board members

s 134 ins 1995 No. 10 s 29
om 2000 No. 34 s 1145 sch 3

Election of board members

s 135 ins 1995 No. 10 s 29
om 2000 No. 34 s 1145 sch 3

Persons qualified to be elected

s 136 ins 1995 No. 10 s 29
om 2000 No. 34 s 1145 sch 3

Amalgamation of boards

s 137 ins 1995 No. 10 s 29
om 2000 No. 34 s 1145 sch 3

Further powers of Governor in Council with respect to board

s 138 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch
om 2000 No. 34 s 1145 sch 3

Powers etc. of chief executive

prov hdg amd 1992 No. 15 s 13 sch
s 139 amd 1992 No. 15 s 13 sch; 2000 No. 26 s 12 sch 1
om 2000 No. 34 s 1145 sch 3

Extension of term of office of member

s 140 om 2000 No. 34 s 1145 sch 3

Disqualification as to person becoming a member of board

s 141 amd 2000 No. 16 s 590 sch 1
om 2000 No. 34 s 1145 sch 3

Termination of office of member of board

s 142 amd 2000 No. 16 s 590 sch 1
om 2000 No. 34 s 1145 sch 3

Casual vacancy in membership of board

s 143 om 2000 No. 34 s 1145 sch 3

Superannuation schemes

s 144 amd 1995 No. 10 s 3 sch
sub 1995 No. 36 s 9 sch 2
om 2000 No. 34 s 1145 sch 3

Division 3—Powers etc. of board

div hdg om 2000 No. 34 s 1145 sch 3

General powers, authorities, functions and duties

s 145 amd 1992 No. 15 s 13 sch; 1995 No. 10 ss 30, 3 sch
om 2000 No. 34 s 1145 sch 3

Delegation of powers, authorities, functions and duties

s 146 om 2000 No. 34 s 1145 sch 3

Board to be a constructing authority

s 147 om 2000 No. 34 s 1145 sch 3

Power to make or enter into contracts or agreements

s 148 om 2000 No. 34 s 1145 sch 3

Provisions affecting contractual powers of board

s 149 om 2000 No. 34 s 1145 sch 3

Powers with respect to plant or stock

s 150 om 2000 No. 34 s 1145 sch 3

Disposal of surplus water

s 151 amd 1992 No. 15 s 13 sch
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pubd gaz 25 September 1998 p 324

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4.39(1A)	65(2)
4.39(2)	65(3)
4.40	66
4.40(1A)	66(2)
4.40(2)	66(3)
4.40(2A)	66(4)
4.40(2B)	66(5)
4.40(3)	66(6)
4.40(4)	66(7)
4.41	67
4.41(1A)	67(2)
4.41(2)	67(3)
4.41(3)	67(4)
4.42	68
4.43	69
4.44	70
4.45	71
4.46	72
4.47	73
4.48	74
4.49	75
4.50	76

4.51	77
4.52	78
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4A.3	81
4A.4	82
4A.5	83
4A.6	84
4A.7	85
4A.8	86
4A.9	87
4A.10	88
4A.11	89
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pt 5	pt 6
5.1	91
5.2	92
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5.5	95
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6.1	96
6.2	97
6.3	98
6.4	99
6.4(2A)	99(3)
6.4(3)	99(4)
6.4(3A)	99(5)
6.4(3B)	99(6)
6.4(4)	99(7)
6.5	100
6.6	101
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6.8	103
6.8(4A)	103(5)
6.8(5)	103(6)
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7.3	105
7.4	106
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8.2	111
8.2(2)(ca)	111(2)(d)
8.2(2)(d)	111(2)(e)
8.2(2)(e)	111(2)(f)
8.2(2)(f)	111(2)(g)
8.2(2)(g)	111(2)(h)
8.2(2)(h)	111(2)(i)
8.3	112
8.4	113
8.5	114
8.6	115
8.7	116
8.8	117
8.9	118
8.10	119
8.10(2A)	119(3)
8.10(2B)	119(4)
8.10(2C)	119(5)
8.10(2D)	119(6)
8.10(3)	119(7)
8.10(3A)	119(8)
8.10(4)	119(9)
8.10(5)	119(10)
8.10(5A)	119(11)
8.10(5B)	119(12)
8.10(6)	119(13)
8.10(7)	119(14)
8.10(8)	119(15)
8.10(9)	119(16)
8.12	120
8.13	121
8.14	122
8.15	123
8.16	124
8.17	125
8.18	126
8.19	127
8.19(1A)	127(2)
8.19(2)	127(3)
8.19(2A)	127(4)
8.19(3)	127(5)
8.19(4)	127(6)
8.19(5)	127(7)
8.20	128
8.20(1A)	128(2)
8.20(2)	128(3)

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9.1	129
9.1(1A)	129(2)
9.1(1B)	129(3)
9.1(1C)	129(4)
9.1(1D)	129(5)
9.1(1E)	129(6)
9.1(1F)	129(7)
9.1(2)	129(8)
9.1(3)	129(9)
9.1(4)	129(10)
9.1(5)	129(11)
9.2	130
9.2(2A)	130(3)
9.2(3)	130(4)
9.2(4)	130(5)
9.2(5)	130(6)
9.2(6)	130(7)
9.3	131
9.3(1A)	131(2)
9.3(2)	131(3)
9.3(3)	131(4)
9.3(4)	131(5)
9.3(5)	131(6)
9.3(6)	131(7)
9.4	132
9.4A	133
9.4B	134
9.4C	135
9.4D	136
9.4E	137
9.5	138
9.6	139
9.7	140
9.8	141
9.9	142
9.10	143
9.11	144
9.12	145
9.12(1A)	145(2)
9.12(2)	145(3)
9.12(3)	145(4)
9.12(4)	145(5)
9.12(5)	145(6)
9.12(6)	145(7)
9.12(7)	145(8)

9.13	146
9.14	147
9.15	148
9.15(2A)	148(3)
9.15(3)	148(4)
9.15(4)	148(5)
9.16	149
9.16(5A)	149(6)
9.16(5B)	149(7)
9.16(5C)	149(8)
9.16(5D)	149(9)
9.16(6)	149(10)
9.16(7)	149(11)
9.16(8)	149(12)
9.17	150
9.18	151
9.19	152
9.20	153
9.21	154
9.22	155
9.22(2A)	155(3)
9.22(3)	155(4)
9.22(3A)	155(5)
9.22(4)	155(6)
9.22(5)	155(7)
9.22(6)	155(8)
9.22(7)	155(9)
9.22(8)	155(10)
9.22(9)	155(11)
9.22(10)	155(12)
9.23	156
9.23(1)(ea)	156(1)(f)
9.23(1)(f)	156(1)(g)
9.23(1)(g)	156(1)(h)
9.23(1)(h)	156(1)(i)
9.23(1)(i)	156(1)(j)
9.23(1)(j)	156(1)(k)
9.23(1)(k)	156(1)(l)
9.23(1)(ka)	156(1)(m)
9.23(1)(kb)	156(1)(n)
9.23(1)(kc)	156(1)(o)
9.23(1)(l)	156(1)(p)
9.23(1)(m)	156(1)(q)
9.23(1)(n)	156(1)(r)
9.23(1)(o)	156(1)(s)
9.23(3A)	156(4)

9.23(3B)	156(5)
9.23(4)	156(6)
9.24	157
9.25	158
9.26	159
9.27	160
9.27(1A)	160(2)
9.27(2)	160(3)
9.27(3)	160(4)
9.27(4)	160(5)
9.27(5)	160(6)
9.28	161
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9.30	163
9.31	164
9.32	165
9.33	166
9.34	167
9.35	168
9.36	169
9.37	170
9.38	171
9.38(3A)	171(4)
9.38(4)	171(5)
9.38(5)	171(6)
9.39	172
9.39(1A)	172(2)
9.39(2)	172(3)
9.39(3)	172(4)
9.40	173
9.40(1)(aa)	173(1)(b)
9.40(1)(b)	173(1)(c)
9.40(1)(c)	173(1)(d)
9.41	174
9.42	175
9.42(1A)	175(2)
9.42(2)	175(3)
9.42(3)	175(4)
9.42(4)	175(5)
9.42(5)	175(6)
9.42(6)	175(7)
9.42(7)	175(8)
9.42(8)	175(9)
9.42(9)	175(10)
9.43	176
9.44	177

9.45	178
9.46	179
9.47	180
9.48	181
9.48(2A)	181(3)
9.48(2B)	181(4)
9.48(3)	181(5)
9.48(3A)	181(6)
9.48(3B)	181(7)
9.48(4)	181(8)
9.48(5)	181(9)
9.48(6)	181(10)
9.48(7)	181(11)
9.48(8)	181(12)
9.49	182
9.50	183
9.51	184
9.52	185
9.53	186
9.54	187
9.55	188
9.56	189
9.57	190
9.57(1A)	190(2)
9.57(1B)	190(3)
9.57(2)	190(4)
9.58	191
9.59	192
9.60	193
9.61	194
9.62	195
9.63	196
9.64	197
9.65	198
9.66	199
9.67	200
9.68	201
9.69	202
9.70	203
9.71	204
9.72	205
9.73	206
9.74	207
9.74(1A)	207(2)
9.74(1B)	207(3)
9.74(2)	207(4)

9.74(3)	207(5)
9.74(4)	207(6)
9.74(5)	207(7)
9.75	208
9.75(1A)	208(2)
9.75(2)	208(3)
9.75(3)	208(4)
9.75(3A)	208(5)
9.75(3B)	208(6)
9.75(3C)	208(7)
9.75(3D)	208(8)
9.75(4)	208(9)
9.75(5)	208(10)
9.76	209
9.77	210
9.78	211
9.78(1A)	211(2)
9.78(2)	211(3)
9.78(2A)	211(4)
9.78(2B)	211(5)
9.78(3)	211(6)
9.78(4)	211(7)
9.78(5)	211(8)
9.78(6)	211(9)
9.78(7)	211(10)
9.79	212
9.80	213
9.81	214
9.82	215
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10.2	216
10.3	217
10.4	218
10.5	219
10.6	220
10.7	221
10.8	222
10.9	223
10.10	224
10.11	225
10.11(3A)	225(4)
10.11(4)	225(5)
10.12	226
10.12(1A)	226(2)
10.12(1B)	226(3)
10.12(2)	226(4)

10.12(3)	226(5)
10.12(4)	226(6)
10.12(5)	226(7)
10.12(6)	226(8)
10.12(7)	226(9)
10.12(8)	226(10)
10.12(9)	226(11)
10.13	227
10.14	228
10.15	229
10.15(4A)	229(5)
10.15(5)	229(6)
10.16	230
10.17	231
10.17(4A)	231(5)
10.17(5)	231(6)
10.17(6)	231(7)
10.17(7)	231(8)
10.17(8)	231(9)
10.17(9)	231(10)
10.17A	232
10.18	233
10.18(3A)	233(4)
10.18(4)	233(5)
10.18(4A)	233(6)
10.18(4B)	233(7)
10.18(4C)	233(8)
10.18(5)	233(9)
10.19	234
10.19(2A)	234(3)
10.19(3)	234(4)
10.19(4)	234(5)
10.19(5)	234(6)
10.20	235
10.21	236
10.22	237
10.22(2A)	237(3)
10.22(3)	237(4)
10.22(4)	237(5)
10.22(5)	237(6)
10.23	238
10.24	239
10.25	240
10.25(1A)	240(2)
10.25(1B)	240(3)
10.25(2)	240(4)

10.25(3)	240(5)
10.25(4)	240(6)
10.25(5)	240(7)
10.26	241
10.27	242
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10.30	245
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10 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5 (c)).

Mental Health Act 2000 No. 16 s 590 sch 1 pt 2 reads as follows—

WATER RESOURCES ACT 1989

1. Section 141(a)—

omit.

2. Section 142(3)(c)—

omit.

Water Act 2000 No. 34 s 1145 sch 3 reads as follows—

WATER RESOURCES ACT 1989

9. Sections 215K and 215L—

omit.

10. Section 234—

omit.