

WATER RESOURCES ACT

No. 112 of 1989

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FIRST SCHEDULE
SECOND SCHEDULE

Queensland



ANNO TRICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 112 of 1989

An Act to consolidate and amend the law relating to rights in water, the measurement 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; the safety and surveillance of dams; to provide for the continuance in existence of the corporation sole under the name "The Commissioner of Water Resources" as a corporation sole under the name and style "Water Resources Commission" and its powers, authorities, functions and duties; and for purposes incidental thereto and consequential thereon

[ASSENTED TO 31ST OCTOBER, 1989]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1.1 Short title. This Act may be cited as the *Water Resources Act 1989*.

1.2 Commencement. (1) Section 1.1 and this section commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act, or those provisions as may be specified, commence on a day or days to be appointed by Proclamation.

1.3 Repeals and savings. (1) The Acts set forth in the First Schedule are repealed in the manner and to the extent specified therein and are referred to in this Act as the "repealed Acts".

(2) (a) Every registration, certificate, license, permit, order, approval, exemption, direction, notification, notice, delegation or other act or authority granted, issued, made and published, given or done under the repealed Acts and in force immediately prior to the commencement of this Act continues in force as if it were granted, issued, made and published, given or done under this Act until it expires by effluxion of the time limited for its operation at the time it was granted, issued, made and published, given or done or is revoked, cancelled, suspended or surrendered in accordance with this Act.

(b) Every agreement, arrangement or contract entered into by The Commissioner of Irrigation and Water Supply or The Commissioner of Water Resources or other person under and for the purposes of the repealed Acts and in existence immediately prior to the commencement of this Act is an agreement or arrangement or a contract entered into by the Commission, Commissioner or other person under and for the purposes of this Act and may be performed and enforced as if this Act had not been passed.

(c) (i) Every water right including in the meaning of that term every element thereof by whatever name called and every allowance for sales water apportioned to a holding under the repealed Acts and in existence immediately prior to the date of commencement of this Act on and from that date continues in force and takes effect as if apportioned under this Act and together they constitute a nominal allocation granted under this Act and this Act applies and extends accordingly.

(ii) The minimum quantity of water and the quantity of additional water supplied in accordance with the provisions of an agreement made or entered into under or for the purposes of the repealed Acts for the supply of water and additional water for irrigation, domestic and stock watering purposes to an owner or occupier of land in existence immediately prior to the commencement of this Act is on and from

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that commencement a nominal allocation under this Act and this Act applies and extends accordingly.

(iii) Every water right including in the meaning of that term every element thereof by whatever name called and every allowance for sales water apportioned to a holding under the repealed Acts and in addition the minimum quantity of water and the quantity of additional water supplied to that holding in accordance with the provisions of a license or an agreement made and entered into under or for the purposes of the repealed Acts for the supply of water or of additional water to an owner or occupier of land within an irrigation area which water right, license and agreement are in existence immediately prior to the commencement of this Act are on and from that commencement combined and together are a nominal allocation under this Act and this Act applies and extends accordingly.

(d) Works constructed by or on behalf of The Commissioner of Irrigation and Water Supply or The Commissioner of Water Resources under the repealed Acts and in existence immediately prior to the commencement of this Act are on and from that commencement works constructed by the Commission under this Act and this Act applies and extends to those works as if constructed under this Act.

(e) A person who immediately prior to the commencement of this Act holds an office or a position to which he was appointed under or for the purposes of the repealed Acts continues to hold that office or position or the corresponding office or position under or for the purposes of this Act until he vacates or is lawfully removed from that office or position and, where that office or position has been held immediately prior to the commencement of this Act subject to and in accordance with the *Public Service Management and Employment Act 1988*, the same or the corresponding office or position is held subject to and in accordance with the lastmentioned Act.

(f) Where in any Act or enactment, Proclamation, Order in Council, regulation, rule, by-law, ordinance, order or other document or writing, reference is made to a provision of the repealed Acts, unless the contrary intention appears, such reference is to the corresponding provision of this Act and that Act, enactment, Proclamation, Order in Council, regulation, rule, by-law, ordinance, order, document or writing is to be construed accordingly.

(g) Any area, Irrigation Area or Drainage Area constituted under the repealed Acts and in existence immediately prior to the commencement of this Act is constituted under this Act and continues in existence under the name then assigned to it until it is abolished, altered, varied, amalgamated with any other area or areas or otherwise dealt with under this Act.

(h) A Board constituted under the repealed Acts and in existence immediately prior to the commencement of this Act is a board constituted under this Act and continues in existence under the name then assigned to it until it is dissolved or otherwise dealt with under this Act.

(i) A member of a Board constituted under the repealed Acts and in existence immediately prior to the commencement of this Act who was appointed or elected as a member under the repealed Acts and who holds office as a member immediately prior to that commencement continues to hold office as a member under this Act in accordance with his appointment or election until he vacates or is lawfully removed from that office.

(j) A person who immediately prior to the commencement of this Act occupies a position as an officer or employee of a Board constituted under the repealed Acts and in existence immediately prior to that commencement continues to occupy that position as an officer or employee of the board as constituted or deemed to be constituted under this Act until he vacates or is lawfully removed therefrom.

For the purpose of securing to an officer or employee referred to in the preceding paragraph the benefits of an industrial award or agreement or to that officer or employee or his dependants the benefits of any superannuation scheme to which that officer or employee is a contributor immediately prior to the commencement of this Act, the continuity of the employment of that officer or employee is not interrupted by reason only of the repeal of the repealed Acts or the constitution of the board under this Act.

(k) The Advisory Council and every Advisory Committee established under the repealed Acts and in existence immediately prior to the commencement of this Act continues in existence under this Act and continues to be constituted by the members by whom it is constituted immediately prior to the commencement of this Act and those members continue to hold office under this Act in accordance with their appointments under the repealed Acts as if they had been appointed under this Act and are eligible for reappointment under this Act.

(l) A superannuation scheme instituted and maintained by a Board under the repealed Acts that is in existence and being maintained by the Board immediately prior to the commencement of this Act is a superannuation or provident scheme or an arrangement instituted under this Act and continues in existence and is to be maintained accordingly.

(m) All fees prescribed by or under the repealed Acts to be paid are prescribed by or under this Act and continue to be payable as prescribed.

(n) All by-laws made under the repealed Acts and in existence immediately prior to the commencement of this Act continue in existence as by-laws under this Act until repealed in accordance with this Act.

(3) (a) A reference in any—

- (i) Act;
- (ii) Proclamation, Order in Council, regulation, rule, by-law or ordinance;
- (iii) license, approval, authority, permit, direction, determination, order, notice, prohibition or other act of executive or administrative authority;
- (iv) agreement, contract, deed or other document, instrument or writing of any kind,

in existence immediately prior to the commencement of this Act—

- (v) to the corporation sole under the name The Commissioner of Water Resources is to be construed as a reference to the Water Resources Commission constituted under this Act;
- (vi) to the Commissioner of Water Resources as a natural person is to be construed as a reference to the Commissioner of Water Resources appointed under this Act.

(b) Any action or proceeding by or against the corporation sole under the name The Commissioner of Water Resources that was commenced prior to the commencement of this Act and is not completed at that commencement may be carried on and completed by or against the Water Resources Commission.

(c) The Registrar of Titles or the Registrar of Dealings and any other person charged with the keeping of a register of dealings concerning land vested in or held by The Commissioner of Water Resources must without further authority other than this section alter the name as shown in that register of the registered proprietor, registered lessee, owner or occupier of land referred to therein to the name "Water Resources Commission".

1.4 Interpretation. (1) In this Act, unless the contrary intention appears—

"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;

"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 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 connexion with an artesian bore or artesian well from which water flows or has flowed naturally to the surface;

"Assistant Commissioner" means an Assistant Commissioner of Water Resources appointed under this Act: The term includes a person who is performing the duties of an Assistant Commissioner;

"authorized officer" means an officer of the Commission or of a board authorized 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: The term does not include land abutting or adjacent to the bed or banks that is from time to time covered by flood water: 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" means an area of land declared by Order in Council to be a catchment area for the purposes of this Act;

"channel" includes any ditch, drain, bench flume, elevated flume or pipeline;

"Commission" means the Water Resources Commission constituted under this Act;

"Commissioner" means the Commissioner of Water Resources appointed under this Act: The term includes a person who is performing the duties of the Commissioner;

"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 Commissioner 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: The term does not include works authorized by or under any other Act or enactment;

"Crown holding" means a holding within the meaning of the *Land Act 1962-1988* 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;

"Deputy Commissioner" means the Deputy Commissioner of

Water Resources appointed under this Act: The term includes a person who is performing the duties of the Deputy Commissioner;

“designated area” means a part of Queensland constituted under this Act as a designated area;

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

“drainage” means the removal of water including flood water 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;

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

“flood water” 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;

“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 connexion with the storage, control, conveyance or distribution of water;

“holding” means an area of land within an irrigation area determined by the Commissioner to be a holding for the purposes of Part VIII;

“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 VIII within and in connexion with an irrigation area: The term also includes so much of the Commission’s business as relates to an irrigation undertaking;
- “lake” includes any lagoon, swamp, marsh or other natural collection of water whether permanent or intermittent: For the exercise of the right to the use and flow and control of water at any time and for the control of quarry material a lake includes the bed and banks thereof together with all the elements of a lagoon, swamp, marsh or other natural collection of water that confine or contain water;
- “land” means land within the meaning of the *Property Law Act 1974-1986*;
- “Land Administration Commission” means the Land Administration Commission within the meaning of the *Land Act 1962-1988*;
- “Land Appeal Court” means the Land Appeal Court within the meaning of the *Land Act 1962-1988*;
- “Land Court” means the Land Court within the meaning of the *Land Act 1962-1988*;
- “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 flood water, 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;
- “local authority” means a Local Authority within the meaning of the *Local Government Act 1936-1989* or the Brisbane City Council within the meaning of the *City of Brisbane Act 1924-1987*;
- “machinery” includes any apparatus, appliance, instrument, equipment or fitting for use in carrying into effect the objects and purposes of this Act;
- “Minister” means the Minister of the Crown who is charged with the administration of this Act: The term includes a Minister of the Crown who is temporarily performing the duties of the Minister;
- “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;
- (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 Commissioner 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 Commission 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 10 metres or more in height and creates a reservoir storage capacity of more than 20 000 cubic metres;

or

(ii) is more than 5 metres in height and creates a reservoir storage capacity of 50 000 cubic metres or more;

(b) works—

(i) 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, other than a barrier defined in paragraph (a) of this definition;

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

declared by the Commissioner 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:

The term 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;

“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:

The term includes—

- (a) any bridge, culvert or other structure and the approaches thereto constructed or deemed to be constructed by the Commission 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;

“sub-artesian bore” includes any shaft, well, gallery, spear or excavation and all works constructed in connexion with any sub-artesian bore, 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” means a subdivision within the meaning of the *Local Government Act 1936-1989*;

“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;

“Treasurer” means the Treasurer of Queensland and includes a Minister of the Crown who is temporarily performing the duties of the Treasurer and to the extent that a Minister assisting the Treasurer is authorized by the Treasurer to perform a duty, that Minister;

“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 irrigation or any other purpose from works of the Commission: The term includes additional water approved to be taken from time to time;

“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 Commissioner has 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. For the exercise of the right to the use and flow and control of water at any time and for the control of quarry material a watercourse includes the bed and banks thereof together with all the elements of a river, creek or stream that confine or contain water;

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

(2) (a) The terms set forth in this paragraph, 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.

(b) 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 Commissioner, affect or affects directly the safety of the referable dam.

(3) 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 II—VESTING OF RIGHTS IN CERTAIN WATER IN CROWN AND DECLARATION RE BED AND BANKS

2.1 Rights in certain water to vest in Crown. The right to the use and flow and control of water at any time—

(a) in a watercourse that flows through or past the land of two or more owners or occupiers or a lake or spring that is situated within or abuts the land of two or more owners or occupiers;

(b) conserved by—

(i) a weir or dam constructed in, on or over—

(A) a watercourse that flows through or past the land of two or more owners or occupiers;

(B) a lake or spring that is situated within or abuts the land of two or more owners or occupiers;

(ii) a barrage;

(c) in an artesian bore, a sub-artesian bore or any other underground source of supply,

vests, subject to the restrictions contained in this Act or until appropriated under this Act or any other Act, in the Crown.

2.2 Restrictions on rights in water vested in Crown. The right to the use and flow and control of water vested in the Crown is—

(a) not to be exercised to the prejudice of a right conferred on and lawfully exercised by The Commissioner for Railways, the Brisbane City Council or a local authority or by any person, board or other body by or under an authority conferred by this Act or any other Act;

(b) to be subject to—

(i) the rights specified in this Act of an owner or occupier

of land abutting the banks of a watercourse, lake or spring or a weir, barrage or dam vested in the Commission or under the control of the Commission or Commissioner to take water therefrom;

- (ii) the rights of the holder of a licence, permit or authority under this Act;
- (iii) the provisions of an agreement to take water under this Act.

2.3 Declaration as to property in bed and banks of watercourse or lake. (1) It is declared—

- (a) that the bed and banks of a watercourse or lake that forms the boundary wholly or partly of a parcel of land do not pass and have never passed with that land upon its alienation by the Crown but remain and always have remained the property of the Crown;
- (b) that that bed and those banks on and from the commencement of *The Rights in Water and Water Conservation and Utilization Act of 1910* have never passed with the land in question upon alienation by the Crown but have always remained the property of the Crown.

(2) This section applies notwithstanding that one and the same person at any time whether before or after the commencement of *The Rights in Water and Water Conservation and Utilization Act of 1910*, *The Water Act of 1926* or this Act has been or is the owner of all land adjacent to the bed or banks of the watercourse or lake in question.

PART III—ADMINISTRATION

Division I—Administration and Appointments

3.1 Administration of Act. Subject to the Minister, the Commission and the Commissioner administer this Act.

3.2 Water Resources Commission. (1) The corporation sole preserved, continued in existence and constituted under the repealed Acts under the name “The Commissioner of Water Resources” is preserved, continued in existence and constituted under this Act under the name and style “Water Resources Commission”.

(2) The Commission is constituted by the Commissioner for the time being and has perpetual succession and an official seal and is capable in law of—

- (a) suing and being sued;
- (b) compounding, for a sum of money or other consideration or proving in a court of competent jurisdiction, all debts or sums of money due to it;
- (c) taking, acquiring, holding, dealing with and disposing of real and personal property;

and

- (d) doing and suffering all acts and things as bodies corporate may by law do and suffer.

(3) The Commission represents the Crown and has and may exercise all the powers, privileges, rights and remedies of the Crown.

(4) All courts, judges, justices and other persons acting judicially must take judicial notice of the seal of the Commission affixed to a document or writing and, until the contrary is proved, must presume that the seal was duly affixed.

(5) The official seal of the Commission must be in the custody of the Commissioner and may be affixed by him or any other person authorized by the Commission by writing under its seal.

(6) The Commission may authorize the making of duplicates of the official seal and may authorize, in writing, any person, either generally or in a specific case, to affix a duplicate of the official seal to any document or writing which that person is authorized in writing to seal on behalf of the Commission.

3.3 Appointment of officers. The following officers are to be appointed in accordance with the *Public Service Management and Employment Act 1988*—

- (a) a person to be the Commissioner of Water Resources and Chief Executive;
- (b) a person to be the Deputy Commissioner of Water Resources;
- (c) so many persons as necessary to be Assistant Commissioners of Water Resources;
- (d) so many other officers as necessary for the administration of this Act.

3.4 Qualifications of Commissioner and Deputy Commissioner. A person appointed to the office of Commissioner or Deputy Commissioner must—

- (a) be an engineer, either holding a degree in engineering granted by any university or college of advanced education recognized by the Institution of Engineers, Australia or be a member or fellow of that institution;
- (b) have had experience in relation to water conservation, water supply, irrigation and administration.

3.5 Continuance in office of certain persons. (1) The person who, immediately prior to the commencement of this Act, holds under the repealed Acts the office of—

- (a) Commissioner of Water Resources is the Commissioner under this Act;
- (b) Deputy Commissioner of Water Resources is the Deputy Commissioner under this Act;
- (c) Assistant Commissioner of Water Resources (Administration) and Secretary to the Commissioner is an Assistant Commissioner under this Act;
- (d) Assistant Commissioner of Water Resources is an Assistant Commissioner under this Act.

(2) Subject to this Act, the Commissioner, the Deputy Commissioner and each Assistant Commissioner hold office under this Act for the balance of their respective terms of appointment under the repealed Acts and are eligible for reappointment.

(3) The salaries and allowances (if any) payable to the persons referred to in subsection (1) on and after the commencement of this Act must be not less than those paid immediately prior to that date.

(4) The continuance in office, appointment or reappointment of the Commissioner, the Deputy Commissioner or an Assistant Commissioner under this Act does not affect the rights accrued or accruing to each of those officers under the *Public Service Superannuation Act 1958-1989* or the *State Service Superannuation Act 1972-1989* whilst holding office under the title assigned by the repealed Acts.

(5) For the purposes of determining the rights referred to in subsection (4) and the continuance of the making of contributions to the State Service Superannuation Fund, the officers referred to in that subsection are deemed to have always held office under the *Public Service Management and Employment Act 1988*.

3.6 Power of delegation by Commission. (1) The Commission may, generally or otherwise as provided by the instrument of delegation, by writing under its seal delegate to the Commissioner or an officer of the Water Resources Commission all or any of its powers, authorities, functions or duties under this Act or any other Act, except this power of delegation.

(2) A power, authority, function or duty delegated under this section, if exercised or performed by the delegate, must be exercised or performed only while the instrument of delegation remains in force and in accordance with that instrument.

(3) A delegation under this section may be made subject to such terms as the Commission thinks fit including a requirement that the delegate must report to it upon the exercise or performance of the delegated power, authority, function or duty.

(4) The Commission may make as many delegations of the same power, authority, function or duty to any number of persons as it considers necessary or desirable.

(5) A delegation under this section is revocable at the will of the Commission.

(6) A delegation under this section does not prevent or prejudice—

- (a) the exercise of a delegated power or authority or the performance of a delegated function or duty by the Commission;
- (b) the supervision by the Commission of the carrying out by the delegate of the terms of the delegation including countermanding the delegate's exercise of any power or authority or the performance of a function or duty under the delegation.

(7) Any act or thing done or suffered by a delegate under the authority of a delegation under this section has the same force and effect as if the act or thing done or suffered had been so done or suffered by the Commission.

3.7 Property to vest in Commission. All works at any time in any watercourse, lake, spring, water storage or channel and constructed by the Commission under this Act and all real and personal property constructed, purchased, acquired, received or held in any manner for the purposes of works are the property of the Commission under this Act.

3.8 Powers of authorized officer. (1) For the purposes of this Act, an authorized 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 his aid another authorized officer or any other person who in his opinion is competent to assist in the exercise of his powers and authorities or the performance of his 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 authorized 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 him 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 him 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 him.

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

3.9 Authentication of documents. Any notice, order, requisition or other document or writing that requires authentication by the Commission for any purpose is sufficiently authenticated without the seal of the Commission if it is signed by the Commissioner or an authorized officer.

3.10 Application of s. 28A of Acts Interpretation Act. Section 28A of the *Acts Interpretation Act 1954-1989* applies in respect of Orders in Council made under this Act as if they were regulations.

Division II—Powers etc. of Commission and Commissioner

3.11 General powers etc. of Commission and Commissioner. (1) The Commission and the Commissioner have the powers, authorities, functions and duties conferred or imposed upon it or him by or under this Act or any other Act.

(2) The Commission may with the approval of the Governor in Council construct, maintain, manage, control and operate works for—

- (a) water conservation;
- (b) water supply;
- (c) irrigation and drainage associated therewith;
- (d) regulation, control and maintenance of the flow of water;
- (e) improvement of underground water supply;
- (f) the conservation, replenishment, utilization or distribution generally of the waters of Queensland both surface and underground.

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- (3) The Commissioner must—
- (a) prepare and keep a description of the natural water resources of Queensland, both surface and underground;
 - (b) measure, make and keep a record of the natural waters of Queensland both surface and underground for the purposes of—
 - (i) ascertaining, defining and recording the permanent surface waters of Queensland and the surface waters of Queensland of a periodic or intermittent nature;
 - (ii) ascertaining and recording available information relating to the artesian waters of Queensland and the underground waters of Queensland not classified as artesian waters;
 - (c) evaluate the present and future water requirements of Queensland;
 - (d) make recommendations to the Minister concerning the development of the water resources of Queensland;
 - (e) for the purposes of protecting life and property, control referable dams;
- and may—
- (f) take all steps and do all acts and things as he thinks fit to protect the water resources of Queensland from anything that results in or is likely to result in a diminution of their quantity or, subject to the *Clean Waters Act 1971-1988*, from anything detrimental to their quality;
 - (g) investigate and survey any natural water resource, surface or underground, in Queensland in order to—
 - (i) ascertain potential sites for works of water storage and the cost of development of those sites;
 - (ii) enable plans to be formulated, co-ordinated and implemented for the conservation, replenishment, utilization and distribution of the waters of Queensland;
 - (h) co-ordinate the investigation, evaluation and development of plans for the control of flood waters and mitigation of flood damage.

3.12 Duty of Commissioner to advise Minister and make recommendations. The Commissioner must—

- (a) advise the Minister with respect to those matters upon which the Minister seeks advice connected with this Act and any other Act that confers on him powers or authorities or imposes on him functions or duties;
- (b) upon a direction given by the Minister in that behalf, make or cause to be made an inquiry or investigation with respect to those matters connected with this Act or any other Act that are specified in the direction so given.

3.13 Powers of Commission with respect to works etc. (1) Subject to this Act, the Commission 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 Commission 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 connexion 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.

(3) The Commission may acquire, provide, operate, maintain, protect, lease, sell or otherwise dispose of recreational or tourist facilities and grant to persons ancillary rights in connexion therewith as the Commission thinks fit at headworks or on other land the property of or under the control of the Commission.

3.14 Powers etc. of Commission as to ancillary works and the like.

For the purposes of this Act or any other Act, the Commission may—

- (a) construct, establish, acquire, purchase, contract for the use of, work, maintain, operate, control, regulate and manage—
 - (i) a quarry;
 - (ii) a gravel pit;
 - (iii) a demonstration farm or an experiment station;
 - (iv) a workshop or scientific facility for use in its operations;
- (b) provide local services at locations it determines and fix and levy charges in respect of local services so provided.

3.15 Entry upon land. (1) Subject to this Act, the Commission or Commissioner or any officer, employee or agent of the Commission or Commissioner in the exercise or performance of its or his respective powers, authorities, functions and duties and upon giving to the authority or owner concerned at least 7 days' notice in writing of its or his 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 for the purposes of this Act or any other Act that confers or imposes on the Commission or Commissioner powers, authorities, functions or duties;
- (b) without limiting the generality of subparagraph (a), enter for the purposes of—
 - (i) making or carrying out inspections, tests, investigations, surveys, experiments, boring or drilling operations, explorations;
 - (ii) constructing, maintaining, operating or altering works that are authorized 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 on the Commission or Commissioner.

(2) For the purposes of subsection (1), the Commission or Commissioner or any officer, employee or agent of the Commission or Commissioner 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 connexion 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 it or he 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 Commission or Commissioner, by notice in writing given to the authority concerned or the owner of the works in question, may require it or him to alter their location in the manner and time specified in the notice.

The Commission may be charged with payment of the costs and expenses incurred in carrying out those alterations necessary for the purposes of this subsection.

Where the authority or owner concerned fails to comply with a requisition contained in a notice under this subsection, the necessary alterations may be undertaken by the Commission.

3.16 Grant of land to Commission. Subject to the *Land Act 1962-1988*, the Governor in Council may, in the name of Her Majesty, grant in fee-simple to the Commission, Crown land required by the Commission for the purposes of this Act or any other Act.

3.17 Acquisition of land by Commission. (1) The Commission may acquire, by agreement or resumption, land—

- (a) wherever situated, that in the opinion of the Commission is required for the purposes of this Act;
- (b) situated within an irrigation area, that in the opinion of the Commission is suitable for subdivision or amalgamation and settlement under the *Land Act 1962-1988* or the *Irrigation Areas (Land Settlement) Act 1962-1972*.

(2) For the purposes of acquiring land by resumption, the Commission has and may exercise the powers, authorities, functions and duties conferred or imposed upon a constructing authority under the *Acquisition of Land Act 1967-1988* and, subject to this section, that Act applies and extends accordingly.

(3) The Commission, as a constructing authority under and within the meaning of the *Acquisition of Land Act 1967-1988* and subject to that Act, may take land held from the Crown for an estate or interest less than freehold.

(4) Where the acquisition of land by the Commission will sever the balance area or part thereof from other land used by the owner, the Commission may, with the approval of the Minister and the consent in writing of the owner, acquire by agreement or resumption the whole or a part of that balance area.

(5) The power conferred upon the Governor in Council by section 22 of the *Acquisition of Land Act 1967-1988* includes power to vest land in the Commission under, subject to and in accordance with the *Land Act 1962-1988* or, as the case may be, the *Irrigation Areas (Land Settlement) Act 1962-1972* as leasehold under the tenure the Governor in Council considers appropriate.

(6) (a) With respect to a proposed acquisition by resumption of land in accordance with subsection (1) (b), the Commissioner, upon application in writing by the owner and where he is of the opinion that the granting of the application will not unduly affect adversely the plan or the proposed plan for subdivision of the land—

(i) may—

(A) permit the owner to retain unresumed;

(B) resume the whole of the land in question and thereupon transfer or sell back to the owner,

so much of the land as is reasonably sufficient in the opinion of the Commissioner to enable the owner to carry on agricultural pursuits;

(ii) may offer to an owner from land acquired from him or from other owners any additional area or additional areas determined by the Commissioner having regard to the nature of the type of production being carried on in the locality at the time of the proposed acquisition, the nature of the subdivision in question, soil suitability and any other factors as the Commissioner thinks fit.

Except where the additional area is necessary for the purpose of providing the owner so much land as is sufficient, in the opinion of the Commissioner, to carry on agricultural pursuits, the value placed on an agricultural area to which subparagraph (ii) refers is the irrigable value thereof determined by the Commissioner together with existing improvements.

(b) Where the Commissioner is of the opinion that the plan or proposed plan for subdivision of the land would be unduly affected adversely by the granting of an application under paragraph (a), the matter must be submitted to the Governor in Council who may, in the name of Her Majesty, sell to the owner of the land acquired or proposed to be acquired for an estate in fee-simple, upon such terms, (including the purchase price to be paid therefor) as are agreed between the Commissioner and the owner, Crown land set apart for the purposes of this Act or land acquired by the Commission in accordance with this section including land acquired from that owner.

(7) (a) Where the purchase price of the land to be transferred or sold to the owner of land under subsection (6) (a) (i) (B), (6) (a) (ii) or (6) (b) can not be agreed upon, the Commissioner—

(i) may refer;

and

(ii) where an agreement for sale of the land in question has been made subject to the determination by the Land Court of the purchase price to be paid therefor, must refer,

to the Land Court for hearing and determination the matter of the amount of the purchase price and the Land Court must hear and determine the matter.

The rules as to procedure and practice of the Land Court apply to hearings and determinations under this paragraph and that Court may where it considers it necessary in a particular case, give directions as to the procedure, practice or other matters with respect to the hearing and determination as it thinks fit.

(b) A person aggrieved by a determination of the Land Court under paragraph (a) may appeal therefrom to the Land Appeal Court.

The rules as to procedure and practice of the Land Appeal Court apply to appeals under this paragraph and that court may, where it considers it necessary in a particular case, give directions as to the procedure, practice or other matters with respect to the appeal as it thinks fit.

(c) The determination of the Land Court or, upon appeal therefrom, of the Land Appeal Court upon a reference under this subsection is final.

(d) For the purposes of this subsection, the purchase price of the land is the amount of money that, in the opinion of the Land Court or, as the case may be, Land Appeal Court, an experienced person would be willing to pay for the fee-simple of the land together with improvements thereon or pertaining thereto, whether visible or invisible and by whomsoever made or acquired.

(8) Except where an agreement for sale of land under subsection (6) otherwise provides, the purchase price for the land sold must be paid within 3 months or such longer period of time as the Commissioner determines after the date of the agreement for sale or of the determination of the purchase price under subsection (7), whichever is the later date.

(9) The Governor in Council, where he thinks fit, may elect not to proceed with the sale of land under subsection (6) (b).

A right of election conferred by this subsection must be exercised before the issue of the deed of grant in respect of the land in question and in any case not later than 3 months after the date of the agreement for sale under subsection (6) (b) or of the determination of the purchase price of the land under subsection (7), whichever is the later date.

The Crown is not liable to pay to a person compensation for loss, injury or damage alleged to have been occasioned, directly or indirectly, by reason of an election not to proceed under this subsection.

3.18 Power of Commission to lease or dispose of land or works. (1)

The Commission may lease, sell or otherwise dispose of land acquired by it under this Act that is not being used or required for the purposes of this Act.

(2) The Commission, with the approval of the Minister, may lease, sell or otherwise dispose of works constructed by it upon terms determined by the Commission.

3.19 Powers of Commission where water supply area or drainage area not constituted or proposed to be abolished. Until a water supply area or drainage area is constituted under this Act in respect of a part of Queensland or where it is proposed to abolish such an area, the Commission with respect to that part or that area has and may exercise the powers and authorities and perform the functions and duties imposed on a board under this Act.

3.20 Power of Commission to supply water by agreement. (1)

Notwithstanding section 4.13, the Commission with the approval of the Governor in Council by Order in Council may supply water to a local authority or any other person for any purpose upon terms agreed between the parties as specified in the Order in Council.

Without limiting or affecting the generality of this subsection, an agreement under this section must include the following—

- (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.

(2) This Act or an agreement made under this section is not to be construed or operate to create on the part of the Commission 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 (3).

(3) Where water upon which the Commission relies for maintenance of supply under this section has been or is likely in the opinion of the Commission to be diminished, the Commission 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.

Reasonable notice must be given by the Commission of its intention to take action under this subsection.

(4) The Commission, at the beginning of a period determined by it 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.

3.21 General power to make and enter into contracts. (1) For the purposes of this section—

“person” includes a Crown instrumentality or an instrumentality representing the Crown;

“Crown” means the Crown in right of the Commonwealth or of the State.

(2) Subject to this Act, the Commission may make and enter into a contract or an agreement with any person with respect to the exercise of any power or authority or the performance of a function or duty conferred or imposed on it by or under this Act or any other Act.

(3) In exercising the powers and authorities conferred by this section, the Commission must have regard to the requirements of the *Financial Administration and Audit Act 1977-1988* applicable to making contracts as if the Commission were an accountable officer within the meaning of that Act.

3.22 Mode of making or entering into contracts or agreements. (1) Subject to this section, the Commission may exercise a power or authority conferred on it by section 3.21 by itself or by the Commissioner or another person on its behalf.

(2) Any contract or agreement that, if made or entered into by and between private persons—

- (a) is required to be by deed or in writing under seal must, when made or entered into by the Commission, be in writing under its seal;
- (b) is required to be in writing signed by the parties must, when made or entered into by the Commission, be in writing

signed on behalf of the Commission by a person authorized by this section;

- (c) may be made orally, when made or entered into by the Commission may be made orally on behalf of the Commission by a person authorized by this section.

(3) Any contract or agreement made on behalf of the Commission may be entered into by the Commissioner or by a person authorized by it or him in that behalf and may be varied, amended or discharged by the Commissioner or that person in the manner in which it is authorized to be made.

3.23 Declaration as to downstream limit along a watercourse above which the Commissioner may exercise powers etc. For the purposes of Part IV the Commissioner, by notification published in the Gazette and in a newspaper circulating in the district in question, may declare, by reference to any natural or artificial feature or the boundary of a parcel of land in close proximity thereto, the downstream limit along a watercourse specified and defined in the notification.

During the continuance in force of a notification under this section, the Commissioner may, with respect to the watercourse specified and defined therein, exercise the powers and authorities and perform the functions and duties conferred or imposed on him by or under this Act with respect to watercourses above the downstream limit specified and defined in the notification.

The power conferred by this section must, in the case of a watercourse that is a river or creek subject to tidal influence, be exercised only after consultation with the appropriate department of the government of the State or, as the case may be, authority having jurisdiction over the part of the river or creek in question.

3.24 Power of Commissioner to carry out investigations, prepare estimates etc. on behalf of person. (1) The Commissioner on behalf of any person may—

- (a) make surveys and carry out investigations;
 (b) prepare designs and estimates of the costs of works;

for or in connexion with—

- (c) any project for water conservation, irrigation, water supply, drainage, flood control and prevention, improvement in the flow in or changes to the course of a watercourse;
 (d) where the person is a local authority, any project for water supply, sewerage, septic tank installations, stormwater drainage, agricultural drainage, flood control and prevention, swimming pools;
 (e) any works necessary for the provision or improvement of the water supply to farm land for domestic or irrigation purposes, watering stock, drainage on farm land or the preparation of farm land for irrigation.

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- (2) The Commissioner on behalf of any person may—
- (a) in the case to which subsection (1) (c) or (1) (d) refers, supervise construction of works;
 - (b) in the case to which subsection (1) (e) refers, provide technical, supervisory or other advice in connexion with the development or construction of works.
- (3) Work undertaken by the Commissioner must be—
- (a) in the case of a project specified in subsection (1) (c), (1) (d) or (2) (a), upon terms agreed between the Commissioner and the person in question;
 - (b) in the case of a project specified in subsection (1) (e) or (2) (b), upon the payment of charges determined by the Commissioner.
- (4) Costs, charges and expenses incurred or charges levied by the Commissioner in the exercise of any power or authority conferred on him by subsection (1) or (2) must be paid to the Commissioner by the person on whose behalf the power or authority was exercised.

The amount of any costs, charges and expenses to which this subsection refers which are not paid is a debt due to the Crown and may be recovered by the Commissioner in a court of competent jurisdiction.

3.25 Power of Commissioner with respect to pipes etc. to be used for certain purposes. (1) The Commissioner may, at the request of or on behalf of a manufacturer, supplier or purchasing authority inspect, test, approve, stamp or mark pipes, fittings, fixtures, materials, equipment or processes to be used in connexion with water supply, sewerage, septic tank installations, swimming pools, drainage works of all kinds or other purposes approved by the Commissioner.

(2) A person who submits to the Commissioner pipes, fittings, fixtures, materials, equipment or processes pursuant to subsection (1) must pay to the Commissioner fees as the Commissioner prescribes.

Division III—Advisory Council and Advisory Committees

3.26 Establishment and functions. (1) The Governor in Council, by Order in Council, may establish—

- (a) an advisory council;
- (b) advisory committees.

(2) The functions of the advisory council are to advise the Minister with respect to—

- (a) the administration of this Act or any other Act that the Commission or Commissioner is required by law to administer and that confers or imposes on it or him powers, authorities, functions or duties;
- (b) subject to paragraph (a), those matters specified in the Order in Council establishing the council.

- (3) The functions of an advisory committee are—
- (a) to advise the Commissioner with respect to—
 - (i) the exercise by him of the powers and authorities and the performance by him of the functions and duties conferred or imposed on him by or under this Act or any other Act;
 - (ii) subject to subparagraph (i), those matters specified in the Order in Council establishing the committee;
 - (b) in the case of an advisory committee appointed with respect to referable dams generally or to a particular referable dam, in addition, to inquire into, report upon and make recommendations to the Commissioner with respect to—
 - (i) those aspects of the investigation, design, proposed construction and operating procedures or other proposals submitted in respect of referable dams generally or the particular referable dam the Commissioner requires;
 - (ii) the implementation of the provisions of this Act with respect to referable dams;
 - (c) in the case of an advisory committee appointed with respect to designated areas generally or a particular designated area, in addition, to report upon and make recommendations to the Commissioner with respect to—
 - (i) the investigation of proposals for the constitution of designated areas generally or the particular designated area and the formulation of recommendations with respect to the objects and purposes for which designated areas generally are or the particular designated area is proposed to be constituted;
 - (ii) the implementation of the provisions of this Act with respect to designated areas.

3.27 Membership. (1) The advisory council and each advisory committee established under this Act may consist of persons representative of interests and specialists in disciplines suitably qualified to the satisfaction of the Governor in Council or as the Governor in Council determines.

(2) The Governor in Council may alter the membership of the advisory council or an advisory committee by increasing or decreasing the number of its members and for that purpose may remove from membership any member and substitute another qualified person as a member.

3.28 Matters to be set forth in Order in Council. (1) An Order in Council that establishes the advisory council or an advisory committee must set forth therein—

- (a) the name assigned to the council or committee;
- (b) particulars of the membership of the council or committee,

the member who is to be chairman and the mode of appointment or of nomination and appointment of the members;

- (c) in a case where the Governor in Council considers that members of the council or committee should be appointed for a term, particulars of the terms of appointment and of the members so appointed;
- (d) the matters in respect of which the council or committee is required to advise the Minister or Commissioner;
- (e) any other matters with respect to the establishment and functions of the council or committee that the Governor in Council in a particular case thinks fit.

(2) The Governor in Council may by Order in Council alter, amend or vary those matters declared in an Order in Council in accordance with subsection (1).

3.29 Duty of Commissioner. The Commissioner may make available to the advisory council or an advisory committee such technical, clerical, secretarial or other assistance as he considers necessary for the proper performance of its functions and the conduct generally of its affairs.

Division IV—Financial and other General Provisions

3.30 Financial arrangements. For the purpose of exercising its powers and authorities and performing its functions and duties, the Commission is empowered to enter into financial arrangements within the meaning of the *Statutory Bodies Financial Arrangements Act 1982-1989* with the Treasurer or any other person and with respect to the Commission as a statutory body within the meaning of that Act, Part IV of that Act, other than sections 23, 25 (1) (i), 32 to 37 both inclusive and section 47 (1) and (2), applies.

3.31 Stamp duty. Notwithstanding the *Stamp Act 1894-1989* or any other Act or law that imposes a duty on instruments, stamp duty is not payable—

- (a) by any person in respect of—
 - (i) any permit, certificate or other authority;
 - (ii) any licence, permit, contract or agreement for the supply of water,
granted and issued or made or entered into, under this Act;
- (b) by the Commission.

3.32 Power to remit payment of charges or interest thereon. The Minister, where he is satisfied that the circumstances warrant, may remit, wholly or partly, payment of charges or interest thereon in respect of which there is an indebtedness to the Crown, the Commission or the Commissioner.

3.33 Annual report. As soon as practicable after 30 June in each year, the Commissioner must prepare and furnish to the Minister a

report on the operations of the Commission and the Commissioner for the twelve months preceding that date, which report must be laid before Parliament.

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

Division I—General Provisions

4.1 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. Where a watercourse or lake does not, at the commencement of this Act, form the boundary wholly or partly of a parcel of land alienated by the Crown before that commencement but subsequently becomes, wholly or partly, that boundary, the Governor in Council, by Order in Council, may declare that, on and from the date of that Order, the bed and banks of that watercourse or lake or the parts thereof that form the boundary become the property of the Crown.

The bed and banks of a watercourse or lake or parts thereof so declared by Order in Council under this section remain the property of the Crown during the continuance in force of that Order in Council.

A declaration under this section does not confer upon any person a right to compensation.

4.2 Declaration re catchment area. The Governor in Council, by Order in Council, may declare, for the regulation and control of land and the protection of water, an area of land specified and defined in the Order in Council to be a catchment area and may place a catchment area so declared under the control of the Commissioner.

4.3 Certain quarry material to be and remain property of Crown. Notwithstanding the *Forestry Act 1959-1987* 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 1962-1988*;
 - (iii) a Crown holding,

is and remains the property of the Crown.

4.4 Wastage of water from artesian or sub-artesian bore. (1) Where the Commissioner is satisfied after due inquiry that water from an artesian bore or a sub-artesian bore is—

- (a) being used for an improper purpose or a purpose other than a purpose authorized by a licence;
- (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 utilized otherwise than to the best advantage, he may, by notice in writing given to the licensee, direct that he, within 30 days after the date of the notice—

(i) close a part of the works specified in the notice;
and

(ii) take those precautions, including repairs and alterations specified in the notice, as the Commissioner thinks necessary to prevent the improper or unauthorized use of the water or to provide for better utilization thereof.

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

Penalty: 50 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 Commissioner or an authorized officer, with all necessary assistants, agents or workmen 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.

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

(4) Costs and expenses incurred by the Commissioner in exercising the powers and authorities conferred on him by subsection (3) may be recovered, in the name of the Commissioner, as a debt due to the Crown, in a court of competent jurisdiction.

4.5 Supply of surplus water from artesian or sub-artesian bore. (1)

Where the Commissioner is satisfied after due enquiry that—

(a) the quantity of water flowing from an artesian bore or supplied from an artesian bore or a sub-artesian 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, he may, by a notice in writing, to the owner, require that the owner of the land on which the artesian bore or sub-artesian bore is situated, within a time determined by the Commissioner and specified in the notice, to enter into an agreement with—

(i) an owner or occupier of other land referred to in subparagraph (b);

or

- (ii) in an appropriate case, an owner or occupier of land intervening between the land on which the artesian bore or sub-artesian bore is situated and the land to be supplied with water,

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

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

(b) A notice under paragraph (a) must set forth terms as the Commissioner thinks fit with respect to—

- (i) the supply and distribution of the water in question;
- (ii) the construction and maintenance of necessary works in connexion with the supply and distribution of the water in question;
- (iii) the costs and expenses of or in connexion with the construction, maintenance and management of those necessary works and the persons by whom and to whom those costs and expenses are payable;
- (iv) the payment to be made to the owner of the land on which the artesian bore or sub-artesian bore is situated for water supplied and distributed.

(c) A notice given under this subsection 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.

(3) 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 sub-artesian bore is situated and the land to be supplied with that water, the Commissioner may include in a notice given under subsection (1) such terms as he 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.

(4) A person who fails to comply with a term imposed by the Commissioner under subsection (3) commits an offence against this Act.

Penalty: 15 penalty units.

4.6 Operation of Act with respect to sub-artesian bores. The provisions of this Act with respect to sub-artesian bores apply only to localities of Queensland, declared by the Governor in Council, by Order in Council (in respect whereof the Governor in Council is hereby empowered), for so long as the Order in Council continues in force.

4.7 Exemption of sub-artesian water supplies for domestic purposes.

Except where the Governor in Council by Order in Council otherwise declares in respect of a locality or part thereof declared by Order in Council under section 4.6, Division II of Part IV does not apply to a sub-artesian bore the supply of water from which is used or required for use for domestic purposes only.

A declaration made under this section may be incorporated in an Order in Council made under section 4.6.

4.8 Prohibition as to diversions and appropriations of water. (1)

Except in the case of a diversion or appropriation of water by a person referred to in section 2.2 (a), a person must not divert or appropriate water from a watercourse, lake or spring except—

(a) in the exercise of the general right conferred by section 4.11 on a person to use water for domestic and other ordinary purposes and for watering stock from a watercourse, lake or spring to which there is access by a road or a reserve within the meaning of the *Land Act 1962-1988*;

or

(b) otherwise under this Act.

(2) This section applies notwithstanding the *Mining Act 1968-1986*, any other Act relating to mining or the terms of any lease or other authority granted under any of those Acts.

(3) This section does not apply to a right to divert or appropriate water granted under any Act relating to mining prior to the date of commencement of the *Water Act and Another Act Amendment Act 1973*.

4.9 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.

(1) Notwithstanding this Act the owner or occupier for the time being of land abutting a watercourse or lake the bed and banks of which are declared or are deemed to be the property of the Crown—

(a) has and may exercise a right of access for himself, his family, his employees or agents or his stock to the part of land comprising the bed and the bank of that watercourse or lake to which the land is adjacent for the purposes of obtaining and using the water therein for domestic and other ordinary purposes and for watering and grazing stock as if this Act had not been passed, for so long as that part remains unappropriated by the Crown for a purpose under this Act;

(b) may maintain and enforce against a person who trespasses upon the part of the bed and the bank of a watercourse or lake referred to in subparagraph (a) any action for trespass which he might have had if this Act had not been passed and the person in question were a trespasser upon land in the possession of that owner or occupier.

(2) Except for the rights conferred upon an owner or occupier by subsection (1), this section must not be construed or operate so as to—

- (a) restrict the right of the Crown to maintain and enforce against a person who trespasses upon the part of the land comprising the bed and the bank of a watercourse or lake referred to in subsection (1) (a) an action arising out of the trespass;
- (b) entitle the owner or occupier referred to in subsection (1) to maintain and enforce against the Crown or a person acting under the authority of this Act or any other Act an action for trespass.

4.10 Right to take water by prescription or use prohibited. A person does not acquire, except under the authority of this Act, the right—

- (a) to take, use or divert water from or to use works constructed in or on a watercourse, lake or spring or a weir, barrage or dam vested in the Commission or under the control of the Commission or Commissioner;
- (b) to take, use or divert water from an artesian bore or a sub-artesian bore.

4.11 Ordinary riparian rights to use water. Subject to section 4.32, an owner or occupier of land abutting a watercourse, lake or spring or a weir, barrage or dam vested in the Commission or under the control of the Commission or Commissioner 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.

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.

4.12 Control of certain quarry material. (1) Notwithstanding the *Forestry Act 1959-1987* or any other Act or law, controlled quarry material for the purposes of this Act is and remains under the control of the Commissioner.

The Commissioner may, under, subject to and in accordance with this Act, authorize by a permit in writing the taking, getting or removal of controlled quarry material.

(2) Quarry material in a watercourse or lake, other than controlled quarry material, remains under the control of the Commissioner 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 to the owner of the land on which the watercourse or lake is situated.

Division II—Licences

4.13 Requirements as to licence. (1) Subject to sections 4.31 and 4.32 a person who, except under the authority of a licence under this Act—

- (a) constructs on his land a referable dam or alters, repairs, maintains, uses, operates, abandons or removes a referable dam already constructed;
- (b) (i) constructs works or uses works already constructed in or on a watercourse, lake or spring—
 - (A) to conserve water;
 - (B) to take water therefrom or water contained in or conserved by a weir, barrage or dam;
- (ii) constructs works or uses works already constructed in or on a watercourse, lake or spring or on or in connexion with land that abuts any of them—
 - (A) for the purpose of drainage;
 - (B) for the prevention of flooding of land by water or the erosion of banks;
 - (C) for improvement in the flow of water in or changes to the course of any of them;
- (c) takes water from a channel constructed by the Commission outside an irrigation area;
- (d) constructs—
 - (i) in that part of a river, creek or stream downstream of the point at which the river, creek or stream becomes a 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;
 - (ii) in a lake,
works in the nature of a barrage;
- (e) 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 (d) and in existence immediately prior to the commencement of the *Water Act Amendment Act 1979*;
- (f) constructs on his land a levee bank or uses a levee bank so constructed;
- (g) constructs on his land an artesian bore or uses an artesian bore so constructed or enlarges, deepens or alters in any manner an artesian bore;
- (h) in districts in which there is in force at the material time an Order in Council under section 4.6 constructs on his land a sub-artesian bore or uses a sub-artesian bore so

constructed or enlarges, deepens or alters in any manner a sub-artesian bore;

- (i) constructs in a designated area controlled works;
- (j) retains, uses or continues to use in a designated area controlled works—
 - (i) constructed prior to and in existence at the date of the constitution of the designated area;
 - (ii) that consist of levee banks to which section 7.5 applies, after the date of the constitution of the designated area or in a case to which section 7.5 applies after the date on which that section came into operation,

commits an offence against this Act.

Penalty: 200 penalty units.

(2) The provisions of this Act that require a licence to be applied for with respect to works specified in subsection (1) (f) 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 with respect to works specified in subsection (1) (j) must be made within 90 days after the date on which the part of Queensland in question was constituted a designated area or, as the case may be, on which the levee banks in question became controlled works under section 7.5 or any longer period determined by the Commissioner in a particular case.

(4) The Commissioner 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.

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

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

- (a) a penalty under section 86 of the *Harbours Act 1955-1989*;
- (b) any claim, demand or action for nuisance, trespass, encroachment, obstruction or otherwise.

Section 86 of the *Harbours Act 1955-1989* does not apply to works the subject of a licence granted and issued in respect of works to which subsection (1) (d) or (1) (e) applies.

(7) For the purposes of this section, the term “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;
- (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.

4.14 Rights of non-riparian owner to licence. (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 the Crown, the Commission, any local authority, 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 4.13.

(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.

The application must be accompanied by—

- (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 his intention to apply for a licence has been given by the applicant to the owners or occupiers in question.

(3) Where the applicant is unable to make arrangements under subsection (2), the Commissioner after due investigation, except in the case of a dam constructed by a local authority or other statutory authority, may, by writing signed by him, authorize 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.

(4) An authority under subsection (3)—

(a) may be subject to any terms the Commissioner 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 Commissioner;

(b) must continue in force during the period for which the licence in accordance with section 4.19 continues in force and no longer.

(5) Sections 4.17 to 4.26 both inclusive and 4.29, 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 Commissioner upon those applications and objections thereto;

(e) licences granted upon those applications.

The terms of an authority under subsection (3) have force and effect as if they formed part of an agreement under this section by the parties concerned and may be enforced accordingly.

(6) This subsection applies 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.

A licensee under this section or a proposed transferee of a licence under this section may advise the Commissioner by writing signed by him of the dealing with land or other occurrence affecting any of his rights or, as the case may be, any of the rights to which the proposed transferee may become entitled and the Commissioner may thereupon cause such investigation and inquiry as he considers necessary to be carried out.

Where upon investigation and inquiry the Commissioner 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 Commissioner may by writing authorize 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 finalization thereof in accordance with this

Act or, as the case may be, the negotiation and completion of new arrangements.

Where the Commissioner 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 Commissioner, the Commissioner may determine forthwith the continuance in existence of the right or rights in question.

4.15 Power of court upon conviction for an offence against s. 4.13.

(1) Upon conviction for an offence against section 4.13, 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 sub-artesian 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 Commissioner or an authorized officer may enter upon the land in question with all assistants, agents or workmen 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 Commissioner or an authorized officer in the exercise of the powers or authorities conferred on him by subsection (2) may be recovered in the name of the Commissioner as a debt due to the Crown in a court of competent jurisdiction.

4.16 Alterations other than for repair or maintenance of works prohibited. 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;
- (b) uses the water supplied from works the subject of the licence for purposes other than those authorized by the licence,

commits an offence against this Act.

Penalty: 200 penalty units.

4.17 Application for licence. (1) An application for a licence must—

- (a) be in writing and signed by the applicant;
- (b) contain particulars and other information determined by the Commissioner;
- (c) be accompanied by the prescribed fee;
- (d) be furnished to the Commissioner.

The Commissioner, where he is of opinion that the works the subject of an application affect or are likely to affect the rights and interests of persons other than the applicant, may, by requisition in writing addressed to the applicant, call upon him to furnish to the Commissioner plans, details and other information with respect to those works as the Commissioner specifies in the requisition.

The Commissioner may not deal with the application until the requisition has been complied with in all respects or the information requested has been otherwise furnished.

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.

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

- (a) a licence for an artesian bore or a sub-artesian 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 of the State, local authority or other statutory body;
- (c) a driller's licence,

the Commissioner 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.

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.

(3) (a) 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 4.14 (2) or, in the case of an application for a licence in respect of works specified in section 4.13 (1) (i) or (1) (j), the person specified in paragraph (c) may, by writing signed by him and addressed to the Commissioner, object to the granting of the application and submit to the Commissioner the grounds of his objection.

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

- (i) where the application relates to works constructed or to be constructed in or on a watercourse or spring, the land abuts that watercourse or spring and—
 - (A) being upstream of the land of the applicant in question or to which the application relates (in this subsection referred to as the “affected land”), is so situated that the point where its downstream boundary abuts the watercourse or spring is within a radius of 8 kilometres measured from the point where the upstream boundary of the affected land abuts the watercourse or spring;
 - (B) being downstream of the affected land, is so situated that the point where its upstream boundary abuts the watercourse or spring is within a radius of 24 kilometres measured from the point where the downstream boundary of the affected land abuts the watercourse or spring;
- (ii) where the application relates to works constructed or to be constructed on a lake, the land abuts the lake and is so situated that the point where its boundary nearest to the affected land is within a radius of 8 kilometres measured from the point where the boundary of the affected land nearest to the land abuts the lake;
- (iii) where the application relates to works other than controlled works or an artesian bore or a sub-artesian 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 kilometres measured from a point on the affected land nearest to the land;
- (iv) where the application relates to an artesian bore or a sub-artesian bore, the land is so situated that any point on its boundary nearest to the affected land is within a radius of 0.5 of a kilometre measured from a point on the affected land nearest to that land.

A distance specified in subparagraph (i), (ii), (iii) or (iv) by reference to a radius is a minimum distance and the Commissioner may, generally or in a particular case, extend a distance so specified.

(c) In the case of an application for a licence in respect of works specified in section 4.13 (1) (i) or (1) (j), the persons eligible to object to the granting of the application are—

- (i) owners or occupiers of land;
- (ii) 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.

(4) 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 (2) and has been so advertised.

4.18 Inquiry by Commissioner and grant or refusal of application.

(1) Upon an application under section 4.17 and an objection thereto, the Commissioner must cause inquiry to be made—

(a) where the application relates to water other than underground water, into—

(i) the availability and sufficiency of water to supply the requirements of—

(A) riparian owners;

(B) licensees;

(C) permittees;

(D) the applicant;

and

(E) persons specified in section 2.2 (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) where the application relates to underground water, into—

(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) in a case to which paragraph (a) or (b) applies, into any other matters or things he thinks fit.

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

(a) may grant the application—

(i) absolutely;

or

(ii) subject to any modifications or variations determined by the Commissioner in a particular case;

or

(b) may refuse the application.

(3) Where he grants the application, the Commissioner 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, as he thinks fit.

(4) For the purposes of an inquiry under this section, the Commissioner or a person duly appointed by him in that behalf has and may exercise all the powers, authorities, protection and jurisdiction of the Chairman of a commission under the *Commissions of Inquiry Act 1950-1989* except those by that Act reserved to a Chairman of a commission who is a judge of the Supreme Court.

4.19 Licences. (1) A licence under this Act—

- (a) is subject to such terms as the Commissioner determines endorsed thereon or attached thereto including, without limiting the generality of this provision, payment of the prescribed licence fee and other fees and charges together with interest thereon in respect of water allocated or taken and water taken in excess of the quantity of water authorized to be taken;
- (b) without limiting the generality of paragraph (a), may be subject to any of the following terms determined by the Commissioner 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 Commissioner;
 - (ii) the licensee must give to the Commissioner in writing 30 days' notice of his 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 Commissioner;
 - (iv) during the currency of the licence, the licensee must maintain to the satisfaction of the Commissioner works constructed or modified in accordance with subparagraph (i) or subparagraph (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 he is entitled to take or use under the licence to the satisfaction of the Commissioner;
- (vi) the licensee, in the case of a referable dam or works declared by the Commissioner under section 5.2 to be a referable dam, must lodge with the Commissioner a security deposit or enter into a bond for a period determined by the Commissioner with an insurer approved by the Commissioner or make such other arrangements satisfactory to the Commissioner in such amount as the Commissioner determines to ensure—
 - (A) compliance by the licensee with the terms of the licence;
 - (B) rectification, to the satisfaction of the Commissioner, of damage done to the extent and in respect of any area in the locality of the referable dam in question he determines;
 - (vii) the Commissioner may at any time require the licensee to give notice to the Commissioner of the licensee's intention to take water to which he is entitled under his 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 Commissioner forthwith of any variation in those requirements;
 - (c) where applicable, entitles the licensee to the grant of a nominal allocation;
 - (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;
 - (e) remains in force, unless sooner cancelled, revoked or suspended, for a period determined by the Commissioner in a particular case or class of cases, specified therein;
 - (f) may be—
 - (i) renewed;
 - (ii) suspended;
 - (iii) cancelled;
 - (iv) revoked;
 - (v) transferred;
 - (vi) amended, modified or varied,
by the Commissioner during the currency thereof;
 - (g) must authorize 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;
 - (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 him or the subject of an arrangement or an authority made or granted under section 4.14;

- (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 those works or the protection of life or property that would or could be endangered by the collapse or failure thereof, this Act and the terms imposed by the licence with respect to safety or the protection of life or property prevail.

(2) (a) The Commissioner, of his 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.

(b) The powers conferred on the Commissioner by this subsection do not include the power—

- (i) to increase of his own motion a benefit to which the licensee is entitled under his licence;

or

- (ii) to grant of his own motion to a licensee a further benefit.

(c) Sections 4.17 and 4.18 apply and extend to an application by a licensee under this subsection that relates to or includes an increase of a benefit to which he is entitled under his licence or a further benefit.

(3) The Commissioner, at the beginning of a period determined by him 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 his licence determine an announced allocation and may alter, amend or vary an announced allocation so determined.

4.20 Amended licence. A licensee, during the currency of his 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.

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 4.17.

4.21 Renewal of licence. (1) 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 Commissioner on or before the date of expiration of the licence or, at the discretion of the Commissioner in a particular case, within 4 months after that date.

A licence in respect of which an application for renewal has been furnished to the Commissioner remains in force until the applicant has been notified of the Commissioner'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.

(2) The Commissioner, 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;

(B) the reduction of the amount of water that the holder thereof is entitled to take and use under the licence;

(C) the reduction of the area of land to which the licence applies;

or

(D) a combination of two or more of those variations specified in provisions (B) and (C);

(b) the application is refused.

The Commissioner, upon the renewal of a licence, must issue to the licensee a renewal with respect to that licence.

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

4.22 Transfer of licence. The Commissioner, upon application in writing duly made in that behalf and payment of the prescribed fee, if any, may transfer a licence.

A transfer under this section is, where the Commissioner requires, subject to the prior acceptance in writing by the transferee of the terms to which the licence is subject at the date of the application or amendments, modifications or variations thereof and is subject to such other terms as the Commissioner in a particular case determines.

4.23 Surrender of licence. (1) Subject to this Act, a licensee, during the currency of a licence, may surrender the licence by furnishing to the Commissioner a notice of surrender in writing signed by him.

(2) A surrender under this section—

(a) subject to subparagraph (b) takes effect on and from the date on which the notice is received by the Commissioner;

(b) may be made subject to a condition that the licensee must remove, to the satisfaction of the Commissioner and prior to a date determined by the Commissioner 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 Commissioner that the works have been removed to his 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.

4.24 Effect of disposal of subdivided land. (1) Where land in respect of which a licence is in force is subdivided whether before or after the issue of the licence, and a separate parcel of land comprising that subdivision is disposed of during the currency of the licence, the licence thereupon ceases to exist and subsections (3) and (5) of section 4.25 apply and extend as if the licence had been cancelled or revoked under that section.

(2) Notwithstanding subsection (1), where a parcel of land not exceeding in area 1 hectare is excised from land referred to in subsection (1) and—

- (a) the land remaining that is capable of being irrigated exceeds the area authorized to be irrigated under the licence;
- (b) in the opinion of the Commissioner, 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 Commissioner, in the exercise of his discretion in a particular case, otherwise determines.

4.25 Amendment, variation, cancellation, revocation or suspension of licence. (1) The Commissioner, where he 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 his licence or of an arrangement or authority under section 4.14 given in relation to that licence,

may by notice in writing given to the licensee call upon him 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 Commissioner—

(a) may amend, vary, cancel or revoke;

(b) may suspend for such period as he 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.

4.26 Appeal to Land Court. (1) A person aggrieved by a decision of the Commissioner 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 4.14 (3) to construct or use works on intervening land,

may appeal therefrom to the Land Court.

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

(a) an application to which section 4.17 (2) (a), (b) or (c) refers;

(b) a referable dam, that concerns the safety or the protection of life or property;

(c) an objection to an application for a licence to construct or use an artesian bore or a sub-artesian bore;

(d) a licence granted and issued under section 8.13;

(e) a driller's licence.

(3) An appeal under this section is instituted by filing in the Land Court registry within 30 days after the date of the notification of the decision in question and no later, a notice of appeal.

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.

The appellant must, within 14 days after filing it, serve on the Commissioner a copy of the notice of appeal.

(4) The Land Court must hear and determine the appeal and may confirm, vary or revoke the decision of the Commissioner the subject of the appeal.

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.

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

(5) The jurisdiction of the Land Court to hear and determine an appeal under this section is vested in one member only and the decision upon the appeal is final and is not further justiciable.

(6) 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 Commissioner.

The parties to the appeal must give effect to the decision.

4.27 Application for reduction in water entitlement or area of land.

(1) A licensee, at any time during the currency of his licence, may make application in writing signed by him to the Commissioner for a reduction of—

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

The application must specify details of the reduction sought.

(2) The Commissioner must notify the licensee of his decision on the application and where he grants it must forward to the licensee an amended licence.

4.28 Requirement as to licensing and employment of drillers. (1) A person who operates as a driller with respect to an artesian bore or a sub-artesian bore not being the holder of a driller's licence commits an offence against this Act.

Penalty: 15 penalty units.

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

Penalty: 15 penalty units.

(3) The Commissioner, upon application in writing and payment of the prescribed fee, may issue to a person who satisfies the Commissioner that he is competent, capable and suitably qualified, a driller's licence.

The Commissioner may at any time cancel or revoke a driller's licence.

4.29 Licence in substitution. Where the Commissioner—

- (a) amends a licence under sections 4.20, 4.25 or 4.27;
- (b) renews a licence under section 4.21;
- (c) transfers a licence under section 4.22,

the amended, renewed or, as the case may be, transferred licence is in substitution for the licence that the Commissioner has amended under section 4.25 or in respect of which the application under sections 4.20, 4.21, 4.22 or 4.27 is made.

4.30 Duplicate or copy of lost or destroyed licence, permit or authority. The Commissioner, upon application duly made in that behalf, payment of the prescribed fee and proof to his 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 III—Permits

4.31 Power to issue permit to government department, other person or body to take water. (1) The Commissioner, 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 4.32,

may grant that department, person or body a permit in writing authorizing 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 Commissioner 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 of the State, that it remain in force for a specified period determined by the Commissioner and that water so taken must be used solely for a purpose of or in connexion 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 of the State, that it remain in force only for a period not exceeding in any case 90 days and that water so taken must be used solely for a purpose specified in the permit.

4.32 Power to issue permit to construct or use works in the exercise of a right to use water under s. 4.11. (1) An owner or occupier of land who uses water in a watercourse, lake or spring, in accordance with section 4.11 must, where he desires to construct or use works to take

water in connexion with that use, make application in writing signed by him for a permit.

The application must be accompanied by the prescribed fee, if any, and furnished to the Commissioner and must contain particulars of the works proposed to be constructed or to be used.

(2) (a) The Commissioner must consider each application received by him and may—

(i) grant;

(ii) in a case where the Commissioner is satisfied that there is available for use by the applicant an alternative water supply, refuse,

the application.

The Commissioner must notify the applicant of his decision upon the application and where he grants it must issue a permit in writing.

(b) A permit under this subsection—

(i) is subject to this Act and any terms determined by the Commissioner, endorsed thereon or attached thereto;

(ii) may authorize 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 Commissioner;

(iii) may, notwithstanding section 4.31 (2) (b), be issued for a period exceeding 90 days.

(3) 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.

Penalty: 15 penalty units.

4.33 Application for and issue of permit in respect of quarry material.

(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 him and accompanied by the prescribed fee;
and

(d) furnished to the Commissioner.

An application with respect to quarry material other than controlled quarry material can be made only by the owner of the land through or past which the watercourse flows or on which part of the lake is situated.

(2) The Commissioner, by notice in writing given to him, may require an applicant under subsection (1) to furnish to the Commissioner

further particulars, information or documentation with respect to the proposed operation as specified in the notice.

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

Where the application relates to controlled quarry material that is in or on a watercourse or lake in or on a Crown holding, the Commissioner must have regard to section 4.34.

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 *Mining Act 1968-1986* 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.

Where he grants the application, the Commissioner must issue a permit authorizing 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.

A decision of the Commissioner under this subsection is final and not further justiciable.

(4) A permit under subsection (3)—

- (a) is subject to terms determined by the Commissioner endorsed on or attached to the permit including a term that the permittee furnish to the Commissioner in writing within 7 days after the end of each month a return of all controlled quarry material taken, got or removed by him, 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 Commissioner;
- (c) authorizes 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 Commissioner an amount determined by the Commissioner by way of contribution towards the costs of research and investigations rendered necessary by the application.

(5) Without limiting the generality of subsection (4) (a) or (4) (d), a permit may be subject to a term that the permittee—

- (a) lodge with the Commissioner a security deposit;
- (b) enter into a bond with an insurer approved by the Commissioner;

or

- (c) make other arrangements satisfactory to the Commissioner, in an amount determined by the Commissioner 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 Commissioner;
- (f) rectification to the satisfaction of the Commissioner to the extent and for the distance determined by him prior to the issue of the permit of damage done to the watercourse or lake by the operations authorized by the permit or caused upstream or downstream of the locality in respect of which the permit is issued.

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

(6) The Commissioner, of his 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.

(7) Where there is an inconsistency between a provision of a regulation, rule, by-law, ordinance or other subordinate legislation of a local authority 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.

(8) Except to the extent set forth in subsection (7), the grant of a permit under this section does not release a permittee from compliance by him with by-laws of a local authority that relate to an extractive industry or to town planning.

4.34 Procedure before dealing with controlled quarry material on Crown holding. (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 Commissioner for a permit.

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.

(2) Upon receipt of an application under subsection (1) and, where applicable, the written evidence in support, the Commissioner must consider the matter and where he 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 Commissioner including where applicable the terms agreed upon by and between the applicant and the lessee.

(3) 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 his application, the Commissioner must give to the lessee in question a notice in writing of the proposal.

A notice in writing under this subsection 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 Commissioner 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.

This subsection does not apply in a case where controlled quarry material, the subject of the proposal is required by or on behalf of The Commissioner of Main Roads or a local authority for use in connexion with the construction, widening or straightening of a road or The Commissioner for Railways for use in connexion with the construction or maintenance of railways.

(4) Where objections are not lodged in accordance with subsection (3), the Commissioner may proceed with the application notwithstanding that the lessee concerned has not consented thereto.

(5) Where objections are lodged in accordance with subsection (3), the Commissioner must submit to the Minister all objections received by him together with his report and recommendations on the proposal and all objections.

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

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

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

(d) The Minister's determination under this subsection is final and effect must be given to it.

4.35 Rights to enter and remain on Crown land or holding under permit. (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 him 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 (5).

(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 Commissioner and refer the dispute to him.

The Commissioner, upon the reference, must inquire into the matters relating to the dispute, and must make and submit to the Minister his report and recommendations thereon.

(4) Upon receipt of the report and recommendations in accordance with subsection (3), 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 he determines that entry upon the land in question is necessary or, if the matter of necessity is not in dispute, he may then proceed to determine matters in connexion with the route or track over which the right of entry may be exercised.

(5) Where the Minister determines in accordance with subsection (4) that entry upon the land in question and a route or track over which entry may be effected are necessary, he 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 he determines.

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

(7) 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 his employees or agents or any of them in the exercise of a right conferred on him by this section.

4.36 Sale of controlled quarry material. The Commissioner may, in accordance with this Act sell, on behalf of the Crown, controlled quarry material.

A sale pursuant to this section—

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

4.37 Royalty or price. (1) Subject to this Act, royalty at the prescribed rates or, as the case may be, the price determined or accepted under section 4.36 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 1886-1989* on complaint by the Commissioner or a person authorized in writing by him 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 Commissioner or a person authorized in writing by him in that behalf.

(3) A person who fails to pay royalty or the price determined or accepted under section 4.36 that he is liable to pay under this Act commits an offence against this Act.

Penalty: 20 penalty units.

A person who is convicted of an offence against this subsection is, in addition to the penalty that may be imposed upon him for that offence, liable to pay to the Commissioner the amount of the royalty or price determined or accepted in respect of which he is convicted.

4.38 Amendment, variation, cancellation, revocation or suspension of permit. (1) The Commissioner may—

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

a permit under this Act where he 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.

Division IV—Limitation on Taking and Use of Water; Unauthorized Works

4.39 Limitation of times during which water may be taken under licence or permit. (1) The Commissioner—

- (a) by a notice published in the Gazette and 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 him,

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 sub-artesian bore situated in a locality declared by Order in Council under section 4.6.

A notice pursuant to this subsection remains in force for the period of time specified therein or, where no period is so specified, until it is revoked by the Commissioner.

(2) 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.

Penalty: 50 penalty units.

4.40 Offences as to dealing with water. (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.

Penalty: 30 penalty units.

(2) The Commissioner or an authorized 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 him 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.

The giving of a notice under this subsection 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).

A person who fails to comply with a notice given under this subsection to the satisfaction of the Commissioner commits an offence against this Act.

Penalty: 15 penalty units.

(3) The Commissioner or an authorized officer, upon conviction for an offence against subsection (1) or failure by a person to comply to the satisfaction of the Commissioner with a notice given under subsection (2) within the time specified, may enter upon the land in question with assistants, agents or workmen 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.

(4) Costs and expenses incurred by the Commissioner or an authorized officer in the exercise of any power or authority conferred on him by subsection (3) may be recovered as a debt due to the Crown by action in a court of competent jurisdiction brought in the name of the Commissioner.

4.41 Powers of Commissioner with respect to unauthorized works.

(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 Commissioner or an authorized officer may give to the owner of those works or any person responsible for the construction thereof a notice in writing requiring him 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.

A person who fails to comply with a notice given under this subsection to the satisfaction of the Commissioner within the time specified commits an offence against this Act.

Penalty: (a) where the offence consists of a failure to comply with a notice in respect of a referable dam, 200 penalty units;

(b) in all other cases, 50 penalty units.

(2) The Commissioner or an authorized officer, upon conviction for an offence against subsection (1) 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 workmen 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.

(3) Costs and expenses incurred by the Commissioner or an authorized officer in the removal or modification of works in the exercise of a power or authority conferred on him 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 Commissioner.

PART V—REFERABLE DAMS

5.1 Control of safety of referable dams. (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 collapse or failure thereof, the Commissioner 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 him by or under this Act with respect to a referable dam.

(2) The Commissioner has and may exercise the power of control conferred on him 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.

5.2 Power of Commissioner to declare certain works or proposed works to be a referable dam. 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 collapse or failure thereof, the Commissioner, 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.

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

5.3 Requirements by Commissioner as to referable dam. The Commissioner—

- (a) may, from time to time in respect of a specified referable dam constructed or to be constructed, 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 connexion 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 Commissioner

and assisted where necessary by persons suitably qualified and experienced to his satisfaction;

- (b) may by a notice in writing given to him 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 Commissioner and in accordance with procedures and at intervals of time determined by him, periodical inspections of the referable dam specified in the notice and cause to be furnished to the Commissioner reports of inspections so carried out;
 - (ii) cause to be carried out by persons suitably qualified and experienced to the satisfaction of the Commissioner and in accordance with procedures determined by him a review of the design, construction and operating procedures of the referable dam specified in the notice and cause to be furnished to the Commissioner with respect to the review so carried out, information as specified in the notice;
 - (iii) carry out any repairs or take any measures to ensure the safety of the referable dam as specified in the notice.

5.4 Exemption of owner of referable dam from provisions of Act.

(1) The Commissioner, where he 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 Commissioner determined, specified in the notice.

(3) The Commissioner 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.

5.5 Protection against liability for failure or collapse of referable dam. Notwithstanding this Act, liability does not attach to the Crown, the Minister, Commissioner, any authorized 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, Commissioner, any authorized 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 Commissioner 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 5.4.

PART VI—SPECIAL WORKS

6.1 Meaning of special works. For the purposes of this Part, the term “special works” means works other than a referable dam that include—

- (a) diversion of a watercourse;
- (b) reclamation of a watercourse, lake or swamp land or part thereof;
- or
- (c) other works,

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

6.2 Recommendation re certain works. Where it has come to the notice of the Commissioner that certain works are proposed that in his opinion are of a nature as to so warrant, he may recommend to the Minister that those works be dealt with under this Part.

The Minister, upon a recommendation of the Commissioner under this section, may recommend to the Governor in Council that the proposed works be declared special works.

6.3 Power of Governor in Council. The Governor in Council may declare proposed works referred to in section 6.2 to be special works for the purposes of this Act.

6.4 Application with respect to special works. (1) Upon the declaration by the Governor in Council that proposed works referred to in section 6.2 are special works, the person proposing the works must make application to the Commissioner for approval to construct those works.

(2) An application under subsection (1) must be accompanied by the prescribed fee and must set forth details of the proposal 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 connexion 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 Commissioner.

The application must be accompanied by appropriate plans, drawings and specifications containing information satisfactory to the Commissioner.

(3) Upon receipt by him of the application and material required to be furnished under subsection (2), the Commissioner 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.

The Minister may seek further information with respect to or in clarification of any aspect of the application, report, recommendations or material furnished as he thinks fit and must submit to the Governor in Council his recommendations thereon.

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

(4) The Commissioner must notify the applicant of the decision of the Governor in Council and upon approval being given, the Commissioner, 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.

6.5 Authority of Minister to make and enter into agreement. The Minister is authorized to make and enter into on behalf of the Government of the State of Queensland an agreement for the purposes of this Part.

6.6 Approval of agreement. An agreement made and entered into under this Part must be submitted to the Governor in Council who may, by Order in Council incorporating a copy of any agreement so approved, approve the agreement.

6.7 Effect of approval of Governor in Council. (1) Upon approval by Order in Council, the provisions of an agreement made and entered into under this Part have the force of law as though the agreement were an enactment of this Act.

(2) 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 subsection, binds that land and each successive owner or occupier thereof during the term of the agreement.

6.8 Notification of existence of agreement. (1) As soon as practicable after the publication in the Gazette of an Order in Council under section 6.6, the Commissioner must furnish notification of the existence of the agreement incorporated in that Order—

- (a) in the case of an agreement relating to freehold land, to the Registrar of Titles at Brisbane or, as the location of the land concerned requires, to the Local Deputy Registrar of Titles at Rockhampton or Townsville;
- (b) in the case of an agreement relating to land other than freehold land, to the Registrar of Dealings, Department of Lands at Brisbane or, as the case requires, to any other person charged with the duty of recording in a public register dealings affecting that land.

(2) A notification furnished under subsection (1) must be accompanied by a copy of the Order in Council in question.

(3) The registrar or other person to whom notification of an agreement is furnished under subsection (1)—

- (a) in the case of land that is freehold land—
 - (i) must record in the register the fact of the existence of the agreement in respect of that land;
 - and
 - (ii) thereupon must cause to be recorded on a current instrument of title to the land produced to him or subsequently issued by him the fact of the existence of the agreement, unless in the meantime he has been notified that the agreement has been terminated or has otherwise ceased to exist or to operate and he has complied with subsection (4) so far as he has been able in relation to that land.
- (b) in the case of land that comprises a holding under the *Land Act 1962-1988* must—
 - (i) where a fresh instrument of lease is issued in respect thereof in circumstances specified in section 284 (1) of that Act, endorse a memorial of the instrument of notification or, as the case requires, make a noting that records the fact of the existence of the agreement in accordance with the record originally made in respect of that land in the register kept of dealings in respect thereof;
 - (ii) where a grant in fee-simple is made in respect thereof, transmit to the Registrar of Titles or, as the case may be, the Local Deputy Registrar of Titles at Rockhampton or

Townsville a copy of an existing entry in the register in the Department of Lands that relates to the existence of the agreement together with the original or a copy of the notification of the existence of the agreement furnished to him and a copy of the Order in Council in question and the registrar or, as the case may be, local deputy registrar must comply with paragraph (a) of this subsection in respect of the deed of grant and any other instrument of title to the land or part thereof as if the notification of the existence of the agreement had been furnished to him in the first instance.

(4) As soon as practicable after an agreement to which this section relates has been terminated or has otherwise ceased to exist or to operate in respect of land, the Commissioner must furnish notification of that fact to the registrar or other person to whom notification of the existence of the agreement was furnished in accordance with subsection (1) and upon receipt of the notification, the registrar or other person—

- (a) where the fact of the existence of the agreement is recorded in the register, must record in the register the fact that the agreement has been terminated or has otherwise ceased to exist or to operate and where a current instrument of title to the land is produced to him, before releasing that instrument, cause a similar record to be made on that instrument;
- (b) where a memorial of the existence of the agreement is endorsed or a record or noting is made in a register kept of dealings in respect of the land, must—
 - (i) in the case of a memorial, suitably endorse it that the agreement to which it relates has been terminated or has otherwise ceased to exist or operate in respect of the land identified in the notification;
 - (ii) in the case of a record or noting, cancel it as far as it relates to the land identified in the notification.

Except as provided by this subsection, a memorial endorsed or a record or noting made on an instrument of title under subsection (3) must not be removed or otherwise dealt with.

(5) A notification furnished under subsection (1) or (4) must identify the land in respect of which the agreement exists or, as the case may be, has been terminated or has otherwise ceased to exist or to operate and must in all respects be in a form acceptable to the registrar or other person to whom it is furnished.

PART VII—DESIGNATED AREAS

7.1 Non-application of Part. Subject to section 7.5, this Part does not apply in the case of a levee bank to which section 47 (24) of the *Local Government Act 1936-1989* applies, constructed with the permission of the local authority, during the currency of an approval of the Governor

in Council for the application of that provision to the local authority area or the part or parts thereof situated in the designated area or any extension of the time for which that approval was originally granted.

7.2 Constitution of designated area. For the purposes of controlling in a part of Queensland the construction, use and maintenance of works that obstruct, divert or otherwise interfere with the flow of water over land within that part, the Governor in Council, by Order in Council may—

- (a) constitute a part of Queensland specified and defined therein to be a designated area and assign thereto a name;
- (b) amalgamate two or more designated areas into one designated area;
- (c) divide a designated area into two or more designated areas;
- (d) alter the boundaries of a designated area by—
 - (i) including land not, at the material time, forming part of the designated area;
 - (ii) excluding land, at the material time, forming part of the designated area;
 - (iii) both including and excluding land in accordance with subparagraph (i) or (ii);
- (e) abolish a designated area;
- (f) alter the name assigned to a designated area.

7.3 Procedure prior to constitution of designated area. (1) Before submitting a proposal with respect to a designated area under section 7.2, the Commissioner, by notification published in the Gazette and in a newspaper circulating in the locality in question, must—

- (a) notify—
 - (i) the proposal for the constitution of the designated area;
 - (ii) the objects and purposes for which the proposed designated area is to be constituted;
 - (b) publish a map or plan and description of the part of Queensland the subject of the proposal.
- (2) A notification under subsection (1) must—
- (a) specify a place, a date, being a date not earlier than 60 days after the first publication in the Gazette of the notification under subsection (1), and a time on that date on or before which objections to the proposal may be made and lodged with the Commissioner and the address to which objections may be directed;
 - (b) set forth the class or classes of persons eligible to make and lodge objections.

(3) For the purposes of this section, the persons eligible to make and lodge objections are—

- (a) owners or occupiers of or persons claiming a right or interest in land within a part of Queensland specified in the notification which may be the proposed designated area or such larger part as the Commissioner determines in a particular case;
- (b) associations or bodies, corporate or unincorporate, representative of the community whether resident in the proposed designated area or not,

who consider that their rights or interests will or may be affected by the constitution of the designated area.

(4) The Commissioner may cause an investigation and inquiry as he considers necessary to be carried out into every objection made and lodged with him in accordance with this section and a report in writing to be made following the inquiry and investigation.

(5) The Commissioner must submit to the Minister the proposal notified in accordance with subsection (1) and, where objections are duly made and lodged, his report on every objection.

The Minister upon consideration of the proposal and objections, if any, must submit to the Governor in Council his recommendations and the Governor in Council, acting on the recommendations of the Minister, may approve the proposal.

7.4 General powers of Commissioner. The Commissioner may direct the undertaking by an authorized officer or any other nominated person of surveys, investigations, inquiries, inspections, examinations or other procedures necessary or desirable for the administration of this Part.

7.5 Power of Commissioner to control levee banks to which s. 47 (24) of the Local Government Act applies. Where in a designated area—

- (a) a local authority has obtained the approval of the Governor in Council for the application of section 47 (24) of the *Local Government Act 1936-1989* to the local authority area or the part or parts thereof situated in the designated area;
 - (b) upon that approval the local authority has permitted the construction in its local authority area or part thereof of levee banks within the meaning of section 47 (24) of that Act;
 - (c) the period of time for which the approval in question has been granted has expired;
- and
- (d) application has not been duly made by the local authority for an extension of that period of time,

the levee banks in question become and are controlled works and this Part and Part IV apply and extend to those works accordingly.

7.6 Licence for controlled works. The Commissioner may grant and issue a licence for the construction or use of controlled works within a designated area and for that purpose Division II of Part IV applies and extends accordingly.

7.7 No right to compensation. The removal or modification by or on behalf of the Commissioner of controlled works constructed by an owner or occupier in a part of Queensland prior to the constitution of that part as a designated area in the exercise of a power or authority conferred on the Commissioner by section 4.41 does not by reason only of that removal or modification confer upon that owner or occupier a right to compensation.

PART VIII—IRRIGATION UNDERTAKINGS AND AREAS

Division I—Irrigation Undertakings

8.1 Irrigation undertaking to be approved by Governor in Council. An irrigation undertaking must not be established until the proposal for the undertaking has been approved by the Governor in Council by Order in Council.

8.2 Procedure on proposal for irrigation undertaking. (1) Where it is proposed to establish an irrigation undertaking and to constitute an irrigation area with respect to that undertaking, the Commissioner must prepare and forward to the Minister a report in accordance with this section.

(2) A report under subsection (1) must contain or be accompanied by the following particulars, documents or writings—

- (a) maps or plans indicating the boundaries and extent of—
 - (i) the land to be comprised in the proposed area;
 - and
 - (ii) land outside the proposed area that may be acquired for the purposes of this Act;
- (b) with respect to the works comprising the proposed undertaking—
 - (i) a sufficient description and the purpose of the works;
 - (ii) a general plan indicating the nature and extent thereof;
 - (iii) an estimate of the total cost thereof and the annual charges necessary for the maintenance and management thereof;
 - (iv) an estimate of the annual revenue expected to be derived;
- (c) (i) an estimate of the quantity of water that under the proposed undertaking will be made available for use for irrigation and other purposes inside or outside the proposed

area after making allowance for anticipated present and probable future requirements;

- (ii) a statement of the sources from which it is proposed to obtain the quantity of water referred to in subparagraph (i);
- (d) a statement of existing watercourses, lakes, lagoons, marshes or swamps inside or outside the proposed area from which it is intended that the Commission should draw the supply of water or part thereof for the proposed area;
- (e) an estimate of the costs that would be incurred in the acquisition of land other than land to be comprised in the proposed area;
- (f) a statement of the area and extent of irrigable land in the proposed area that may be beneficially irrigated;
- (g) other special advantages that are likely to accrue generally from the establishment of the proposed undertaking;
- (h) an estimate of the number of officers and employees required to manage and maintain the undertaking.

8.3 Approval of proposal by Governor in Council. The Minister must submit to the Governor in Council his recommendations on the report prepared in accordance with section 8.2 and the Governor in Council acting on the recommendations of the Minister may approve the proposal the subject of the report.

8.4 Establishment of irrigation undertaking. Upon the approval of a proposal with respect to an irrigation undertaking in accordance with this Act, the Governor in Council by Order in Council may establish the undertaking.

8.5 Power to construct works and do necessary acts and things in connexion with irrigation undertaking. The Commission may—

- (a) construct all the proper works for the purposes of or in connexion with an irrigation undertaking;
- (b) take all steps, do all acts and things and give all orders and directions for or in connexion with the performance and execution of works specified in paragraph (a) as it considers necessary.

Division II—Irrigation Areas

8.6 Constitution of area. The Governor in Council, by Order in Council, may—

- (a) constitute a part of Queensland specified therein to be, in relation to the irrigation undertaking so specified, an irrigation area;
- (b) assign to an area a name;
- (c) amalgamate two or more areas into one area;
- (d) divide an area into two or more areas;
- (e) alter the boundaries of an area by—
 - (i) including land not, at the material time, forming part of the area;
 - (ii) excluding land, at the material time, forming part of the area;
 - (iii) both including and excluding land in accordance with subparagraph (i) or (ii);
- (f) abolish an area.

8.7 Drainage works. Subject to this Act, the Commission may, inside or outside or partly inside and partly outside an irrigation area, construct, maintain and operate works of drainage as it thinks necessary or expedient and may, for the purpose of raising moneys to defray costs of or in connexion with the construction, maintenance and operation of drainage works, in respect of land inside that area make and levy such rates or charges as are prescribed upon such basis or bases as is or are prescribed.

8.8 Assessment on owners of sugar-mills and other premises. (1) The Commissioner with the approval of the Governor in Council first had and obtained (in respect whereof the Governor in Council is hereby empowered) in addition to making and levying rates or other charges authorized by or under this Act may make and levy in the manner prescribed assessments as are prescribed on the owners of sugar-mills within the meaning of the *Regulation of Sugar Cane Prices Act 1962-1989* to which is assigned in accordance with that Act land situated within an irrigation area or the owners of premises used for the processing of other crops cultivated on land within an irrigation area.

(2) Assessments made and levied in accordance with subsection (1) must be applied towards the costs of operation, maintenance or administration and as a contribution towards capital costs with respect to the supply of water to or the drainage of the land in question from works constructed by the Commission or from surface or underground sources assured as a result of those works.

8.9 Powers of Commissioner with respect to treatment, destruction or removal of trees, other vegetation, litter or refuse in irrigation area.

(1) Where the Commissioner is satisfied that there are or is on land

within an irrigation area trees, other vegetation, litter or refuse that in his opinion are or is likely to obstruct the flow of or pollute the water in a watercourse or channel or other works therein or thereon, he may give to the occupier, or where there is no occupier, to the owner of the land in question a notice in writing requiring him to take in the time and manner specified in the notice with respect to that land all steps and to do all acts and things to treat, destroy or remove trees, other vegetation, litter or refuse or to take other remedial measures as the Commissioner determines.

(2) Where the person to whom a notice has been given under subsection (1) fails within the time specified in the notice to comply therewith, the Commissioner or an authorized officer, with officers, employees or workmen and such vehicles, machinery and equipment as necessary for the purpose, may enter upon the land in question and therein take all steps and do all acts and things as the Commissioner or authorized officer considers necessary to treat, destroy or remove the trees, other vegetation, litter or refuse or to take other remedial measures.

(3) Costs and expenses incurred by the Commissioner or an authorized officer in exercising the powers and authorities conferred by 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 Commissioner.

8.10 Subdivision of freehold land within irrigation area. (1) A person may, with the approval of the Commissioner, given upon an application duly made to him, subdivide freehold land situated within an irrigation area of which that person is the registered proprietor including land that comprises a holding.

(2) (a) Prior to the making of an application in accordance with subsection (1), a person may, upon payment of the prescribed fee and submission of a general plan setting forth the nature and extent of the proposed subdivision and other particulars with respect thereto, notify the Commissioner of a proposal to subdivide freehold land.

(b) The Commissioner must consider the plan and other particulars furnished and may, where he considers it necessary to do so, require the person in question to submit further information, drawings or other particulars as the Commissioner determines.

(c) The Commissioner may—

- (i) approve the proposal as notified;
- (ii) approve the proposal with amendments as he determines;
- (iii) refuse the proposal.

(d) The Commissioner must forward to the person in question a notification of his decision and where the proposal is approved must issue to him a provisional approval setting out where applicable the amendments to which the approval is subject.

(e) A provisional approval is subject to terms as the Commissioner determines including a term that the person in question must

within the time specified in the provisional approval make application in accordance with this section for formal approval of the proposed subdivision or notify the Commissioner that he no longer desires to proceed with the proposal.

(3) An application under this section must be in writing accompanied by the prescribed fee and—

- (a) a plan of the proposal accompanied by information, drawings and other details as necessary for the purpose; or, as the case requires,
- (b) a plan of the proposal prepared in accordance with the terms of a provisional approval under subsection (2) (d).

A person who proceeds in accordance with subsection (2), pays the fee prescribed by that subsection and obtains a provisional approval is not required to pay a further fee upon lodging an application in accordance with this subsection.

(4) The Commissioner must consider each application made under this section and all material furnished therewith and may, where he thinks it necessary to do so, require a party to the proposal to submit further information, drawings or other details as the Commissioner determines.

(5) The Commissioner may approve, refuse to approve or approve with amendments as he determines the subdivision the subject of the application.

An approval under this subsection is subject to terms as the Commissioner determines including, in the case of the approval by him of a plan of subdivision of a holding to which a nominal allocation has been granted under this Act, a term that the owner of the holding pay the costs and expenses incurred in the construction of new works of water supply rendered necessary following the subdivision.

Notification of the decision of the Commissioner with respect to an application under this section must be forwarded to the applicant.

(6) The approval of the Commissioner to a plan of subdivision given under this section with such amendments, if any, as are determined by the Minister upon appeal under section 10.22 is to be endorsed by way of a notation thereon signed and dated by the Commissioner.

(7) The provisions of the *Local Government Act 1936-1989* with respect to the subdivision of land must be read subject to this section and a local authority must not approve a plan of subdivision of freehold land in an irrigation area unless—

- (a) the plan has been approved by the Commissioner and has had endorsed thereon a notation signed and dated by the Commissioner of that approval;
- and
- (b) approval by the local authority to the plan is duly applied for within 12 months after the date of the notation by the Commissioner of his approval to the plan.

(8) The Minister, by notification published in the Gazette, may exempt from the provisions of this section freehold land within an irrigation area specified in the notification and may by a like notification revoke an exemption so granted.

During the continuance in force of a notification under this subsection, the land specified therein is and continues to be exempt from the provisions of this section.

Division III—Water Allocations in Irrigation Areas

8.11 Determination of holding. Where in the opinion of the Commissioner, the whole or part of any parcel or parcels of land within an irrigation area is irrigable land, he may determine that parcel or those parcels or any part or parts thereof to be a holding for the purposes of this Act and may alter or revoke a determination so made.

8.12 Grant of water allocation to holding. (1) The Commissioner must grant to each holding—

- (a) within an irrigation area constituted and in existence immediately prior to the date of commencement of this Act where there is not in existence at that date in respect of that holding a water right granted under the repealed Acts;
- (b) within an irrigation area constituted after the date of commencement of this Act,

upon bases as he determines, a nominal allocation and may alter or revoke a nominal allocation so granted.

(2) The Commissioner, at the beginning of a period determined by him in each year or from time to time during that period may, in respect of each nominal allocation granted under subsection (1), determine an announced allocation and may alter an announced allocation so determined.

8.13 Licence in respect of water allocation granted to holding. (1) Upon the grant by him under section 8.12 of a nominal allocation to each holding determined by him under section 8.11, the Commissioner must, without lodgment of an application in that behalf by the owner of that holding, grant and issue to that owner a licence.

(2) A licence under subsection (1)—

- (a) must set forth—
 - (i) descriptions and other relevant particulars of land constituting the holding in question;
 - (ii) particulars of the nominal allocation granted to the holding in question;
 - (iii) other particulars as the Commissioner determines;

(b) is subject to terms with respect to the irrigation area in question and generally such other terms including, without limiting the generality of this provision, terms for payment of the prescribed licence fee and other fees and charges together with interest thereon in respect of water allocated or taken and water taken in excess of the quantity of water authorized to be taken.

(3) Without limiting the generality of subsection (2), the following provisions of Division II of Part IV apply to licences under this section—

- (a) section 4.19 (1) (b) (vii) and (b) (viii), (d), (e), (f) and (g), 4.19 (2) (a) and 4.19 (3);
- (b) sections 4.22, 4.23, 4.25, 4.29 and 4.30.

8.14 Surrender of nominal allocation. Subject to section 10.16, the owner of a holding may at any time surrender the nominal allocation, or a part thereof, granted to that holding by furnishing to the Commissioner a notice in writing to that effect signed by him.

A surrender under this section takes effect upon the payment of the charge made and levied in accordance with section 10.16 or, when no charge is made and levied, on and from the date on which notice of the surrender is received by the Commissioner.

8.15 Power of Commissioner with respect to nominal allocation upon subdivision of holding. Where a nominal allocation has been determined in respect of a holding that has been subdivided prior to the grant of that nominal allocation or is subsequently subdivided, the Commissioner may—

- (a) determine each parcel of land comprising the subdivision to be a holding;
- (b) with or without the construction of any further works of supply, determine a nominal allocation in respect of each holding so determined;
and
- (c) make and levy additional charges towards the costs of the supply of water to each holding so determined.

8.16 Power to discontinue water supply upon non-payment of charges.

(1) Where a person fails to pay within the prescribed time a water charge or any other charge or amount payable under this Part, the Commissioner may give to that person a notice in writing calling upon him to pay within 7 days or any longer time as the Commissioner in a particular case determines, the amount specified in the notice including interest, if any, thereon.

(2) Upon failure by the person to whom a notice under subsection (1) has been given to pay the amount specified in the notice or to make arrangements satisfactory to the Commissioner for the payment thereof, the Commissioner may cut off and discontinue the supply of water to that person for so long as the amount in question remains unpaid.

The cessation of the supply of water to a person pursuant to this section does not discharge him from his liability to pay to the Commissioner any amount due and owing by him by way of irrigation charges, other charges, interest or otherwise under this Part.

Division IV—Administration

8.17 Crown land in irrigation area may be set apart. The Governor in Council, by notification in the Gazette, may set apart Crown land in an irrigation area for the purposes of this Act and may by a further like notification alter or revoke a notification so published.

8.18 Power of Commission to authorize person to construct channels. The Commission, by writing under the hand of the Commissioner, may authorize a person to exercise within an irrigation area those powers and authorities of the Commission specified in the writing for the purpose of constructing and maintaining channels or other works for the conveyance of water from a water storage or other works so specified to the land of the person so specified.

8.19 Access across irrigation channel. (1) (a) Where there is no direct access from a piece or parcel of land to a road other than a road from which that piece or parcel of land is separated by land reserved, set apart or acquired for the purpose of a channel, the Commission must, upon the construction of a channel on the land so reserved, set apart or acquired, provide a means of access from that piece or parcel of land to that road.

(b) A means of access to which paragraph (a) refers—

- (i) must be constructed and maintained by the Commission in a position determined by it;
- (ii) must comprise a bridge, culvert or other structure, and approaches thereto on, over, under, through or across the channel in question and the land appurtenant thereto reserved, set apart or acquired for the purpose of the channel as the Commission considers sufficient having regard to all the circumstances.

(2) Subject to this subsection, the owner of a piece or parcel of land to which subsection (1) applies, with the prior approval in writing of the Commissioner may—

- (a) remove to another site a means of access so provided;
- (b) in addition provide other means of access from that piece or parcel of land to the road from which it is separated by land reserved, set apart or acquired for the purpose of a channel.

An approval of the Commissioner in accordance with this subsection is subject to conditions that—

- (c) the means of access must be removed to or provided at a site approved by the Commissioner;

and

- (d) a bridge, culvert or other structure and the approaches thereto, on, over, under, through or across the channel and the land reserved, set apart or acquired for the purpose of the channel appurtenant thereto comprising part of the means of access must be constructed in compliance in every respect with plans and specifications determined by the Commissioner.

(3) Where subsequent to the construction of a channel to which this section refers, a piece or parcel of land is subdivided, the owner for the time being of every subdivision that abuts the land reserved, set apart or acquired for the purposes of a channel by which that piece or parcel of land is separated from a road may provide under, subject to and in compliance with subsection (2) but not otherwise a means of access from the subdivision in question to that road.

(4) Liability at law does not attach to the Crown, Minister, Commission, Commissioner or any officer, employee or agent of the Commission or Commissioner in respect of a claim or demand of any kind arising out of a removal or provision of access in accordance with subsection (2) or (3).

(5) For the purposes of this Act or any other Act or law with respect to the giving of access to a road from land, every piece or parcel of land to which this section applies is deemed to have access to the road from which that piece or parcel of land is separated by land reserved, set apart or acquired for the purpose of a channel notwithstanding that a means of access has not been provided in accordance with this section.

8.20 Access where land is resumed. (1) Where—

- (a) there is no direct access from a piece or parcel of land that is by a resumption of land in an irrigation area under and for the purposes of this Act severed from another piece or parcel of land vested in the same owner;
- (b) the resumed land is reserved or set apart for the purpose of a channel;
- and
- (c) immediately prior to the resumption of the resumed land the severance was not otherwise in any manner vested or did not exist,

the Commission must, upon the construction on the land so resumed and reserved or set apart for the purpose of a channel, provide a means of access from the firstmentioned unresumed piece or parcel of land to that other unresumed piece or parcel of land.

Section 8.19 (1) (b) applies to a means of access provided in accordance with this subsection as if it were a means of access provided in accordance therewith and must be complied with in every respect.

(2) For the purposes of this Act or of any other Act or law with respect to severance, the elimination, lessening or minimization of damage due to severance or the giving of access to or as between or amongst pieces or parcels of land so severed, every piece or parcel of land to which this section applies is deemed to have access to that piece or parcel of land from which the firstmentioned piece or parcel of land is separated by land resumed or set apart for the purposes of a channel notwithstanding that a means of access has not been provided in accordance with this section.

PART IX—WATER SUPPLY AREAS AND DRAINAGE AREAS

Division I—Constitution of Area

9.1 Constitution of area. (1) The Governor in Council, in respect of the construction, acquisition, maintenance, administration, extension or modification of works of or for—

- (a) water conservation;
- (b) water supply;
- (c) irrigation;
- (d) drainage;
- (e) the prevention of floods;
- (f) the control of flood water;
- (g) the replenishment or improvement of underground water supplies,

may by Order in Council—

- (h) constitute a part of Queensland specified and defined therein as a water supply area or, as the case requires, drainage area and assign thereto a name;
- (i) constitute a board for an area so constituted and assign thereto a name.

(2) For or in connexion with the purposes specified in subsection (1), the Governor in Council, by a further Order in Council may—

- (a) amalgamate two or more areas into one area;
- (b) divide an area into two or more areas;
- (c) alter the boundaries of an area by—
 - (i) including land not, at the material time, forming part of the area;
 - (ii) excluding land, at the material time, forming part of the area;
 - (iii) both including and excluding land in accordance with subparagraph (i) or (ii);
- (d) abolish an area;
- (e) alter the name assigned to an area or a board;
- (f) give directions for the adjustment of the rights and

responsibilities of a board affected by an Order in Council made under subsection (1).

9.2 Procedure for preliminary advertisement of proposal for water supply or drainage area and establishment of steering committee. (1) Where it is made to appear to the Commissioner by a sufficient number of the owners of land in a locality that there is a need for the constitution in that locality of a water supply area or drainage area, the Commissioner may request those owners or representatives thereof to make a submission to him setting forth—

- (a) broad principles of and general information and particulars as to the proposal;
- (b) evidence of the support of a sufficient number of the owners of land in the locality for the proposal;
- (c) other information and particulars as the Commissioner determines, relevant to the proposal.

(2) Upon receipt of a submission in accordance with subsection (1), the Commissioner, where he is satisfied that the principles, information, particulars and evidence warrant further consideration, may, by notification published at least once in a newspaper circulating in the locality in question, advertise information and particulars with respect to the proposal as he determines.

The notification must invite owners of land in the locality to advise the Commissioner within the time specified in the notification whether or not they support the proposal and to provide further information and comments as they consider relevant.

(3) The Commissioner must consider all material submitted to him in accordance with subsection (2) and where he is satisfied that there is sufficient support from the owners of land concerned for the proposal, he may, after consultation with those owners, establish a steering committee consisting of a number of owners determined by him.

(4) The functions and duties of a steering committee established under subsection (3) are—

- (a) to examine the broad principles and all information and particulars of the proposal;
- (b) to enter into negotiations with the owners of land in the locality likely to be affected by the proposal with a view to consolidating and finalizing details thereof;
- (c) to liaise with officers of the Commissioner during inquiries into and investigations and planning of the proposal.

(5) The steering committee, upon the exercise of its functions and the performance of its duties, must report to the Commissioner thereon.

(6) This section does not derogate from or in any way affect the operation of sections 9.3 and 9.5.

9.3 Procedure prior to submission of proposals for making of Order in Council under s. 9.1. (1) Before a submission is furnished for the

making of an Order in Council under section 9.1 the Commissioner, by notification published in the Gazette and in a newspaper circulating in the locality in question, must notify proposals for—

- (a) the constitution of the area and the board;
- (b) the acquisition of works already constructed;
- (c) the works to be acquired or constructed.

(2) Without limiting the matters that may be contained therein, a notification under subsection (1) must—

- (a) specify a date, being a date not earlier than 60 days after the date of the first publication of the notification in the Gazette, on or before which objections to the proposals may be made and lodged with the Commissioner;
- (b) contain with respect to each proposal—
 - (i) a description of the purposes for which it is proposed to constitute the area and the board;
 - (ii) a description of the boundaries of the area;
 - (iii) a plan and description of—
 - (A) the works already constructed whether or not for the purposes specified in subparagraph (i) that it is intended the proposed board will acquire;
 - (B) the works that it is intended the proposed board will construct;
 - (C) the land that it is intended the proposed board will take and acquire for its purposes;
 - (iv) the estimated costs with respect to works and land described in subparagraph (iii) together with a statement of the proposed means of defraying those costs;
 - (v) the number of members and the manner of constitution of the proposed board;
 - (vi) in the case of a water supply area, the quantity of water that the proposed board will be entitled to divert from the source or sources specified and the rate of diversion;
 - (vii) further particulars as are prescribed or as the Commissioner considers necessary.

(3) The Commissioner may cause to be carried out any investigation as he thinks necessary into every objection lodged with him in accordance with the notification under subsection (1) and a report in writing thereon to be made.

(4) The Commissioner must submit to the Minister the proposals notified in accordance with subsection (1) and, where objections are duly made and lodged, his report on every objection.

The Minister upon consideration of the proposal and objections, if any, must submit to the Governor in Council his recommendations thereon and the Governor in Council, acting on the recommendations of the Minister, may approve the proposals.

(5) In the case of a submission for the making of a further Order in Council under section 9.1 (2), the Commissioner may, where he considers a particular case so warrants, give the notification specified in subsection (1) and thereupon must comply with subsections (2), (3), (4) and (5).

(6) The Order in Council under section 9.1 (1) or a further Order in Council under section 9.1 (2) must set forth in addition to all other necessary matters details of the proposals as approved by the Governor in Council.

Division II—Constitution of Board

9.4 Constitution. (1) A board may be constituted in one of the following modes as the Governor in Council declares, namely by—

- (a) appointment by the Governor in Council—
 - (i) of a local authority to constitute the board;
 - (ii) of sufficient persons as members to constitute the board;
- (b) election of sufficient qualified persons as members to constitute the board;
- (c) appointment of some persons under subparagraph (a) (ii) and the election of other persons under paragraph (b) as members sufficient in number to constitute the board.

(2) A person who—

- (a) is the owner or occupier or one of the owners or occupiers of land situated within a water supply area or drainage area, whether or not he is resident therein;
- (b) is resident within a water supply area or drainage area, whether or not he is a ratepayer,

is qualified to be elected as a member of a board.

Where an owner or occupier referred to in subparagraph (a) is a body corporate, the qualified person within the meaning of that subparagraph is an individual nominated by the governing body of that body corporate whether or not that individual is a resident within the area in question.

(3) The Order in Council constituting the area must—

- (a) specify the term during which a member of the board holds office, not exceeding in any case 3 years;
- (b) in the case of the constitution of a board by the election of persons as members thereof, declare—
 - (i) the mode of election;
 - (ii) the date and time of the first election;
 - (iii) the persons entitled to vote and that each of those persons is entitled to one vote only;
- (c) make provision for the filling of casual vacancies and any other matter or thing incidental to the office of member.

(4) Where at an election to which this section refers, a sufficient number of persons as members to constitute the board is not elected, the Governor in Council may appoint as members sufficient additional qualified persons to make up the deficiency in number. Any additional member holds office for the term during which he would have held office if he had been duly elected.

(5) A board is a body corporate under the name assigned to it with perpetual succession and a common seal and is capable in law of—

- (a) suing and being sued;
- (b) compounding for a sum of money or other consideration or proving in a court of competent jurisdiction all debts or sums of money due and owing to it;
- (c) taking, acquiring, holding, dealing with and disposing of real and personal property;
- (d) doing and suffering all acts and things as bodies corporate may by law do and suffer.

(6) All courts, judges, justices and other persons acting judicially must take judicial notice of the seal of a board affixed to a document or writing and, until the contrary is proved, must presume that the seal was duly affixed.

(7) The common seal of the board must be in the custody of the chairman of the board and may be affixed by him or any other person authorized in that behalf by the board by writing under its seal.

9.5 Further powers of Governor in Council with respect to board.
The Governor in Council, by Order in Council may—

- (a) dissolve a board;
- (b) remove from office all the members of a board;
- (c) reconstitute a board dissolved or from which all the members have been removed, in accordance with section 9.4;
- (d) instead of reconstituting a board that has been dissolved, or from which all the members have been removed from office, appoint the Commissioner to administer the affairs of the area in question.

9.6 Powers etc. of Commissioner. (1) Upon the appointment of the Commissioner under section 9.5—

- (a) all property and assets of the board and all rates, charges and other moneys due and payable or accruing to the board become vested in the Commissioner and must be paid to or may be recovered by the Commissioner by action as for a debt brought by him in a court of competent jurisdiction;
- (b) all liabilities of the board become and are payable by the Commissioner out of and are chargeable against the property and assets of the board;
- (c) the Commissioner during the term of his appointment, must administer the affairs of the board as if he were the board

and the board had not been dissolved or all of its members removed from office and for that purpose has and may exercise the powers, authorities, immunities and protection and perform the functions and duties conferred or imposed on the board and in existence immediately prior to its dissolution or the removal from office of all its members.

(2) A person who considers that he is entitled to any moneys paid to or recovered by the Commissioner in the exercise of any power or authority conferred on him by subsection (1) may make a claim to the Commissioner setting forth the grounds upon which the claim is based, particulars of the claim and the total amount thereof.

The Commissioner must consider each claim under this subsection received by him and must make a determination which is final and not further justiciable.

9.7 Extension of term of office of member. (1) If, upon the expiration of the term of office of a member of a board, his successor has not been appointed or elected, that member holds office until his successor is duly appointed or, as the case may be, elected.

(2) A member of a board is, if he is otherwise qualified and subject to this Act, eligible for re-appointment or, as the case may be, re-election as a member.

9.8 Disqualification as to person becoming a member of board. A person is not qualified to become a member of a board if he—

- (a) is a patient within the meaning of the *Mental Health Services Act 1974-1989*;
- (b) is an undischarged bankrupt or has otherwise taken advantage of the laws in force for the time being relating to bankruptcy;
- (c) in Queensland, has been convicted upon indictment or summarily of an indictable offence for which he is liable to imprisonment for one year or more or has been convicted elsewhere than in Queensland of an offence that, if committed by him in Queensland, would constitute an indictable offence upon conviction whereof he would be so liable;
- (d) holds under a board a position or place of profit;
- (e) is directly or indirectly engaged or interested otherwise than as manager of a body corporate or for trustees in any contract or agreement with or on behalf of a board.

9.9 Termination of office of member of board. (1) A member of a board may resign his office at any time by notice in writing signed by him furnished to the chairman of the board.

(2) The Governor in Council may remove from office a member of a board if he—

- (a) becomes or is made bankrupt or otherwise takes advantage of the laws in force for the time being relating to bankruptcy;
- (b) becomes incapable of discharging the duties of his office;
- or
- (c) is incompetent or unfit from any cause to hold his office.

(3) A member of a board vacates his office—

- (a) in the event of his—
 - (i) resignation, upon receipt by the chairman of the board of notice of his resignation;
 - (ii) removal by the Governor in Council, upon issue by the Minister to the board of notice of his removal;
- (b) if he declines to act or to act further as a member;
- (c) if he becomes a patient within the meaning of the *Mental Health Services Act 1974-1989*;
- (d) if he is absent without prior leave granted by the board from three consecutive meetings of the board of which due notice has been given to him;
- (e) if he ceases to be qualified as a member;
- (f) if he is convicted in Queensland upon indictment or summarily of an indictable offence for which he is liable to imprisonment for one year or more or is convicted upon indictment or summarily elsewhere than in Queensland of an offence that, if committed by him in Queensland, would constitute an indictable offence upon conviction whereof he would be so liable.

9.10 Casual vacancy in membership of board. A casual vacancy arises in the office of a member of a board if—

- (a) he dies during his term of office;
- (b) his office becomes vacant following an event specified in section 9.9.

9.11 Superannuation scheme or arrangement. (1) A board, with the prior approval of the Governor in Council by Order in Council, may institute and maintain or participate in a scheme or an arrangement that secures superannuation or provident benefits for any officer or employee of the board and may establish and maintain funds and contribute thereto for that purpose.

(2) A board, with the prior approval of the Governor in Council by Order in Council, may terminate or amend any superannuation or

provident scheme or arrangement instituted by it whether before or after the date of commencement of this Act and maintained by it.

Division III—Powers etc. of Board

9.12 General powers, authorities, functions and duties. (1) A board has and may exercise the powers and authorities and perform the functions and duties conferred or imposed on it by or under this Act.

Without limiting or in any way affecting the generality of this provision, a board must—

- (a) investigate proposals for and design works that it is authorized by or under this Act to construct;
- (b) construct or acquire works that it is authorized by or under this Act to construct or acquire;
- (c) administer, operate and maintain in a state of good order and efficiency works constructed or acquired by it;
- (d) fix and levy rates and charges and make assessments in accordance with this Act;
- (e) make provision out of its operating fund for an annual sum as it determines or an annual sum or additional annual sum as the Commissioner may direct by notice in writing in that behalf given to the board, in any case to be set aside for the purpose of effecting renewals or extensions of works to which this section refers.

(2) Subject to this Act, a board may construct or acquire all works, take all steps and do all acts and things as it considers necessary for constructing, maintaining, acquiring, altering, repairing, operating, administering and using the works authorized by the Order in Council constituting the area and, without limiting the generality of the powers and authorities conferred by this section, may exercise, construct, take and do all or any of the powers, authorities, works, steps, acts or things specified in this section.

(3) For the purposes of this Act, a board—

- (a) upon giving to the authority or owner concerned 7 days' notice in writing of its intention to do so, may enter upon a road or land within its area and therein, thereon or thereunder—
 - (i) make surveys and take levels;
 - (ii) set out works and break up the soil;
 - (iii) open up a drain;
 - (iv) construct works and in connexion therewith carry out all necessary operations;
 - (v) erect fences;
 - (vi) subject to Part IV, take, get and remove or use any quarry material, trees, timber, other material and things;
 - (vii) carry out blasting operations;
- (b) may, subject to section 9.79, enter upon any road, railway,

- tramway or land within its area and construct across or under or therein or thereon works and repair, alter, discontinue or remove all or any of the works so constructed;
- (c) may with the consent of the owners or occupiers of structures, premises or land appurtenant thereto enter therein or thereon and construct therein, thereon or thereunder works;
 - (d) may with the consent of the occupiers enter upon land within its area, vested in the Crown, and—
 - (i) occupy it temporarily;
 - (ii) take, get and remove therefrom or deposit therein or thereon or otherwise interfere with quarry material or other material;
 - (iii) form thereon and use temporary roads;
 - (iv) erect thereon workshops, sheds or other buildings of a temporary nature;
 - (v) fell timber thereon and carry it away or use it.
- (4) The power under this section to enter upon land includes power to—
- (a) re-enter that land from time to time;
 - (b) remain upon that land upon the original entry or any re-entry with assistants, vehicles, materials, machinery, equipment or other things as necessary to achieve the purposes of the original entry.
- (5) A person who enters or re-enters upon land 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 subsequent re-entry or by the doing of any act or thing or the carrying out of any purpose specified in subsection (1).
- (6) A board must pay to the Crown for all timber taken and removed from Crown land in the exercise of a power or authority conferred on the board by this section the same royalties as are payable under the laws in force at the material time for timber so taken and removed.

9.13 Delegation of powers, authorities, functions and duties. (1) A board may either generally or otherwise as provided by the instrument of delegation by writing under its seal delegate to its chairman or an officer of the board all or any of the powers, authorities, functions or duties conferred or imposed on it by or under this Act, except this power of delegation.

(2) A power, authority, function or duty so delegated, if exercised or performed by the delegate, must be exercised or performed in accordance with the instrument of delegation.

(3) A delegation may be made subject to terms as the board determines including a term that the delegate must report to it upon the exercise of the delegated power or authority or the performance of the delegated function or duty.

(4) The board may make as many delegations of the same power, authority, function or duty and to any number of persons as it determines.

(5) The board may at any time revoke a delegation made under this section.

(6) A delegation under this section does not prevent or prejudice—

- (a) the exercise of a delegated power or authority or the performance of a delegated function or duty by the board;
- (b) the exercise by the board of supervision of the carrying out by the delegate of the terms of the delegation including countermanding the delegate's exercise of any power or authority or the performance of a function or duty under the delegation.

(7) Any act or thing done or suffered by a delegate under the authority of a delegation under this section has the same force and effect as if the act or thing done or suffered had been so done or suffered by the board.

9.14 Board to be a constructing authority. (1) A board is with respect to land as defined in that Act a constructing authority within the meaning of the *Acquisition of Land Act 1967-1988* and the purposes for which land so defined may be taken by the board thereunder include works or a purpose with respect to which any power, authority or right is conferred or function or duty is imposed on a board by or under this Act.

(2) A board as a constructing authority under and within the meaning of the *Acquisition of Land Act 1967-1988* may resume for a purpose specified in subsection (1) land other than land within the meaning of the *Acquisition of Land Act 1967-1988* and the provisions of the *Land Act 1962-1988* with respect to resumptions under that Act, with and subject to all necessary adaptations, apply and extend accordingly.

(3) Where land assigned to a sugar-mill is taken or resumed for a purpose specified in subsection (1) or (2), the Central Sugar Cane Prices Board may (and it is by this provision so empowered) grant an assignment of other land to the same or another sugar-mill instead of the assigned land so taken.

The value of an assignment granted under this subsection must be set off against compensation payable upon the taking or resumption of the land in question.

9.15 Power to make or enter into contracts or agreements. (1) A board may enter into contracts or agreements for or in connexion with the exercise of its powers and authorities or the performance of its functions and duties under this Act.

(2) Except where otherwise prescribed by this Act, a contract or an agreement authorized by this Act to be made or entered into by a board must be made or entered into by or in the name of the board in accordance with this subsection.

Any contract or agreement that, if made or entered into between private persons—

- (a) would by law be required to be in writing and under seal, must be made by the board in writing and under its seal;
- (b) would by law be required to be in writing signed by the parties, may be made in writing signed by the chairman or two members of the board;
- (c) would by law be valid although not reduced to writing, may be made without writing by the chairman or two members of the board.

(3) Any contract or agreement duly made or entered into in a manner prescribed by subsection (2) may be varied, amended or discharged in the manner in which it is authorized to be made.

(4) Notwithstanding paragraphs (b) and (c) of subsection (2), a board may authorize the secretary or another officer generally or in a particular case instead of the chairman or two members referred to in those paragraphs to make or enter into any contract or agreement referred to in those paragraphs for the execution of works or the furnishing of goods, materials or services of a value not exceeding the amount as the Minister from time to time fixes if—

- (a) provision for meeting the cost of that contract or agreement has been made in the budget of the board;

or

- (b) the cost of that contract or agreement has been approved by the board in emergent or extraordinary circumstances,

and the secretary or other officer may make or enter into that contract or agreement in the manner specified in paragraph (b) of subsection (2), if it is a contract or an agreement to which that paragraph applies, and may vary, amend or discharge the contract or agreement in like manner.

9.16 Provisions affecting contractual powers of board. (1) A board, with the approval of the Governor in Council and subject to the terms he imposes, may agree to pay by periodical instalments amounts due and payable in respect of any obligation lawfully accepted by it.

(2) Before a contract or an agreement for—

- (a) the execution of works or the furnishing of goods, materials or services to an amount exceeding any amount as the Minister from time to time fixes;
- (b) the sale of surplus goods or materials to a value exceeding any amount as the Minister from time to time fixes;

or

(c) the sale of land,

is made or entered into by a board, it must, at least 3 weeks before making or entering into the contract or agreement, invite tenders by public notice published in a newspaper or newspapers and in a manner and to an extent as in its opinion will ensure that the notification of its intention is likely to be seen by as many people as possible who are likely to tender with respect to the contract or agreement.

(3) Before a contract or an agreement for—

(a) the execution of works or the furnishing of goods, materials or services to an amount within the monetary range that the Minister from time to time fixes;

(b) the sale of surplus goods or materials to a value not exceeding the amount fixed by the Minister under subsection (2) (b),

is made or entered into by a board, it must invite quotations for the contract or agreement in a manner and to the extent as will in its opinion ensure the receipt of a reasonable number of quotations.

(4) The procedure specified in subsection (2) or (3) may be dispensed with where, in the board's opinion, an emergency exists.

(5) A board, in respect of the sale of land or surplus goods or materials instead of complying with subsections (2) or (3), may comply with this subsection.

The board must first offer the land or surplus goods or materials for sale by public auction and thereupon any of the land, surplus goods or materials not sold at public auction may be sold by private contract.

At least once within a period of not more than 14 days and not less than 7 days before the date on which it proposes to offer for sale by public auction land, surplus goods or materials, the board must advertise in a newspaper circulating in the locality in question the date, time and place when and where the public auction will be held together with a full description of the land, surplus goods or materials in question.

In the case of the sale of land, the board, in addition and within the period specified in the last preceding paragraph, must affix on some conspicuous part of the land a notice setting out the date, time and place when and where the public auction will be held and containing a full description of the land.

An offer for sale by public auction to which this subsection applies may be one at a reserve price determined by the board.

(6) Subsections (2), (3), (4) and (5) do not apply to any contract or agreement made or entered into by a board with the Crown in right of the State or of the Commonwealth or a public authority constituted under an Act or an Act of the Commonwealth or an Act of a State other than Queensland or of a Territory of the Commonwealth.

(7) Subject to this Act, a board may accept the tender or quotation that on a view of all the circumstances appears to it to be the most advantageous or may decline to accept any tender or quotation.

(8) In determining which tender or quotation is the most advantageous in respect of any contract or agreement for the furnishing of goods or materials to be financed wholly or partly by way of moneys borrowed under section 9.25 or by way of grant or subsidy the board must take into consideration the requirements of the Treasurer.

9.17 Powers with respect to plant or stock. A board by resolution and with the approval of the Minister may—

- (a) approve the adjustment of the value of plant or stock;
- (b) write down or write out of its records worn out plant or obsolete stock;
- (c) sell worn out plant or obsolete stock specified in paragraph (b).

9.18 Disposal of surplus water. Subject to this Act, a board may dispose of water not required for a purpose for which its area is constituted—

- (a) to a ratepayer, for his use only;
or
- (b) with the approval of the Commissioner, to a person other than a ratepayer, for his use only.

9.19 Supply of water to local authority or corporation. Notwithstanding this Act and subject to this section, upon the application of a local authority, corporation sole or body corporate, a board, subject to the approval of the Governor in Council first had and obtained, may supply water thereto although—

- (a) the supply is for a purpose other than one for which the area is constituted;
and
- (b) the water to be supplied is not surplus to the water required for the purposes for which the area is constituted.

The supply of water under this section is subject to terms agreed upon by and between the board and the local authority, corporation sole or body corporate in question.

9.20 Procedure where supply of water insufficient. (1) Where the supply of water at the disposal of a board is, in its opinion, insufficient at any time to afford to all users and consumers the supplies that they are respectively entitled to receive, the board may supply to the users and consumers the quantities of water at its disposal as are in proportion to the quantities that the users or consumers would have been entitled to receive if sufficient water had been available.

(2) This Act is to be construed so as not to render it obligatory on a board to supply water to any person where by reason of drought,

accident or other cause the board is of the opinion that it is not practicable to do so.

(3) Liability at law does not attach to a board for failure by it to supply water to any person in a case where the board, without negligence or wilful default on its part, has been unable to supply that water.

9.21 Power to enter and use certain land. (1) For the purposes of works—

- (a) proposed to be constructed or constructed under the authority of the *Water Act 1926-1987* or this Act;
- (b) constructed prior to and in existence at the date of the constitution of its area,

a board has and is declared to have always had power and authority to enter at any time land within its area in, on or over which the works are proposed to be constructed or constructed or within a distance not exceeding 20 metres of either side of the works as the board determines and to use land so entered for the purposes of exercising its powers and authorities and performing its functions and duties without having to obtain the grant of an easement or other right to enter and use that land.

(2) The exercise of a power or authority conferred on a board by this section does not, and it is declared never did, impose upon the board or any officer, employee or agent of the board a liability to pay compensation to any person as the result of the exercise.

9.22 Interference with works of local authority. (1) A board, in the exercise by it of a power or authority under this Act that requires interference with works constructed by a local authority as a function of local government, must comply with this section.

(2) Except in the case of interference to be performed in an emergency, the board must give to the local authority having the care and management of the works in question at least 7 days' notice in writing of its intention to interfere with those works and the activities to be undertaken.

Interference to be performed in an emergency may proceed without the prescribed notice having been given but a like notice must be given to the local authority concerned as soon as practicable after the commencement of the interference or the date on which the necessity for the interference arises.

(3) The local authority having the care and management of the works in question may superintend the interference in accordance with a plan, if any, prepared by the local authority.

A difference arising respecting a plan in accordance with this subsection must be referred to an arbitrator agreed upon by the board and the local authority concerned or failing agreement, an arbitrator appointed by the Governor in Council, and his determination in the matter is final and the parties must give effect thereto.

(4) The board must make necessary provisions for guarding against interruptions to traffic or public utilities during the performance of activities in connexion with the interference.

(5) Where the local authority in question—

- (a) fails, after the notice under subsection (2) has been duly given, to attend at the time fixed for the commencement of the interference in question;
- (b) fails to prepare a plan in accordance with subsection (3);
- (c) fails, refuses or neglects to superintend the interference in question,

the board may perform the activities specified in the notice without the superintendence of that local authority.

(6) Where a board has interfered with works of a local authority in accordance with this section, it must—

- (a) with all convenient speed and as little interruption to traffic and public utilities as is practicable, complete the activities and fill in the ground and reinstate and make good the parts interfered with and carry away all surplus spoil and other waste occasioned by the activities;
- (b) at all times while any road or other works of a local authority is or are opened up or excavated take all steps and do all acts and things as are necessary for the warning of traffic and the protection of the public;
and
- (c) keep the parts so opened up or excavated in good repair for 3 months after reinstating and making them good and for a further time not exceeding 12 months during which the parts so opened up or excavated continue to subside.

(7) In the case where a board is required by this Act to reinstate and make good works of a local authority, the local authority in question, after giving notice in writing to the board of its intention to do so, may itself reinstate or make good the works in question.

The board must pay to the local authority the reasonable costs and expenses incurred by it in the exercise of a power conferred by this subsection including the costs of supervision.

Costs and expenses specified in this subsection remaining unpaid are a debt due and owing to the local authority and may be recovered by it in a court of competent jurisdiction.

A notice given to a board under this subsection discharges the board from the liability to comply with subsection (6) (c).

9.23 Power to make by-laws. (1) A board by resolution may make by-laws not inconsistent with this Act providing for—

- (a) all matters and things necessary for the proper construction, maintenance, operation, protection and administration of all works under its control and management;
- (b) the regulation and control of the taking, supply and use of water from its works;
- (c) the use, good management and preservation of land owned by it or under its control;
- (d) the regulation and control of the recreational use of dams, water storages and land owned by it or under its control and of the waters therein or thereon and without limiting the generality of this provision, regulation and control therein, thereon or thereover of water craft or motorized land vehicles of every type and description and prohibition or restriction of certain recreational activities;
- (e) the protection of its property from trespass and damage; access by members of the public to specified parts of its property and the terms governing access;
- (f) the preservation of water under its control from pollution in any form and of the banks of dams and water storages from erosion;
- (g) the manner in which powers, authorities, functions or duties must be exercised or performed by it or by any person for the purposes of this Act;
- (h) the powers, authorities, functions and duties and qualifications of its officers and employees;
- (i) the grant and issue of licences, registrations or permits to or with respect to persons or its property for the purposes of this Act;
- (j) the procedure and conduct of business at its meetings;
- (k) the fees, charges, costs and expenses payable by and to it and the matters in respect of which they are payable to or to be paid by it; methods of collection thereof; manner, time and place of payment thereof; persons by and to whom they are payable; all matters with respect to the recovery thereof;
- (l) the removal from its property of unauthorized persons or persons who contravene or fail to comply with a by-law and any vehicle, machinery or equipment used by those persons;
- (m) the determination of the basis or bases upon which rates and charges may be made and levied under section 9.41;
- (n) matters and things that under this Act may be prescribed by its by-laws;
- (o) all matters and things that in its opinion are necessary or desirable for the exercise of its powers and authorities or the performance of its functions and duties;

-
- (2) A by-law—
- (a) may impose a penalty for a contravention of or failure to comply therewith not exceeding in any case 20 penalty units;
 - (b) may provide for the recoupment of costs and expenses incurred by the board in executing or doing works—
 - (i) required by a by-law to be done where the person so required has failed to execute or do the works;
 - (ii) required to be executed or done to remedy damage occasioned by a contravention of or failure to comply with a by-law, from the person who has failed to execute or do the work or, as the case may be, committed a contravention or failure to comply;
 - (c) may require any works or things to be executed or done by the use of materials, within such time and in a manner as the board or any authorized officer or other authorized person directs or approves and only by qualified and licensed persons;
 - (d) may be made to apply—
 - (i) throughout the whole area for which the board is constituted or to a part only specified therein;
 - (ii) in respect of all the works of the board or in respect of works as are specified therein.

(3) A proposed by-law must be submitted to the Minister who must make his recommendations thereon and submit it together with those recommendations to the Governor in Council.

The Governor in Council, acting on the recommendations of the Minister, may approve the proposed by-law.

Upon its approval a by-law must be published in the Gazette and thereupon has the force of law.

(4) A by-law or part thereof may be repealed or revoked by Order in Council.

9.24 Committees. (1) A board may—

- (a) appoint out of its total membership for general or special purposes a number of committees each consisting of a number of its members as the board determines and must fix a quorum for each committee so appointed;
- (b) delegate to a committee appointed under this section power to take any step or do any act, matter or thing that the board has power to take or do under this Act or to hold an inquiry with respect to any matter relevant to the powers, authorities, functions or duties of the board under this Act.

(2) A committee may appoint one of its members to be chairman of that committee.

(3) A committee may meet at times and places and may adjourn a meeting to times and places as it determines.

(4) Business must not be conducted at a meeting of a committee unless a quorum fixed by the board is present.

(5) Where a chairman is not present at a meeting of a committee, the members present must elect from their number a member to be chairman.

(6) A committee exercises a power or authority or performs a function or duty by a majority vote of the members present and voting at a duly constituted meeting, the chairman having a deliberative vote and, in the event of an equality of votes on an issue before the committee, a casting vote.

(7) A committee must report to the board.

(8) Subject to this section, the provisions of this Act with respect to the conduct of business and proceedings at meetings of a board, with and subject to all necessary adaptations, apply and extend to a committee.

Division IV—Borrowing Powers, Financial Arrangements, Funds and Accounts of Board

9.25 Borrowing powers of board. (1) A board, subject to and in accordance with this Act and the *Statutory Bodies Financial Arrangements Act 1982-1989* may borrow moneys for the following purposes—

- (a) the acquisition by it of land;
- (b) the construction of authorized works;
- (c) the payment of costs and expenses of or incidental to the acquisition of works by the board under this Act;
- (d) the discharge of—
 - (i) principal moneys and interest thereon on loans advanced to the board;
 - (ii) other moneys due and owing by the board;
- (e) a purpose other than those specified in subparagraphs (a), (b), (c) or (d) approved by the Governor in Council.

(2) Before proceeding to enter into financial arrangements, a board must, at a special meeting called for the purpose, resolve to enter into the financial arrangement proposed.

9.26 Financial arrangements. For the purposes of exercising its powers and authorities and performing its functions and duties, a board is empowered to enter into financial arrangements within the meaning of the *Statutory Bodies Financial Arrangements Act 1982-1989* with the Treasurer or any other person and, in respect of the board as a statutory body within the meaning of that Act, Part IV of that Act applies.

9.27 Unauthorized borrowing. (1) Where a board borrows money that it is not authorized by law to borrow, the members of the board who consented to that borrowing are jointly and severally liable to repay the money borrowed and interest thereon, if any, to the person from whom the money was borrowed.

Money referred to in this subsection that has been unlawfully borrowed and interest thereon, if any, may be recovered from the members of the board who consented to the borrowing or any of them by the person from whom the money was borrowed as money lent by that person to the board by action in a court of competent jurisdiction.

(2) (a) Where money is appropriated from a fund kept by a board for the purpose of repaying money unlawfully borrowed or interest thereon, the members of the board who consented to the appropriation are jointly and severally liable to refund to the board the money so appropriated with interest at the rate determined by the Governor in Council (in respect whereof the Governor in Council is hereby empowered) and until so determined at the rate of 15 per centum per annum.

(b) Money referred to in this subsection that has been appropriated may be recovered from the members of the board who consented to the appropriation or any of them as a debt due to the board, by the Treasurer or a person duly authorized in writing in that behalf by the Treasurer, in a court of competent jurisdiction.

Costs awarded by the court to the Treasurer or authorized person in an action are costs as between solicitor and client.

Money recovered by action brought under this section must be paid to the board concerned and must be credited by the board to the fund from which it was appropriated.

9.28 Investment of certain moneys. A board as a statutory body within the meaning of the *Statutory Bodies Financial Arrangements Act 1982-1989* is empowered to invest moneys held by it that are not required for the time being for the purpose of this Act and to that end section 48 of the firstmentioned Act applies and extends.

9.29 Financial administration. Part IIA of the *Financial Administration and Audit Act 1977-1988* applies and extends to a board that is a statutory body within the meaning of that Act and that board must comply in all respects with every provision of that Part that is applicable to it.

9.30 Funds of board. A board must establish and thereafter maintain in accordance with this Act the following funds—

- (a) an operating fund;
- (b) where applicable—
 - (i) a reserve fund;
 - (ii) a capital works fund;
 - (iii) a trust fund;
- and
- (c) any other funds the Minister directs.

Subject to this Act and except as is otherwise prescribed, the funds

must be separate and distinct and a separate bank account must be kept for each fund.

9.31 Operating fund. (1) A board must pay or cause to be paid into its operating fund—

- (a) all moneys payable to it on account of rates and charges authorized by or under this Act;
- (b) all penalties, fees and charges payable to it under this Act;
- (c) all moneys paid to it by way of interest;
- (d) all moneys paid to it other than moneys required by this Act to be paid to any other fund of the board.

(2) Moneys from time to time forming its operating fund must be applied by the board to—

- (a) expenditure necessarily incurred by the board in the exercise of its powers and authorities and the performance of its functions and duties other than expenditure that is by this Act to be met from some other fund of the board;
- (b) payment in accordance with this Act of moneys from that fund to any other fund of the board.

9.32 Reserve fund. (1) A board must pay or cause to be paid into its reserve fund where established—

- (a) the whole or part of any surplus in its operating fund that the board resolves to transfer to its reserve fund;
- (b) moneys set aside from its operating fund to meet a future liability of the board, whether certain or contingent and, if the board so resolves, interest earned on those moneys.

(2) Moneys from time to time forming the board's reserve fund—

- (a) must be applied, where those moneys form part of a specific reserve, to the liability or purpose of the board for which the specific reserve was established;
- (b) may be applied, where those moneys do not form part of a specific reserve, to—
 - (i) the replacement of assets of the board or the construction or acquisition of further assets for the purposes of the board;
 - (ii) a liability or purpose of the board for which a specific reserve may properly be established.

(3) A board may, by its resolution and subject to this Act—

- (a) discontinue a specific reserve established by it;
- (b) continue a specific reserve established by it for a purpose other than the purpose for which it was established.

Where the board exercises the power conferred on it by this section, the specific reserve in question is to be taken to have been established for the purpose last resolved by the board and may be applied accordingly.

Where a specific reserve is discontinued or applied to the purpose for which it was established or not applied for another purpose resolved by the board, any residue of moneys remaining at credit in that reserve is to be transferred to the credit of the operating fund of the board.

9.33 Capital works fund. (1) A board must pay or cause to be paid into its capital works fund where established all moneys—

- (a) received by it by way of loan raisings under this Act or grant or subsidy from any source;
- (b) duly provided from another fund of the board;
- (c) received by it by way of contribution from any source whether by loan or otherwise,

for the purpose of works of a capital nature.

(2) Moneys from time to time forming its capital works fund must be applied by the board to expenditure necessarily incurred by the board in connexion with—

- (a) the investigation, planning and design, purchase or construction of works of the board;
- (b) the acquisition by the board of land that is to be utilized by it in the performance of its functions and duties under this Act.

(3) The balance or a part thereof remaining at credit in its capital works fund at its closure must be paid into and applied by the board for the purpose of another fund or dealt with in another manner as approved in writing by the Treasurer.

9.34 Trust fund. (1) A board must pay or cause to be paid into its trust fund where established—

- (a) all moneys received or held by it—
 - (i) by way of deposit;
 - or
 - (ii) in trust for any person;
- (b) all moneys held by it that are unclaimed moneys.

(2) Moneys from time to time forming its trust fund must be applied by the board—

- (a) in the case of moneys—
 - (i) received or held by way of deposit, according to the terms on which the deposit is held;
 - (ii) held in trust for any person, to the payment to or for the credit of that person;
- (b) in the case of unclaimed moneys, in disposing of them according to law.

9.35 Accounts. A board must ensure that proper accounts are established and faithfully and properly kept in accordance with this Act.

9.36 Audit of accounts. The accounts of a board including the accounts of any superannuation scheme or arrangement instituted and maintained by it must be audited by the Auditor-General or an authorized auditor directed by him, each of whom, with respect to the audit and accounts, has and may exercise all the powers and authorities conferred and perform all the functions and duties imposed on him by the *Financial Administration and Audit Act 1977-1988*.

A board must pay to the Auditor-General in respect of an audit a fee fixed by the Auditor-General.

Division V—Budget of Board

9.37 Budget of board. (1) A board, not later than 31 August in each year or such other date therein as the Commissioner approves in respect of that board must—

- (a) prepare a budget in respect of each fund maintained by it;
- (b) as and when required to do so, lodge with the Commissioner the budget so prepared.

(2) The board must—

- (a) determine the surplus or deficit to be carried forward from the year last preceding;
- (b) estimate as accurately as possible—
 - (i) the revenue to be received by the board from all sources during the year for which the budget is framed;
 - (ii) the moneys to be disbursed by the board during the year for which the budget is framed in respect of—
 - (A) the operation and management of the works and the conduct of the business of the board;
 - (B) the interest on and redemption of moneys advanced to the board;
 - (C) the transfer of moneys to the reserve fund;
 - (D) the purposes of the board not specified in provisions (A), (B) or (C) of this subparagraph (ii).

(3) The Commissioner must cause the budget of a board lodged with him under subsection (1) (b) to be examined and where, upon examination, it appears that—

- (a) moneys specified therein have been overestimated or underestimated;
- (b) an item of disbursement of moneys specified therein should not be included therein;
- or
- (c) any moneys or item that should be included therein have or has been omitted,

the Commissioner is to amend the budget as he thinks fit.

(4) The budget lodged with the Commissioner under subsection (1) (b) or any budget as amended under subsection (3) must be submitted

to the Minister for approval and until approved by the Minister is of no force or effect.

(5) The budget of a board as approved by the Minister is binding on the board.

(6) The Minister, upon the recommendation of a board, may, from time to time during the year for which the budget is framed, vary that budget.

9.38 Observance of budget and disbursements in emergent circumstances. (1) Subject to this section, a board must confine its disbursements throughout the year for which the budget is framed within the items and sums of moneys set forth therein.

(2) Where, during the year in question, it appears to a board that an emergent circumstance has arisen that requires the board to make a disbursement from any of its funds—

(a) that was not provided for;

or

(b) that exceeds the estimate provided in respect of that disbursement,

in the budget in question, the board before making a disbursement must—

(c) by resolution approve that the disbursement be made;

(d) in the case of a budget lodged with the Commissioner under section 9.37 (1) (b), where the making of the disbursement would result in an excess exceeding 10 per centum of the total sum of the moneys comprising the items of disbursement included in that budget, seek the approval of the Minister to the making thereof.

(3) A board must seek the approval of the Minister in accordance with subsection (2) (d) by making an application in writing to the Commissioner and furnishing to him on request any further particulars and information he requires.

The Commissioner must submit the application to the Minister who may approve or refuse it.

(4) Where during a year for which a budget is framed, a board makes from any of its funds a disbursement—

(a) that was not provided for;

(b) that exceeds the estimate provided for in respect of that disbursement,

in the budget in question without first having complied with subsection (2) (d), all members of the board who voted for the making of that disbursement are jointly and severally liable to repay to the board the amount of that disbursement or, as the case may be, the amount by which that disbursement exceeds the amount of the estimate in respect of that disbursement in the budget in question.

An amount for which members of a board are liable under this subsection is a debt due and owing to the board and may be recovered by action brought by the Minister or a person authorized by him in that behalf in a court of competent jurisdiction.

Division VI—Rates and Charges

9.39 Power to levy rates and charges. (1) A board may—

- (a) make and levy rates and assessments;
- (b) make and levy charges,

in respect of its area for the purpose of raising moneys to defray—

- (c) principal moneys and interest on borrowings by it;
- (d) payments by way of rent due and owing by it;
- (e) any other payment required by law to be made by it;
- (f) costs, charges and expenses for or in connexion with—

- (i) the construction or acquisition or the maintenance, repair, administration, control, extension or renewal of works constructed by it or placed under its control by or under the *Water Act 1926-1987* or this Act;

- (ii) the business of the board;

- (iii) the administration of this Act.

A board, in respect of any land within its area, may fix the maximum or, as the case may be, minimum amount that is required to be paid as rates or charges in respect of that land by the person liable for the payment thereof and for that purpose may take into consideration any matter or thing as the board determines.

(2) A board may in respect of its area make and levy charges for the provision of additional connexions to its works.

(3) A board, instead of making and levying rates and charges on the occupiers of land within its area or a part thereof, may, with the prior consent of the local authority for that area, make and levy a charge on that local authority for the purpose of raising moneys to defray those matters and things specified in subsections (1) (c) to (1) (f) both inclusive.

9.40 Basis of rating and levying charges. (1) A board, in respect of land within its area subject to rating, may—

- (a) where that land is rateable under and for the purposes of the *Local Government Act 1936-1989*, make and levy a rate in accordance with the rateable value of that land determined for the purposes of that Act:

Provided that where rateable land to which this subparagraph applies within the area of a board is situated within the areas of two or more local authorities, the board may make

- and levy different rates in respect of the land situated in the areas of different local authorities;
- (b) make and levy a rate in accordance with classifications determined by the board with respect to different parts of that land;
 - or
 - (c) fix the rate, or the charge for water allocated or supplied under this Act to an owner or occupier of land, calculated on one basis for one purpose and on another basis or other bases for another purpose or other purposes authorized by or under this Act.
- (2) Without limiting or affecting in any way the generality of this provision, rates or charges may be those following—
- (a) in connexion with the supply of water for—
 - (i) stock purposes—
 - (A) a rate per hectare of the land within the area benefited by the works varying according to—
 - the potential carrying capacity of the land;
 - or
 - the type of stock depastured on the land;
 - (B) a charge for the quantity of water supplied to each owner or occupier of land within the area;
 - (ii) domestic purposes—
 - (A) a rate for each separate tenement in the area;
 - (B) a charge for the quantity of water supplied to each owner or occupier of land within the area;
 - (b) in connexion with land subject to irrigation a charge for the quantity of water—
 - (i) allocated;
 - or
 - (ii) suppliedto each owner or occupier of land within the area;
 - (c) in connexion with the supply of water for other purposes, a charge for the quantity of water—
 - (i) allocated;
 - or
 - (ii) supplied;
 - (d) in connexion with—
 - (i) drainage works;
 - or
 - (ii) works for the prevention of floods or the control of flood water—
 - (A) a rate per hectare on the whole of the land within the area;
 - (B) a rate per hectare on land within the area benefited by the works, varying according to the distance of that land from the works or the benefit received;

or

- (C) a rate per hectare on land within the area benefited by the works, varying according to the types of crops cultivated and the distance of that land from the works or the benefit received.

(3) Where water is supplied for more than one purpose, separate rates or charges may be made and levied, calculated on the bases specified in this section with respect to each purpose.

(4) Where part of a parcel of land is subject to rating under this Act and the whole of that parcel has been valued by the Valuer-General under and for the purposes of the *Valuation of Land Act 1944-1987*, the Valuer-General may value, under and for the purposes of that Act, the part of that parcel so subject to rating, this valuation being the rateable value of that part for the purposes of this section.

(5) An additional valuation made in accordance with subsection (4) must be used only for determining the valuation of the part of the land subject to rating under this Act for the purpose of making and levying the rate and must not be or be deemed to be a valuation made under and for the purposes of the *Valuation of Land Act 1944-1987* or any other Act.

(6) Land selected or otherwise acquired under lease or licence from the Crown is and becomes land subject to rating for the purposes of this Act on and from the date upon which the lessee or licensee is entitled to enter into possession of the land.

(7) Where land becomes subject to rating in accordance with this Act, the rate for the first year is to be proportioned for the period of the year to which it is subject to rating.

9.41 Other methods of making and levying rates. A board, instead of making and levying rates in accordance with section 9.40 may make and levy rates in respect of land within its area that is subject to rating under this Act on a basis or bases as the board by by-law determines.

In determining by by-law the basis or bases on which rates may be made or levied in accordance with this section, the board must have regard to the benefit received or likely to be received by a ratepayer.

9.42 Assessment on sugar-cane or sugar. (1) Where land in an area subject to rating under this Act is assigned to a sugar-mill, the board constituted for that area, in a case where it is authorized to do so by Order in Council (in respect whereof the Governor in Council is hereby empowered) instead of making and levying a rate in accordance with section 9.40 or 9.41 with respect to the land so assigned, may make and levy on the owner of the sugar-mill in question an assessment in accordance with this section.

The making and levying of an assessment under this section does not limit or in any way affect the power conferred on the board to make and levy a rate under section 9.40 or 9.41 with respect to land

not assigned to a sugar-mill or land within the area assigned to a sugar-mill but used at the material time for growing crops other than sugar-cane.

(2) The board, in each calendar year, may make and levy an assessment—

(a) on every tonne of sugar-cane received at a sugar-mill during the crushing season (which in this section means the period during which sugar-cane is received at the mill and crushed);
or

(b) on the proportion of the mill peak that relates to land in the area assigned to a sugar-mill, allocated at the material time to a sugar-mill under the *Regulation of Sugar Cane Prices Act 1962-1989*.

(3) The board, by a notice in writing given to the owner of a sugar-mill must—

(a) make provision for payment by him of an assessment made and levied under this section by periodical instalments or otherwise;
and

(b) fix the times at which payment of that assessment or instalment is to be made to the board.

(4) The owner of a sugar-mill must pay to the board the amount of an assessment or, as the case may be, each instalment made and levied under this section in respect of a crushing season.

(5) A payment under subsection (4) must be made—

(a) in the case of an assessment referred to in subsection (2) (a), on the actual number of tonnes of sugar-cane received during the crushing season or, in the case of a periodical instalment, during the relevant part of the crushing season, at the sugar-mill;
and

(b) in the case of an assessment made and levied under subsection (2) (b), at the time fixed by the board for payment thereof or of a periodical instalment thereof.

(6) Every assessment under this section and every instalment must be paid by the owner of the sugar-mill and the grower of the sugar-cane in proportions determined by the Governor in Council by the Order in Council authorizing the making and levying of the assessment.

(7) Where a board proposes to make and levy an assessment or to vary the assessment last made and levied under this section notice in writing of the proposed assessment or variation must be given to the owner of the sugar-mill not later than 31 May in the year in question.

(8) A portion of an assessment made and levied under this section or a portion of a periodical instalment of an assessment so made and

levied not duly paid and remaining unpaid is a debt due and owing to the board by the owner of a sugar-mill and may be recovered by the board by action in a court of competent jurisdiction.

(9) The owner of a sugar-mill, with respect to moneys payable by the grower of the sugar-cane under this section may—

- (a) deduct from moneys due and owing to that grower the amount thereof and the power to so deduct continues notwithstanding a change in the ownership of those moneys;
- (b) recover from that grower as a debt due and owing to him the amount thereof by action in a court of competent jurisdiction.

9.43 Additional or alternative rate for water. Where the works in respect of which an area is constituted are for the purpose of replenishing the subterranean water supply of the area or for purposes that include that purpose, the board constituted for that area may make and levy in respect of land, the owner or occupier of which takes water from—

- (a) surface water contained within the works of the board;
- (b) surface or sub-artesian water sources supplied or supplemented by or from the works of the board,

a rate fixed on any basis that the board determines.

A rate fixed in accordance with this section may be in addition to or in substitution for any other rate, charge or assessment that may be made and levied by the board under this Act.

9.44 Contribution towards new or additional service. (1) In addition to the making and levying of rates, assessments and charges in accordance with sections 9.40, 9.41, 9.42 or 9.43 a board, in a case where land is being or is capable of being supplied with water or connexion to drainage works under this Part within an area after the constitution thereof, may require an applicant for a new or an additional service for the supply of water or the provision of drainage in respect of a parcel of land in that area to pay to the board—

- (a) a contribution towards the costs incurred or to be incurred by the board in providing the appropriate headworks or drainage works;
- (b) the costs incurred by the board in providing works for or in connexion with the new or additional service, where the land in question is the only land that will be served by those works or a contribution towards costs where the land in question and other land will be served by those works, determined by the board.

(2) Notice in writing of every contribution or payment of costs required by the board to be paid under this section must be given to the applicant in question.

(3) Notwithstanding this Act, an appeal does not lie against a determination by a board of the costs or a contribution required to be paid under this section.

9.45 Rate-book. (1) A board must cause to be prepared a book or another record called the "rate-book" setting forth—

- (a) the names and addresses of the several owners and occupiers of land within its area that is subject to rating;
- (b) the area and description of each parcel of land within its area that is subject to rating and the nature and extent of the several benefits received, whether directly or indirectly, from works maintained by the board;
- (c) the different rates, charges or assessments proposed to be made and levied on property within its area that is subject to rating or the owners or occupiers thereof liable to the payment of charges or assessments;
- (d) the basis or bases that the board has adopted in making, fixing or levying those rates, charges or assessments;
- (e) the amounts of rates, charges or assessments proposed.

(2) The board must consider the entries made in the rate-book and may adopt it absolutely or subject to any alteration it determines.

(3) Upon the rate-book being signed and dated by the chairman or any two members of the board the rates, charges and assessments adopted by the board are deemed to be duly made and levied on that date.

(4) An assessment with respect to a rate or charge made or levied remains in force until a further assessment is made.

(5) The rate-book must be kept open for inspection and may be inspected by a ratepayer at any time during office hours without payment of a fee at the public office of the board or another place as the board determines.

9.46 Amendment of rate-book. (1) The board, from time to time, may alter, amend, modify or vary a rate-book by—

- (a) inserting therein—
 - (i) the name and address of a person claiming and entitled or liable to have those particulars inserted therein as owner or occupier;
 - and
 - (ii) the name and address of a person who ought to have been included therein as a ratepayer;
- (b) striking out the name and other particulars entered of a person who ought not to have been included as a ratepayer;
- (c) raising or, as the case may be, reducing the assessments made or rates and charges made and levied in respect of a person where that person has been under assessed or over assessed;

or

(d) making any alteration as will make the rate or charge made and levied and the assessment made thereon conform with this Act.

(2) Any alteration made under subsection (1) is—

(a) not valid until it has been initialled by the chairman at a meeting of the board at which it was made and endorsed with the date of that meeting;

(b) not by reason only thereof, to be held to avoid a rate or charge made and levied or an assessment made thereon.

9.47 Levy of rate or charge. A rate or charge made in accordance with this Act is levied by a board by the service of a notice in writing of the assessment of the rate or charge on the person appearing in the rate-book as the person in respect of whom the rate or charge is made and may be levied yearly, half-yearly, quarterly or in respect of any period the board by resolution determines.

The amount of every rate or charge levied is due and payable by the person to whom the notice is given within the period of 30 days next after the date of issue of the notice and may be recovered by the board after the expiration of that period.

The notice or, as the case may be, the first notice issued in respect of a rate or charge made for a period must include a statement that the ratepayer may appeal against an assessment of a rate or charge in accordance with this Act.

9.48 Appeal to Land Court. (1) A person aggrieved by the amount of an assessment of a rate or charge made and levied by a board upon him or by any alteration may appeal to the Land Court against that assessment.

(2) An appeal under this section is instituted by filing in the Land Court registry within 30 days after the date of the notice to him of the assessment or the alteration thereof in question and no later, a notice of appeal.

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

The appellant must within 14 days after filing it serve on the board a copy of the notice of appeal.

(3) The Land Court must hear and determine the appeal and may confirm the amount of the assessment out of which the appeal arose or vary it by increasing or decreasing the amount thereof.

So far as they may be made applicable, the rules as to the procedure and practice of the Land Court apply to appeals 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 with respect to the appeal as it thinks fit.

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

(4) The jurisdiction of the Land Court to hear and determine an appeal under this section is vested in one member only.

(5) A party aggrieved by a decision of the Land Court on an appeal under this section may appeal to the Land Appeal Court in the manner and subject to the procedure prescribed by the *Land Act 1962-1988* with respect to appeals to the Land Appeal Court.

(6) A decision of the Land Court or on appeal of the Land Appeal Court given following an appeal under this section must be transmitted to the Registrar of the Supreme Court nearest to the place where the matter was heard and determined and that registrar must upon its receipt file the decision and thereupon it has the effect of a judgment of the Supreme Court and may be enforced accordingly.

(7) (a) An appeal under this section does not by reason only thereof limit or affect in any way the right of the board to take action in the appropriate court for the recovery of the amount of the assessment appealed against.

(b) Notwithstanding paragraph (a), where an assessment is varied by a decision given in an appeal under this section an appropriate adjustment must be made to the amount of that assessment and to that end amounts constituting increases must be added to the assessment and amounts constituting decreases must be deducted and a refund made of any overpayment.

9.49 Power of Commissioner where rates and assessments insufficient to meet board's commitments. Where the Commissioner is of the opinion that rates and charges made and levied by a board are insufficient for the purpose of raising the sums of money necessary to enable the board during the period for which they are made and levied to perform its functions and duties, carry on its operations and fulfil its obligations, he may, by notice in writing, direct the board within the time set forth in the notice to make and levy—

(a) additional rates;

and

(b) where applicable, additional assessments under section 9.42, for the purpose of raising sums of money necessary for the purposes specified in this section.

Upon receipt of a notice under this section, the board must make and levy forthwith additional rates or, as the case may be, additional assessments in accordance with the directions of the Commissioner and this Act.

9.50 Land subject to or exempt from rating. All land within an area is subject to rating for the purposes of this Act except—

- (a) unoccupied Crown land;
- (b) Crown land reserved for or dedicated to public purposes within the meaning of the *Land Act 1962-1988*;
- (c) land occupied by the Crown other than land leased by the Crown from any person;
- (d) land vested in or occupied by a board or the Commission;
- (e) land declared to be exempted by Order in Council (in respect whereof the Governor in Council is hereby empowered) on the recommendation of a board.

Subparagraph (d) does not apply to land vested in or under the control of a board or the Commission that is occupied by a person other than the board or the Commission from which occupation the board or the Commission derives a benefit, that land being, during the continuance of its occupation, subject to rating for the purposes of this Act.

9.51 Liability for payment of rates and charges. (1) The amount of an assessment of rates and charges made and levied under this Act is payable in the first instance by the occupier—

- (a) of the land subject to rating;
- (b) on whom the charges were made and levied.

(2) Rates and charges due and payable to a board under this Act and remaining unpaid and interest thereon may be recovered by the board in a court of competent jurisdiction as a debt due and owing to it.

(3) A board, after giving due notice of its intention to do so, may refuse to supply water to a person by whom moneys in respect of rates or charges under this Act are due and payable and remain unpaid.

The exercise by a board of the power conferred by this subsection does not absolve the person in question from his liability to pay to the board the amounts in question due and payable and remaining unpaid.

9.52 Recovery of rates and charges. Rates and charges made and levied by a board and interest thereon may be recovered by the board from the owner at the material time of the land in respect of which the rates and charges have been made and levied.

9.53 Procedure as to payment of rates and charges upon forfeiture or surrender of holding. Notwithstanding section 238 of the *Land Act 1962-1988*, where a holding under that Act is forfeited or surrendered wholly or partly, moneys received by the Crown from an incoming lessee or a purchaser in respect of improvements on that holding must, after deducting the amount due to the Crown, be held by the Crown for the purpose of defraying the amount of rates and charges made and levied under this Act due and remaining unpaid at the date of the forfeiture or surrender.

Moneys so due and payable and remaining unpaid must to the extent of moneys held be paid to the board concerned and in that case the balance, if any, of moneys held must be paid to the former lessee or holder.

9.54 Interest on rates and charges. Where rates and charges remain unpaid after the expiration of the period of 30 days next following the date of issue of the notice of assessment or, where a period is fixed during which discount is allowed, any longer period as the board determines, interest at the rate determined by the board not exceeding in any case 15 per centum per annum or any other percentage per annum as the Governor in Council determines (in respect whereof the Governor in Council is hereby empowered) calculated at simple interest is chargeable and payable on the amount of those rates or charges so remaining unpaid.

Interest payable under this section is recoverable in the same manner as rates and charges are recoverable under this Act.

9.55 Discounts in respect of amounts of rates and charges. A board may, by resolution, grant to ratepayers generally in its area discounts on the amounts of rates and charges made and levied by it, not exceeding in any case 15 per centum or any other percentage as the Governor in Council determines (in respect whereof the Governor in Council is hereby empowered) for prompt payment thereof and to ratepayers in its area who are in receipt of pensions under the *Commonwealth Social Services Act 1947* as amended.

Division VII—Business and Proceedings of Board

9.56 Conduct of business. Subject to this Act, a board conducts its business and its proceedings at meetings in the manner it determines.

9.57 Meetings. (1) A board must hold its first meeting at a time and place as the Governor in Council appoints and may hold any subsequent meetings necessary for the conduct of its affairs and the transaction of its business at the times and places it determines.

The chairman may at any time convene a special meeting of the board.

The board must hold an annual meeting on a date and at a time and place determined by it.

(2) Meetings of the board, other than a meeting sitting as a committee of the whole, are open to the ratepayers in its area.

9.58 Chairman. (1) At the first meeting of a board, or at an adjournment of that meeting, the members present must elect one member to hold office until the annual meeting of the board next following the date of election of the chairman.

(2) Where a chairman is not elected at the first meeting of a board or within one month after the date appointed for the first meeting, the Governor in Council may appoint one of the members of the board to

be chairman and a member so appointed holds office until the annual meeting of the board next following the date of his appointment.

(3) Where the chairman of a board resigns his office as chairman or member or his office is vacated during his term of office, the board must elect a member to be chairman in his stead and a member so elected holds office until the annual meeting of the board next following the date of his election.

(4) The chairman of a board takes precedence in all matters with respect to the board and is its principal executive officer.

9.59 Duty of chairman at meeting. The chairman presides at every meeting of the board at which he is present and, in his absence from a meeting from any cause, another member of the board present and elected by the members present presides as acting chairman.

9.60 Deputy chairman. Where the chairman of a board is absent from its area or is ill or otherwise indisposed, the board may, if it thinks fit, appoint another member of the board to be its deputy chairman and to act as chairman during the absence of the chairman.

9.61 Prohibition on voting by member having pecuniary interest. (1) A member of a board who votes or takes part in debate with respect to any matter before the board in which he has, directly or indirectly, by himself, his spouse or his partner or partners (if any) a pecuniary interest, commits an offence against this Act.

Penalty: 20 penalty units.

(2) The Governor in Council, where he is satisfied that the business of a board cannot otherwise be effectively carried on, may exempt from the provisions of subsection (1) a specified member or all members of that board and, while an exemption under this subsection remains in force, subsection (1) does not apply to the member or members of a board so exempted.

(3) For the purpose of this section the term "spouse" includes a person lawfully married whether residing in a connubial relationship or not: The term includes persons not lawfully married, who have resided in a connubial relationship for more than three years.

9.62 Quorum. Business must not be transacted at a meeting of a board unless a majority of the number of members of the board for the time being declared by the Order in Council constituting the board is present.

9.63 Conduct of affairs. A board exercises or performs a power, authority, function or duty conferred or imposed on it by a majority vote of its members present at a duly convened meeting of the board and voting on the business in question before the board.

A member of the board who, being present at a meeting and entitled to vote, abstains from voting is deemed to have voted for the negative.

The chairman has a deliberative vote and, in the event of an equality of votes on a question before the board, a second or casting vote.

9.64 Minutes. (1) A board and every committee appointed by it must record and keep by the secretary under the superintendence of the chairman, in a book or another record provided for the purpose, entries of all proceedings of the board or, as the case may be, committee in the nature of minutes, these entries including the names of—

- (a) the members present at each meeting of the board or committee;
- (b) all members voting on any question before the board or committee in which a division is called.

(2) Minutes of a meeting must be signed by the chairman at the meeting next following the meeting at which the proceedings recorded therein have taken place.

(3) Books or other records containing minutes must be open to inspection by any member of the board or other person having an interest in any matter recorded therein that the board considers sufficient.

9.65 Adjournment of meetings. The members present at a meeting of the board may adjourn the meeting from time to time.

Where a quorum is not present at a meeting of the board within 30 minutes after the time appointed for the commencement of a meeting—

- (a) the member or members present;
 - (b) the majority of members, if more than two members are present;
 - (c) the chairman, if he is present, and the members present are equally divided on the issue;
- or
- (d) the secretary to the board if no members are present,

may adjourn the meeting to a time not later than 14 days after the date on which the meeting is adjourned.

This section must not be construed or operate so as to prevent the adjournment of a meeting to a later hour on the day on which the meeting was appointed to be held.

9.66 Notice of meetings. (1) A notice of a meeting or an adjourned meeting of a board (other than a meeting adjourned to a later hour of the day on which that meeting was held or appointed to be held or to the first or second day following that day) must be in writing and must be given at least 7 days prior to the date of the meeting.

(2) A notice under subsection (1) must specify the date, place and time of the meeting and, where the notice is given in respect of a special

meeting, the business of that meeting, no business other than that specified being able to be conducted at a special meeting.

(3) The chairman of a board may, where he is of opinion that an emergency exists, call a meeting of the board and that meeting may be held validly notwithstanding that subsection (1) is not or cannot be complied with.

9.67 Rescission of resolution. (1) Notice of the intention to propose a rescission of a resolution of a board must be given to each member of the board at least 2 days before the date of the meeting at which the proposal is to be moved.

(2) A resolution of the board can not be rescinded unless proof that the notice specified in subsection (1) has been given is produced at the meeting at which the proposal is to be moved.

(3) Where the number of members present at a meeting at which a proposal for the rescission of a resolution of a board is moved is equal to or less than the number of members present at the meeting at which that resolution was adopted, that resolution is rescinded only by a vote by an absolute majority of all the members of the board.

9.68 Validity of proceedings. Any act, proceeding or agreement of a board or a committee or of a person acting as chairman is not invalidated or affected by reason only of the fact that at the time the act was done, the proceeding taken or commenced or the agreement made—

- (a) there was a vacancy in the membership of the board;
- (b) there was a defect in the appointment or election of a member;
- (c) a person not qualified or who had ceased to be qualified had acted as a member.

9.69 Officers. (1) A board may from time to time appoint a secretary to the board and other officers and employees as necessary for the purpose of exercising the powers and authorities and performing the functions and duties conferred or imposed on it by or under this Act.

(2) Subject to any applicable award of an industrial court or any other tribunal or authority or an industrial agreement, an officer or employee of a board is to be paid a salary or wage at a rate and is employed on terms as the board determines.

(3) Except in the case of an officer or employee of a board who is appointed by the board under a special agreement in writing containing the terms of service and employment, officers and employees of a board hold office during the pleasure of the board.

(4) The chairman of a board may terminate the employment of an officer or employee of the board whose services, in the opinion of the chairman, are no longer required in connexion with any of the works or business of the board and must report such termination to the next meeting of the board.

(5) Notwithstanding this Act, the chairman of a board may engage an officer or employee for a temporary purpose and determine his emolument and the period of his employment whenever in the opinion of the chairman it is necessary to do so for the purpose of expediting the business of the board and may at any time terminate the services of an officer or employee so engaged.

9.70 Suspension of officers. (1) The chairman of a board may suspend from office an officer of the board who, in the chairman's opinion, is guilty of misconduct or neglect of duty and may, if he thinks it necessary appoint another officer in his stead on a temporary basis and must report the suspension and appointment to the next meeting of the board.

(2) An officer suspended under this section who is dismissed by the board, is not entitled to be paid or to receive salary or allowances in respect of any period from and including the date of his suspension.

An officer appointed on a temporary basis instead of an officer suspended under this section holds office and receives remuneration only until the date the board determines but not in any case later than the date immediately preceding the date of reinstatement of the officer in question or, where that officer is dismissed, the date immediately preceding the date on which the successor appointed instead takes up duty.

9.71 Safe custody of records. The secretary to a board is responsible for the safe custody of the rate-book and all books of account, receipts, vouchers, contracts and agreements and other books, papers, records and writings the property of or relating to the business of the board.

9.72 Authentication of documents. Any order, summons, notice, direction, requisition or other document or writing that requires authentication by a board is sufficiently authenticated without the seal of the board if it is signed by the chairman or secretary or an authorized officer thereof.

9.73 Office. A board must appoint and occupy as its public office premises determined by the board.

9.74 Review of performance and operation of board. (1) Within a reasonable time after the date of commencement of this Act, the Commissioner must conduct a review of the performance and operations of every board that at that date has been in existence for 7 years or more.

The Minister, for the purposes of the operation of this section, may determine a period of less than 7 years generally or in respect of a particular board and in that event the review in respect of the boards or board in question must be conducted immediately after the expiration of the period so determined.

Thereafter the Commissioner must conduct a like review upon the expiration of each period of 7 years or any less period as the Minister

has determined generally or in respect of a particular board next following the date of the first review.

(2) In conducting a review in accordance with this section, the Commissioner must—

(a) have regard to—

- (i) whether the objects and purposes for which the board was constituted or any of them still need or needs to be achieved;
- (ii) whether the functions of the board could be better performed or the public interest better served in the area in question by the making of other suitable arrangements;
- (iii) changes in the area in question of—
 - (A) the development of the area;
 - (B) the density of population, and the effect that those changes have had on the need for the continuation in existence of the board;
- (iv) the efficiency and effectiveness of the board in carrying out its functions;

(b) assess—

- (i) the need generally for the continuation in existence of the board;
- (ii) the advisability of the continuation in existence of the board for a term shorter than the term covered by the review with provision for a further review at the expiration thereof;
- (iii) whether the functions of the board could be adequately performed following the making of other suitable arrangements.

(3) Upon the completion of the review, the Commissioner must make his report and recommendations thereon to the Minister.

The Minister upon consideration of the matter must submit to the Governor in Council his recommendations with respect to the review and the Governor in Council, acting on the recommendations of the Minister may make his decision thereon.

The Commissioner must thereupon give effect to the decision of the Governor in Council in accordance with this Act.

9.75 Transfer of functions of board to local authority. (1) Where it appears or is represented to the Commissioner in respect of an area constituted under this Part (in this section referred to as “the area”) that due to—

- (a) the closer development thereof;
- (b) the density of population therein;
- (c) any other circumstances or occurrences within the area as

the Commissioner having regard to the objects and purposes of this Act considers relevant,

the functions of the board constituted for the area could be better performed or the public interest better served in the area by the local authority in which the area in question is situated, the Commissioner may recommend to the board and the local authority in question that they examine the matter with a view to determining whether that local authority, as a function of local government, could better perform the functions of that board in the whole or a part of the area in question.

Where the board and the local authority agree in principle, they may enter into negotiations for the purpose of determining ways and means for the implementation of the proposal.

(2) In conducting negotiations provided for in subsection (1) regard must be had to—

- (a) the value of the assets and liabilities of the board with respect to the area or the part thereof to which the negotiations relate;
- (b) the value of existing works of the board and their suitability for the purposes of the supply of water to or the provision of drainage in the area by the local authority;
- (c) the effect that the proposal may have on ratepayers in the area and the views of those ratepayers with respect to the proposal;
- (d) the consideration to be paid by the local authority to the board in respect of assets to be acquired;
- (e) the liabilities of the board to be assumed by the local authority;
- (f) the quantum of compensation to be paid and the matters in respect of which compensation may be payable, including the adjustment of rates and charges;
- (g) the practicability of the assumption by the local authority of the liabilities and other commitments of the board and the ways and means by which those liabilities and commitments may be assumed;
- (h) the effect that the management of existing works or the provision of additional works by the local authority may have on rates and charges made and levied on ratepayers in the area;
- (i) the necessary transfers of property within the area to the local authority and the manner in which and the times at which transfers may conveniently be arranged and executed;
- (j) any other matters and things as the board or the local authority considers relevant and necessary.

(3) Where agreement is reached by the board and the local authority that the needs of the area or the part thereof concerned, with respect to water supply or drainage, would best be met by the assumption by

the local authority of the commitments of the board and of the control and development of a water reticulation or drainage scheme for the area or part, the board and the local authority may enter into an agreement providing for all matters and things necessary for the implementation of the proposal.

Upon the execution of the agreement, the board must furnish to the Commissioner a copy of the agreement as executed.

Thereupon the Commissioner must submit to the Minister for consideration his report on the proposal and furnish with that report a copy of the agreement.

The Minister, upon consideration of the matter, must make a recommendation and the Governor in Council, acting on the recommendation of the Minister, may approve the agreement and, where applicable, incorporate in the Order in Council a copy of the agreement.

The Commissioner must notify the board and the local authority of the agreement as approved.

(4) Where the Commissioner has been appointed under section 9.5 (d) to administer the affairs of an area upon the dissolution of the board constituted for that area and circumstances have arisen that render the provisions of subsection (1) applicable, the Commissioner may recommend to the local authority in question that it examine the matter in the manner and to the extent provided in that subsection.

Thereupon this section must be construed as if the Commissioner were the dissolved board and the provisions thereof apply accordingly.

Division VIII—General Provisions

9.76 Governor in Council may appoint Commissioner to administer area. Where with respect to an area constituted under this Part a board has not been constituted, the Governor in Council by Order in Council may appoint the Commissioner to administer that area for a period specified in the Order in Council and to exercise the powers and authorities and to perform the functions and duties of the board as if the board had been duly constituted, and for those purposes the Commissioner is deemed to be the board and may exercise the powers and authorities and perform the functions and duties.

9.77 Power of Commissioner to undertake certain works on behalf of board. The Commissioner, on behalf of a board may—

- (a) carry out surveys and preliminary investigations in respect of any proposed project with respect to water supply or drainage;
- (b) design or supervise the construction of works in connexion therewith upon terms agreed upon by and between the Commissioner and the board in question.

An agreement entered into under this subsection is deemed to be a contract between the Commissioner and the board in question and may be enforced accordingly.

9.78 Power of board to require occupier or owner to maintain works connected to works of board. (1) Notwithstanding section 9.12, a board, upon a resolution by it in that behalf, by notice in writing given to him, may require an occupier of land in its area or, if that land is at the material time unoccupied, the owner thereof, to maintain in good order and repair and in an efficient working condition to the satisfaction of the board those works connected with works of the board as the board by resolution determines.

The notice must include a statement that the occupier or, as the case may be, owner may, within 30 days after the date of the notice and no later, appeal to the Commissioner or, where the Commissioner is administering the affairs of the board, the Minister against the requisition contained in the notice.

(2) An occupier or owner of land referred to in subsection (1), within 30 days after the date of the notice specified in that subsection, may appeal to the Commissioner or, as the case may be, Minister for a determination whether or not the requisition contained in the notice or a part thereof is reasonable and necessary.

The notice of appeal must be in writing, state the grounds of appeal and be served on the Commissioner or, as the case may be, Minister.

A copy of the notice of appeal must be given forthwith upon its service—

- (a) in the case of an appeal to the Commissioner, to the board in question;
- (b) in the case of an appeal to the Minister, to the Commissioner.

(3) Upon receipt by him of the notice of appeal the Commissioner or, as the case may be, Minister must cause investigation and inquiry to be made into the matter.

(4) Upon the investigation and inquiry, the Commissioner or, as the case may be, Minister must determine the appeal and his determination is final and without further appeal and binds all parties concerned and they must give effect thereto.

(5) A board, upon failure by an occupier or, as the case may be, owner to whom a notice under subsection (1) has been given to comply with a requisition contained in the notice that has not been the subject of an appeal and determination under this section or, in the case of an appeal, a requisition as amended upon such appeal, by a further notice in writing given to him, may require that occupier or owner within the time specified in the notice to effect repairs, take steps and do all acts and things as are in the opinion of the board, necessary to satisfy the requisition or that part thereof in respect of which the failure to comply has occurred.

(6) (a) Where the occupier or, as the case may be, owner fails within the time specified in the further notice given to him under subsection (5) to comply with a requisition contained therein, the board may cause to be effected and done all repairs, steps, acts and things as are necessary for compliance.

(b) Costs and expenses incurred by the board in taking action in accordance with paragraph (a) are a debt due and owing by the occupier or, as the case may be, owner in question to the board and may be recovered by the board by action in a court of competent jurisdiction.

9.79 Restriction as to breaking up railway and tramway or altering position of road. This Act does not authorize or empower a board to break up or alter the position of a road, railway or tramway without the consent of the authority or person having control of the road or in which or whom the railway or tramway is vested unless—

(a) special powers in that behalf are conferred upon the board by the Order in Council constituting the board;

or

(b) the approval of the Governor in Council in that behalf is first had and obtained.

Before conferring special powers under paragraph (a) or giving approval under paragraph (b), the Governor in Council must be satisfied that—

(c) notice of the proposal to apply for special powers or the giving of the approval has been given to the authority or person concerned by advertisement or otherwise as the Governor in Council directs;

and

(d) opportunity to object to the proposal has been given to the authority or person concerned.

9.80 Obstruction of member of board, officer or other person. A person who assaults, obstructs or attempts to obstruct, threatens, abuses, insults, intimidates or attempts to intimidate a member of a board or any officer, employee or agent thereof or a person acting with the authority of a board or any member, officer, employee or agent thereof in the lawful exercise by him of any power or authority or the performance of a function or duty conferred or imposed on him by or under this Act commits an offence against this Act.

Penalty: 20 penalty units.

9.81 Protection against liability. Any act, matter or thing done or made by—

(a) a board;

(b) any member, officer, employee or agent of a board;

(c) a person acting with the authority of a board or of any member, officer, employee or agent thereof,

for the purposes of carrying out or giving effect to this Act or done or made in good faith and purporting to be for the purposes of this Act and without negligence does not subject it or him to any action, liability, claim or demand.

9.82 Fees and expenses payable to member of board. (1) Subject to subsection (2), a board may pay to a member of a board, including the chairman, out of its operating fund fees under headings as it fixes from time to time by resolution and expenses necessarily incurred in respect of attendances at meetings of the board and in the performance of inspections or other duties as a member of the board.

(2) (a) Fees fixed by the board in accordance with subsection (1) must not in any case exceed the maximum amounts declared by the Governor in Council by Order in Council (in respect whereof the Governor in Council is hereby empowered) in respect of the different headings so declared.

(b) Expenses necessarily incurred and payable in accordance with subsection (1) must not in any case exceed under any heading the rate prescribed from time to time by regulations made under the *Public Service Management and Employment Act 1988*.

PART X—MISCELLANEOUS PROVISIONS

Division I—Proceedings for Offences; Offences

10.1 Offences generally and penalty. (1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

(2) A person who—

- (a) fails to do that which he is directed or required to do,
- or
- (b) does that which he is forbidden to do,

by a person acting under the authority of this Act commits an offence against this Act.

(3) Where an act or omission constitutes an offence against this Act under more than one provision thereof, the offender may be prosecuted under one or other of those provisions but so that he must not be punished more than once for the same act or omission.

(4) Except where a specific penalty is otherwise prescribed, a person who commits an offence against this Act is liable to a penalty of 20 penalty units.

10.2 Proceedings for offences. (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 1886-1989* 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 Commissioner or an officer authorized in writing in that behalf by the Minister or Commissioner.

(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.

10.3 Saving of other proceedings and recovery of moneys. (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 Commission or, as the case may be, Commissioner 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 1886-1989* 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 Commissioner or a person authorized in writing in that behalf by the Minister or Commissioner.

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

Penalty: 20 penalty units.

10.5 Protection of information and reports. 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 he received information, the nature

of the information received or the name or place of residence of the person who furnished the information;

- (b) an authorized officer must not be compelled to produce a report made or received by him in his official capacity or containing confidential information.

10.6 Restriction on liability for offence by employee or agent. A person is not liable to be convicted for an offence against this Act committed by him as an employee or agent if he satisfies the court that the offence was committed while the business of his 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.

10.7 Liability for offence by body corporate. (1) Where a body corporate commits an offence against this Act, then, without derogating from section 7 of *The Criminal Code*, each of the following persons is deemed to have committed the offence and, notwithstanding section 23 of *The Criminal Code* 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 chairman 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 (1) (b) to prove that the offence was committed without that person's consent or connivance and that he exercised due diligence to prevent the commission of the offence.

10.8 Prohibition as to taking water on non-payment of charges therefor. 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 with respect thereto by section 10.14 or, as the case requires, 10.15, the Commissioner may give to that person a notice in writing.

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;
- (b) require payment of the arrears and interest or the making of arrangements satisfactory to the Commissioner 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.

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.

Penalty: 30 penalty units.

10.9 Unlawful taking, getting or removal of quarry material. (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 4.3 (b) or land vested in the Commission, 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.

Penalty: 20 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 Commissioner royalty at the prescribed rate on the controlled quarry material taken or got and removed in contravention of that subsection.

10.10 Contravention of or failure to comply with terms of a licence or permit. A person who contravenes or fails to comply with a term to which—

- (a) a licence;
- (b) a permit under section 4.31 (1) (b), 4.32 or 4.33,

is subject, commits an offence against this Act.

- Penalty: (a) where the offence consists of a failure to comply with a term of a licence with respect to a referable dam, 200 penalty units;
- (b) all other cases, 50 penalty units.

Division II—Trespass and Removal of Trespassers

10.11 Trespass and unlawful occupation. (1) For the purposes of this section and section 10.12, the term “land under the control of the Commission” includes—

- (a) Crown land vested in or placed under the control of the Commission for the purposes of this Act;
- (b) Crown land granted in fee-simple to the Commission for the purposes of this Act;
- (c) land leased to, acquired or held in fee-simple by the Commission for the purposes of this Act;
- (d) land reserved and set apart under the *Land Act 1962-1988* and placed under the control of the Commission as trustee;
- (e) land acquired by the Commission 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 Commission,

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 Commission),

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

Penalty: 15 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.

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.

(4) 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 10.12 (1) 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 10.12 (2) 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.

10.12 Removal of trespassers. (1) A person duly authorized by the Commission who believes on reasonable grounds that a person—

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

or

(b) is in possession of land vested in or under the control of the Commission 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 1886-1989*.

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 member of the police force requiring him forthwith to remove the person in question from the land and to take possession of the land on behalf of the Commission.

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

(2) (a) 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 Commission, and—

(i) 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 him to possession of that land issued under this Act or any other Act or law;

or

(ii) the owner of the structure, improvement, other thing or crop cannot be found, after reasonable enquiry by or on behalf of the Commission,

a person duly authorized in that behalf by the Commission may make a complaint before a justice and that complaint must be heard and determined by way of summary proceeding under the *Justices Act 1886-1989*.

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.

(b) Where the person alleged in a complaint under this subsection 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 Commission, after having made or caused to be made reasonable enquiry with a view to locating the owner, has been unable to locate him—

- (i) may proceed to hear and determine the matter of the complaint in the absence of the owner;
- or
- (ii) 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.

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.

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

(d) (i) 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 this subsection is forfeited to the Crown and thereupon vests in the Commission and may be sold for removal or otherwise disposed of in the manner determined by the Commission.

(ii) Where the amount received upon the sale of any structure, improvement, other thing or crop forfeited to the Crown under subparagraph (i) of this paragraph is insufficient to defray the costs and expenses incurred by the Commission with respect to the removal or other disposal thereof, the Commission 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 authorized officer.

(e) The powers conferred on the Commission or an authorized 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 to take action under section 338 of the *Land Act 1962-1988*.

Division III—General Provisions

10.13 Water charges. (1) Subject to subsection (4), the Commissioner may in respect of each nominal allocation make and levy a minimum water charge.

(2) A minimum water charge under this section—

- (a) may be made and levied yearly, half-yearly or in respect of any other period approved by the Minister;
- (b) may be made and levied by the service of a notice in writing upon the occupier or where, in a particular case, there is no occupier, the owner of the holding to which the nominal allocation is granted;
- (c) becomes due and payable on the date of issue of the notice;
- (d) must be paid within 30 days after the date of issue of the notice;
- (e) is subject to interest at the rate determined from time to time by the Governor in Council by Order in Council (in respect of which the Governor in Council is hereby empowered).

(3) A notice under subsection (2) (b) must—

- (a) set forth the amount of the charge and the period in respect of which it is levied;
- (b) specify that—
 - (i) payment of the charge must be made at the place set forth therein within 30 days after the date of issue thereof;
 - (ii) the amount of the charge may be recovered after the expiration of 30 days after the date of issue thereof;
 - (iii) the amount of a charge remaining unpaid after—
 - (A) in a case where the charge is made and levied yearly, 6 months;
 - (B) in a case where the charge is made and levied half-yearly, 4 months;
 - (C) in a case where the charge is made and levied in respect of any other period as the Minister determines, a period determined by the Minister,

following the date on which the charge first became due and payable is subject to the payment of interest at the rate determined in accordance with subsection (2) (e) in respect of the period commencing on that date and terminating on the date of payment of that amount.

(4) A water charge under this section can not be made and levied in respect of land situated in an irrigation area until the land in question is capable of being supplied with water in accordance with this Act and the occupier is notified accordingly.

(5) Where in any year the quantity of water taken under a nominal allocation exceeds the quantity represented by the minimum water

charge the Commissioner may make and levy monthly additional water charges and for the purposes of this subsection subparagraphs (b), (c), (d) and (e) of subsection (2) apply.

(6) A notice served for the purposes of subsection (5) must set forth the amount of the charge and the period for which it is levied and must specify that—

- (a) payment of the charge must be made at the place set forth therein within 30 days after the date of issue thereof;
- (b) the amount of the charge may be recovered after the expiration of 30 days after the date of issue thereof;
- (c) the amount of the charge remaining unpaid upon the expiration of 30 days next following the date on which it first became due and payable must be subject to payment of interest at the rate determined in accordance with subsection (2) (e) in respect of the period commencing on the date on which the amount of the charge first became due and payable and terminating on the date of payment thereof.

10.14 Payment of water charge, interest thereon and recovery thereof. (1) A minimum water charge and every other charge payable under this Act is a debt due and owing to the Commissioner and may be recovered by him from the person to whom water is allocated or, as the case may be, supplied by action in a court of competent jurisdiction.

(2) Where any minimum water charge or other charge or part thereof payable under this Act remains unpaid interest on the amount remaining unpaid is payable, in the case of—

- (a) a charge made and levied yearly, after the expiration of 6 months;
- (b) a charge made and levied half-yearly, after the expiration of 4 months;
- (c) a charge made and levied in respect of any other period as the Minister determines, after the expiration of a period determined by the Minister;
- (d) a charge made for water exceeding the quantity represented by the minimum irrigation charge, after the expiration of 1 month,

next following the date on which the charge or part thereof first became due and payable at the rate determined calculated from and including the date on which it first became due and payable up to and including the date of payment thereof.

Interest may be recovered by the Commissioner in the same manner as any water charge or other amount payable under this Act may be recovered.

10.15 Power to supply water in excess of entitlement under announced allocation. (1) A person may make application in writing to the

Commissioner for a supply of water in excess of the quantity to which he is entitled under his announced allocation.

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

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.

(5) 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.

10.16 Rights of Commissioner upon surrender of nominal allocation.

(1) Where the owner of a holding or other 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 holding or other land, the Commissioner may make and levy on that owner a charge determined by him consisting of a contribution towards the costs and expenses incurred by the Commissioner in the operation and maintenance of the works of the Commission that supply water to or otherwise benefit the holding or other land in question, capitalized in respect of a period of time determined by him and a proportion of the capital costs of the headworks in question determined by him.

(2) Notwithstanding subsection (1), the Commissioner may make and levy a charge on the owner of land other than a holding only when the Governor in Council by Order in Council (in respect of which the Governor in Council is hereby empowered) has declared the headworks that supply water to or otherwise benefit that land to be subject to this section.

10.17 Agreements as to transfer of water under allocation.

(1) An owner of a holding or other land to or in respect of which a water allocation has been granted may, with the approval of the Commissioner and subject to this section, enter into an agreement with the owner of another holding or another piece or parcel of land to allow the second-mentioned owner to use the water allocated under that allocation or a proportion thereof.

(2) The owner first-mentioned in subsection (1) of a holding or other land who proposes to enter into an agreement in accordance with that subsection must submit the proposal in writing to the Commissioner together with the prescribed fee and furnish to the Commissioner the following information—

- (a) personal particulars of the other party to the proposed agreement;
- (b) description of the holding or 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 Commissioner must consider the proposal and may, by writing, require the owner in question to furnish to the Commissioner such further information as he determines and specifies in the requisition.

(4) The Commissioner—

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

An approval granted under this subsection—

- (d) must be limited in the first instance to a period not exceeding in any case 12 months from the date of the approval;
- (e) may be renewed from time to time for a period as the Commissioner determines;
- (f) does not absolve the owner in question from paying to the Commissioner the prescribed charges for water under the nominal allocation granted to him.

(5) In considering the proposal, the Commissioner may have regard to—

- (a) the capability of the system to supply the additional water to the holding or other land the subject of the proposed agreement;
- (b) other matters and things as he determines taking into account the objects and purposes of this Act.

(6) Upon receipt of an approval granted under subsection (4), the owners of the holdings or other land in question 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 Commissioner and thereupon submit to the Commissioner the draft agreement for perusal and upon being satisfied that this agreement incorporates the terms imposed by him, the Commissioner must advise the parties accordingly.

(7) The parties must upon execution furnish to the Commissioner a copy of the agreement as executed.

(8) 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 holding or other land to which the allocation has been granted.

(9) The Commissioner, in a case where he is satisfied that a party to an agreement under this section has failed to comply with a term imposed by the Commissioner 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.

10.18 Unlawful construction of works or interference with works.

(1) A person who—

(a) without the consent of the Commission or Commissioner constructs or causes to be constructed works or any thing for the purpose of connecting with works the property of the Commission or under the control of the Commission or Commissioner;

(b) without the consent of a board, constructs or causes to be constructed works or any thing for the purpose of connecting with works the property of that board,

commits an offence against this Act.

Penalty: 20 penalty units.

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

(a) destroys, injures, damages or removes or attempts to destroy, injure, damage or remove works the property of the Commission or under the control of the Commission or Commissioner or the property of a board;

(b) does an act calculated to render a part of machinery or works the property of the Commission or under the control of the Commission or Commissioner 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.

Penalty: 20 penalty units.

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

(i) takes up, removes, demolishes or otherwise interferes with works the property of the Commission or under the control

of the Commission or Commissioner or the property of a board;

- (ii) does an act whereby the supply of water by the Commission or Commissioner or a board may be obstructed or lessened;
- (iii) knowingly erects or puts a structure or an obstruction, annoyance or encroachment in, upon, over or under works the property of the Commission or under the control of the Commission or Commissioner or the property of a board,

commits an offence against this Act.

Penalty: 20 penalty units.

(b) It is a defence to a charge for an offence defined in paragraph (a) for a person to prove that the act constituting the offence was committed without his authority, direction or connivance and that he exercised due diligence to prevent the commission of the offence.

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

- (i) the works unlawfully constructed constituting the offence be removed by the offender within the time specified by the court;
- (ii) the works of the board or Commission or under the control of the Commission or Commissioner 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.

(b) Upon the failure of the offender, within the time specified to comply in all respects with an order made under subparagraph (a) (i) or (a) (ii), the Commission, Commissioner or, as the case may be, board or an authorized officer thereof may enter upon the land in question with assistants, agents or workmen 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.

Costs and expenses incurred by the Commission, Commissioner or board or an authorized officer thereof in the exercise of the powers and authorities conferred on it or him by this paragraph are a debt due and owing to the Commission, Commissioner or, as the case may be, board and may be recovered by it or him by action in a court of competent jurisdiction.

(c) The Commission, Commissioner 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 subparagraph (a) remains unsatisfied.

(5) 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 Commission, Commissioner 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 him in committing the offence.

10.19 Powers of Commissioner where obstruction causes collection of water on railway, tramway or public road or public nuisance.

(1) Where the Commissioner is of the opinion that an obstruction or interference whether or not authorized 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, he may cause an authorized officer with assistants, agents or workmen 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 Commissioner considers necessary or desirable to reduce or prevent the collection of that water.

(2) Before exercising the powers conferred on him by subsection (1), the Commissioner, where he 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 him to take within the time specified in the notice all remedial measures the Commissioner considers necessary to reduce or prevent the collection of the water in question specified in the notice.

A person who fails to comply with a notice given under this subsection to the satisfaction of the Commissioner within the time specified therein commits an offence against this Act.

Penalty: 15 penalty units.

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

(4) Costs and expenses incurred by the Commissioner or an authorized 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 Commissioner.

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

10.20 Warrant to enter land or premises. (1) Where the Commission, Commissioner, a board, an authorized officer or other officer or an employee or agent of the Commission, Commissioner or board is

authorized 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 Commission, Commissioner, board, authorized officer, other officer or employee or agent to so enter, an authorized 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 Commission, Commissioner, board, authorized officer, other officer or employee or agent is authorized by or under this Act to enter the land or premises in question for the purposes of this Act;
- (b) the Commission, Commissioner, board, authorized officer, other officer or employee 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 Commission, Commissioner, board, authorized officer, other officer or employee or agent to enter upon the land or premises,

he may issue his warrant directed to an authorized officer to enter the land or premises named in the warrant for the purpose of exercising therein the powers and authorities conferred upon the Commission, Commissioner, board, authorized officer, other officer or employee 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 authorized 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 Commission, Commissioner, board, authorized officer, other officer or employee or agent with respect to the land or premises so specified.

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

10.21 Diversion of watercourse or lake and reclamation of certain land. (1) Where it appears or is represented to the Minister that it would be desirable in the public interest or for any other reason that—

- (a) a watercourse or lake should be diverted;
 - (b) a watercourse, lake or swamp land should be reclaimed,
- the Minister may refer the matter for inquiry and report to a tribunal consisting of—
- (c) a member of the Land Court;
 - (d) the Commissioner or a person duly authorized in writing by him in that behalf;

and

- (e) a member of the Land Administration Commission or a person duly authorized in writing by the Chairman, Land Administration Commission, in that behalf.

(2) A reference pursuant to subsection (1) is for all purposes deemed a reference under section 37 (2) of the *Land Act 1962-1988* and that subsection with and subject to all necessary adaptations applies and extends accordingly.

(3) The tribunal must inquire into all matters the subject of the reference and furnish to the Minister a report together with a certificate as to whether or not it would be in the public interest to proceed with the diversion or reclamation.

(4) Where the tribunal certifies that it would be in the public interest to proceed with the diversion or reclamation, it must make recommendations to the Minister as to—

- (a) the arrangements or adjustments that in the opinion of the tribunal are just and equitable and required to be made with owners or occupiers of land or holders of riparian rights (if any) who would be affected by the diversion or reclamation;
- (b) the steps to be taken and the acts, matters or things to be done or executed for the purposes of or in connexion with the carrying out and completion of the diversion or reclamation;
- (c) the manner in which the land formed by a reclamation should be dealt with.

(5) The Minister must, upon consideration of the matter, make recommendations with respect to the proposed diversion or reclamation and the Governor in Council, acting on the recommendations of the Minister, may approve the proposed diversion or reclamation.

(6) Where the Governor in Council approves the proposed diversion or reclamation, he may by Order in Council authorize—

- (a) a Crown instrumentality or corporation representing the Crown;
- (b) a department of the government of the State;
- (c) a local authority;

or

- (d) any other person or body,

to carry out and complete the diversion or, as the case may be, reclamation as approved and may, by the same or a subsequent Order in Council, enumerate the steps and acts, matters and things that he considers necessary or desirable to be—

- (e) taken, done or executed for the purposes of or in connexion with the carrying out and completion of the diversion or

reclamation approved, including the payment of costs, charges and expenses incurred with respect thereto;

- (f) the manner in which and the persons by whom any step, act, matter or thing specified is to be done or executed.

(7) The Crown instrumentality or corporation representing the Crown, government department, local authority or other person or body authorized by an Order in Council under subsection (6) has by itself or himself and his or its officers, employees or agents the right to enter and re-enter land for the purposes of the exercise of the powers and authorities and the performance of the functions and duties conferred or imposed upon him or it for the purposes of the carrying out and completion of the diversion or reclamation approved.

(8) The land formed by a reclamation under this section upon its formation becomes and is Crown land within the meaning of the *Land Act 1962-1988* except where prior to the reclamation the bed and banks of the watercourse, lake or swamp land the subject of the reclamation were the property of the owner of the land through which the watercourse flowed or whereon the lake or swamp land was situated in which event the land so formed is and remains the property of that owner.

A watercourse or lake diverted under this section, upon the completion of the diversion, is and continues to be a watercourse or lake within the meaning of this Act.

10.22 Appeal to Minister. (1) A person aggrieved by—

- (a) a decision of the Commissioner under section 4.5;
- (b) a decision of the Commissioner under section 8.10(5);
- (c) the determination of, or the failure to determine, a holding under section 8.11;
- (d) the grant of a nominal allocation in respect of a holding under section 8.12 or a determination made thereunder upon any alteration or revocation thereof,

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.

The appellant must within 14 days after giving the notice serve on the Commissioner a copy of the notice of appeal.

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

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

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

10.23 Compensation for injury, loss or damage. (1) Except where this Act otherwise provides—

- (a) the Commission;
- (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 Commission, Commissioner or an officer, employee or agent of it or him acting under the authority of the Commission or Commissioner;
- (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 connexion with the exercise or performance in respect of which that person is not in default.

(2) Compensation payable by the Commission 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 1967-1988*, 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.

10.24 Claim for compensation. A claim for compensation under this Act must—

- (a) be in writing and furnished to the Commissioner 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 his 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 one year after the occurrence of the act, matter or thing out of which the claim for compensation arose.

The claimant must, upon a requisition in that behalf duly given by him, furnish to the Commissioner or, as the case may be, board the further information and particulars with respect to his claim specified in the requisition.

10.25 Procedure upon failure to reach agreement as to amount of compensation. (1) Where the Commissioner 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, Commissioner or

board may refer to the Land Court for hearing and determination the matter of the amount of the compensation.

The jurisdiction of the Land Court to hear and determine a reference under this section is vested in one member only.

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 Commissioner or board his claim for compensation.

(2) 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 Commissioner or board and within 14 days after filing giving to the Commissioner or board or, as the case may be, claimant notice of the reference.

(3) 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.

(4) The Land Court, upon the application of the Commissioner 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.

Where a claimant fails to comply with an order of the Land Court under this subsection, the court may strike out the reference.

10.26 Jurisdiction of Land Court. 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.

10.27 Appeal from Land Court re compensation. 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 1962-1988* with respect to appeals to the Land Appeal Court.

10.28 Apportionment of joint liability. Where the Commissioner directs or permits two or more persons—

(a) to do or join in doing any act, matter or thing;

(b) to pay or join in paying a sum of money,

under or for the purposes of this Act, he may apportion the act, matter or thing to be done or the sum of money to be paid between or, as the case may be, among those persons in the manner he considers just.

10.29 Notice of transfer of land. (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 Commission has agreed to supply water must give to the Commissioner notice in writing of the sale or other disposal,

specifying the name and address of the purchaser or other person taking the disposition.

(2) (a) The owner of land in respect of which a licence has been granted and issued or to which the Commission has agreed to supply water that is subdivided must, forthwith upon the approval by the local authority of that subdivision, give to the Commissioner notice in writing accompanied by an approved plan of that subdivision.

(b) Upon the sale of a parcel of land following a subdivision referred to in this subsection, the owner must forthwith give to the Commissioner a notice in writing of the sale specifying the name and address of the purchaser.

(c) A person who is liable for the payment of moneys under Part IV or Part VIII 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 he were still the owner.

10.30 Searches in public offices. (1) Where a right conferred by section 121 of the *Real Property Act 1861-1988* is exercised by a person acting on behalf of the Commission or Commissioner, a fee must not be charged for a service rendered upon the exercise of that right.

(2) An authorized officer may at all reasonable times and without payment of a fee inspect records in the office of the Commissioner for Corporate Affairs or 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 he thinks fit.

10.31 Continuation in operation of notice, order and the like. 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 last-mentioned persons respectively.

10.32 Service of documents. (1) Any notice, direction, requisition, order, assessment of rates or charges or other document or writing relating to the business of—

(a) the Commission or Commissioner;

(b) a board,

required or authorized 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) (i) where it is addressed to the Commission or Commissioner, it is left with some person at any office of the Water Resources Commission or forwarded by post to the Commissioner;
 - (ii) 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 him 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 three times in a newspaper circulating generally in the locality in question at intervals of not less than one week between each publication.

10.33 Protection against liability. (1) Any act, matter, thing, recommendation or decision done or made by or any agreement, arrangement or contract entered into by—

- (a) the Minister;
- (b) the Commission;
- (c) the Commissioner;
- (d) any authorized officer or other officer;
- (e) a person acting with or under the authority of the Minister, Commission, Commissioner, any authorized 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 against or attach to the Crown, the Minister, Commission, Commissioner, or any officer, employee, workman or other person for or in respect of—

- (a) an obstruction of the navigation of a navigable river within the meaning of the *Harbours Act 1955-1989*;
- (b) the diminution of the quantity of water in a watercourse by reason of the execution of works authorized 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 connexion 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 Commission, the Commissioner, its or his officers, workmen or agents or any of them for or in respect of—

- (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 Commission in a case where the escape is not attributable to the negligence or default of the Commission, Commissioner, officers, workmen or agents or any of them;
 - (ii) the withdrawal into works of the Commission or into drives, tunnels or other excavations constructed by the Commission in connexion 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 Commission that is caused directly or indirectly by reason of or in consequence of the following acts, matters or things done in connexion 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.

This subsection does not affect or in any way limit the liability of the Commission to pay damages for personal injury to a person where the Commission would be, but for this Act, so liable.

10.34 Evidentiary provisions. (1) In a proceeding for the purposes of this Act—

(a) it is not necessary to prove—

(i) the appointment of the Commissioner or other officer or the authority of the Commissioner 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 Commission 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, Commissioner, any authorized 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 Commission and sealed with its seal or purporting to have been issued or published by a department of the government of the State 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 authorized 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 including an advertisement purporting to be made and inserted in that newspaper by, or on behalf or under the direction of the Commissioner 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 Commissioner;
- (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 Commission or Commissioner and purporting to be under the seal of the Commission or signed by the Minister, Commissioner or a person authorized in that behalf by the Commission or Commissioner 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 authorized officer that works, matters or things specified therein have been constructed, done or supplied by the Commission 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 connexion 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 authorized officer stating that a certain quantity of water is shown by the index or register of a meter authorized by the Commissioner 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 authorized 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 authorized by the Commissioner (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 his 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 authorized 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 Commissioner or an authorized 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 *Main Roads Act 1920-1988* 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, authorized 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 Commission or the Commissioner 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 his 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.

10.35 Regulations. (1) The Governor in Council may make regulations not inconsistent with this Act for or with respect to all matters and things that are necessary or convenient for the administration of this Act or with respect to the powers, authorities, functions and duties conferred or imposed on the Commission or Commissioner for the purposes of this Act or for carrying this Act into effect.

(2) The power to regulate includes the power to prohibit.

(3) Regulations may be made to apply generally throughout Queensland or within a locality in Queensland or, with respect to a class of person, matter or thing, to apply generally or to be of limited application as indicated therein.

(4) The regulations—

- (a) may adopt wholly or partly and specifically or by reference and with any alteration, amendment, modification or variation any of the standards, rules, codes, specifications or methods of any association, body or institution whether as in force or recommended at the time of adoption or as amended from time to time;
- (b) may confer powers or authorities or impose functions or duties in connexion with the regulations on a department of the government of the State, public authority or local authority.

(5) Without limiting the generality of the power conferred on the Governor in Council by subsection (1), regulations may be made for or with respect to the matters and things set forth in the Second Schedule.

SCHEDULES

FIRST SCHEDULE

[Section 1.3]

Year and Number of Act	Short Title	Extent of Repeal
13 Geo. V. No. 29	<i>"The Irrigation Act of 1922"</i>	The whole
17 Geo. V. No. 12	<i>"The Water Act of 1926"</i>	The whole
18 Geo. V. No. 25	<i>"The Mining Acts Amendment Act of 1927, No. 2"</i>	The whole
21 Geo. V. No. 4	<i>"The Water Act Amendment Act of 1930"</i>	The whole
22 Geo. V. No. 44	<i>"The Irrigation and Water Supply Acts Amendment Act of 1931"</i>	s. 8 and Schedule
24 Geo. V. No. 21	<i>"The Irrigation Acts Amendment Act of 1933"</i>	The whole
1 Edw. VIII. No. 7	<i>"The Water Acts Amendment Act of 1936"</i>	The whole
1 Geo. VI. No. 18	<i>"The Land Acts and Other Acts Amendment Act of 1937"</i>	s. 30
4 Geo. VI. No. 27	<i>"The Water Acts and Another Act Amendment Act of 1940"</i>	Part II
6 Geo. VI. No. 10	<i>"The Land Acts and Other Acts Amendment Act of 1941"</i>	Part VI
6 Geo. VI. No. 39	<i>"The Local Government Acts and Another Act Amendment Act of 1942"</i>	Part III
13 Geo. VI. No. 48	<i>"The Irrigation and Water Supply Commission Act and Other Acts Amendment Act of 1949"</i>	Part III

FIRST SCHEDULE—*continued*

Year and Number of Act	Short Title	Extent of Repeal
3 Eliz. II. No. 27	<i>"The Irrigation Acts and Other Acts Amendment Act of 1954"</i>	Part IV
6 Eliz. II. No. 42	<i>"The Irrigation Acts and Another Act Amendment Act of 1957"</i>	Part III
8 Eliz. II. No. 28	<i>"The Irrigation Acts Amendment Act of 1959"</i>	The whole
10 Eliz. II. No. 6	<i>"The Irrigation Acts Amendment Act of 1961"</i>	The whole
10 Eliz. II. No. 8	<i>"The Water Acts Amendment Act of 1961"</i>	The whole
1964 No. 69	<i>"The Water Acts Amendment Act of 1964"</i>	The whole
1965 No. 6	<i>"The Irrigation Acts Amendment Act of 1965"</i>	The whole
1967 No. 3	<i>"The Water Acts Amendment Act of 1967"</i>	The whole
1967 No. 48	<i>"The Acquisition of Land Act of 1967"</i>	First Schedule Part II. All amendments of 13 Geo. V. No. 29 as subsequently amended. First Schedule Part II— (a) In column 1, omit "17 Geo. V. No. 12 as subsequently amended"; (b) In column 2, omit " <i>The Water Acts, 1926 to 1967</i> "; (c) In column 3, omit all amendments to " <i>The Water Acts, 1926 to 1967</i> "
1968 No. 30	<i>the Water Act Amendment Act 1968</i>	The whole

FIRST SCHEDULE—*continued*

Year and Number of Act	Short Title	Extent of Repeal
1973 No. 10	<i>Water Act and Another Act Amendment Act 1973</i>	The whole except s. 14
1975 No. 9	<i>Water Act Amendment Act 1975</i>	The whole
1976 No. 74	<i>Water Act Amendment Act 1976</i>	The whole
1977 No. 5	<i>Irrigation Act and Another Act Amendment Act 1977</i>	Part II
1978 No. 79	<i>Water Resources Administration Act 1978</i>	The whole
1979 No. 26	<i>State Development and Public Works Organization Act and Other Acts Amendment Act 1979</i>	Part VI
1979 No. 11	<i>Water Act Amendment Act 1979</i>	The whole
1981 No. 11	<i>Water Resources Administration Act Amendment Act 1981</i>	The whole
1981 No. 12	<i>Water Act Amendment Act 1981</i>	The whole
1983 No. 36	<i>Irrigation Act and Another Act Amendment Act 1983</i>	The whole

SECOND SCHEDULE

SUBJECT MATTER FOR REGULATIONS

[Section 10.35 (5)]

1. Officers and employees. The powers, authorities, functions and duties of officers and other persons administering this Act and of employees of the Commission or Commissioner; the conduct, discipline, regulation and control of other persons and employees.

2. Inspections. Provision for inspections of works, machinery, equipment and services and all matters and things in connexion therewith or incidental thereto.

3. Terms and implied terms in contracts and the like. The terms to be inserted or implied in contracts, agreements, leases and other instruments; the forms of contracts, agreements, leases and other instruments.

4. Notices and the like. The forms of and the signing, giving, serving and enforcement of notices, requisitions and other documents or writings under this Act.

5. Applications and grants etc. Applications (including criteria to be considered under section 4.18) 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, approvals, certificates and authorities may be granted, issued, revoked, cancelled, suspended, surrendered, transferred or renewed; the records to be kept in relation thereto.

6. Proof of matters and things and documents. 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 connexion therewith.

7. Mode of execution. 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 connexion therewith.

8. Materials for works or things. 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 Commission, Commissioner 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.

9. Management of works. The due management and use of works and other property of the Crown or vested in the Commission and of

rights in water vested in the Commission or under the control of the Commission or Commissioner and the construction, maintenance, extension, cleaning, repair and management of the works in connexion therewith.

10. Straying stock. The prevention of the straying of stock on roads, reserves or other land vested in the Commission or under the control of the Commission or Commissioner.

11. Preservation of watercourses and the like, catchment areas against injury, damage, etc. 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.

12. Traffic. Regulation and control of traffic on roads and other localities on or in land vested in the Commission or under the control of the Commission or Commissioner.

13. Demonstration farms, experiment stations. The establishment and the regulation and control of the operation and management of demonstration farms and experiment stations.

14. Improvements. The construction of improvements on holdings; the fixing of prices or charges for the acquisition or use of improvements on holdings effected by or under the authority of the Commission or Commissioner.

15. Protection of water and works. Protection of the water, works, surveys, fittings and other property of the Crown or vested in the Commission or under the control of the Commission or Commissioner and every part thereof from trespass, diversion, pollution, defilement, obstruction, injury, loss or damage.

16. Nuisances. Prevention of encroachment of nuisances on and removal of nuisances from land and works vested in the Commission or under the control of the Commission or Commissioner.

17. Structures. 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 connexion with the construction of structures within the area.

18. Provision etc. of recreational or tourist facilities. 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 connexion therewith at headworks or on other land vested in the Commission or under the control of the Commission or Commissioner.

19. Recreational activities. 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 Commission or under the control of the Commission or Commissioner including, without limiting the generality of this provision, regulation and control of the use therein, thereon or thereover of watercraft or motorized land vehicles of every type and description; prohibition or restriction of certain recreational activities.

20. Supply of water. 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.

21. Use of water for irrigation, domestic purposes, watering stock and other purposes. 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.

22. Insufficiency in water supply. The provision of methods and procedures to meet the contingency of any insufficiency in the general water supply in any area.

23. Charges for water. The fixing of the scale 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.

24. Drainage rates and charges. 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.

25. Local services and charges therefor. 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 Commission or under the control of the Commission or Commissioner; the fixing, payment, collection and recovery by the Commissioner of charges for the rendering of services specified in this clause.

26. Riparian owners and occupiers. 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 Commission 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 Commission.

27. Prevention of waste and the like of water. The prevention of and provision of remedies for the waste, misuse, undue or unauthorized consumption or pollution of water contained in or supplied from water storages or works of the Commission or underground sources of water supply.

28. Water allocations. 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 connexion 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.

29. Furnishing information and returns re works. 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.

30. Furnishing of information and returns re controlled quarry material. The information and returns to be furnished by a person with respect to controlled quarry material or other material taken and removed by him 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.

31. Sale of controlled quarry material by auction and the like. 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.

32. Designated areas, catchment areas. 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.

33. Fees and the like. Fees, charges, allowances, royalty, costs and expenses payable to or to be paid by the Commission or Commissioner

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.

34. Control of bores. Regulation and control in the public interest of the flow of water from an artesian bore or a sub-artesian bore.

35. Forms. The forms to be used for the purposes of this Act and the particular purposes for which those forms must respectively be used.

36. Penalties. 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 Commission or Commissioner consequent upon a contravention of or failure to comply with a regulation must be paid by the offender.

37. Interest. Providing that moneys payable to the Commission or Commissioner 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.

38. Matters prescribed. All matters required or permitted by or under this Act to be prescribed where the manner of prescription is not specified.