

Queensland



# **WATER RESOURCES ACT 1989**

**Reprinted as in force on 31 March 2000  
(includes amendments up to Act No. 5 of 2000)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 4C**

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# Information about this reprint

This Act is reprinted as at 31 March 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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

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

**Also see endnotes for information about—**

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

Queensland



**WATER RESOURCES ACT 1989**

**TABLE OF PROVISIONS**

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title .....	17
2	Interpretation .....	17
<b>PART 2—VESTING OF RIGHTS IN CERTAIN WATER IN CROWN AND DECLARATION RE BED AND BANKS</b>		
3	Rights in certain water to vest in Crown .....	26
4	Restrictions on rights in water vested in Crown .....	26
5	Declaration as to property in bed and banks of watercourse or lake .....	27
<b>PART 3—ADMINISTRATION</b>		
<i>Division 1—General</i>		
6	Delegation by Minister .....	28
6A	Appointment of authorised officers .....	28
6B	Limitation of authorised officer’s powers .....	28
6C	Authorised officer’s identity card .....	28
6D	Production or display of authorised officer’s identity card .....	29
7	Powers of authorised officer .....	29
<i>Division 2—Powers of corporation and chief executive</i>		
8	General powers etc. of corporation and chief executive .....	31
9	Powers of corporation with respect to works etc. ....	33
10	Powers etc. of corporation as to ancillary works and the like .....	34
11	Entry upon land .....	34
12	Acquisition of land by corporation .....	36
13	Power of corporation to lease or dispose of land or works .....	39
14	Powers of corporation where water supply area or drainage area not constituted or proposed to be abolished .....	39

*Water Resources Act 1989*


---

15	Power of corporation to supply water by agreement . . . . .	40
16	Declaration as to downstream limit along a watercourse above which the chief executive may exercise powers etc. . . . .	41
17	Power of chief executive to carry out investigations, prepare estimates etc. on behalf of person . . . . .	42
18	Power of chief executive with respect to pipes etc. to be used for certain purposes . . . . .	43
	<b><i>Division 3—Advisory council and advisory committees</i></b>	
19	Establishment and functions . . . . .	43
20	Membership . . . . .	45
21	Further matters about the operation of a council or committee . . . . .	45
22	Duty of chief executive . . . . .	46
	<b><i>Division 4—Financial and other general provisions</i></b>	
23	Corporation is statutory body . . . . .	46
24	Stamp duty . . . . .	46
25	Power to remit payment of charges or interest thereon . . . . .	46
	<b>PART 3A—WATER MANAGEMENT PLANS</b>	
	<b><i>Division 1—Preliminary</i></b>	
25A	Definitions for pt 3A . . . . .	47
	<b><i>Division 2—Preparation and approval of water management plans</i></b>	
25B	Water management plans may be made . . . . .	47
25C	Content of water management plans . . . . .	47
25D	Public notice of proposal to prepare draft water management plan . . . . .	48
25E	Principles and policies for draft water management plan . . . . .	48
25F	Public notice inviting submissions on draft water management plan . . . . .	49
25G	Submissions to be considered before water management plan made . . . . .	50
25H	Draft plan must be readvertised if changed . . . . .	50
25I	Approval of water management plan . . . . .	50
25J	Notice of intention not to proceed further toward making water management plan . . . . .	51
25K	Amendment of water management plan . . . . .	51
25L	Public inspection and purchase of plans . . . . .	52
25M	Regulatory impact statements . . . . .	52

***Division 3—Effect of notice of proposal to prepare plan***

25N	Effect of notice under s 25D on applications, agreements, sales, etc. . . . .	52
25O	Exceptions to s 25N . . . . .	54

***Division 4—Compliance with plan***

25P	Actions must not be inconsistent with water management plan . . . . .	56
-----	---	----

**PART 4—REGULATION AND CONTROL OF WATER,  
WATERCOURSES AND CERTAIN QUARRY MATERIALS*****Division 1—General provisions***

26	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 . . . . .	57
27	Control over catchment area . . . . .	58
28	Certain quarry material to be and remain property of Crown . . . . .	58
29	Wastage of water from artesian or subartesian bore . . . . .	59
30	Supply of surplus water from artesian or subartesian bore . . . . .	60
33	Prohibition as to diversions and appropriations of water . . . . .	61
34	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 . . . . .	62
35	Right to take water by prescription or use prohibited . . . . .	63
36	Ordinary riparian rights to use water . . . . .	63
37	Control of certain quarry material . . . . .	64

***Division 1A—Certain specific provisions about subartesian bores***

37A	Act applies to subartesian bores in declared subartesian areas . . . . .	64
37B	Exemptions for small bores in declared subartesian areas . . . . .	64

***Division 2—Licences***

38	Offences about constructing works etc. and otherwise taking water without the authority of a licence . . . . .	65
39	Rights of non-riparian owner to licence . . . . .	68
40	Power of court upon conviction for an offence against s 38 . . . . .	70
41	Alterations other than for repair or maintenance of works prohibited . . . . .	71
42	Application for licence . . . . .	71
43	Inquiry by chief executive and grant or refusal of application . . . . .	74
43A	Certain decisions of the chief executive to be published in newspapers . . . . .	77

---

43B	Notice of decision about constructing or using artesian or subartesian bores . . . . .	77
44	Licences . . . . .	78
45	Amended licence . . . . .	80
46	Renewal of licence . . . . .	81
47	Transferring licences . . . . .	82
48	Surrender of licence . . . . .	82
48A	Holder of driller's licence to keep certain information about boreholes and give it to the chief executive . . . . .	83
49	Effect of disposal of subdivided land . . . . .	83
50	Amendment, variation, cancellation, revocation or suspension of licence . . . . .	84
50A	Procedure for internal review of decision about driller's licences . . . . .	85
50B	Stay of operation of original decisions . . . . .	87
51	Appeal to Land Court . . . . .	87
52	Application for reduction in water entitlement or area of land . . . . .	90
53	Requirement as to licensing and employment of drillers . . . . .	90
54	Licence in substitution . . . . .	90
55	Duplicate or copy of lost or destroyed licence, permit or authority . . . . .	91
<b><i>Division 3—Permits</i></b>		
56	Power to issue permit to government department, other person or body to take water . . . . .	91
57	Power to issue permit to construct or use works in the exercise of a right to use water under s 36 . . . . .	92
58	Application for and issue of permit in respect of quarry material . . . . .	93
59	Procedure before dealing with controlled quarry material on Crown holding . . . . .	95
60	Rights to enter and remain on Crown land or holding under permit . . . . .	97
61	Sale of controlled quarry material . . . . .	98
62	Sale of controlled quarry materials to fossicker . . . . .	99
63	Royalty or price . . . . .	99
64	Amendment, variation, cancellation, revocation or suspension of permit . . . . .	100
64A	Notice to stop unauthorised quarrying activities etc. . . . .	101

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

65	Limitation of times during which water may be taken under licence or permit . . . . .	102
66	Offences as to dealing with water . . . . .	103
67	Powers of chief executive with respect to unauthorised works . . . . .	104

***Division 5—Protecting and improving the physical integrity of watercourses***

68	Definitions . . . . .	105
69	Division binds the Crown . . . . .	105
70	Destruction of vegetation, excavation or placing of fill . . . . .	105
71	Permit to destroy vegetation or to excavate or fill . . . . .	107
72	Matters to be considered by chief executive . . . . .	109
73	Cancellation of permit or amendment of terms of permit . . . . .	109
74	Suspension of permit in exceptional circumstances . . . . .	111
75	Limited nature of permit . . . . .	111
76	Notice to stop, or not engage in, a stated activity . . . . .	111
77	Notice to remove vegetation etc. . . . .	112
78	Appeals . . . . .	113

**PART 5—SALE OF WATER ENTITLEMENTS**

79	Purpose of this part . . . . .	114
80	Definitions for pt 5 . . . . .	115
81	Chief executive may publish notice . . . . .	116
82	Where notice must be published . . . . .	116
83	Inquiry before publication of notice of intention to sell . . . . .	117
84	Persons who are eligible to give objections . . . . .	117
85	Chief executive must inquire into objections . . . . .	117
86	Chief executive may amend notice of intention to sell . . . . .	118
87	Objections to amendment . . . . .	119
88	Steps to be taken after inquiry . . . . .	119
89	Chief executive may sell entitlements after notice is published . . . . .	120
90	Issue of licence on sale of entitlement . . . . .	120
90A	Entering into agreement on sale of entitlement . . . . .	120

**PART 6—REFERABLE DAMS**

91	Control of referable dams . . . . .	121
92	Power of chief executive to declare certain works or proposed works to be a referable dam . . . . .	121
93	Requirements by chief executive as to referable dam . . . . .	122
94	Exemption of owner of referable dam from provisions of Act . . . . .	123
95	Protection against liability for failure or collapse of referable dam . . . . .	124

**PART 7—SPECIAL WORKS**

96	Meaning of special works . . . . .	125
97	Recommendation re certain works . . . . .	125
98	Power of Governor in Council . . . . .	125
99	Application with respect to special works . . . . .	125
100	Authority of Minister to make and enter into agreement . . . . .	127
101	Approval of agreement . . . . .	127
102	Effect of agreement . . . . .	127
103	Recording agreement . . . . .	127

**PART 8—DESIGNATED AREAS**

104	Constitution of designated area . . . . .	128
105	Procedure before making regulation about designated area . . . . .	128
106	General powers of chief executive . . . . .	131
107	Licence for controlled works . . . . .	131
108	Levee banks under Local Government Act not controlled works . . . . .	131
109	No right to compensation . . . . .	132

**PART 9—IRRIGATION UNDERTAKINGS AND AREAS***Division 1—Irrigation undertakings*

110	Irrigation undertaking to be approved by Governor in Council . . . . .	132
111	Procedure on proposal for irrigation undertaking . . . . .	132
112	Minister to provide report to Governor in Council . . . . .	133
113	Establishing the irrigation undertaking . . . . .	133
114	Power to construct works and do necessary acts and things in connection with irrigation undertaking . . . . .	134

*Division 2—Irrigation areas*

115	Constitution of area . . . . .	134
-----	--------------------------------	-----



---

116	Drainage works . . . . .	135
117	Assessment on owners of sugar mills and other premises . . . . .	135
118	Powers of chief executive with respect to treatment, destruction or removal of trees, other vegetation, litter or refuse in irrigation area . . .	135
119	Subdivision of freehold land within irrigation area . . . . .	136
<b><i>Division 3—Water allocations in irrigation areas</i></b>		
120	Grant of water allocation . . . . .	138
121	Licence for water allocation for land . . . . .	139
122	Surrender of nominal allocation . . . . .	139
123	Chief executive’s power if nominal allocation land is subdivided . . . . .	139
124	Power to discontinue water supply upon non-payment of charges . . . . .	140
<b><i>Division 4—Administration</i></b>		
125	Crown land in irrigation area may be set apart . . . . .	140
126	Power of corporation to authorise person to construct channels . . . . .	141
127	Access across irrigation channel . . . . .	141
128	Access where land is resumed . . . . .	142
<b>PART 10—WATER SUPPLY AREAS AND DRAINAGE AREAS</b>		
<b><i>Division 1—Constitution of area</i></b>		
129	Constitution of area and establishment of board . . . . .	143
130	Procedure for preliminary advertisement of proposal for water supply or drainage area and establishment of steering committee . . . . .	145
131	Procedure before making regulation . . . . .	146
<b><i>Division 2—Membership of boards</i></b>		
132	Membership . . . . .	148
133	Term of office . . . . .	148
134	Appointment of board members . . . . .	149
135	Election of board members . . . . .	149
136	Persons qualified to be elected . . . . .	149
137	Amalgamation of boards . . . . .	150
138	Further powers of Governor in Council with respect to board . . . . .	150
139	Powers etc. of chief executive . . . . .	151
140	Extension of term of office of member . . . . .	152
141	Disqualification as to person becoming a member of board . . . . .	152

142	Termination of office of member of board . . . . .	152
143	Casual vacancy in membership of board . . . . .	153
144	Superannuation schemes . . . . .	154

***Division 3—Powers etc. of board***

145	General powers, authorities, functions and duties . . . . .	154
146	Delegation of powers, authorities, functions and duties . . . . .	157
147	Board to be a constructing authority . . . . .	157
148	Power to make or enter into contracts or agreements . . . . .	158
149	Provisions affecting contractual powers of board . . . . .	159
150	Powers with respect to plant or stock . . . . .	161
151	Disposal of surplus water . . . . .	161
152	Supply of water to local government or corporation . . . . .	161
153	Procedure where supply of water insufficient . . . . .	162
154	Power to enter and use certain land . . . . .	162
155	Interference with works of local government . . . . .	163
156	Power to make by-laws . . . . .	165
157	Committees . . . . .	167

***Division 4—Borrowing powers, financial arrangements, funds and accounts of board***

158	Borrowing powers of board . . . . .	168
159	Boards are statutory bodies . . . . .	169
160	Unauthorised borrowing . . . . .	169
163	Funds of board . . . . .	170
164	Operating fund . . . . .	170
165	Reserve fund . . . . .	171
166	Capital works fund . . . . .	171
167	Trust fund . . . . .	172
168	Accounts . . . . .	173
169	Audit of accounts . . . . .	173

***Division 5—Budget of board***

170	Budget of board . . . . .	173
171	Observance of budget and disbursements in emergent circumstances . . . .	174

***Division 6—Rates and charges***

172	Power to levy rates and charges . . . . .	176
173	Basis of rating and levying charges . . . . .	177
174	Other methods of making and levying rates . . . . .	179
175	Making and levying assessments . . . . .	179
176	Additional or alternative rate for water . . . . .	181
177	Contribution towards new or additional service . . . . .	181
178	Rate-book . . . . .	182
179	Amendment of rate-book . . . . .	183
180	Levy of rate or charge . . . . .	183
181	Appeal to Land Court . . . . .	184
182	Power of chief executive where rates and assessments insufficient to meet board's commitments . . . . .	185
183	Land subject to or exempt from rating . . . . .	186
184	Liability for payment of rates and charges . . . . .	186
185	Recovery of rates and charges . . . . .	187
186	Procedure as to payment of rates and charges upon forfeiture or surrender of lease . . . . .	187
187	Interest on rates and charges . . . . .	187
188	Discounts in respect of amounts of rates and charges . . . . .	187

***Division 7—Business and proceedings of board***

189	Conduct of business . . . . .	188
190	Meetings . . . . .	188
191	Chairperson . . . . .	188
192	Duty of chairperson at meeting . . . . .	189
193	Deputy chairperson . . . . .	189
194	Prohibition on voting by member having pecuniary interest . . . . .	189
195	Quorum . . . . .	190
196	Conduct of affairs . . . . .	190
197	Minutes . . . . .	190
198	Adjournment of meetings . . . . .	191
199	Notice of meetings . . . . .	191
200	Rescission of resolution . . . . .	192

201	Validity of proceedings . . . . .	192
202	Officers . . . . .	192
203	Suspension of officers . . . . .	193
204	Safe custody of records . . . . .	193
205	Authentication of documents . . . . .	194
206	Office . . . . .	194
207	Review of performance and operation of board . . . . .	194
208	Transfer of functions of board to local government . . . . .	195

***Division 8—General provisions***

209	Appointment of chief executive to administer area . . . . .	198
210	Power of chief executive to undertake certain works on behalf of board . . . . .	198
211	Power of board to require occupier or owner to maintain works connected to works of board . . . . .	198
212	Restriction as to breaking up railway and tramway or altering position of road . . . . .	200
213	Obstruction of member of board, officer or other person . . . . .	200
214	Protection against liability . . . . .	201
215	Fees and expenses payable to member of board . . . . .	201

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

***Division 1—Preliminary***

215A	Definitions for pt 10A . . . . .	202
215B	Application of pt 10A . . . . .	203

***Division 2—Flood mitigation***

215C	Establishment of technical advisory committee . . . . .	203
215D	Functions of committee . . . . .	203
215E	Committee meetings . . . . .	203
215F	Minister's approval of flood mitigation manual . . . . .	203
215G	Protection from liability . . . . .	204

***Division 3—Protection of water quality***

215H	Purpose of div 3 . . . . .	204
215I	Regulation of land use in catchment area . . . . .	204
215J	Effect of regulation . . . . .	205

***Division 4—Protection of existing water allocations***

215K	Purpose of div 4 . . . . .	205
215L	Existing entitlements to water continue . . . . .	205

***Division 5—Company’s power to access and maintain its facilities***

215M	Definition for div 5 . . . . .	205
215N	Appointment of authorised persons . . . . .	205
215O	Identity card for company’s authorised persons . . . . .	206
215P	Failure to return identity card . . . . .	206
215Q	Display of authorised person’s identity card . . . . .	206
215R	Power to enter places . . . . .	207
215S	Power to carry out activities . . . . .	207
215T	Compensation . . . . .	207
215U	Company to give notice of damage . . . . .	207

***Division 6—Information request***

215V	Chief executive’s power to require information from the company . . . . .	208
215W	Commercially sensitive information . . . . .	208

***Division 7—General provisions about the company***

215X	Application of Financial Administration and Audit Act 1977 . . . . .	209
------	--	-----

***Division 8—Transitional***

215Y	Existing approved manual of operational procedures for flood mitigation . . . . .	209
------	---	-----

**PART 11—MISCELLANEOUS PROVISIONS*****Division 1—Proceedings for offences—offences***

216	Proceedings for offences . . . . .	209
217	Saving of other proceedings and recovery of moneys . . . . .	210
218	Obstruction of officer or other person . . . . .	210
219	Protection of information and reports . . . . .	211
220	Restriction on liability for offence by employee or agent . . . . .	211
221	Liability for offence by body corporate . . . . .	211
222	Prohibition as to taking water on non-payment of charges therefor . . . . .	212
223	Unlawful taking, getting or removal of quarry material . . . . .	213
224	Contravention of licences and certain permits . . . . .	213

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

224A	Power to require name and address . . . . .	214
224B	Power to require answers to questions . . . . .	215
224C	Power to require production of documents . . . . .	216
224D	Failure to give name and address etc. . . . .	216
224E	Failure to answer questions . . . . .	217
224F	Failure to produce documents . . . . .	217
224G	False, misleading or incomplete documents . . . . .	217
224H	False or misleading information . . . . .	218
224I	Impersonation of authorised officer . . . . .	218

***Division 1B—Enforcement of certain notices***

224J	Definitions for div 1B . . . . .	218
224K	Orders to enforce notice under compliance section . . . . .	219
224L	Consent injunctions . . . . .	219
224M	Interim injunctions . . . . .	220
224N	Factors relevant to granting restraining injunction . . . . .	220
224O	Factors relevant to granting mandatory injunction . . . . .	220
224P	Discharge or variation of injunction or order . . . . .	221

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

225	Trespass and unlawful occupation . . . . .	221
226	Removal of trespassers . . . . .	222

***Division 3—General provisions***

229	Power to supply water in excess of entitlement under announced allocation . . . . .	225
230	Rights of chief executive upon surrender of nominal allocation . . . . .	225
231	Agreements as to transfer of water under allocation . . . . .	226
232	Person may sell right to nominal allocation . . . . .	227
233	Unlawful construction of works or interference with works . . . . .	229
234	Powers of chief executive where obstruction causes collection of water on railway, tramway or public road or public nuisance . . . . .	231
235	Warrant to enter land or premises . . . . .	232
236	Diversion of watercourse or lake and reclamation of certain land . . . . .	233

---

237	Appeal to Minister . . . . .	235
238	Compensation for injury, loss or damage . . . . .	236
239	Claim for compensation . . . . .	236
240	Procedure upon failure to reach agreement as to amount of compensation . . . . .	237
241	Jurisdiction of Land Court . . . . .	238
242	Appeal from Land Court re compensation . . . . .	238
243	Apportionment of joint liability . . . . .	238
244	Notice of transfer of land . . . . .	239
245	Searches in public offices . . . . .	239
246	Continuation in operation of notice, order and the like . . . . .	240
247	Service of documents . . . . .	240
248	Protection against liability . . . . .	241
249	Evidentiary provisions . . . . .	243
250	Approval of forms . . . . .	246
250A	Regulation-making power . . . . .	247
251	References to repealed Act . . . . .	247
<b>PART 12—TRANSITIONAL AND VALIDATION</b>		
252	Transitional provision for Natural Resources Amendment Legislation Act 1997 . . . . .	247
256	Validation of terms . . . . .	248
257	Areas continued in existence . . . . .	248
258	Remaking certain subordinate legislation . . . . .	248
<b>SCHEDULE</b> . . . . .		
<b>SUBJECT MATTER FOR REGULATIONS</b>		
1	Officers and other persons . . . . .	249
2	Inspections . . . . .	249
3	Terms and implied terms in contracts and the like . . . . .	249
4	Notices and the like . . . . .	249
5	Applications and grants etc. . . . .	249
6	Proof of matters and things and documents . . . . .	250
7	Mode of execution . . . . .	250
8	Materials for works or things . . . . .	250

---

9	Management of works . . . . .	250
10	Straying stock . . . . .	251
11	Preservation of watercourses and the like, catchment areas against injury, damage, etc. . . . .	251
12	Traffic . . . . .	251
13	Demonstration farms, experiment stations . . . . .	251
14	Improvements . . . . .	251
15	Protection of water and works . . . . .	251
16	Nuisances . . . . .	252
17	Structures . . . . .	252
18	Provision etc. of recreational or tourist facilities . . . . .	252
19	Recreational activities . . . . .	252
20	Supply of water . . . . .	253
21	Use of water for irrigation, domestic purposes, watering stock and other purposes . . . . .	253
22	Insufficiency in water supply . . . . .	253
23	Charges for water . . . . .	253
23A	Recovery of charges for water . . . . .	253
24	Drainage rates and charges . . . . .	254
25	Local services and charges therefor . . . . .	254
26	Riparian owners and occupiers . . . . .	254
27	Prevention of waste and the like of water . . . . .	255
28	Water allocations . . . . .	255
28A	Carryovers and forward draws of water allocations . . . . .	255
29	Furnishing information and returns re works . . . . .	255
30	Furnishing of information and returns re controlled quarry material . . . . .	256
31	Sale of controlled quarry material by auction and the like . . . . .	256
32	Designated areas, catchment areas . . . . .	256
33	Fees and the like . . . . .	256
34	Control of bores . . . . .	257
35	Penalties . . . . .	257
36	Interest . . . . .	257



**ENDNOTES**

1	Index to endnotes .....	258
2	Date to which amendments incorporated .....	258
3	Key .....	259
4	Table of earlier reprints .....	259
5	Tables in earlier reprints .....	260
6	List of legislation .....	260
7	List of annotations .....	262
8	List of forms .....	283
9	Table of renumbered provisions .....	283
10	Provisions that have not commenced and are not incorporated into reprint .....	297



# WATER RESOURCES ACT 1989

[as amended by all amendments that commenced on or before 31 March 2000]

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

## PART 1—PRELIMINARY

### Short title

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

### Interpretation

- 2.(1) In this Act—

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

“**approved form**” see section 250.<sup>1</sup>

“**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

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<sup>1</sup> Section 250 (Approval of forms)

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

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

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

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

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

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

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

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

**“catchment area”** see section 27.

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

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

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

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

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

**“corporation”** means the Primary Industries Corporation.

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

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

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

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

**“designated area”** see section 104.

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

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

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

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

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

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

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

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

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

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

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

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

**“irrigation undertaking”** includes all works and operations necessary for and incidental to carrying into effect the objects and purposes of part 9 within and in connection with an irrigation area, and also includes so much of the corporation’s business as relates to an irrigation undertaking.

**“lake”** includes—

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

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

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

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

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

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

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

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

**“owner”**—

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

*Water Resources Act 1989*

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

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

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

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

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

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

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

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

**“referable dam”** means—

- (a) works or proposed works that include or would include a barrier whether permanent or temporary that does or could or would impound, divert or control water, which barrier—
  - (i) is 10 m or more in height and creates a reservoir storage capacity of more than 20 000 m<sup>3</sup>; or
  - (ii) is more than 5 m in height and creates a reservoir storage capacity of 50 000 m<sup>3</sup> 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



*Water Resources Act 1989*

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or would impound, divert or control water or hazardous waste, other than a barrier defined in paragraph (a);

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

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

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

**“reservoir”** includes a bore, tank or well.

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

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

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

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

**“subartesian bore”** includes any shaft, well, gallery, spear or excavation and all works constructed in connection with any subartesian bore, shaft, well, gallery, spear or excavation which intersects an underground source of water and from which water does not flow naturally to the surface.

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

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

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

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

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

“**water available for allocation**” means—

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

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

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

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

but, in any case, only at every place upstream of the point to which the spring tide normally flows and reflows therein whether due to a natural cause or an artificial barrier therein or, when the chief executive has declared by notification under this Act a downstream limit then, during the continuance in force of that notification, only at every place upstream of that limit.

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

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

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

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

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

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

(4) In provisions of this Act that concern—

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

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

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

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

### **Rights in certain water to vest in Crown**

3. 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 2 or more owners or occupiers or a lake or spring that is situated within or abuts the land of 2 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 2 or more owners or occupiers;
    - (B) a lake or spring that is situated within or abuts the land of 2 or more owners or occupiers;
  - (ii) a barrage;
- (c) in an artesian bore, a subartesian 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.

### **Restrictions on rights in water vested in Crown**

4. 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 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 corporation or under the control of the corporation or the chief executive 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.

### **Declaration as to property in bed and banks of watercourse or lake**

**5.(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 1910*<sup>2</sup> 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 1910*, the *Water Act 1926*<sup>3</sup> 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.

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<sup>2</sup> The *Rights in Water and Water Conservation and Utilisation Act 1910* has been repealed, as from 27 October 1926.

<sup>3</sup> The *Water Act 1926* has been repealed, as from 1 February 1990.

## **PART 3—ADMINISTRATION**

### *Division 1—General*

#### **Delegation by Minister**

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

#### **Appointment of authorised officers**

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

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

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

#### **Limitation of authorised officer's powers**

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

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

#### **Authorised officer's identity card**

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

**(2)** The identity card must—

- (a) contain a recent photograph of the authorised officer; and
- (b) be signed by the authorised officer; and

(c) identify the person as an authorised officer under this Act.

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

Maximum penalty—10 penalty units.

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

### **Production or display of authorised officer's identity card**

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

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

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

### **Powers of authorised officer**

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

- (a) make such investigation, inquiry, inspection or examination as is necessary to ascertain that this Act or any requisition, order, notice or direction is being complied with;
- (b) execute, fix, remove, replace, renew, substitute, alter, repair, clean or examine any plant, equipment, works or machinery;
- (c) take account of the quantity of water taken and used and compare that quantity with the quantity entitled to be taken and used in accordance with the terms of a licence, permit, other authority or

*Water Resources Act 1989*

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water allocation under this Act;

- (d) regulate the supply of water under a licence, permit, other authority or water allocation under this Act so as to comply with the quantity entitled to be taken and used;
- (e) take all steps and do all acts and things with respect to a watercourse, lake, spring or underground source of water supply as are necessary for—
  - (i) the purpose of taking measurements and making records of the natural water resources of Queensland;
  - (ii) the conservation and regulation of water therein;
  - (iii) the prevention of the undue, excessive, illegal or improper use, diversion or waste of water therein;
  - (iv) the preservation of water therein from pollution and the prevention of pollution thereof;
  - (v) the protection of and prevention of interference with the bed, banks, channels and works thereof over or within which the water therein flows or is contained;
- (f) call to the authorised officer's aid another authorised officer or any other person who in the authorised officer's opinion is competent to assist in the exercise of the authorised officer's powers and authorities or the performance of the authorised officer's functions and duties and a person so acting in aid, while so doing, has and may exercise and perform the same powers, authorities, functions and duties as are conferred or imposed on the authorised officer by or under this Act;
- (g) use such force as is reasonably necessary in the exercise of the powers and authorities or the performance of the functions and duties conferred on the authorised officer by or under this Act;
- (h) take all steps and do all acts and things as are necessary in the exercise of the powers and authorities or the performance of the functions and duties conferred or imposed on the authorised officer by or under this Act;
- (i) exercise such other powers and authorities and perform such other functions and duties as are prescribed or delegated to the



authorised officer.

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

### *Division 2—Powers of corporation and chief executive*

#### **General powers etc. of corporation and chief executive**

**8.(1)** The corporation 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, utilisation or distribution generally of the waters of Queensland both surface and underground;
- (g) the protection and improvement of—
  - (i) springs; and
  - (ii) the beds and banks of watercourses and lakes, and other elements of watercourses and lakes that confine or contain water.

(2) The chief executive must—

- (a) prepare and keep a description of the natural water resources of Queensland, both surface and underground; and
- (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

*Water Resources Act 1989*

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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; and
- (c) evaluate the present and future water requirements of Queensland; and
- (d) make recommendations to the Minister concerning the development of the water resources of Queensland; and
- (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 the chief executive 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 *Environmental Protection Act 1994*, from anything detrimental to their quality; and
- (g) monitor the physical integrity of—
  - (i) springs; and
  - (ii) the beds and banks of watercourses and lakes, and other elements of watercourses and lakes that confine or contain water; and
- (h) take action necessary or desirable to protect—
  - (i) springs; and
  - (ii) the beds and banks of watercourses and lakes, and other elements of watercourses and lakes that confine or contain water; and
- (i) 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, coordinated and implemented

for the conservation, replenishment, utilisation and distribution of the waters of Queensland; and

- (j) coordinate the investigation, evaluation and development of plans for the control of floodwaters and mitigation of flood damage.

### **Powers of corporation with respect to works etc.**

**9.(1)** Subject to this Act, the corporation 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 corporation may—

- (a) investigate, design, construct, acquire, provide, extend, renew and improve, maintain, alter and repair works and things and discontinue those works and things which in its opinion are obsolete or of no further use;
- (b) construct works—
  - (i) to measure and record the natural water resources of Queensland, both surface and underground;
  - (ii) in, under, across, along or against a road, land or premises or under a railway or tramway in any manner it thinks necessary or proper;
  - (iii) for the supply of water to land or premises or to measure and ascertain the extent of that supply;
- (c) use water from any watercourse, lake or other source in or in connection with works or land vested in or under its control;
- (d) obtain from a watercourse or lake and its water storages and works an adequate supply of water for the purposes of this Act or any other Act;
- (e) divert, intercept and store water in or coming from any watercourse, lake or other source and for that purpose alter the course of any watercourse or other source;
- (f) divert water from one source to another;

- (g) take, for the purposes of this Act or any other Act, water found under or on land;
- (h) where reasonably practicable, provide other watering places and channels for the use of adjoining land instead of those taken away or interrupted in the exercise of a power or authority conferred or the performance of a function or duty imposed on it by this section.

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

### **Powers etc. of corporation as to ancillary works and the like**

10. For the purposes of this Act or any other Act, the corporation 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.

### **Entry upon land**

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

- (a) enter upon a road or land or premises other than a dwelling house or premises being used at the material time as a dwelling house for the purposes of this Act or any other Act that confers or

*Water Resources Act 1989*

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imposes on the corporation or chief executive powers, authorities, functions or duties;

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

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

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

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

- (a) re-enter from time to time;
- (b) remain for the time necessary to achieve the purposes for which the original entry was made;

- (c) take and keep upon the original entry or re-entry the assistants, vehicles, materials, machinery, equipment and other things necessary to achieve the purposes of the original entry.

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

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

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

(6) The corporation may be charged with payment of the costs and expenses incurred in carrying out those alterations necessary for the purposes of subsection (5).

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

### **Acquisition of land by corporation**

**12.(1)** The corporation may acquire, by agreement or resumption, land—

- (a) wherever situated, that in the opinion of the corporation is required for the purposes of this Act;
- (b) situated within an irrigation area, that in the opinion of the corporation is suitable for subdivision or amalgamation and settlement under the *Land Act 1994*.

(2) For the purposes of acquiring land by resumption, the corporation has and may exercise the powers, authorities, functions and duties conferred or imposed upon a constructing authority under the *Acquisition of Land Act*

1967 and, subject to this section, that Act applies and extends accordingly.

(3) The corporation, as a constructing authority under and within the meaning of the *Acquisition of Land Act 1967* 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 corporation will sever the balance area or part thereof from other land used by the owner, the corporation 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 the *Acquisition of Land Act 1967*, section 22, includes power to vest land in the corporation under, subject to and in accordance with the *Land Act 1994* as leasehold under the tenure the Governor in Council considers appropriate.

(6) With respect to a proposed acquisition by resumption of land in accordance with subsection (1)(b), the chief executive, upon application in writing by the owner and where the chief executive 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—

(a) may—

(i) permit the owner to retain unresumed;

(ii) 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 chief executive to enable the owner to carry on agricultural pursuits;

(b) may offer to an owner from land acquired from the owner or from other owners any additional area or additional areas determined by the chief executive 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 chief executive thinks fit.

(7) 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 chief executive, to carry on agricultural pursuits, the value placed on an

agricultural area to which subsection (6)(b) refers is the irrigable value thereof determined by the chief executive together with existing improvements.

**(8)** Where the chief executive 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 subsection (6), 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 chief executive and the owner, Crown land set apart for the purposes of this Act or land acquired by the corporation in accordance with this section including land acquired from that owner.

**(9)** Where the purchase price of the land to be transferred or sold to the owner of land under subsection (6)(a)(ii) or (b) or (8) can not be agreed upon, the chief executive—

- (a) may refer; and
- (b) 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.

**(10)** The rules as to procedure and practice of the Land Court apply to hearings and determinations under subsection (9) 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.

**(11)** A person aggrieved by a determination of the Land Court under subsection (9) or (10) may appeal therefrom to the Land Appeal Court.

**(12)** The rules as to procedure and practice of the Land Appeal Court apply to appeals under subsection (11) 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.

**(13)** The determination of the Land Court or, upon appeal therefrom, of the Land Appeal Court upon a reference under subsection (9) is final.



(14) For the purposes of subsections (9) to (13), 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.

(15) Except where an agreement for sale of land under subsections (6) to (8) otherwise provides, the purchase price for the land sold must be paid within 3 months or such longer period of time as the chief executive determines after the date of the agreement for sale or of the determination of the purchase price under subsections (9) to (14), whichever is the later date.

(16) The Governor in Council, where the Governor in Council thinks fit, may elect not to proceed with the sale of land under subsection (8).

(17) A right of election conferred by subsection (16) 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 (8) or of the determination of the purchase price of the land under subsections (9) to (14), whichever is the later date.

(18) 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 subsection (16).

### **Power of corporation to lease or dispose of land or works**

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

### **Powers of corporation where water supply area or drainage area not constituted or proposed to be abolished**

14. 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 corporation 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.

### **Power of corporation to supply water by agreement**

**15.(1)** This section applies despite section 38.<sup>4</sup>

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

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

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

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

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

**(5)** This Act or an agreement made under this section is not to be construed or operate to create on the part of the corporation an obligation to

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<sup>4</sup> Section 38 (Offences about constructing works etc. and otherwise taking water without the authority of a licence)

supply a fixed quantity of water in the event of an insufficiency in the supply of water from any cause requiring a discontinuance or lessening thereof in accordance with subsection (6).

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

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

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

(8) The corporation, 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.

(9) In this section—

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

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

**Declaration as to downstream limit along a watercourse above which the chief executive may exercise powers etc.**

**16.(1)** For the purposes of part 4 the chief executive, 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.

(2) During the continuance in force of a notification under this section, the chief executive 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 the chief executive by or under this Act with respect to watercourses above the downstream limit specified and defined in the notification.

(3) 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.

**Power of chief executive to carry out investigations, prepare estimates etc. on behalf of person**

17.(1) The chief executive 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 connection 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 government—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.

(2) The chief executive 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 connection with the development or construction of works.

(3) Work undertaken by the chief executive must be—

- (a) in the case of a project specified in subsection (1)(c), (d) or (2)(a)—upon terms agreed between the chief executive 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 chief executive.

(4) Costs, charges and expenses incurred or charges levied by the chief executive in the exercise of any power or authority conferred on the chief executive by subsection (1) or (2) must be paid to the chief executive by the person on whose behalf the power or authority was exercised.

(5) The amount of any costs, charges and expenses to which subsection (4) refers which are not paid is a debt due to the Crown and may be recovered by the chief executive in a court of competent jurisdiction.

### **Power of chief executive with respect to pipes etc. to be used for certain purposes**

**18.(1)** The chief executive 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 connection with water supply, sewerage, septic tank installations, swimming pools, drainage works of all kinds or other purposes approved by the chief executive.

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

### *Division 3—Advisory council and advisory committees*

#### **Establishment and functions**

**19.(1)** The Minister may establish—

*Water Resources Act 1989*

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- (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 corporation or chief executive is required by law to administer and that confers or imposes on the corporation or the chief executive powers, authorities, functions or duties;
- (b) subject to paragraph (a), those matters specified by the Minister when establishing the council.

(3) The functions of an advisory committee are—

- (a) to advise the chief executive with respect to—
  - (i) the exercise by the chief executive of the powers and authorities and the performance by the chief executive of the functions and duties conferred or imposed on the chief executive by or under this Act or any other Act;
  - (ii) subject to subparagraph (i), those matters specified by the Minister when 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 chief executive 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 chief executive 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 chief executive 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.

### **Membership**

**20.(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 Minister or as the Minister determines.

**(2)** The Minister 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.

### **Further matters about the operation of a council or committee**

**21.** If the Minister establishes the advisory council or an advisory committee, the Minister must decide in writing—

- (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 chairperson and the mode of appointment or of nomination and appointment of the members;
- (c) if the Minister 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 chief executive;
- (e) any other matters with respect to the establishment and functions of the council or committee that the Minister in a particular case thinks fit.

**Duty of chief executive**

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

***Division 4—Financial and other general provisions*****Corporation is statutory body**

23. Under the *Statutory Bodies Financial Arrangements Act 1982*, the corporation is a statutory body.<sup>5</sup>

**Stamp duty**

24. Notwithstanding the *Stamp Act 1894* 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 corporation.

**Power to remit payment of charges or interest thereon**

25. The Minister, where the Minister 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 or the corporation.

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<sup>5</sup> The corporation is declared to be a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* under the *Primary Industries Corporation Act 1992*, section 7A.



## **PART 3A—WATER MANAGEMENT PLANS**

### *Division 1—Preliminary*

#### **Definitions for pt 3A**

**25A.** In this part—

“**plan area**”, for a draft water management plan or water management plan, means the part of Queensland to which the plan applies.

“**proposed plan area**” means the part of Queensland to which a draft water management plan, when prepared, is proposed to apply.

### *Division 2—Preparation and approval of water management plans*

#### **Water management plans may be made**

**25B.(1)** The Minister may make water management plans for parts of Queensland.

(2) The Minister may make a water management plan only by making a draft water management plan, prepared under this division, as the water management plan.

(3) A water management plan is subordinate legislation.

#### **Content of water management plans**

**25C.(1)** A water management plan must—

- (a) describe the plan area for the plan; and
- (b) state whether the plan applies to underground water or water other than underground water, or both; and
- (c) include the principles and policies under which the right vested in the Crown under section 3 is to be exercised for the plan area.

(2) A water management plan may—

- (a) include a map or series of maps showing water resource

information; and

- (b) make provision for anything about which a regulation may be made under this Act.

### **Public notice of proposal to prepare draft water management plan**

**25D.(1)** The Minister must give public notice when the Minister proposes to prepare a draft water management plan.

**(2)** The notice must—

(a) be published in—

- (i) a newspaper circulating generally throughout the proposed plan area; and
- (ii) other newspapers the Minister considers appropriate; and

(b) invite submissions (written or oral) from the public; and<sup>6</sup>

(c) state a day (not earlier than 30 business days from the publication of the notice) by which submissions may be made, and the person to whom, and the place where, the submissions may be made.

**(3)** The notice may state whether it is intended that the draft plan apply only to underground water or water other than underground water, or both.

**(4)** The Minister must send a copy of the notice to each local government whose local government area includes the whole or part of the proposed plan area.

**(5)** The Minister may send a copy of the notice to any person or group the Minister considers appropriate.

### **Principles and policies for draft water management plan**

**25E.** In preparing the principles and policies to be included in a draft water management plan, the Minister must have regard to the following for the plan area—

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<sup>6</sup> Under section 19, the Minister may also establish an advisory council or committee.

- (a) the total water rights vested in the Crown;<sup>7</sup>
- (b) existing entitlements to water under the Act, including, for example, entitlements of riparian owners, licensees and permittees and entitlements under agreements;
- (c) the provision of water for ecosystems;
- (d) the extent of beneficial flooding currently enjoyed by landowners;
- (e) future water needs;
- (f) water flows;
- (g) underground water levels.

### **Public notice inviting submissions on draft water management plan**

**25F.(1)** The Minister must give public notice when a draft water management plan has been prepared.

**(2)** The notice must—

- (a) be published in—
  - (i) a newspaper circulating generally throughout the plan area for the draft plan; and
  - (ii) other newspapers the Minister considers appropriate; and
- (b) state where copies of the draft plan may be inspected and, on payment of a fee, purchased; and
- (c) invite submissions (written or oral) from the public; and
- (d) state a day (not earlier than 30 business days from the publication of the notice) by which submissions may be made, and the person to whom, and the place where, the submissions may be made.

**(3)** The Minister must send a copy of the notice and draft plan to each local government whose local government area includes the whole or part of the plan area.

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<sup>7</sup> Section 3 is about rights vested in the Crown. Section 4 is about restrictions on those rights.

(4) A local government receiving a copy of the draft plan must make the copy available for inspection by the public.

(5) The Minister may send a copy of the notice to any person or group the Minister considers appropriate.

### **Submissions to be considered before water management plan made**

**25G.** Before making the draft plan as a water management plan, the Minister must consider all submissions made, by the day mentioned in section 25F(2)(d), about the draft plan.

### **Draft plan must be readvertised if changed**

**25H.(1)** The Minister must not make a draft water management plan as a water management plan if the draft plan is different from the draft plan public notice of which was given under section 25F.

(2) If a draft plan, proposed to be made as a water management plan, is different from the draft plan public notice of which was given under section 25F, section 25F applies again to the draft plan proposed to be made as a water management plan.

(3) This section does not apply if the difference—

- (a) corrects a minor error in the draft plan of which the notice was given; or
- (b) is not a change of substance; or
- (c) is merely the expression of the draft plan in a way that is different from, and not inconsistent with, the draft plan of which the notice was given.

### **Approval of water management plan**

**25I.** A water management plan does not have effect until it is approved by the Governor in Council.

### **Notice of intention not to proceed further toward making water management plan**

**25J.(1)** This section applies if the Minister has given public notice that—

- (a) the Minister proposed to prepare a draft water management plan but has not prepared a draft water management plan; or
- (b) a draft water management plan has been prepared.

**(2)** If the Minister decides not to proceed further under this division towards the making of a water management plan, the Minister must give public notice of the decision.

**(3)** The notice must be published in—

- (a) a newspaper circulating generally throughout—
  - (i) if subsection (1)(a) applies—the proposed plan area; or
  - (ii) if subsection (1)(b) applies—the plan area; and
- (b) other newspapers the Minister considers appropriate.

**(4)** The Minister must send a copy of the notice to each local government, person or group to whom the Minister sent a notice—

- (a) about the proposed preparation of the plan; and
- (b) if the draft plan was prepared—when the draft plan was prepared.

### **Amendment of water management plan**

**25K.(1)** A water management plan (the “**first plan**”) may be amended by another plan (the “**amending plan**”) only if the procedures applying to the preparation of a draft water management plan, and the making and approval of a water management plan, under this part are followed for the amending plan.

**(2)** Without limiting subsection (1), the amending plan may—

- (a) change the boundaries of the plan area for the first plan; or
- (b) amalgamate the first plan with another plan; or
- (c) change the principles or policies of the first plan.

**(3)** Despite subsection (1), a regulation may amend a water management

plan (and the procedures mentioned in subsection (1) do not apply) if the amendment is only—

- (a) to correct a minor error in the plan, or make another change that is not a change of substance; or
- (b) if the plan states that an amendment of a stated type may be made to the plan by amendment under this subsection—to make an amendment of the stated type.

### **Public inspection and purchase of plans**

**25L.(1)** The chief executive must keep each draft water management plan prepared, and each water management plan made, under this part, available for inspection by the public during office hours on business days at the head office, and at the appropriate regional office, of the department.

**(2)** The chief executive may also keep a plan mentioned in subsection (1) available for inspection by the public at other places the chief executive considers appropriate.

**(3)** On payment of a fee, a person may buy a copy of a plan.

**(4)** The fee for a copy of the plan must not be more than the reasonable cost of publishing the copy.

### **Regulatory impact statements**

**25M.** A regulatory impact statement under the *Statutory Instruments Act 1992* need not be prepared for a water management plan made under this part.

### ***Division 3—Effect of notice of proposal to prepare plan***

#### **Effect of notice under s 25D on applications, agreements, sales, etc.**

**25N.(1)** If the Minister gives public notice that the Minister proposes to prepare a draft water management plan—

- (a) the corporation must not negotiate about, or enter into, an

*Water Resources Act 1989*

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agreement for the supply of water under section 15<sup>8</sup> for the area;  
and

- (b) the chief executive must not deal with an application made under section 39, 42 or 45<sup>9</sup> about works in the area; and
- (ba) the chief executive must not deal with an application made under section 44(2) about works, or the taking of water, in the area; and
- (c) the chief executive must not deal with an application made under section 56<sup>10</sup> about a watercourse, lake, spring or underground water in the area; and
- (d) the chief executive must not take action under part 5<sup>11</sup> about the sale of an entitlement to be issued a licence for a nominal allocation of water provided by works in the area; and
- (e) the chief executive must not grant or amend, under part 9, division 3,<sup>12</sup> a nominal allocation for specified land in the area; and
- (f) no action may be taken under part 10, division 1,<sup>13</sup> for constituting, in relation to works in the area, a water supply area.

(2) Subsection (1) applies on and from the day the notice is published (the “**publication day**”) until—

- (a) a water management plan for the area is notified under the *Statutory Instruments Act 1992*; or

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<sup>8</sup> Section 15 (Power of corporation to supply water by agreement)

<sup>9</sup> Section 39 (Rights of non-riparian owner to licence), 42 (Application for licence) or 45 (Amended licence)

<sup>10</sup> Section 56 (Power to issue permit to government department, other person or body to take water)

<sup>11</sup> Part 5 (Sale of water entitlements)

<sup>12</sup> Part 9 (Irrigation undertakings and areas), division 3 (Water allocations in irrigation areas)

<sup>13</sup> Part 10 (Water supply areas and drainage areas), division 1 (Constitution of area)

(b) the Minister publishes a notice under section 25J.<sup>14</sup>

**(3)** To remove any doubt, it is declared that subsection (1) applies—

- (a) for negotiations about an agreement—even if the negotiations started before the publication day; and
- (b) for an application—even if the application was made before the publication day.

**(4)** In subsections (1) and (2)—

“**area**” means—

- (a) until a notice under section 25F<sup>15</sup> has been published—the proposed plan area; and
- (b) once a notice under section 25F has been published—the plan area for the most recent draft water management plan.

### **Exceptions to s 25N**

**250.(1)** Section 25N does not apply to the following—

- (a) an application for a licence to construct works or a bore to take water—
  - (i) only for domestic purposes or for watering stock; or
  - (ii) for the watering of crops for feeding stock, if the application—
    - (A) relates to a crop area of no greater than 10 ha; and
    - (B) was made before a notice published under section 25D<sup>16</sup> was first published in a newspaper; or
  - (iii) if the application does not seek an increase in the benefit to which the licensee is entitled under an existing licence;

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<sup>14</sup> Section 25J (Notice of intention not to proceed further toward making water management plan)

<sup>15</sup> Section 25F (Public notice inviting submissions on draft water management plan)

<sup>16</sup> Section 25D (Public notice of proposal to prepare draft water management plan)



- (b) an application for a driller's licence;
- (c) an application to construct a levee bank;
- (d) an application for a licence in relation to underground water, if the notice published under section 25D states that it is not intended that the plan apply to underground water;
- (e) an application for a licence in relation to water other than underground water, if the notice published under section 25D states that it is not intended that the plan apply to water other than underground water;
- (f) if a supply of water is required by a local government in an emergency situation—
  - (i) negotiations for, or the granting of, a permit under section 56; or
  - (ii) negotiations for, or the making of, an agreement under section 15;
- (g) a water matter, if—
  - (i) the matter is in relation to authorised works; and
  - (ii) the matter relates to an amount of water it was proposed would be available after the construction of the works; and
  - (iii) the whole of the amount of water has not been allocated, sold, granted or otherwise disposed of.

(2) In subsection (1)(a)(i)—

**“stock”** means stock—

- (a) of a number not more than the number depastured ordinarily on the land to which the application relates, having regard to seasonal fluctuations in the carrying capacity of the land; and
- (b) not held in close concentration for a purpose other than grazing.

(3) In subsection (1)(g)—

**“authorised works”** means works the corporation may construct under section 8 or 114.<sup>17</sup>

**“water matter”** means—

- (a) a negotiation about, or entering into, an agreement for the supply of water under section 15; or
- (b) an application made under section 39, 42, 45 or 56; or
- (c) an action taken under part 5; or
- (d) the grant or amendment of a nominal allocation under part 9, division 3; or
- (e) an action taken under part 10, division 1.

#### *Division 4—Compliance with plan*

### **Actions must not be inconsistent with water management plan**

**25P.(1)** An action taken, or decision made, under this Act in relation to the plan area for a water management plan must not be inconsistent with the plan.

**(2)** For subsection (1), an action is taken, or a decision is made, in relation to the plan area if the action is taken or the decision is made for—

- (a) negotiating about, or entering into, an agreement for the supply of water under section 15<sup>18</sup> for the plan area; or
- (b) dealing with an application made under section 39, 42 or 45<sup>19</sup> about works in the plan area; or
- (ba) dealing with an application made under section 44(2) about works, or the taking of water, in the area; or

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<sup>17</sup> Section 8 (General powers etc. of corporation and chief executive) or 114 (Power to construct works and do necessary acts and things in connection with irrigation undertaking)

<sup>18</sup> Section 15 (Power of corporation to supply water by agreement)

<sup>19</sup> Section 39 (Rights of non-riparian owner to licence), 42 (Application for licence) or 45 (Amended licence)

- (c) dealing with an application made under section 56<sup>20</sup> about a watercourse, lake, spring or underground water in the plan area; or
- (d) the sale under part 5<sup>21</sup> of an entitlement to be issued a licence for a nominal allocation of water provided by works in the plan area; or
- (e) the grant or amendment, under part 9, division 3,<sup>22</sup> of a nominal allocation for specified land in the plan area; or
- (f) constituting, under part 10, division 1,<sup>23</sup> in relation to works in the plan area, a water supply area.

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

### *Division 1—General provisions*

#### **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**

**26.(1)** 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 regulation, may declare that, on and from the date of the regulation, the bed and banks of that

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<sup>20</sup> Section 56 (Power to issue permit to government department, other person or body to take water)

<sup>21</sup> Part 5 (Sale of water entitlements)

<sup>22</sup> Part 9 (Irrigation undertakings and areas), division 3 (Water allocations in irrigation areas)

<sup>23</sup> Part 10 (Water supply areas and drainage areas), division 1 (Constitution of area)

watercourse or lake or the parts thereof that form the boundary become the property of the Crown.

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

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

### **Control over catchment area**

**27.(1)** For the purpose of preserving water quality, a regulation may—

- (a) declare an area to be a catchment area; and
- (b) authorise the chief executive to control specified use of land in the catchment area, including, for example—
  - (i) the subdivision of land; and
  - (ii) the rezoning of land; and
  - (iii) the disposal of effluent; and
  - (iv) another activity that may affect water quality; and
- (c) prescribe how the chief executive may exercise the control.

(2) A regulation under this section may—

- (a) provide that the chief executive may delegate the chief executive's powers under the regulation, in relation to land in a catchment area, to the local government in whose area the land is situated; and
- (b) make provision about the exercise of a delegated power.

### **Certain quarry material to be and remain property of Crown**

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

- (a) the property of or deemed to be the property of the Crown;
- (b) situated in or on—

- (i) Crown land;
- (ii) land reserved for or dedicated to public purposes within the meaning of the *Land Act 1994*;
- (iii) a Crown holding;

is and remains the property of the Crown.

### **Wastage of water from artesian or subartesian bore**

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

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

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

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

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

Maximum penalty—200 penalty units.

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

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

under subsection (2).

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

### **Supply of surplus water from artesian or subartesian bore**

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

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

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

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

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

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

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

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

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

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

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

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

### **Prohibition as to diversions and appropriations of water**

**33.(1)** Except in the case of a diversion or appropriation of water by a person referred to in section 4(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 36 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 1994*; or

(b) otherwise under this Act.

(2) This section applies notwithstanding the *Mineral Resources Act 1989*, 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*.<sup>24</sup>

### **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**

**34.(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 or herself, his or her family, his or her employees or agents or his or her 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 paragraph (a) any action for trespass which the owner or occupier 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

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<sup>24</sup> The *Water Act and Another Act Amendment Act 1973* has been repealed, as from 1 December 1994.



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.

### **Right to take water by prescription or use prohibited**

**35.** 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 corporation or under the control of the corporation or chief executive;
- (b) to take, use or divert water from an artesian bore or a subartesian bore.

### **Ordinary riparian rights to use water**

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

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

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

**(2)** For the purposes of this section—

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

**Control of certain quarry material**

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

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

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

***Division 1A—Certain specific provisions about subartesian bores*****Act applies to subartesian bores in declared subartesian areas**

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

**Exemptions for small bores in declared subartesian areas**

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

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

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

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

***Division 2—Licences*****Offences about constructing works etc. and otherwise taking water without the authority of a licence**

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

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

works in the nature of a barrage; or

- (f) uses works in the nature of a barrage constructed in that part of a river, creek or stream or in a lake specified in paragraph (e) and in existence immediately prior to the commencement of the *Water Act Amendment Act 1979*;<sup>25</sup> or
- (g) constructs on the person's land a levee bank or uses a levee bank so constructed; or
- (h) constructs on the person's land an artesian bore or uses an artesian bore so constructed or enlarges, deepens or alters in any manner an artesian bore; or
- (i) in a declared subartesian area—constructs on the person's land a subartesian bore or uses a subartesian bore so constructed or enlarges, deepens or alters in any manner a subartesian bore; or
- (j) constructs in a designated area controlled works; or
- (k) keeps or uses, in a designated area, controlled works constructed before the constitution of the designated area;

commits an offence against this Act.

Maximum penalty—

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

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

(3) An application for a licence for the following works in a designated area must be made within 90 days after the constitution of the designated area, or any longer period decided by the chief executive in a particular case—

- (a) controlled works, specified under a regulation under section 104 as acceptable proposed works, being constructed when the

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<sup>25</sup> The *Water Act Amendment Act 1979* has been repealed, as from 1 February 1990.

designated area is constituted;

- (b) controlled works constructed before the designated area is constituted.

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

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

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

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

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

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

- (a) a penalty under the *Harbours Act 1955* section 86;<sup>26</sup>
- (b) any claim, demand or action for nuisance, trespass, encroachment, obstruction or otherwise.

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<sup>26</sup> The *Harbours Act 1955* has been repealed. However, section 86 of that Act continues to have effect under the *Transport Infrastructure Act 1994*, section 236 (Continuation of certain provisions of Harbours Act requiring approval for certain matters).

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

(10) For the purposes of this section—

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

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

### **Rights of non-riparian owner to licence**

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

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

(3) The application must be accompanied by—

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

(4) Where the applicant is unable to make arrangements under

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

(5) An authority under subsection (4)—

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

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

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

(7) The terms of an authority under subsection (4) have force and effect as if they formed part of an agreement under this section by the parties concerned and may be enforced accordingly.

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

(9) A licensee under this section or a proposed transferee of a licence

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

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

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

### **Power of court upon conviction for an offence against s 38**

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

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

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



purpose and take all steps and do all acts and things as specified in the order.

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

### **Alterations other than for repair or maintenance of works prohibited**

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

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

commits an offence against this Act.

Maximum penalty—

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

### **Application for licence**

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

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

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

(3) The chief executive may require an applicant to give to the chief

executive further information, plans and other documents relevant to the application.

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

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

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

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

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

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

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

(8) The notice must specify—

*Water Resources Act 1989*

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

objections to the application may be lodged.

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

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

- (a) if the application is about works constructed or to be constructed in or on a watercourse or spring—
  - (i) the land is situated so that—
    - (A) the nearest part of the land upstream of the applicant's land or the land to which the application relates (the "**affected land**") is within a radius of 8 km of the affected land; or
    - (B) the nearest part of the land downstream of the affected land is within a radius of 24 km of the affected land; and
  - (ii) if the land does not abut the watercourse or spring—the owner of the land holds a licence granted on an application under section 39; or
- (b) if the application is about works constructed or to be constructed on a lake—
  - (i) the nearest part of the land to the applicant's land or the land to which the application relates (the "**affected land**") is within a radius of 8 km of the affected land; and
  - (ii) if the land does not abut the lake—the owner of the land holds a licence granted on an application under section 39; or

- (c) if the application is about works other than controlled works or an artesian bore or a subartesian bore constructed or to be constructed elsewhere than in or on a watercourse, lake or spring—the land is so situated that any point on its boundary nearest to the affected land is within a radius of 8 km measured from a point on the affected land nearest to the land; or
- (d) if the application is about an artesian bore or a subartesian bore—the land is so situated that any point on its boundary nearest to the affected land is within a radius of 0.5 km measured from a point on the affected land nearest to that land.

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

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

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

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

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

### **Inquiry by chief executive and grant or refusal of application**

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

- (a) if the application relates to water other than underground water—
  - (i) the availability and sufficiency of water to supply the requirements of—

*Water Resources Act 1989*

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- (A) riparian owners; and
  - (B) licensees; and
  - (C) permittees; and
  - (D) the applicant; and
  - (E) persons specified in section 4(a);
- (ii) the effect that the granting of the application will have or is likely to have on entitlements of riparian owners, licensees and permittees;
- (b) if the application relates to underground water—
    - (i) the availability and sufficiency of water to satisfy the requirements of—
      - (A) licensees; and
      - (B) the applicant;
    - (ii) the effect that the granting of the application will have or is likely to have on the requirements of owners of neighbouring land and licensees;
- (c) if the application relates to an existing or proposed referable dam—
    - (i) the sufficiency of the dam to prevent the uncontrolled loss or release of the water or hazardous waste contained by the dam; and
    - (ii) the risk to life or property that would or could be endangered by the uncontrolled loss or release of water or hazardous waste caused by the collapse or failure of the referable dam; and
    - (iii) the matters mentioned in paragraph (a) or (b), if either paragraph applies to the application.
- (d) if the application is for a driller's licence—the suitability of the applicant to hold a driller's licence of the type stated in the application, including, for example, the applicant's skills in different aquifer systems and knowledge and proficiency in different drilling techniques.

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

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

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

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

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

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

as the chief executive thinks fit.

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

**Certain decisions of the chief executive to be published in newspapers**

**43A.(1)** This section applies to a decision, made by the chief executive under section 43, about which a person may, under section 51,<sup>27</sup> appeal to the Land Court, other than a decision about constructing or using an artesian or subartesian bore.

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

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

**Notice of decision about constructing or using artesian or subartesian bores**

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

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

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

- (a) the reasons for the decision; and
- (b) that the applicant may, under section 51, appeal against the decision to the Land Court within 30 days after the day the notice is received by the applicant.

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

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<sup>27</sup> Section 51 (Appeal to Land Court) states the persons who may appeal against decisions of the chief executive to the Land Court, the process for making the appeal, the way the matter must be heard and determined by the Land Court and other matters.

**Licences****44.(1)** A licence under this Act—

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



*Water Resources Act 1989*

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- (B) rectification, to the satisfaction of the chief executive, of damage done to the extent and in respect of any area in the locality of the referable dam in question the chief executive determines;
  - (vii) the chief executive may at any time require the licensee to give notice to the chief executive of the licensee's intention to take water to which the licensee is entitled under the licensee's licence and including information as to the quantity of water required and the period during which the quantity is to be taken;
  - (viii) the licensee in a case to which subparagraph (vii) applies must notify the chief executive forthwith of any variation in those requirements; and
- (ba) without limiting paragraph (a), may include—
- (i) terms that are designed to protect the access (including future access) of persons other than the licensee to water, including because of the combined effect of the licence and other licences held by the licensee; and
  - (ii) terms that have regard to other licences held by the licensee, including, for example, terms that apply having regard to the combined effect of the licence and the other licences; and
- (c) where applicable, entitles the licensee to the grant of a nominal allocation; and
  - (d) operates for the benefit of the owner for the time being of the land on which the works the subject of the application are constructed or proposed to be constructed or of the person whose proposal it is; and
  - (e) remains in force, unless sooner cancelled, revoked or suspended, for a period determined by the chief executive in a particular case or class of cases, specified therein; and
  - (g) must authorise the holder, during the period of the licence, to do all acts and things necessary for and incidental to the purposes for which the licence is granted and issued; and
  - (h) must, subject to this Act, entitle the holder during the period of the licence to the quiet enjoyment and sole occupation of works

constructed under the authority thereof as against all other persons but so far only as those works are constructed or maintained on the land occupied by the holder or the subject of an arrangement or an authority made or granted under section 39; and

- (i) must not prejudice or affect in any way the operation of any other Act or law that applies to works the subject of the licence except that for the purposes of ensuring the safety of a referable dam and the protection of life or property that would or could be endangered by the uncontrolled loss or release of water or hazardous waste caused by the collapse or failure of a referable dam, this Act and the terms of the licence prevail.

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

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

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

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

(5) The chief executive, at the beginning of a period determined by the chief executive in each year or from time to time during that period may, in respect of each nominal allocation to which a licensee has become entitled under the licensee's licence determine an announced allocation and may alter, amend or vary an announced allocation so determined.

### **Amended licence**

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

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

### **Renewal of licence**

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

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

(1B) The chief executive may—

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

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

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

- (a) the application is granted—
  - (i) absolutely;
  - (ii) subject to variation of the licence by—
    - (A) the amendment, modification or revocation of a term to which it is subject or the addition of a further term; or
    - (B) the reduction of the amount of water that the holder thereof is entitled to take and use under the licence; or
    - (C) the reduction of the area of land to which the licence applies; or

(D) a combination of 2 or more of those variations specified in sub-subparagraphs (B) and (C);

(b) the application is refused.

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

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

### **Transferring licences**

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

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

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

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

### **Surrender of licence**

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

(2) A surrender under this section—

(a) subject to paragraph (b) takes effect on and from the date on which the notice is received by the chief executive;

(b) may be made subject to a condition that the licensee must remove, to the satisfaction of the chief executive and prior to a date determined by the chief executive and notified to that licensee, all works constructed or used under the authority of the licence and in that event will take effect on and from the date on which notification has been given by the chief executive that the works have been removed to the chief executive's satisfaction;

- (c) does not derogate from or affect in any way a duty with respect to works imposed on the licensee by or under this Act prior to the surrender of the licence.

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

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

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

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

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

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

### **Effect of disposal of subdivided land**

**49.(1)** This section applies if—

- (a) a licence, authorising water to be taken, is in force for land; and
- (b) the land is subdivided, whether before or after the issue of the licence; and
- (c) a separate parcel of land comprising the subdivision is disposed of while the licence is in force.

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

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

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

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

### **Amendment, variation, cancellation, revocation or suspension of licence**

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

- (a) a licence was granted, issued or renewed in error or in consequence of a false or fraudulent document, statement or representation;
- (b) there has been since the date of grant or renewal of the licence a change in circumstances necessitating amendment of a term of that licence or the imposition of a further term;
- (c) the licensee—
  - (i) has been convicted of an offence against this Act in relation to the licence in question;
  - (ii) has contravened or failed to comply with a term of the licensee's licence or of an arrangement or authority under section 39 given in relation to that licence;
  - (iii) has not complied with a requirement made by the chief executive, under this Act, about the works the subject of the licence;

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

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

executive—

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

the licence in question.

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

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

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

### **Procedure for internal review of decision about driller's licences**

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

- (a) a decision under section 43(2) in relation to a driller's licence, other than a decision to grant the application absolutely;
- (b) a decision under section 50(2) to amend, vary, cancel, revoke or suspend a driller's licence.<sup>28</sup>

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

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

(3) The application must—

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<sup>28</sup> Sections 43 (Inquiry by chief executive and grant or refusal of application) and 50 (Amendment, variation, cancellation, revocation or suspension of licence)

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

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

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

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

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

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

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

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

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

(10) Subsection (6) applies despite the *Acts Interpretation Act 1954*, section 27A.<sup>29</sup>

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<sup>29</sup> *Acts Interpretation Act 1954*, section 27A (Delegation of powers)



**Stay of operation of original decisions**

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

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

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

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

**Appeal to Land Court**

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

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

(2) A person who had a right to object, and objected, under section 84<sup>30</sup> about a notice of intention to sell or under section 87<sup>31</sup> about an amendment of the notice may, within 30 days after the subsequent sale proposal is last published under section 88,<sup>32</sup> appeal to the Land Court about the proposal.

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<sup>30</sup> Section 84 (Persons who are eligible to give objections)

<sup>31</sup> Section 87 (Objections to amendment)

<sup>32</sup> Section 88 (Steps to be taken after inquiry)

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

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

**(4)** An appeal under this section is instituted by filing a notice of appeal in the registry of the Land Court within 30 days after—

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

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

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

**(7)** The Land Court must hear and determine the appeal and may confirm, vary or revoke the decision of the chief executive the subject of the appeal.

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

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

(10) The jurisdiction of the Land Court to hear and determine an appeal under this section is vested in 1 member only and the decision upon the appeal is final and is not further justiciable.

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

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

(13) In subsection (1)—

**“dissatisfied person”** means—

- (a) for a decision about an application for a licence or for the renewal of a licence—the applicant; or
- (b) for a decision about the amendment, variation, cancellation, revocation or suspension of a licence—the person who was the licensee when the decision was made; or
- (c) for a decision about an application for the transfer of a licence—the transferor and the transferee; or
- (d) for a decision about an application under section 39<sup>33</sup>—the owner of intervening land mentioned in section 39(4); or
- (e) a person who, on or before the date specified in a notice under section 42(8),<sup>34</sup> had a right to object, and objected, to an application; or
- (f) a person who is the purchaser of land from another person who, on or before the date specified in a notice under section 42(8), had a right to object to an application, but only if the purchase was settled after the date specified in the notice.

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<sup>33</sup> Section 39 (Rights of non-riparian owner to licence)

<sup>34</sup> Section 42 (Application for licence)

**Application for reduction in water entitlement or area of land**

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

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

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

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

**Requirement as to licensing and employment of drillers**

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

Maximum penalty—200 penalty units.

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

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

**Licence in substitution**

**54.** Where the chief executive—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the application.

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

**(5)** A permit under subsection (3)—

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

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

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

**Application for and issue of permit in respect of quarry material**

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

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

in or from a watercourse or lake must be—

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

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

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

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

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

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

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

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

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

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

**(9)** A permit under subsection (7)—

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

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

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

in an amount determined by the chief executive to ensure—

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



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

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

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

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

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

### **Procedure before dealing with controlled quarry material on Crown holding**

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

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

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

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

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

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

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

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

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

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

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

recommendations on the proposal and all objections.

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

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

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

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

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

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

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

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

under subsection (6).

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

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

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

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

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

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

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

### **Sale of controlled quarry material**

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

(2) A sale pursuant to this section—

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

### **Sale of controlled quarry materials to fossicker**

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

(2) If the person collects not more than 1 m<sup>3</sup> of controlled quarry materials in a year, the corporation is taken to have sold the controlled quarry materials to the person at no cost.

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

### **Royalty or price**

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

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

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

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

Maximum penalty—50 penalty units.

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

### **Amendment, variation, cancellation, revocation or suspension of permit**

**64.(1)** The chief executive may—

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

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

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

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

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

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

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

### **Notice to stop unauthorised quarrying activities etc.**

**64A.(1)** This section applies if—

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

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

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

Maximum penalty—200 penalty units.

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

- (a) a penalty is imposed under section 223<sup>35</sup> in relation to the activity; or
- (b) an enforcement injunction is obtained under part 11, division 1B.<sup>36</sup>

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<sup>35</sup> Section 233 (Unlawful construction of works or interference with works)

<sup>36</sup> Under part 11, division 1B an injunction may be obtained if a person contravenes a notice under section 76(1).

***Division 4—Limitation on taking and use of water—unauthorised works*****Limitation of times during which water may be taken under licence or permit****65.(1)** The chief executive—

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

may determine and notify—

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

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

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

**(3)** A person who—

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

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

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



**Offences as to dealing with water**

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

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

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

Maximum penalty—200 penalty units.

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

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

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

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

Maximum penalty—200 penalty units.

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

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

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

### **Powers of chief executive with respect to unauthorised works**

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

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

Maximum penalty—

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

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

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

***Division 5—Protecting and improving the physical integrity of watercourses***

**Definitions**

**68.** In this division—

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

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

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

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

**Division binds the Crown**

**69.(1)** This division binds the Crown.

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

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

**Destruction of vegetation, excavation or placing of fill**

**70.(1)** A person must not—

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

unless—

*Water Resources Act 1989*

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

Maximum penalty—400 penalty units.

(2) Subsection (1) does not apply to—

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

- of fire risk given under the *Fire Service Act 1990*;<sup>37</sup> or
- (ii) that is permitted or required to be carried out under the *Electricity Act 1994* to prevent—
    - (A) obstruction of, or interference with, an electric line; or
    - (B) creation of an electrical hazard; or
  - (iii) that happens as a necessary part of works that are carried out under this Act other than under a licence, permit or notice; or
  - (iv) if the vegetation is regrowth, and does not consist of mulga or other fodder trees—following destruction under a permit given under section 71 less than 2 years previously; or
  - (v) if the vegetation has been lawfully planted for woodlot, fodder, agriculture, forestry, garden or horticultural purposes; or
  - (vi) that is necessary—
    - (A) to prevent personal injury or property damage; or
    - (B) to provide for emergency access.

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

### **Permit to destroy vegetation or to excavate or fill**

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

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

**(1A)** If the applicant is not the owner of land that wholly contains the watercourse, lake or spring or that part of the watercourse, lake or spring

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<sup>37</sup> Now see *Acts Interpretation Act 1954*, s 141 and *Fire Service Amendment Act 1996*, s 5.

where the activity is to take place, the application must include the written consent of all owners of land—

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

(2) The application must—

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

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

(4) The chief executive may—

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

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

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

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

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

(9) No compensation is payable because of—

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

**Matters to be considered by chief executive**

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

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

**(2)** The chief executive must then consider—

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

**Cancellation of permit or amendment of terms of permit**

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

*Water Resources Act 1989*

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

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

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

(3) The notice must—

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

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

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

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

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

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



**Suspension of permit in exceptional circumstances**

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

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

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

Maximum penalty—400 penalty units.

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

**Limited nature of permit**

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

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

**76.(1)** This section applies if—

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

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

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

Maximum penalty—200 penalty units.

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

- (a) a penalty is imposed under section 70 for the activity; or
- (b) an enforcement injunction is obtained under part 11, division 1B.<sup>38</sup>

### **Notice to remove vegetation etc.**

**77.(1)** If—

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

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

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<sup>38</sup> Section 70 creates offences for destroying vegetation etc. Under part 11, division 1B an injunction may be obtained if a person contravenes a notice under section 76(1).

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

Maximum penalty—200 penalty units.

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

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

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

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

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

(8) In this section—

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

## Appeals

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

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

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

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

which—

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

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

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

(5) An appeal is started by—

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

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

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

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

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

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

## **PART 5—SALE OF WATER ENTITLEMENTS**

### **Purpose of this part**

**79.** The purpose of this part is to allow recovery of costs incurred by the

State in providing works by enabling the chief executive to sell, to owners of land—

- (a) entitlements to enter into agreements under section 15<sup>39</sup> to take and use nominal allocations of water provided by the works; or
- (b) entitlements to be issued licences under this part to take and use nominal allocations of water provided by the works.

### **Definitions for pt 5**

**80.** In this part—

**“agreement party”** means a person who enters into an agreement with the corporation under section 15 under an entitlement under this part.

**“entitlement”** means an entitlement to enter into an agreement with the corporation under section 15 or to be issued a licence under this part to take and use a nominal allocation for land specified in a sale proposal.

**“entitlement information”**, for the sale of entitlements, means information specifying—

- (a) the quantity of water available for sale; and
- (b) the land whose owners will be entitled to purchase the entitlements; and
- (c) the way the entitlements will be sold, including how the purchaser and the price will be decided; and
- (d) the terms that may be included in a potential agreement or potential licence, including, for example—
  - (i) conditions about the subsequent sale of some or all of the entitlements of the agreement party or licence holder; and
  - (ii) fees or charges that may be imposed in relation to the agreement or licence; and
  - (iii) terms mentioned in section 15 for an agreement under that section or in section 44(1)<sup>40</sup> for a licence; and

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<sup>39</sup> Section 15 (Power of corporation to supply water by agreement)

<sup>40</sup> Section 44 (Licences)

(e) any other condition of the entitlement.

**“notice of intention to sell”** see section 81(1).

**“potential agreement”** means an agreement that might be entered into within the terms of a notice of intention to sell.

**“potential licence”** means a licence that might be issued within the terms of a notice of intention to sell.

**“sale proposal”** means a sale proposal under section 88.

### **Chief executive may publish notice**

**81.(1)** The chief executive may publish a notice (a **“notice of intention to sell”**) stating that the chief executive proposes to sell entitlements to the owners of specified land.

**(2)** The chief executive may only publish a notice of intention to sell with the Governor in Council’s approval.

**(3)** A notice of intention to sell must—

- (a) state that the chief executive proposes selling entitlements in relation to land; and
- (b) include the entitlement information about the proposal or state where a copy of the information may be inspected; and
- (c) invite persons to give objections to the chief executive within 60 days after publication.

### **Where notice must be published**

**82.** A notice of intention to sell must be published in a newspaper circulating in every place where there is situated land—

- (a) specified in the entitlement information; or
- (b) whose owners the chief executive reasonably considers are eligible to give objections to the chief executive about the notice of intention to sell.

**Inquiry before publication of notice of intention to sell**

**83.(1)** Before publishing a notice of intention to sell, the chief executive must cause to be made the type of inquiry that the chief executive would have to cause to be made under section 43<sup>41</sup> if applications were made under section 42<sup>42</sup> for the issue of licences relating to the water to be made available for sale under the notice of intention to sell.

**(2)** In a notice of intention to sell, the chief executive may only make provision for the sale of an entitlement relating to land within an irrigation area if the chief executive reasonably considers there is enough water available for the entitlement after taking into account water that is to be supplied to the holders of licences under section 121.<sup>43</sup>

**Persons who are eligible to give objections**

**84.** The following persons may give an objection to the chief executive about a notice of intention to sell—

- (a) a person who would be entitled to object under section 42(9) if an application were made under section 42 for any licence relating to any of the water to be made available for sale under the notice of intention to sell;
- (b) a person who, by paying any charge, levy or another amount under this Act, contributes to the cost of the works that will provide the nominal allocations for a potential agreement or;
- (c) a person who is the owner of land that is not included in the land specified in the notice of intention to sell who objects to the fact that it has not been included.

**Chief executive must inquire into objections**

**85.(1)** For each objection received under section 84(a) or (b), the chief executive must cause inquiry to be made into the relative advantages and disadvantages arising from the entering into of potential agreements or the

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<sup>41</sup> Section 43 (Inquiry by chief executive and grant or refusal of application)

<sup>42</sup> Section 42 (Application for licence)

<sup>43</sup> Section 121 (Licence for water allocation for land)

issue of the potential licences having regard to its effect on the interests of the objector.

(2) For an objection under section 84(c), unless the chief executive considers that the inquiry made under section 83 dealt with the issues raised in the objection, the chief executive must cause the inquiry mentioned in section 83 to be extended sufficiently to deal with the issues raised in the objection.

### **Chief executive may amend notice of intention to sell**

**86.(1)** The chief executive may amend a notice of intention to sell, by notice published—

- (a) in every newspaper in which the notice of intention to sell was published; and
- (b) in every other newspaper in which publication of the notice of intention to sell would have been published were the amendment made before the publication.

(2) The notice must—

- (a) state the terms of the amendment or state where a copy of the amendment may be inspected; and
- (b) invite persons to give objections about the amendment to the chief executive within 60 days after publication.

(3) An amendment may take the form of an interim notice of intention to sell that indicates how the notice of intention to sell has been amended.

(4) An amendment may be made in response to an objection under section 87 or for another reason.

(5) An amendment may only be made with the Governor in Council's approval.

(6) The chief executive may amend a notice of intention to sell without publishing it under subsection (1) if—

- (a) the substantial effect of the amendment is to reduce the total amount of land specified in the notice or the total amount of water available for potential agreements or potential licences; or
- (b) the chief executive reasonably considers that the amendment will



not substantially adversely affect the rights of a person who would be entitled to object if the amendment were published.

### **Objections to amendment**

**87.(1)** The following persons may give an objection to the chief executive about an amendment of a notice of intention to sell—

- (a) a person who was not entitled to object to the notice of intention to sell when it was published under section 81 but who would have been entitled to object if the amendment had been made before then;
- (b) a person—
  - (i) who was entitled to object to the notice of intention to sell when it was published under section 81; and
  - (ii) who has been adversely affected by the amendment.

**(2)** Section 85,<sup>44</sup> with all necessary changes, applies to an objection to an amendment.

### **Steps to be taken after inquiry**

**88.(1)** After—

- (a) complying with the procedure under sections 81 to 87; and
- (b) deciding any further change to the entitlement information the chief executive reasonably considers appropriate arising out of the inquiry under section 87(2);

the chief executive may publish a notice (the “**sale proposal**”) advertising the proposed sale of the entitlements.

**(2)** To remove doubt, it is declared that section 86 does not apply to a change under subsection (1)(b).

**(3)** The chief executive may only publish the sale proposal with the Governor in Council’s approval.

**(4)** The sale proposal must include the entitlement information.

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<sup>44</sup> Section 85 (Chief executive must inquire into objections)

(5) The sale proposal must be published in a newspaper circulating in every place where land specified in the entitlement information is situated.

### **Chief executive may sell entitlements after notice is published**

**89.** The chief executive may only sell entitlements—

- (a) as stated in the sale proposal to which the entitlements relate; and
- (b) more than 30 days after the day the sale proposal was last published; and
- (c) as prescribed under a regulation.

### **Issue of licence on sale of entitlement**

**90.(1)** On the sale of an entitlement to be issued a licence, the chief executive may, without further procedure, issue a licence as required under the terms of the sale.

**(2)** A licence can not be issued under subsection (1) to a person not entitled to purchase the entitlement to be issued with the licence under the terms of the relevant sale proposal.

**(3)** The following sections do not apply to the issue of the licence under subsection (1)—

- section 42 (Application for licence)
- section 43 (Inquiry by chief executive and grant or refusal of application)
- section 51 (Appeal to Land Court).

### **Entering into agreement on sale of entitlement**

**90A.** On the sale of an entitlement to enter into an agreement under section 15,<sup>45</sup> the corporation may enter into an agreement under section 15 as required under the terms of the sale.

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<sup>45</sup> Section 15 (Power of corporation to supply water by agreement)

## **PART 6—REFERABLE DAMS**

### **Control of referable dams**

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

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

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

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

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

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

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

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

### **Requirements by chief executive as to referable dam**

**93.(1)** The chief executive—

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

notice to ensure the safety of the referable dam and the protection of life or property that would or could be endangered by the uncontrolled loss or release of water or hazardous waste caused by the collapse or failure of the referable dam.

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

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

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

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

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

### **Exemption of owner of referable dam from provisions of Act**

**94.(1)** The chief executive, where the chief executive considers for any reason that the collapse or failure of a referable dam would not endanger life or property, may, by a notice in writing given to the owner, grant exemption to the owner of the referable dam specified in the notice from any provisions of this Act so specified except those provisions that relate to the licensing of a referable dam.

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

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

- (a) revoke an exemption granted under subsection (1); or

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

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

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

### **Protection against liability for failure or collapse of referable dam**

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

- (a) an approval of the chief executive of a proposal submitted by the owner of land on which the referable dam is constructed or to be constructed with respect to the design, construction, alteration, repair, or maintenance, operation, abandonment and removal of the referable dam;
- (b) an exemption granted to the owner of the referable dam under section 94.

## **PART 7—SPECIAL WORKS**

### **Meaning of special works**

**96.** For the purposes of this part—

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

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

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

### **Recommendation re certain works**

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

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

### **Power of Governor in Council**

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

### **Application with respect to special works**

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

executive for approval of the works.

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

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

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

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

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

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

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



### **Authority of Minister to make and enter into agreement**

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

### **Approval of agreement**

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

**(2)** A regulation approving an agreement must—

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

### **Effect of agreement**

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

### **Recording agreement**

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

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

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

**(4)** In this section—

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

## **PART 8—DESIGNATED AREAS**

### **Constitution of designated area**

**104.(1)** 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, a regulation may—

- (a) constitute a part of Queensland specified and defined therein to be a designated area and assign thereto a name;
- (b) amalgamate 2 or more designated areas into 1 designated area;
- (c) divide a designated area into 2 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.

**(2)** A regulation may be made under subsection (1) only to give effect to a proposal recommended under section 105.

**(3)** The regulation must specify the details of the proposal to which it gives effect.

### **Procedure before making regulation about designated area**

**105.(1)** This section specifies the procedure for making a recommendation about a proposal before a regulation may be made, under section 104, to give effect to the proposal.

**(2)** The chief executive must publish a notice about the proposal in the gazette and in a newspaper circulating in the part of Queensland the subject

of the proposal (the “**relevant land**”).

(3) The notice—

- (a) must describe the proposal; and
- (b) must describe the relevant land; and
- (c) must include a map or plan of the relevant land, or specify where a map or plan may be inspected; and
- (d) for a proposal to constitute a designated area—must specify the purposes for which the area is proposed to be constituted; and
- (e) for a proposal to constitute a designated area or alter the boundaries of a designated area—may specify acceptable existing works or acceptable proposed works for the area or any land included in the area by the alteration; and
- (f) must state that objections may be given to the chief executive about the proposal; and
- (g) must specify—
  - (i) the persons eligible to object to the proposal; and
  - (ii) the date and time by which the objections must be given; and
  - (iii) the address for giving the objections.

(4) The date specified as the date by which the objections must be given must not be less than 60 days after the first publication of the notice in the gazette.

(5) The following persons are eligible to object to a proposal—

- (a) a person who—
  - (i) owns, occupies or claims a right or interest in the relevant land or other land specified in the notice for the purpose; and
  - (ii) considers the person’s rights or interests will or may be affected by the proposal;
- (b) an entity that—
  - (i) represents a community, whether or not the community lives in the designated area or proposed designated area; and
  - (ii) considers the rights or interests of the persons in the

community will or may be affected by the proposal.

(6) The chief executive may—

- (a) carry out any investigation the chief executive considers necessary into an objection given to the chief executive; and
- (b) make a written recommendation to the Minister about the regulation the Governor in Council may consider making under section 104.

(7) The recommendation may contain a proposal (a “**modified proposal**”) that is different to the proposal notified under subsection (2) (the “**original proposal**”).

(8) However, before making a recommendation to the Minister that contains a modified proposal, the chief executive must publish another notification (the “**later notification**”), in the gazette and in a newspaper circulating in the relevant locality, specifying—

- (a) the differences between the original proposal and the modified proposal; and
- (b) the date and time, not earlier than 14 days after publication of the later notification, by which objections to the modified proposal, about the matters that are different, may be given to the chief executive.

(9) The chief executive may carry out any investigation the chief executive considers necessary into an objection about the modified proposal given to the chief executive.

(10) In this section—

“**acceptable existing works**” means works that—

- (a) would be controlled works if they were in a designated area; and
- (b) would not have an unacceptable hydraulic impact if the place where the works are situated were flooded.

“**acceptable proposed works**” means proposed works that—

- (a) are proposed to be constructed by a day specified in the proposal; and
- (b) would be controlled works, when constructed, if the proposed

worksite were in a designated area; and

- (c) would not have an unacceptable hydraulic impact if the proposed worksite were flooded after the works were constructed.

**“proposed worksite”**, for acceptable proposed works, means the site where it is proposed the works will be constructed.

**“unacceptable hydraulic impact”** of works means the impact the works have on floodwater if persons other than the owner of the works are disadvantaged, to an extent the chief executive considers unacceptable, because of—

- (a) damage to their property; or
- (b) reduction of beneficial flooding; or
- (c) another reason.

### **General powers of chief executive**

**106.** The chief executive may direct the undertaking by an authorised officer or any other nominated person of surveys, investigations, inquiries, inspections, examinations or other procedures necessary or desirable for the administration of this part.

### **Licence for controlled works**

**107.** The chief executive may grant and issue a licence for the construction or use of controlled works within a designated area and for that purpose part 4, division 2 applies and extends accordingly.

### **Levee banks under Local Government Act not controlled works**

**108.(1)** In this section—

**“levee bank”** means a levee bank within the meaning of the *Local Government Act 1993* that is constructed, maintained or kept under a permission given under that Act.

**(2)** Levee banks are not controlled works if the permission for their construction, maintenance or keeping has not expired.

**No right to compensation**

**109.** The removal or modification by or on behalf of the chief executive 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 chief executive by section 67 does not by reason only of that removal or modification confer upon that owner or occupier a right to compensation.

**PART 9—IRRIGATION UNDERTAKINGS AND AREAS***Division 1—Irrigation undertakings***Irrigation undertaking to be approved by Governor in Council**

**110.** An irrigation undertaking must not be established until the proposal for the undertaking has been approved under a regulation.

**Procedure on proposal for irrigation undertaking**

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

### **Minister to provide report to Governor in Council**

**112.** The Minister may submit to the Governor in Council—

- (a) the report; and
- (b) recommendations about the undertaking.

### **Establishing the irrigation undertaking**

**113.** On receiving the report and recommendations, the Governor in Council must consider the report and recommendations and take the

following action as the Governor in Council considers appropriate—

- (a) make a regulation establishing the undertaking on terms—
  - (i) that are set out in the recommendations; or
  - (ii) that vary from the terms set out in recommendations;
- (b) decline to make a regulation.

### **Power to construct works and do necessary acts and things in connection with irrigation undertaking**

**114.** The corporation may—

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

### ***Division 2—Irrigation areas***

#### **Constitution of area**

**115.** A regulation 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 2 or more areas into 1 area;
- (d) divide an area into 2 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.

### **Drainage works**

**116.** Subject to this Act, the corporation may, inside or outside or partly inside and partly outside an irrigation area, construct, maintain and operate works of drainage as the corporation thinks necessary or expedient and may, for the purpose of raising moneys to defray costs of or in connection 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.

### **Assessment on owners of sugar mills and other premises**

**117.(1)** The chief executive with the prior approval of the Governor in Council in addition to making and levying rates or other charges authorised by or under this Act may make and levy in the manner prescribed assessments as are prescribed on the owners of sugar mills to which relate under the *Sugar Industry Act 1999* cane production areas that include 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 corporation or from surface or underground sources assured as a result of those works.

### **Powers of chief executive with respect to treatment, destruction or removal of trees, other vegetation, litter or refuse in irrigation area**

**118.(1)** Where the chief executive is satisfied that there are or is on land within an irrigation area trees, other vegetation, litter or refuse that in the chief executive's 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, the chief executive may give to the occupier, or where there is no occupier, to

the owner of the land in question a notice in writing requiring the occupier or owner 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 chief executive 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 chief executive or an authorised officer, with officers, employees or workers 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 chief executive or authorised 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 chief executive or an authorised 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 chief executive.

### **Subdivision of freehold land within irrigation area**

**119.(1)** A person may, with the approval of the chief executive, given upon an application duly made to the chief executive, subdivide freehold land situated within an irrigation area of which that person is the registered proprietor including land for which a nominal allocation has been granted.

(2) 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 chief executive of a proposal to subdivide freehold land.

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

(4) The chief executive may—

- (a) approve the proposal as notified;
- (b) approve the proposal with amendments as the chief executive

determines;

(c) refuse the proposal.

(5) The chief executive must forward to the person in question a notification of the chief executive's decision and where the proposal is approved must issue to the person a provisional approval setting out where applicable the amendments to which the approval is subject.

(6) A provisional approval is subject to terms as the chief executive 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 chief executive that the person no longer desires to proceed with the proposal.

(7) 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 (5).

(8) 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 subsection (7).

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

(10) The chief executive may approve, refuse to approve or approve with amendments as the chief executive determines the subdivision the subject of the application.

(11) An approval under subsection (10) is subject to terms as the chief executive determines including, in the case of the approval by the chief executive of a plan of subdivision of land for which a nominal allocation has been granted under this Act, a term that the owner of the land pay the costs and expenses incurred in the construction of new works of water supply

rendered necessary following the subdivision.

(12) Notification of the decision of the chief executive with respect to an application under this section must be forwarded to the applicant.

(13) The approval of the chief executive to a plan of subdivision given under this section with such amendments (if any) as are determined by the Minister upon appeal under section 237 is to be endorsed by way of a notation thereon signed and dated by the chief executive.

(14) The provisions of the *Integrated Planning Act 1997* with respect to the subdivision of land must be read subject to this section and a local government must not approve a plan of subdivision of freehold land in an irrigation area unless—

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

(15) 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.

(16) During the continuance in force of a notification under subsection (15), the land specified therein is and continues to be exempt from the provisions of this section.

### *Division 3—Water allocations in irrigation areas*

#### **Grant of water allocation**

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

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

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

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

### **Licence for water allocation for land**

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

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

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

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

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

### **Surrender of nominal allocation**

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

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

### **Chief executive's power if nominal allocation land is subdivided**

**123.(1)** This section applies if—

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

subdivided after the grant.

(2) The chief executive may—

- (a) with or without the construction of any further works of supply, decide a nominal allocation for each part of the land subdivided; and
- (b) make and levy charges towards the costs of the supply of water to each part of the land subdivided.

### **Power to discontinue water supply upon non-payment of charges**

**124.(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 chief executive may give to that person a notice in writing calling upon that person to pay within 7 days or any longer time as the chief executive 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 chief executive for the payment thereof the chief executive may cut off and discontinue the supply of water to that person for so long as the amount in question remains unpaid.

(3) The cessation of the supply of water to a person pursuant to this section does not discharge the person from the person's liability to pay to the chief executive any amount due and owing by the person by way of irrigation charges, other charges, interest or otherwise under this part.

### ***Division 4—Administration***

#### **Crown land in irrigation area may be set apart**

**125.** 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.

**Power of corporation to authorise person to construct channels**

**126.** The corporation, by writing under the hand of the chief executive, may authorise a person to exercise within an irrigation area those powers and authorities of the corporation 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.

**Access across irrigation channel**

**127.(1)** 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 corporation 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.

**(2)** A means of access to which subsection (1) refers—

- (a) must be constructed and maintained by the corporation in a position determined by it;
- (b) 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 corporation considers sufficient having regard to all the circumstances.

**(3)** Subject to subsection (4), the owner of a piece or parcel of land to which subsection (1) applies, with the prior approval in writing of the chief executive 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.

**(4)** An approval of the chief executive in accordance with subsection (3) is subject to conditions that—

- (a) the means of access must be removed to or provided at a site approved by the chief executive; and

- (b) 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 chief executive.

(5) 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 subsections (3) and (4) but not otherwise a means of access from the subdivision in question to that road.

(6) Liability at law does not attach to the Crown, Minister, corporation, chief executive or any officer, or employee of the department or agent of the corporation or chief executive in respect of a claim or demand of any kind arising out of a removal or provision of access in accordance with subsection (3), (4) or (5).

(7) 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.

### **Access where land is resumed**

#### **128.(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; and
- (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 corporation 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.

(2) Section 127(2) applies to a means of access provided in accordance with subsection (1) as if it were a means of access provided in accordance therewith and must be complied with in every respect.

(3) For the purposes of this Act or of any other Act or law with respect to severance, the elimination, lessening or minimisation 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 10—WATER SUPPLY AREAS AND DRAINAGE AREAS**

### *Division 1—Constitution of area*

#### **Constitution of area and establishment of board**

**129.(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 regulation—

- (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) establish a board for an area so constituted and assign thereto a name.

**(2)** A board established under this section—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued in its corporate name; and
- (d) is an exempt public authority under the corporations Law.

**(3)** A board has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property.

**(4)** Without limiting subsection (3), a board has the powers given to it under this Act.

**(5)** The chairperson of a board must have custody of the board's common seal.

**(6)** The chairperson, or another person authorised by a board, may affix the common seal.

**(7)** Judicial notice must be taken of the imprint of the common seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is established.

**(8)** For a purpose specified in subsection (1), a regulation may—

- (a) amalgamate 2 or more areas into 1 area; or
- (b) divide an area into 2 or more areas; or

- (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); or
- (d) abolish an area; or
- (e) alter the name assigned to an area or a board; or
- (f) give directions for the adjustment of the rights and responsibilities of a board affected by a regulation made under this section.

**(9)** To remove any doubt it is declared that—

- (a) 2 or more non-contiguous parcels of land may be constituted as a single area; and
- (b) a proposal effected by a regulation under this section may involve acquiring or constructing works in or out of the area.

**(10)** A regulation may be made under this section only to give effect to a proposal recommended under section 131.

### **Procedure for preliminary advertisement of proposal for water supply or drainage area and establishment of steering committee**

**130.(1)** Where it is made to appear to the chief executive 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 chief executive may request those owners or representatives thereof to make a submission to the chief executive 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 chief executive determines, relevant to the proposal.

**(2)** Upon receipt of a submission in accordance with subsection (1), the

chief executive, where the chief executive 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 the chief executive determines.

(3) The notification must invite owners of land in the locality to advise the chief executive 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.

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

(5) The functions and duties of a steering committee established under subsection (4) 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 finalising details thereof;
- (c) to liaise with officers of the chief executive during inquiries into and investigations and planning of the proposal.

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

(7) This section does not derogate from or in any way affect the operation of sections 131 and 138.

### **Procedure before making regulation**

**131.(1)** This section specifies the procedure for making a recommendation about a proposal before a regulation may be made, under section 129, to give effect to the proposal.

(2) The chief executive must publish a notice, in the gazette and in a

newspaper circulating in the relevant locality, about the proposal.

**(3)** The notice 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 chief executive;
- (b) contain with respect to each proposal—
  - (i) a description of the purposes for which it is proposed to constitute the area and establish 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 chief executive considers necessary.

**(4)** The chief executive may—

- (a) carry out any investigation the chief executive considers necessary into an objection given to the chief executive; and
- (b) make a written recommendation to the Minister about the

regulation the Governor in Council may consider making under section 129.

(5) The recommendation may contain a proposal (the “**modified proposal**”) that is different to the proposal notified under subsection (2) (the “**original proposal**”).

(6) However, before making a recommendation to the Minister that contains a modified proposal, the chief executive must publish another notification (the “**later notification**”) specifying—

- (a) the differences between the original proposal and the modified proposal; and
- (b) the date and time, not earlier than 14 days after publication of the later notification, by which objections to the modified proposal, about the matters that are different, may be given to the chief executive.

(7) The chief executive may carry out any investigation the chief executive considers necessary into an objection about the modified proposal given to the chief executive.

### *Division 2—Membership of boards*

#### **Membership**

**132.** A board may consist of—

- (a) a local government appointed under section 134; or
- (b) persons appointed under section 134; or
- (c) persons elected under section 135; or
- (d) persons appointed under section 134 and persons elected under section 135.

#### **Term of office**

**133.(1)** A regulation may provide for the term of office of members of a board, in any case of not more than 3 years.

(2) The Governor in Council may specify the term of office of a member

appointed under section 134.

(3) The term of office specified in a member's appointment may be different to the terms of the other members of the board.

*Example—*

A person appointed to fill a vacancy in a board may be appointed for a shorter term of office than the other board members, so that the terms of all board members end at the same time.

### **Appointment of board members**

**134.(1)** In this section—

“**elected persons**”, for a board, are persons elected under section 135 as members of the board.

“**suitable persons**”, for a board, are persons who the Governor in Council considers are able to effectively perform the functions of members of the board.

(2) The Governor in Council may appoint as the member or members of a board—

- (a) a local government; or
- (b) suitable persons, whether or not other persons on the board are or will be elected persons.

### **Election of board members**

**135.(1)** A regulation may provide that all, or some, of the members of a board are to be elected.

(2) A regulation may provide for the election and may, for example, provide for the creation of electoral divisions within an area for the election of members in the area.

(3) The members of the board must be elected under the regulation.

### **Persons qualified to be elected**

**136.(1)** A person is qualified to be elected to a board of an area only if the person—

- (a) is an owner, part owner or occupier of land in the area; or
- (b) lives in the area.

(2) For this section, if the person qualified to be elected is a body corporate, an individual nominated by the body corporate is the person qualified to be elected.

### **Amalgamation of boards**

**137.(1)** In this section—

“**new board**” means a board that is constituted or has its jurisdiction extended under subsection (2).

“**old board**” means a board dissolved under subsection (3).

(2) If the Governor in Council amalgamates 2 or more areas into a single area, the Governor in Council may—

- (a) constitute a new board for the amalgamated area; or
- (b) extend the jurisdiction of a board in 1 of the areas to be amalgamated to cover the amalgamated area.

(3) Any board constituted for each of the areas being amalgamated (other than a board that has its jurisdiction extended) is dissolved.

(4) On the dissolution of an old board—

- (a) all its property and liabilities become the property and liabilities of the new board; and
- (b) the new board is substituted for the old board in all contracts to which the old board is a party; and
- (c) the new board is substituted as a party for the old board in all pending and existing proceedings to which the old board is a party.

### **Further powers of Governor in Council with respect to board**

**138.** A regulation 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 132;
- (d) instead of reconstituting a board that has been dissolved, or from which all the members have been removed from office, appoint the chief executive to administer the affairs of the area in question.

### **Powers etc. of chief executive**

**139.(1)** Upon the appointment of the chief executive under section 138—

- (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 corporation and must be paid to or may be recovered by the chief executive by action as for a debt brought by the chief executive in a court of competent jurisdiction;
- (b) all liabilities of the board become and are payable by the chief executive out of and are chargeable against the property and assets of the board;
- (c) the chief executive during the term of the chief executive's appointment, must administer the affairs of the board as if the chief executive 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 the person is entitled to any moneys paid to or recovered by the chief executive in the exercise of any power or authority conferred on the chief executive by subsection (1) may make a claim to the chief executive setting forth the grounds upon which the claim is based, particulars of the claim and the total amount thereof.

(3) The chief executive must consider each claim under subsection (2) received by the chief executive and must make a determination which is final and not further justiciable.

**Extension of term of office of member**

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

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

**Disqualification as to person becoming a member of board**

**141.** A person is not qualified to become a member of a board if the person—

- (a) is a patient within the meaning of the *Mental Health Act 1974*;
- (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 the person is liable to imprisonment for 1 year or more or has been convicted elsewhere than in Queensland of an offence that, if committed by the person in Queensland, would constitute an indictable offence upon conviction whereof the person 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.

**Termination of office of member of board**

**142.(1)** A member of a board may resign the member's office at any time by notice in writing signed by the member furnished to the chairperson of the board.

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

- (a) becomes or is made bankrupt or otherwise takes advantage of the

- laws in force for the time being relating to bankruptcy; or
- (b) becomes incapable of discharging the duties of the member's office; or
  - (c) is incompetent or unfit from any cause to hold the member's office.
- (3)** A member of a board vacates the member's office—
- (a) in the event of the member's—
    - (i) resignation, upon receipt by the chairperson of the board of notice of the member's resignation;
    - (ii) removal by the Governor in Council, upon issue by the Minister to the board of notice of the member's removal;
  - (b) if the member declines to act or to act further as a member;
  - (c) if the member becomes a patient within the meaning of the *Mental Health Act 1974*;
  - (d) if the member is absent without prior leave granted by the board from 3 consecutive meetings of the board of which due notice has been given to the member;
  - (e) if the member ceases to be qualified as a member;
  - (f) if the member is convicted in Queensland upon indictment or summarily of an indictable offence for which the member is liable to imprisonment for 1 year or more or is convicted upon indictment or summarily elsewhere than in Queensland of an offence that, if committed by the member in Queensland, would constitute an indictable offence upon conviction whereof the member would be so liable.

### **Casual vacancy in membership of board**

**143.** A casual vacancy arises in the office of a member of a board if—

- (a) the member dies during the member's term of office;
- (b) the member's office becomes vacant following an event specified in section 142.

**Superannuation schemes**

**144.(1)** A board may—

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

**(2)** The auditor-general must audit the schemes.

**(3)** Subsection (2) is subject to the *Financial Administration and Audit Act 1977*, part 6.<sup>46</sup>

***Division 3—Powers etc. of board*****General powers, authorities, functions and duties**

**145.(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.

**(2)** Without limiting or in any way affecting the generality of subsection (1), a board must—

- (a) investigate proposals for and design works that it is authorised by or under this Act to construct;
- (b) construct or acquire works that it is authorised 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 chief executive 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

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<sup>46</sup> *Financial Administration and Audit Act 1977*, part 6 (Audit of public accounts and public sector entities)

renewals or extensions of works to which this section refers.

(3) 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 authorised by the regulation 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.

(4) 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, land within its area or other relevant land and—
  - (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 connection therewith carry out all necessary operations;
  - (v) erect fences;
  - (vi) subject to part 4, 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 212, enter upon any road, railway, tramway, or land within its area or other relevant land 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 land within its area or other relevant land, vested in the Crown, and—
  - (i) occupy it temporarily;

*Water Resources Act 1989*

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- (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.

(5) 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.

(6) A person who enters or re-enters upon land under the authority of and for the purposes specified in subsections (1) and (2) 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 subsections (1) and (2).

(7) 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.

(8) In this section—

**“other relevant land”**, for a board, means land or a road outside its area—

- (a) on which it is authorised to construct works; or
- (b) that it is necessary for the board to enter—
  - (i) to construct the works it is authorised to construct; or
  - (ii) in connection with the construction.

**Delegation of powers, authorities, functions and duties**

**146.(1)** A board may either generally or otherwise as provided by the instrument of delegation by writing under its seal delegate to its chairperson 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.

**Board to be a constructing authority**

**147.(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* 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* may resume for a purpose specified in subsection (1) land other than land within the meaning of the *Acquisition of Land Act 1967* and the provisions of the *Land Act 1994* 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.

(4) The value of an assignment granted under subsection (3) must be set off against compensation payable upon the taking or resumption of the land in question.

### **Power to make or enter into contracts or agreements**

**148.(1)** A board may enter into contracts or agreements for or in connection 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 authorised 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 subsection (2).

(3) 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 chairperson or 2 members of the board;
- (c) would by law be valid although not reduced to writing, may be made without writing by the chairperson or 2 members of the board.



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

(5) Notwithstanding subsections (3)(b) and (c), a board may authorise the secretary or another officer generally or in a particular case instead of the chairperson or 2 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 subsection (3)(b), 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.

### **Provisions affecting contractual powers of board**

**149.(1)** A board, with the approval of the Governor in Council and subject to the terms the Governor in Council 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; or
- (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 subsection (2) or (3), may comply with this subsection.

**(6)** 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.

**(7)** 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.

**(8)** In the case of the sale of land, the board, in addition and within the period specified in subsection (7), 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.

**(9)** An offer for sale by public auction to which subsection (5) applies may be one at a reserve price determined by the board.

**(10)** Subsections (2) to (9) 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.

(11) 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.

(12) 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 158 or by way of grant or subsidy the board must take into consideration the requirements of the Treasurer.

### **Powers with respect to plant or stock**

**150.** 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).

### **Disposal of surplus water**

**151.** 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 the ratepayer's use only; or
- (b) with the approval of the chief executive, to a person other than a ratepayer, for the person's use only.

### **Supply of water to local government or corporation**

**152.(1)** Notwithstanding this Act and subject to this section, upon the application of a local government, corporation sole or body corporate, a board, subject to the approval of the Minister, 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.

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

### **Procedure where supply of water insufficient**

**153.(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.

### **Power to enter and use certain land**

**154.(1)** For the purposes of works—

- (a) proposed to be constructed or constructed under the authority of the *Water Act 1926*<sup>47</sup> 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 m 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

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<sup>47</sup> The *Water Act 1926* has been repealed, as from 1 February 1990.

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.

### **Interference with works of local government**

**155.(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 government 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 government 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.

(3) 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 government concerned as soon as practicable after the commencement of the interference or the date on which the necessity for the interference arises.

(4) The local government 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 government.

(5) A difference arising respecting a plan in accordance with subsection (4) must be referred to an arbitrator agreed upon by the board and the local government concerned or failing agreement, an arbitrator appointed by the Minister, and the arbitrator's decision in the matter is final and the parties must give effect thereto.

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

(7) Where the local government in question—

- (a) fails, after the notice under subsection (2) or (3) 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 (4);
- (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 government.

**(8)** Where a board has interfered with works of a local government 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; and
- (b) at all times while any road or other works of a local government 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.

**(9)** In the case where a board is required by this Act to reinstate and make good works of a local government, the local government 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.

**(10)** The board must pay to the local government the reasonable costs and expenses incurred by it in the exercise of a power conferred by subsection (9) including the costs of supervision.

**(11)** Costs and expenses specified in subsection (10) remaining unpaid are a debt due and owing to the local government and may be recovered by it in a court of competent jurisdiction.

**(12)** A notice given to a board under subsection (9) discharges the board from the liability to comply with subsection (8)(c).

**Power to make by-laws**

**156.(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 watercraft or motorised 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;
- (f) access by members of the public to specified parts of its property and the terms governing access;
- (g) the preservation of water under its control from pollution in any form and of the banks of dams and water storages from erosion;
- (h) 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;
- (i) the powers, authorities, functions and duties and qualifications of its officers and employees;
- (j) the grant and issue of licences, registrations or permits to or with respect to persons or its property for the purposes of this Act;
- (k) the procedure and conduct of business at its meetings;
- (l) 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;
- (m) methods of collection thereof;

- (n) manner, time and place of payment thereof persons by and to whom they are payable;
- (o) all matters with respect to the recovery thereof;
- (p) the removal from its property of unauthorised persons or persons who contravene or fail to comply with a by-law and any vehicle, machinery or equipment used by those persons;
- (q) the determination of the basis or bases upon which rates and charges may be made and levied under section 174;
- (r) matters and things that under this Act may be prescribed by its by-laws;
- (s) 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 50 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 authorised officer or other authorised 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 the Minister's recommendations thereon and submit it together with those recommendations to the Governor in Council.

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

(5) Upon its approval a by-law must be published in the gazette and thereupon has the force of law.<sup>48</sup>

(6) A by-law or part thereof may be repealed or revoked under a regulation.

## **Committees**

**157.(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 chairperson 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 chairperson is not present at a meeting of a committee, the members present must elect from their number a member to be chairperson.

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<sup>48</sup> A by-law is subordinate legislation under the *Statutory Instruments Act 1992*.

(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 chairperson 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 4—Borrowing powers, financial arrangements, funds and accounts of board***

**Borrowing powers of board**

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

- (a) the acquisition by it of land;
- (b) the construction of authorised 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 paragraphs (a) to (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.

**Boards are statutory bodies**

**159.(1)** Under the *Statutory Bodies Financial Arrangements Act 1982*, a board is a statutory body.

**(2)** The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which a board's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

**Unauthorised borrowing**

**160.(1)** Where a board borrows money that it is not authorised 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.

**(2)** Money referred to in subsection (1) 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.

**(3)** 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 annum.

**(4)** Money referred to in subsection (3) 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 authorised in writing in that behalf by the Treasurer, in a court of competent jurisdiction.

**(5)** Costs awarded by the court to the Treasurer or authorised person in an action are costs as between solicitor and client.

**(6)** 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.

**Funds of board**

**163.(1)** A board must establish and thereafter maintain in accordance with this Act the following funds—

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

**(2)** Subject to this Act and except as is otherwise prescribed, the funds must be separate and distinct and a separate account must be kept at a financial institution for each fund.

**Operating fund**

**164.(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 authorised 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.

**Reserve fund**

**165.(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.

**(4)** 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.

**(5)** 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.

**Capital works fund**

**166.(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 connection 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 utilised 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.

### **Trust fund**

**167.(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.

## **Accounts**

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

## **Audit of accounts**

**169.(1)** The accounts of a board must be audited by the auditor-general or an authorised auditor directed by the auditor-general, 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 or her by the *Financial Administration and Audit Act 1977*.

**(2)** A board must pay to the auditor-general in respect of an audit a fee fixed by the auditor-general.

## ***Division 5—Budget of board***

### **Budget of board**

**170.(1)** A board, not later than 31 August in each year or such other date therein as the chief executive 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 chief executive 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 sub-subparagraphs (A) to (C).

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

- (a) moneys specified therein have been overestimated or underestimated; or
- (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 chief executive is to amend the budget as the chief executive thinks fit.

(4) The budget lodged with the chief executive 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.

### **Observance of budget and disbursements in emergent circumstances**

**171.(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 chief executive under section 170(1)(b), where the making of the disbursement would result in an excess exceeding 10% 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 chief executive and furnishing to the chief executive on request any further particulars and information the chief executive requires.

(4) The chief executive must submit the application to the Minister who may approve or refuse it.

(5) 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.

(6) An amount for which members of a board are liable under subsection (5) is a debt due and owing to the board and may be recovered

by action brought by the Minister or a person authorised by the Minister in that behalf in a court of competent jurisdiction.

### *Division 6—Rates and charges*

#### **Power to levy rates and charges**

**172.(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 connection 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*<sup>49</sup> or this Act;
  - (ii) the business of the board;
  - (iii) the administration of this Act.

**(2)** 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.

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

**(4)** 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

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<sup>49</sup> The *Water Act 1926* has been repealed, as from 1 February 1990.

consent of the local government for that area, make and levy a charge on that local government for the purpose of raising moneys to defray those matters and things specified in subsection (1)(c) to (f).

### **Basis of rating and levying charges**

**173.(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 1993*—make and levy a rate in accordance with the rateable value of that land determined for the purposes of that Act; or
- (b) however, where rateable land to which paragraph (a) applies within the area of a board is situated within the areas of 2 or more local governments—the board may make and levy different rates in respect of the land situated in the areas of different local governments; or
- (c) make and levy a rate in accordance with classifications determined by the board with respect to different parts of that land; or
- (d) 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 authorised 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 connection 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—

*Water Resources Act 1989*

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- (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 connection with land subject to irrigation a charge for the quantity of water—
  - (i) allocated; or
  - (ii) supplied;to each owner or occupier of land within the area;
- (c) in connection with the supply of water for other purposes, a charge for the quantity of water—
  - (i) allocated; or
  - (ii) supplied;
- (d) in connection 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; or
    - (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 1 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 chief executive of the department in which the *Valuation of Land Act 1944* is administered under and for the purposes of the *Valuation of Land Act 1944*, that chief executive

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* 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.

### **Other methods of making and levying rates**

**174.(1)** A board, instead of making and levying rates in accordance with section 173 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.

(2) 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.

### **Making and levying assessments**

**175.(1)** Where land in an area subject to rating under this Act is assigned to a sugar mill, the board constituted for that area, if it is authorised to do so under regulation instead of making and levying a rate in accordance with section 173 or 174 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 the authorising regulation.

(2) 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 173 or 174 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 sugarcane.

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

- (a) make provision for payment by the owner 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.

(5) 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.

(6) A payment under subsection (5) must be made at the time fixed under the authorising regulation.

(7) Every assessment under this section and every instalment must be paid by the owner of the sugar mill and the grower of the sugarcane in proportions specified in the regulation authorising the making and levying of the assessment.

(8) 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.

(9) 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.

(10) The owner of a sugar mill, with respect to moneys payable by the grower of the sugarcane 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 the owner the amount thereof by action in a court of competent jurisdiction.

### **Additional or alternative rate for water**

**176.(1)** 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 subartesian water sources supplied or supplemented by or from the works of the board;

a rate fixed on any basis that the board determines.

**(2)** 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.

### **Contribution towards new or additional service**

**177.(1)** In addition to the making and levying of rates, assessments and charges in accordance with sections 173 to 176 a board, in a case where land is being or is capable of being supplied with water or connection 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 connection 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.

### **Rate-book**

**178.(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 chairperson or any 2 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.



**Amendment of rate-book**

**179.(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; or
- (b) striking out the name and other particulars entered of a person who ought not to have been included as a ratepayer; or
- (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 underassessed or overassessed; 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 chairperson 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.

**Levy of rate or charge**

**180.(1)** 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.

**(2)** 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.

(3) 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.

### **Appeal to Land Court**

**181.(1)** A person aggrieved by the amount of an assessment of a rate or charge made and levied by a board upon the person 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 the person of the assessment or the alteration thereof in question and no later, a notice of appeal.

(3) 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.

(4) The appellant must within 14 days after filing it serve on the board a copy of the notice of appeal.

(5) 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.

(6) 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.

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

(8) The jurisdiction of the Land Court to hear and determine an appeal under this section is vested in 1 member only.

(9) 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 1994* with respect to appeals to the Land Appeal Court.

(10) 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.

(11) 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.

(12) Notwithstanding subsection (11), 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.

### **Power of chief executive where rates and assessments insufficient to meet board's commitments**

**182.(1)** Where the chief executive 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, the chief executive 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 175, for the purpose of raising sums of money necessary for the purposes specified in this section.

(2) 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 chief executive and this Act.

**Land subject to or exempt from rating**

**183.(1)** All land within an area is subject to rating for the purposes of this Act except—

- (a) unoccupied Crown land;
- (b) unallocated State land reserved for or dedicated to public purposes within the meaning of the *Land Act 1994*;
- (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 corporation;
- (e) land declared to be exempted under a regulation.

**(2)** Subsection (1)(d) does not apply to land vested in or under the control of a board or the corporation that is occupied by a person other than the board or the corporation from which occupation the board or the corporation derives a benefit, that land being, during the continuance of its occupation, subject to rating for the purposes of this Act.

**Liability for payment of rates and charges**

**184.(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.

**(4)** The exercise by a board of the power conferred by subsection (3) does not absolve the person in question from the person's liability to pay to the board the amounts in question due and payable and remaining unpaid.

**Recovery of rates and charges**

**185.** 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.

**Procedure as to payment of rates and charges upon forfeiture or surrender of lease**

**186.(1)** Despite the *Land Act 1994*, chapter 5, part 5, division 1, if a lease is forfeited or surrendered wholly or partly, moneys received by the Crown from an incoming lessee or a purchaser in respect of improvements on the lease 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.

**(2)** 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.

**Interest on rates and charges**

**187.(1)** 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 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.

**(2)** Interest payable under this section is recoverable in the same manner as rates and charges are recoverable under this Act.

**Discounts in respect of amounts of rates and charges**

**188.** 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% 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 *Social Services Act 1991* (Cwlth).

### *Division 7—Business and proceedings of board*

#### **Conduct of business**

**189.** Subject to this Act, a board conducts its business and its proceedings at meetings in the manner it determines.

#### **Meetings**

**190.(1)** A board must hold its first meeting at a time and place as the Minister 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.

**(2)** The chairperson may at any time convene a special meeting of the board.

**(3)** The board must hold an annual meeting on a date and at a time and place determined by it.

**(4)** Meetings of the board, other than a meeting sitting as a committee of the whole, are open to the ratepayers in its area.

#### **Chairperson**

**191.(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 chairperson.

**(2)** Where a chairperson is not elected at the first meeting of a board or within 1 month after the date appointed for the first meeting, the Minister may appoint one of the members of the board to be chairperson and a member so appointed holds office until the annual meeting of the board next following the date of the member's appointment.

(3) Where the chairperson of a board resigns office as chairperson or member or the chairperson's office is vacated during the chairperson's term of office, the board must elect a member to be chairperson in the chairperson's stead and a member so elected holds office until the annual meeting of the board next following the date of the member's election.

(4) The chairperson of a board takes precedence in all matters with respect to the board and is its principal executive officer.

### **Duty of chairperson at meeting**

**192.** The chairperson presides at every meeting of the board at which the chairperson is present and, in the chairperson's absence from a meeting from any cause, another member of the board present and elected by the members present presides as acting chairperson.

### **Deputy chairperson**

**193.** Where the chairperson 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 chairperson and to act as chairperson during the absence of the chairperson.

### **Prohibition on voting by member having pecuniary interest**

**194.(1)** A member of a board who votes or takes part in debate with respect to any matter before the board in which the member has, directly or indirectly, by himself or herself, the member's spouse or the member's partner or partners (if any) a pecuniary interest, commits an offence against this Act.

Maximum penalty—50 penalty units.

(2) If the Minister is satisfied that the business of a board can not otherwise be effectively carried on, the Minister may by written notice 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—

“**spouse**” includes a person lawfully married whether residing in a connubial relationship or not, and includes persons not lawfully married, who have resided in a connubial relationship for more than 3 years.

## **Quorum**

**195.** Business must not be transacted at a meeting of a board unless a majority of the number of members of the board is present.

## **Conduct of affairs**

**196.(1)** 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.

(2) 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.

(3) The chairperson has a deliberative vote and, in the event of an equality of votes on a question before the board, a second or casting vote.

## **Minutes**

**197.(1)** A board and every committee appointed by it must record and keep by the secretary under the superintendence of the chairperson, 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 chairperson 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.

### **Adjournment of meetings**

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

**(2)** 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; or
- (b) the majority of members, if more than 2 members are present; or
- (c) the chairperson, if the chairperson 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.

**(3)** 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.

### **Notice of meetings**

**199.(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 chairperson of a board may, where the chairperson 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 can not be complied with.

**Rescission of resolution**

**200.(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.

**Validity of proceedings**

**201.** Any act, proceeding or agreement of a board or a committee or of a person acting as chairperson 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.

**Officers**

**202.(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 chairperson of a board may terminate the employment of an officer or employee of the board whose services, in the opinion of the chairperson, are no longer required in connection 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 chairperson of a board may engage an officer or employee for a temporary purpose and determine his or her emolument and the period of his or her employment whenever in the opinion of the chairperson 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.

### **Suspension of officers**

**203.(1)** The chairperson of a board may suspend from office an officer of the board who, in the chairperson's opinion, is guilty of misconduct or neglect of duty and may, if the chairperson thinks it necessary appoint another officer in the officer's 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 the officer's suspension.

(3) 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.

### **Safe custody of records**

**204.** 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.

### **Authentication of documents**

**205.** 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 chairperson or secretary or an authorised officer thereof.

### **Office**

**206.** A board must appoint and occupy as its public office premises determined by the board.

### **Review of performance and operation of board**

**207.(1)** Within a reasonable time after the date of commencement of this Act, the chief executive 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.

**(2)** 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.

**(3)** Thereafter the chief executive 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.

**(4)** In conducting a review in accordance with this section, the chief executive 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.

(5) Upon the completion of the review, the chief executive must make a report and recommendations thereon to the Minister.

(6) The Minister upon consideration of the matter must submit to the Governor in Council the Minister's recommendations with respect to the review and the Governor in Council, acting on the recommendations of the Minister may make the Governor in Council's decision thereon.

(7) The chief executive must thereupon give effect to the decision of the Governor in Council in accordance with this Act.

### **Transfer of functions of board to local government**

**208.(1)** Where it appears or is represented to the chief executive in respect of an area constituted under this part ("**the area**") that due to—

(a) the closer development thereof;

(b) the density of population therein;

*Water Resources Act 1989*

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- (c) any other circumstances or occurrences within the area as the chief executive 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 government in which the area in question is situated, the chief executive may recommend to the board and the local government in question that they examine the matter with a view to determining whether that local government, 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.

(2) Where the board and the local government agree in principle, they may enter into negotiations for the purpose of determining ways and means for the implementation of the proposal.

(3) In conducting negotiations provided for in subsection (2) 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 government;
- (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 government to the board in respect of assets to be acquired;
- (e) the liabilities of the board to be assumed by the local government;
- (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 government 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 government may have on rates

*Water Resources Act 1989*

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and charges made and levied on ratepayers in the area;

- (i) the necessary transfers of property within the area to the local government 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 government considers relevant and necessary.

(4) Where agreement is reached by the board and the local government 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 government 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 government may enter into an agreement providing for all matters and things necessary for the implementation of the proposal.

(5) Upon the execution of the agreement, the board must furnish to the chief executive a copy of the agreement as executed.

(6) Thereupon the chief executive must submit to the Minister for consideration the chief executive's report on the proposal and furnish with that report a copy of the agreement.

(7) The Minister, upon consideration of the matter, must make a recommendation and the Governor in Council, acting on the recommendation of the Minister, may by regulation approve the agreement and incorporate a copy of the agreement in the regulation.

(8) The chief executive must notify the board and the local government of the agreement as approved.

(9) Where the chief executive has been appointed under section 138(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 subsections (1) and (2) applicable, the chief executive may recommend to the local government in question that it examine the matter in the manner and to the extent provided in those subsections.

(10) Thereupon this section must be construed as if the chief executive were the dissolved board and the provisions thereof apply accordingly.

***Division 8—General provisions*****Appointment of chief executive to administer area**

**209.** Where with respect to an area established under this part a board has not been established, a regulation may appoint the chief executive to administer that area for a period specified in the regulation and to exercise the powers and authorities and to perform the functions and duties of the board as if the board had been duly established, and for those purposes the chief executive is deemed to be the board and may exercise the powers and authorities and perform the functions and duties.

**Power of chief executive to undertake certain works on behalf of board**

**210.(1)** The chief executive, 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 connection therewith upon terms agreed upon by and between the chief executive and the board in question.

**(2)** An agreement entered into under this section is deemed to be a contract between the chief executive and the board in question and may be enforced accordingly.

**Power of board to require occupier or owner to maintain works connected to works of board**

**211.(1)** Notwithstanding section 145, a board, upon a resolution by it in that behalf, by notice in writing given to the person, 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.

**(2)** 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 chief executive or, where the chief executive is administering



the affairs of the board, the Minister against the requisition contained in the notice.

(3) 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 chief executive 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.

(4) The notice of appeal must be in writing, state the grounds of appeal and be served on the chief executive or, as the case may be, Minister.

(5) A copy of the notice of appeal must be given forthwith upon its service—

- (a) in the case of an appeal to the chief executive—to the board in question;
- (b) in the case of an appeal to the Minister—to the chief executive.

(6) Upon receipt by the chief executive or Minister of the notice of appeal the chief executive or, as the case may be, Minister must cause investigation and inquiry to be made into the matter.

(7) Upon the investigation and inquiry, the chief executive or, as the case may be, Minister must determine the appeal.

(8) 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 the occupier or owner, 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.

(9) Where the occupier or, as the case may be, owner fails within the time specified in the further notice given to the occupier or owner under subsection (8) 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.

(10) Costs and expenses incurred by the board in taking action in accordance with subsection (9) 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.

### **Restriction as to breaking up railway and tramway or altering position of road**

**212.(1)** This Act does not authorise 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 regulation constituting the board; or
- (b) the approval of the Governor in Council in that behalf is first had and obtained.

**(2)** Before conferring special powers under subsection (1)(a) or giving approval under subsection (1)(b), the Governor in Council must be satisfied that—

- (a) 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
- (b) opportunity to object to the proposal has been given to the authority or person concerned.

### **Obstruction of member of board, officer or other person**

**213.** 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 the person of any power or authority or the performance of a function or duty conferred or imposed on the person by or under this Act commits an offence against this Act.

Maximum penalty—200 penalty units.

**Protection against liability**

**214.** 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 the member, officer, employee, agent or person to any action, liability, claim or demand.

**Fees and expenses payable to member of board**

**215.(1)** Subject to subsections (2) and (3), a board may pay to a member of a board, including the chairperson, 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 board must not fix a fee for a purpose that is more than a maximum amount that may be prescribed under a regulation for the purpose.

(3) 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 under the *Public Service Act 1996*.

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

### *Division 1—Preliminary*

#### **Definitions for pt 10A**

**215A.** In this part—

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

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

**“committee”** see section 215C.

**“company”** means the company within the meaning of the *South East Queensland Water Board (Reform Facilitation) Act 1999*, schedule 2.<sup>50</sup>

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

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

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

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

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

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

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<sup>50</sup> *South East Queensland Water Board (Reform Facilitation) Act 1999*, schedule 2—

**“company”** means a company—

(a) wholly owned by the State and the following local governments, in whatever proportions—

(i) Brisbane, Gold Coast, Ipswich, Logan and Redcliffe city councils;

(ii) Beaudesert, Caboolture, Esk, Gatton, Kilcoy, Laidley and Pine Rivers shire councils; and

(b) formed or to be formed under the Corporations Law.

**Application of pt 10A**

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

***Division 2—Flood mitigation*****Establishment of technical advisory committee**

**215C.** The Minister may establish a technical advisory committee (the “**committee**”).

**Functions of committee**

**215D.(1)** The committee’s functions are—

- (a) to advise and make recommendations to the Minister on flood mitigation in south-east Queensland; and
- (b) to prepare a manual (a “**flood mitigation manual**”) of operational procedures for flood mitigation for each of the company’s reservoirs.

**(2)** The committee may give advice or make recommendations on its own initiative or if asked by the Minister.

**Committee meetings**

**215E.** The committee may meet at the times and places it decides and conduct its business in the way it decides.

**Minister’s approval of flood mitigation manual**

**215F.(1)** The committee must give the Minister a copy of each flood mitigation manual prepared by the committee, and any proposed amendment of the manual, for the Minister’s approval.

**(2)** The Minister may, by gazette notice, approve the manual or amendment.

**Protection from liability**

**215G.(1)** The Minister or a member of the committee does not incur civil liability for an act done, or omission made, honestly and without negligence under this division.

(2) The company, or a company official, in observing the operational procedures in a flood mitigation manual approved by the Minister does not incur civil liability for an act done, or omission made, honestly and without negligence in observing the procedures.

(3) If subsection (1) or (2) prevents civil liability attaching to a person, the liability attaches instead to the State.

(4) In this section—

“**company official**” means—

- (a) a director of the company; or
- (b) an employee of the company; or
- (c) an agent of the company.

***Division 3—Protection of water quality*****Purpose of div 3**

**215H.** The purpose of this division is to protect the quality of water in a company reservoir.

**Regulation of land use in catchment area**

**215I.(1)** A regulation may regulate—

- (a) the use of land in the catchment area, or a part of the catchment area, identified in the regulation for a company reservoir; and
- (b) the construction and use of buildings and structures on the land.

(2) To the extent that a planning scheme under the *Integrated Planning Act 1997* or a local law is inconsistent with the regulation, the planning scheme or local law is ineffective.

(3) To the extent that a development approval under the *Integrated*

*Planning Act 1997* is inconsistent with the regulation, the development approval is ineffective.

### **Effect of regulation**

**215J.** A regulation made under section 215I does not affect a person's power under this or another Act to take action to protect the quality of water in a company reservoir.

### *Division 4—Protection of existing water allocations*

#### **Purpose of div 4**

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

#### **Existing entitlements to water continue**

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

### *Division 5—Company's power to access and maintain its facilities*

#### **Definition for div 5**

**215M.** In this division—

“**authorised person**”, of the company, means an employee or agent of the company authorised by the company for this division.

#### **Appointment of authorised persons**

**215N.** The company may appoint an employee of the company to be an authorised person only if—

- (a) the company is satisfied the employee has the necessary expertise or experience to be an authorised person; or

- (b) the employee has satisfactorily finished training approved by the company.

### **Identity card for company's authorised persons**

**215O.(1)** The company must give an identity card to each of its authorised persons.

**(2)** The identity card must—

- (a) contain a recent photograph of the person; and
- (b) be signed by the person; and
- (c) identify the person as an authorised person; and
- (d) include an expiry date.

### **Failure to return identity card**

**215P.** A person who ceases to be an authorised person must give the person's identity card to the company within 7 days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **Display of authorised person's identity card**

**215Q.(1)** An authorised person may exercise a power in relation to someone else (the "**other person**") only if the authorised person—

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

**(2)** However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.



**Power to enter places**

**215R.(1)** An authorised person may enter a place to inspect, operate, change, maintain, remove, repair or replace a company facility at the place.

**(2)** However, the authorised person may enter a place at any reasonable time only if—

- (a) the company has given the occupier at least 14 days notice of the entry and the purpose of the entry; or
- (b) the company needs to take, in the interest of public health or safety, urgent action in relation to its facility at the place.

**(3)** For subsection (2), a place does not include a part of the place where a person resides.

**(4)** In this section—

“**facility**” means equipment or a structure.

**Power to carry out activities**

**215S.** After entering a place under this division, the authorised person may carry out the activity that is the purpose of the entry.

**Compensation**

**215T.(1)** A person may claim compensation from the company if the person incurs loss or expense because of the exercise or purported exercise of a power under this division.

**(2)** Payment of compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction.

**(3)** A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

**Company to give notice of damage**

**215U.(1)** If the authorised person, in the exercise or purported exercise of a power under this division, damages anything, the authorised person must immediately give written notice of the particulars of the damage.

(2) The notice must be given to the person who appears to the authorised person to be the owner, or in control, of the thing.

(3) If, for any reason, it is not practicable to comply with subsection (2), the authorised person must—

- (a) leave the notice at the place where the damage happened; and
- (b) ensure the notice is left in a reasonably secure way and in a conspicuous position.

### *Division 6—Information request*

#### **Chief executive's power to require information from the company**

**215V.(1)** The company must give the chief executive the information the chief executive reasonably requires to enable the chief executive to perform the chief executive's functions.

(2) The information must be given within a reasonable time after the chief executive asks for it.

(3) However, this section does not require the company to give information if giving the information might tend to incriminate the company.

(4) If the company contravenes this section it commits an offence.

Maximum penalty—200 penalty units.

#### **Commercially sensitive information**

**215W.(1)** This section applies to information the company has given to the chief executive under section 215V if the information is of a commercially sensitive nature.

(2) The chief executive must not disclose the information to any other person.

***Division 7—General provisions about the company*****Application of Financial Administration and Audit Act 1977**

**215X.** To remove any doubt, it is declared that the company is not a statutory body for the *Financial Administration and Audit Act 1977* and that Act does not apply to the company.

***Division 8—Transitional*****Existing approved manual of operational procedures for flood mitigation**

**215Y.(1)** Until the Minister approves a flood mitigation manual under division 3, the flood mitigation manual for the North Pine Dam approved by the Minister under the repealed Act is taken to be the flood mitigation manual approved by the Minister under the division for the dam.

**(2)** Until the Minister approves a flood mitigation manual under division 3, the flood mitigation manual for the Wivenhoe Dam and the Somerset Dam approved by the Minister under the repealed Act is taken to be the flood mitigation manual approved by the Minister under the division for the dams.

**PART 11—MISCELLANEOUS PROVISIONS*****Division 1—Proceedings for offences—offences*****Proceedings for offences**

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

- (a) must be taken by way of summary proceeding under the *Justices Act 1886* within 12 months after the offence is committed or within 12 months after the commission of the offence first comes

to the knowledge of the complainant, whichever period is the later to expire;

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

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

### **Saving of other proceedings and recovery of moneys**

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

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

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

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

### **Obstruction of officer or other person**

**218.** A person who assaults, obstructs or attempts to obstruct, threatens,

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

Maximum penalty—200 penalty units.

### **Protection of information and reports**

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

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

### **Restriction on liability for offence by employee or agent**

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

### **Liability for offence by body corporate**

**221.(1)** Where a body corporate commits an offence against this Act, then, without derogating from the Criminal Code, section 7, each of the following persons is deemed to have committed the offence and, notwithstanding the Criminal Code, section 23 or any other rule of law or practice, to be responsible for the act or omission concerned therein and

may be charged with the offence and punished accordingly—

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

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

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

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

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

(2) The notice must—

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

(3) A person who, having failed to pay the charges due at the date of the

notice or to make satisfactory arrangements for payment within the time specified in the notice given pursuant to this section, takes and continues to take water in contravention of the notice commits an offence against this Act.

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

### **Unlawful taking, getting or removal of quarry material**

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

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

takes, gets or removes on or from—

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

commits an offence against this Act.

Maximum penalty—400 penalty units.

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

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

### **Contravention of licences and certain permits**

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

Maximum penalty—

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

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

Maximum penalty—200 penalty units.

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

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

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

#### **Power to require name and address**

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

- (a) finds the person committing an offence against this Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the authorised officer to suspect on reasonable grounds that the person has committed an offence against this Act.<sup>51</sup>

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

(3) The authorised officer may require the person to give evidence of the correctness of the person's name or address if the authorised officer suspects on reasonable grounds that the name or address given is false.<sup>52</sup>

(4) If a police officer believes on reasonable grounds that a person has not complied with an authorised officer's requirement under subsection (1) or (3), the police officer may take the following steps—

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<sup>51</sup> It is an offence against section 224D(1) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

<sup>52</sup> It is an offence against section 224D(2) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.



- (a) the police officer may ask the person whether the person has a reasonable excuse for not complying with the requirement;
- (b) if the person gives an excuse, the police officer may ask for details or further details of the excuse;
- (c) if the person does not answer the question or gives an excuse the police officer reasonably believes is not a reasonable excuse, the officer may—
  - (i) tell the person that the officer is considering arresting the person for failing to comply with the requirement; and
  - (ii) require the person to state the person's name and residential address (or, if the person has no residential address, an address at which the person can most likely be contacted); and
  - (iii) if the officer reasonably suspects a stated name or address is false—require the person to give evidence of the correctness of the stated name or address;
- (d) the police officer may arrest the person without a warrant if the officer reasonably believes—
  - (i) the person has not complied with a requirement of the officer under paragraph (c)(ii) or (iii); and
  - (ii) proceedings by way of complaint and summons against the person for an offence against section 224D would be ineffective.

### **Power to require answers to questions**

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

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

**(2)** The authorised officer may require the person to answer a question

about the offence.<sup>53</sup>

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

### **Power to require production of documents**

**224C.(1)** An authorised officer may require a person to produce a document required to be held or kept by the person under this Act to the authorised officer for inspection.<sup>54</sup>

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

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

### **Failure to give name and address etc.**

**224D.(1)** A person who is required by an authorised officer under section 224A(1)<sup>55</sup> to state the person's name or address must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

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

Maximum penalty—50 penalty units.

(3) A person does not commit an offence against this section if—

(a) the authorised officer required the person to state the person's

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<sup>53</sup> It is an offence against section 224E(2) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

<sup>54</sup> It is an offence against section 224F to fail to comply with the requirements unless the person has a reasonable excuse for not complying with it.

<sup>55</sup> Section 224A (Power to require name and address)

name and address on suspicion of the person having committed an offence against this Act; and

- (b) the person is not proved to have committed the offence.

### **Failure to answer questions**

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

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

Maximum penalty—50 penalty units.

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

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

### **Failure to produce documents**

**224F.** A person who is required under section 224C<sup>56</sup> to produce a document must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

### **False, misleading or incomplete documents**

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

Maximum penalty—200 penalty units.

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

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<sup>56</sup> Section 224C (Power to require production of documents)

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

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

### **False or misleading information**

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

Maximum penalty—200 penalty units.

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

### **Impersonation of authorised officer**

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

Maximum penalty—200 penalty units.

## *Division 1B—Enforcement of certain notices*

### **Definitions for div 1B**

**224J.** In this division—

“**compliance section**” means section 64A or 76.

“**court**” means the Supreme Court.

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

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

- (a) has aided, abetted, counselled or procured the contravention; or

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

### **Orders to enforce notice under compliance section**

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

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

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

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

### **Consent injunctions**

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

**Interim injunctions**

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

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

**Factors relevant to granting restraining injunction**

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

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

**Factors relevant to granting mandatory injunction**

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

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

**Discharge or variation of injunction or order**

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

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

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

**“land under the control of the corporation”** includes—

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

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 corporation);

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

Maximum penalty—50 penalty units.

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

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

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

### **Removal of trespassers**

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

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

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



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

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

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

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

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

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

(6) Where the person alleged in a complaint under subsection (4) to be the owner of the structure, improvement, other thing or crop the subject of the complaint has not been served with the complaint and the summons issued thereon and is not present at the hearing, the court, if it is satisfied that the corporation, after having made or caused to be made reasonable inquiry with a view to locating the owner, has been unable to locate the owner—

- (a) may proceed to hear and determine the matter of the complaint in

the absence of the owner; or

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

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

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

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

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

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

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

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

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

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

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

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

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

**Rights of chief executive upon surrender of nominal allocation**

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

determined by the chief executive.

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

### **Agreements as to transfer of water under allocation**

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

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

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

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

(4) The chief executive—

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

(5) An approval granted under subsection (4)—

- (a) must be limited in the first instance to a period not exceeding in any case 12 months from the date of the approval;
- (b) may be renewed from time to time for a period as the chief executive determines;
- (c) does not absolve the owner in question from paying to the chief executive the prescribed charges for water under the nominal allocation granted to the owner.

(6) In considering the proposal, the chief executive may have regard to—

- (a) the capability of the system to supply the additional water to the other land the subject of the proposed agreement;
- (b) other matters and things as the chief executive determines taking into account the objects and purposes of this Act.

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

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

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

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

### **Person may sell right to nominal allocation**

**232.(1)** In this section—

**“part 5 entitlement”** means an entitlement within the meaning of part 5 to be issued with a licence for a nominal allocation.

(2) A person who—

- (a) purchases a part 5 entitlement but who has not been issued with a licence under the entitlement; or
- (b) has been issued with a licence after purchasing a part 5 entitlement;

may sell all or some of the person’s rights to a nominal allocation under the licence to another person who was eligible under the relevant sale proposal to purchase the part 5 entitlement.

(3) A regulation may provide for the sale by a person of the person’s right to a nominal allocation under a licence issued under part 4 or 9.

(4) A regulation may provide for, in relation to a sale under subsection (2) or (3)—

- (a) the conditions that are to apply to the sale; and
- (aa) the exercise by the purchaser of the rights to a nominal allocation acquired under the sale; and
- (b) the making and levying of a charge by the chief executive to recover the corporation’s costs, expenses and losses resulting for any reason from the sale.

(4A) Without limiting subsection (4)(b), a charge for a sale under subsection (2) or (3) levied under subsection (4)(b) may be for—

- (a) the corporation’s administrative costs and expenses; and
- (b) costs and expenses resulting from construction or maintenance of headworks or other works; and
- (c) losses of revenue to the corporation due to decrease in the use or potential use of works or increased delivery costs; and
- (d) costs, expenses or losses of the corporation over a future period; and
- (e) a part of the corporation’s costs, expenses or losses resulting from more than 1 sale under subsection (2) or (3) apportioned in relation to the sale on any basis decided under a regulation.

(5) A sale under this section is subject to the issue of, or amendment of, a licence or licences by the chief executive to give effect to the sale and to conditions that the chief executive may impose on a licence issued or amended.

### **Unlawful construction of works or interference with works**

**233.(1)** A person who—

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

commits an offence against this Act.

Maximum penalty—200 penalty units.

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

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

commits an offence against this Act.

Maximum penalty—200 penalty units.

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

- (a) takes up, removes, demolishes or otherwise interferes with works the property of the corporation or under the control of the

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

commits an offence against this Act.

Maximum penalty—200 penalty units.

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

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

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

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

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



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

(9) Upon a conviction for an offence defined in subsection (2) or (3), the court, in addition to imposing a penalty, may order that the offender pay to the corporation, chief executive or board in question the amount of money assessed by the court to cover the cost attributable to the injury, loss or damage done by the offender in committing the offence.

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

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

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

(3) A person who fails to comply with a notice given under subsection (2) to the satisfaction of the chief executive within the time

specified therein commits an offence against this Act.

Maximum penalty—200 penalty units.

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

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

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

### **Warrant to enter land or premises**

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

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

officer or agent to enter upon the land or premises;

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

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

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

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

### **Diversion of watercourse or lake and reclamation of certain land**

**236.(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; and
- (d) the chief executive or a person duly authorised in writing by the chief executive in that behalf; and
- (e) the chief executive of the department administering the *Land Act 1994* or a person authorised by that chief executive.

(2) A reference pursuant to subsection (1) is for all purposes deemed a reference under the *Land Act 1962*, section 37(2), as continued by the *Land Act 1994*, 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 connection 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) After considering the recommendations, the Minister may approve the proposed diversion or reclamation.

(6) If the Minister approves the proposed diversion or reclamation, the Minister may authorise—

- (a) a Crown instrumentality or corporation representing the Crown; or
- (b) a department of the government; or
- (c) a local government; 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 authorisation, enumerate the steps and acts, matters and things that the Minister considers necessary or desirable to be—

- (e) taken, done or executed for the purposes of or in connection 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 government or other person or body authorised under subsection (6) has by itself, himself or herself and his, hers 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, her 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 unallocated State land within the meaning of the *Land Act 1994* 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.

(9) 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.

### **Appeal to Minister**

**237.(1)** A person aggrieved by—

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

may appeal to the Minister.

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

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

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

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

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

### **Compensation for injury, loss or damage**

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

- (a) the corporation;
- (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 corporation, chief executive or an officer, or person acting under the authority of the corporation or chief executive;
- (d) by a board or an officer, employee or agent thereof acting under the authority of the board;

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

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

### **Claim for compensation**

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

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

question;

(b) set forth—

- (i) the name and place of residence of the claimant and the name and place of business of the claimant's solicitor (if any);
- (ii) the nature of the injury, loss or damage in respect of which the claim is made;
- (iii) the total amount of compensation claimed and particulars detailing how that amount is arrived at and specifying in each case the amount claimed under each separate heading constituting the claim;

(c) be furnished within 1 year after the occurrence of the act, matter or thing out of which the claim for compensation arose.

(2) The claimant must, upon a requisition in that behalf duly given by the claimant, furnish to the chief executive or, as the case may be, board the further information and particulars with respect to the claimant's claim specified in the requisition.

### **Procedure upon failure to reach agreement as to amount of compensation**

**240.(1)** Where the chief executive or, as the case may be, board and the claimant fail to reach agreement as to the amount of compensation payable under this Act, the claimant, chief executive or board may refer to the Land Court for hearing and determination the matter of the amount of the compensation.

(2) The jurisdiction of the Land Court to hear and determine a reference under this section is vested in 1 member only.

(3) A reference under this section may be made at any time after the expiration of 90 days next following the date on which the claimant furnished to the chief executive or board the claimant's claim for compensation.

(4) A reference under this section is made by filing in the office of the registrar of the Land Court a copy of the claim for compensation furnished by the claimant to the chief executive or board and within 14 days after filing giving to the chief executive or board or, as the case may be, claimant

notice of the reference.

(5) A claim for compensation so filed may be amended only after leave of the Land Court has been granted subject to any terms as the Land Court determines including terms as to payment of costs.

(6) The Land Court, upon the application of the chief executive or board in question, may order the claimant to file in the office of the registrar of the Land Court within the time specified in the order further or other particulars with respect to the claim for compensation as, having regard to the claim, the court thinks fit.

(7) Where a claimant fails to comply with an order of the Land Court under subsection (6), the court may strike out the reference.

### **Jurisdiction of Land Court**

**241.** The Land Court must hear and determine the claim for compensation and must cause its decision to be certified in writing by the registrar of the Land Court to the parties and they must give effect thereto.

### **Appeal from Land Court re compensation**

**242.** A person aggrieved by a decision of the Land Court as to the amount of compensation payable under this Act may appeal to the Land Appeal Court against the decision in the manner and subject to the procedure prescribed by the *Land Act 1994* with respect to appeals to the Land Appeal Court.

### **Apportionment of joint liability**

**243.** Where the chief executive directs or permits 2 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, the chief executive 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 the chief executive considers just.



**Notice of transfer of land**

**244.(1)** A person who sells or otherwise disposes of land in respect of which a licence has been granted and issued or to which the corporation has agreed to supply water must give to the chief executive notice in writing of the sale or other disposal, specifying the name and address of the purchaser or other person taking the disposition.

**(2)** The owner of land in respect of which a licence has been granted and issued or to which the corporation has agreed to supply water that is subdivided must, forthwith upon the approval by the local government of that subdivision, give to the chief executive notice in writing accompanied by an approved plan of that subdivision.

**(3)** Upon the sale of a parcel of land following a subdivision referred to in subsection (2), the owner must forthwith give to the chief executive a notice in writing of the sale specifying the name and address of the purchaser.

**(4)** A person who is liable for the payment of moneys under part 4 or 9 who, having sold the land in question or a part thereof, fails to give notice in accordance with this section continues to be liable for the payment of moneys after the sale in the same manner and to the same extent as if the person were still the owner.

**Searches in public offices**

**245.(1)** Where a right conferred by the *Land Title Act 1994*, section 35 is exercised by a person acting on behalf of the corporation or chief executive, a fee must not be charged for a service rendered upon the exercise of that right.

**(2)** An authorised officer may at all reasonable times and without payment of a fee inspect records in the office of a registrar of the Supreme Court for the purpose of ascertaining the names of corporations and joint stock companies, trustees with respect to estates or trusts, and executors and administrators of estates and may make and take all copies of or extracts from records as the authorised officer thinks fit.

**Continuation in operation of notice, order and the like**

**246.** Any notice, order, requisition or other document or writing required under this Act to be given to or served on an owner or occupier is, if due service thereof has been made, binding on all persons claiming through, from or under the owner or occupier on whom or which it has been served to the same extent as if it had been served on those lastmentioned persons respectively.

**Service of documents**

**247.(1)** Any notice, direction, requisition, order, assessment of rates or charges or other document or writing relating to the business of—

- (a) the corporation or chief executive;
- (b) a board;

required or authorised by this Act to be given to or served on a person is duly given or served if—

- (c) it is delivered personally to the person to whom it is directed;
- (d) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (e) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (f) where it is addressed to the owner or occupier of land or premises—it is left with some adult person on the land or premises, or if there is no such person, it or a true copy of it is fixed on some conspicuous part of the land or premises;
- (g) where it is addressed to the corporation or chief executive—it is left with some person at any office of the department or forwarded by post to the chief executive;
- (h) where it is addressed to a board—it is left with the secretary thereof or some other person at the office of the board or other place determined by the board or forwarded by post to the secretary thereof.

**(2)** A document or writing within the meaning of this section directed to

an owner or occupier of land whose name is not known may be addressed to the owner or occupier by the description 'owner' or, as the case may be, 'occupier' of the land in question without further name or description.

(3) Subject to subsection (2), a document or writing within the meaning of this section that is directed to a person whose name and address are unknown may be given or served by publishing that document or writing 3 times in a newspaper circulating generally in the locality in question at intervals of not less than 1 week between each publication.

### **Protection against liability**

**248.(1)** Any act, matter, thing, recommendation or decision done or made by or any agreement, arrangement or contract entered into by—

- (a) the Minister;
- (b) the corporation;
- (c) the chief executive;
- (d) any authorised officer or other officer;
- (e) a person acting with or under the authority of the Minister, corporation, chief executive, any authorised officer or other officer;

for the purpose of carrying out or giving effect to this Act or done in good faith and purporting to be for the purposes of this Act must not subject them or any of them or the Crown to any action, liability, claim or demand.

(2) Except where it is expressly provided by this Act with respect to the payment of compensation, any action, liability, claim or demand does not lie against or attach to the Crown, the Minister, corporation, chief executive, or any officer, employee, worker or other person for or in respect of—

- (a) an obstruction of the navigation of a navigable river; or
- (b) the diminution of the quantity of water in a watercourse by reason of the execution of works authorised by or under this Act; or
- (c) any injury, loss or damage occasioned or alleged to be occasioned or in any way arising out of or in connection with the exercise of the powers and authorities or the performance of the functions and duties conferred or imposed by or under this Act.

(3) Notwithstanding this Act, any action, liability, claim or demand does not lie against or attach to the corporation, the chief executive, officers, workers or agents of the corporation or of the chief executive 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 corporation in a case where the escape is not attributable to the negligence or default of the corporation, chief executive, officers, workers or agents or any of them;
  - (ii) the withdrawal into works of the corporation or into drives, tunnels or other excavations constructed by the corporation in connection therewith of surface or subsoil water from or the distortion of the soil or particles thereof or other material in, on or under, land adjacent to or in the vicinity of those works, drives, tunnels or other excavations where they are constructed and maintained without negligence and proceeded with without undue delay;
- (b) any injury, loss or damage sustained by a person during the progress of the construction of works by or on behalf of the corporation that is caused directly or indirectly by reason of or in consequence of the following acts, matters or things done in connection therewith, namely—
  - (i) the performance of preparatory or ancillary work;
  - (ii) the temporary closure of or obstruction to, or the temporary placement of any material, structure, plant, earth or spoil or any construction or other thing of any kind, in or on any road, lane, footpath, gateway, doorway or other opening;
  - (iii) the discharge onto a road, lane, footpath or gateway of water;
  - (iv) noise or vibration;

where those works are constructed without negligence and proceeded with without undue delay.

(4) Subsection (3) does not affect or in any way limit the liability of the corporation to pay damages for personal injury to a person where the corporation would be, but for this Act, so liable.

**Evidentiary provisions**

**249.(1)** In a proceeding for the purposes of this Act—

- (a) it is not necessary to prove—
  - (i) the appointment of the chief executive or other officer or the authority of the chief executive or other officer to do an act, take a proceeding or give any direction or order;
  - (ii) the limits of an area, land vested in or under the control of the corporation or catchment area subject always to the rights of the defendant to prove the contrary;
- (b) a signature purporting to be that of the Minister, chief executive, any authorised officer or other officer is to be taken to be the signature it purports to be until the contrary is proved;
- (c) the production of a map or plan purporting to have been made on behalf of the corporation and sealed with its seal or purporting to have been issued or published by a department of the Government or an officer thereof is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters stated or delineated therein;
- (d) copies of plans, specifications and books of reference with respect to matters arising under this Act and of any alteration or correction thereof or extract therefrom certified by an authorised officer to be true and correct copies is, upon their production in that proceeding, conclusive evidence of the contents thereof;
- (e) a copy of an extract from a newspaper purporting to be a newspaper circulating in a certain locality consisting of or including an advertisement purporting to be made and inserted in that newspaper by, or on behalf or under the direction of the chief executive with respect to matters arising under this Act is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence—
  - (i) that the newspaper is one circulating in the locality in question;
  - (ii) that the advertisement was made and inserted in that newspaper by, on behalf or under the direction of the chief executive;

- (iii) of the contents of that advertisement;
- (f) a document or writing purporting to be made or issued by, on behalf or under the direction of the corporation or chief executive and purporting to be under the seal of the corporation or signed by the Minister, chief executive or a person authorised in that behalf by the corporation or chief executive is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that document or writing;
- (g) a certificate purporting to be signed by an authorised officer that works, matters or things specified therein have been constructed, done or supplied by the corporation pursuant to the requirements of or for or on behalf of any person and setting forth the costs and expenses incurred (with interest if any) in connection therewith is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
- (h) the production of a deed of grant, certificate of title, memorandum of transfer or other instrument creating an interest in land or of a duly certified copy thereof is evidence and, in the absence of evidence to the contrary, conclusive evidence that the person named therein as registered proprietor or as entitled to the interest is the owner of or person entitled to the interest in the land;
- (i) a certificate purporting to be signed by an authorised officer stating that a certain quantity of water is shown by the index or register of a meter authorised by the chief executive to have passed through that meter during an interval of time specified in the certificate is upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence that the quantity of water so stated has in fact passed through that meter and been supplied;
- (j) a certificate purporting to be signed by an authorised officer stating that during the time specified therein a certain quantity of water specified therein has been supplied to a person specified therein and that that quantity has been measured—
  - (i) by a method other than the use of the index or register of a

meter authorised by the chief executive (setting forth the method); or

- (ii) by estimation or assessment (setting forth the method), is upon its production in that proceeding evidence and, in the absence of evidence to the contrary, conclusive evidence that the quantity of water specified so measured or, as the case may be, estimated or assessed has in fact been supplied during the interval of time so specified to the person so specified;
- (k) wherever it is necessary to mention or refer to a person as the owner or occupier of land or premises, it is sufficient for the purposes of that proceeding to designate that person as the owner or occupier of the land or premises without reference to the person's name or further or other description;
- (l) a document purporting to be a copy of any record, licence, registration, permit, approval, certificate, order, notice, requisition or authority under this Act is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence of that licence, registration, permit, approval, certificate, order, notice, requisition or authority;
- (m) a certificate purporting to be signed by a person authorised to grant it is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate;
- (n) a certificate purporting to be signed by the chief executive or an authorised officer certifying the receipt or otherwise of any notice, application or payment or that any amount of fees or other moneys specified in the certificate is payable under this Act by a specified person and has not been paid is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate;
- (o) a certificate or document relating to a motor vehicle purporting to be issued under the *Transport Infrastructure (Roads) Act 1991* is, upon its production in that proceeding, evidence and, in the absence of evidence to the contrary, conclusive evidence of the

matters contained in that certificate or document and that the person named therein as the person in whose name the motor vehicle is registered was the person using the motor vehicle at the material time or during the material period;

- (p) an allegation or averment in a complaint—
- (i) that a place is, or that any act, matter or thing was done or omitted, within any specified district or area;
  - (ii) that any person was or was not, at the material time, licensed, permitted, registered, authorised or approved under this Act;
  - (iii) that any licence, registration, permit, approval, certificate or authority required under this Act to be obtained was not duly obtained by the person required to obtain it;
  - (iv) of the date on which the commission of the offence first came to the knowledge of the complainant;
- is evidence and, in the absence of evidence to the contrary, conclusive evidence of that allegation or averment;
- (q) an allegation in a complaint or like document by means of which legal proceedings of any kind are initiated that an item named therein is or is not the property of the corporation or the chief executive is evidence and in the absence of evidence to the contrary conclusive evidence of the matters alleged.

(2) Wherever it is proved in a proceeding for the purposes of this Act that water is being or has been wrongfully taken or used or illegally diverted or taken onto or into land owned or occupied by any person, it is deemed that the taking, use or diversion of that water has been effected by or by the direction of that person, unless that person satisfies the court that the taking, use or diversion of the water onto, on or into the land in question was effected without the person's knowledge, direction or connivance.

(3) This section does not prejudice or in any way affect other means of proving the elements of an alleged offence.

### **Approval of forms**

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



**Regulation-making power**

**250A.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may confer powers and functions for this Act on the corporation, a chief executive, a department, public authority or local government.

(3) A regulation may make provision for a purpose mentioned in the schedule.

(4) Without limiting subsection (3), a regulation may—

- (a) fix the water allocation for an entity; and
- (b) impose conditions on the allocation, including, for example, the volume of water the entity must make available to another entity each year from the allocation, and the period for which the allocation is made.

**References to repealed Act**

**251.** A reference in an Act or document to the *Water Act 1926* is taken to be a reference to this Act.

**PART 12—TRANSITIONAL AND VALIDATION****Transitional provision for Natural Resources Amendment Legislation Act 1997**

**252.(1)** Despite the repeal of sections 227 and 228<sup>57</sup> by the *Natural Resources Legislation Amendment Act 1997*, those sections apply, as if they had not been repealed, to a charge made and levied under section 227 before its repeal.

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<sup>57</sup> *Natural Resources Legislation Amendment Act 1997*, sections 227 (Water charges) and 228 (Payment of water charge, interest thereon and recovery thereof)

(2) Subsection (1) does not limit the *Acts Interpretation Act 1954*, section 20.<sup>58</sup>

### **Validation of terms**

**256.(1)** This section applies to a term of a licence if the licence was in force, or purportedly in force, immediately before the commencement of section 44(1)(ba)<sup>59</sup> (the “**paragraph**”), and—

- (a) the licence was issued under part 4, division 2;<sup>60</sup> and
- (b) had the licence been issued after the commencement of the paragraph, the term would be a term authorised under this Act.

(2) The term is taken to have always been validly included in the licence.

### **Areas continued in existence**

**257.** To remove any doubt, it is declared that an area, other than an irrigation area or drainage area, constituted under section 1.3(g)<sup>61</sup> of this Act as originally enacted, is, and always was, constituted as a water supply area.

### **Remaking certain subordinate legislation**

**258.(1)** The procedures stated in section 131 for making a regulation under section 129<sup>62</sup> do not apply to a regulation remaking subordinate legislation made under section 129 and in force immediately before the commencement of this section.

(2) Subsection (1) applies despite section 129(10).

(3) This section expires on 30 June 2000.

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<sup>58</sup> *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

<sup>59</sup> Section 44 (Licences)

<sup>60</sup> Part 4 (Regulation and control of water, watercourses and certain quarry materials), division 2 (Licences)

<sup>61</sup> Section 1.3 (Repeals and savings) of the Act as originally enacted

<sup>62</sup> Section 129 (Constitution of area and establishment of board)

## **SCHEDULE**

### **SUBJECT MATTER FOR REGULATIONS**

section 250A(3)

#### **Officers and other persons**

1. The powers, authorities, functions and duties of officers and other persons administering this Act; the conduct, discipline, regulation and control of other persons.

#### **Inspections**

2. Provision for inspections of works, machinery, equipment and services and all matters and things in connection therewith or incidental thereto.

#### **Terms and implied terms in contracts and the like**

3. The terms to be inserted or implied in contracts, agreements, leases and other instruments; the forms of contracts, agreements, leases and other instruments.

#### **Notices and the like**

4. The signing, giving, serving and enforcement of notices, requisitions and other documents or writings under this Act.

#### **Applications and grants etc.**

5. Applications (including criteria to be considered under section 43) for and the grant, issue, revocation, cancellation, suspension or surrender of licences, amended licences, registrations, permits, approvals, certificates and authorities under this Act and transfers, renewals and duplicates thereof; the terms subject to which licences, amended licences, registrations, permits,

**SCHEDULE (continued)**

approvals, certificates and authorities may be granted, issued, revoked, cancelled, suspended, surrendered, transferred or renewed; the records to be kept in relation thereto.

**Proof of matters and things and documents**

6. The manner in which matters and things required to be proved under this Act and any application, recommendation, report, order, notice, requisition or other document under this Act may be proved for any purpose and the procedures to be followed in connection therewith.

**Mode of execution**

7. The manner in which any act, matter or thing under or for the purposes of this Act may be executed, done or performed and the procedures to be followed in connection therewith.

**Materials for works or things**

8. Requiring any works or thing under or for the purposes of this Act to be executed, done or constructed with the use of materials, within the time or in the manner the corporation, chief executive or officer or other person directs or approves generally or for a class of cases or in a particular case; requiring works to be executed or constructed only by designated qualified persons.

**Management of works**

9. The due management and use of works and other property of the Crown or vested in the corporation and of rights in water vested in the corporation or under the control of the corporation or chief executive and the construction, maintenance, extension, cleaning, repair and management of the works in connection therewith.

## SCHEDULE (continued)

**Straying stock**

10. The prevention of the straying of stock on roads, reserves or other land vested in the corporation or under the control of the corporation or chief executive.

**Preservation of watercourses and the like, catchment areas against injury, damage, etc.**

11. The preservation and protection of watercourses, lakes, springs, underground and other sources of water supply and catchment areas against injury, damage, trespass or pollution the prohibition of the doing or continuance of any act that causes or is likely to cause pollution thereof or of the water supply therein or thereon.

**Traffic**

12. Regulation and control of traffic on roads and other localities on or in land vested in the corporation or under the control of the corporation or chief executive.

**Demonstration farms, experiment stations**

13. The establishment and the regulation and control of the operation and management of demonstration farms and experiment stations.

**Improvements**

14. The construction of improvements on land for which a nominal allocation has been granted; the fixing of prices or charges for the acquisition or use of improvements on land for which a nominal allocation has been granted effected by or under the authority of the corporation or chief executive.

**Protection of water and works**

15. Protection of the water, works, surveys, fittings and other property of

**SCHEDULE (continued)**

the Crown or vested in the corporation or under the control of the corporation or chief executive and every part thereof from trespass, diversion, pollution, defilement, obstruction, injury, loss or damage.

**Nuisances**

**16.** Prevention of encroachment of nuisances on and removal of nuisances from land and works vested in the corporation or under the control of the corporation or chief executive.

**Structures**

**17.** The construction, control and regulation of structures within an irrigation area and the height and design of and materials to be used in and all other matters and things in or in connection with the construction of structures within the area.

**Provision etc. of recreational or tourist facilities**

**18.** Regulation and control of the provision, operation, maintenance, protection, lease, sale or other disposal of recreational or tourist facilities and the grant to persons of ancillary rights in connection therewith at headworks or on other land vested in the corporation or under the control of the corporation or chief executive.

**Recreational activities**

**19.** Regulation and control of recreational activities in, on or over watercourses, lakes, other water storages, dams, weirs, barrages or catchment areas or land vested in the corporation or under the control of the corporation or chief executive including, without limiting the generality of this provision, regulation and control of the use therein, thereon or thereover of watercraft or motorised land vehicles of every type and description; prohibition or restriction of certain recreational activities.

## SCHEDULE (continued)

**Supply of water**

**20.** Regulation and control of the supply and distribution of water; prescription of the terms on or subject to which water may be allocated, supplied or distributed; the methods to be adopted for measuring water entitlements and quantities of water; quantities of water that consumers are entitled to receive and the names or descriptions that may be applied to different entitlements under licences or permits; determination of the time, order and manner of the delivery of water.

**Use of water for irrigation, domestic purposes, watering stock and other purposes**

**21.** The terms, subject to which water may be used by consumers for irrigation, domestic purposes, watering stock or industrial, mining, urban or other specified purposes.

**Insufficiency in water supply**

**22.** The provision of methods and procedures to meet the contingency of any insufficiency in the general water supply in any area.

**Charges for water**

**23.** The making and levying, and the fixing of the scale or structure of, charges to be paid for water allocated, supplied to or taken by consumers under a licence, permit, contract or agreement or water allocation or otherwise allocated or supplied including, without limiting the generality of this provision, the fixing of a minimum amount to be paid in specified cases and different charges for water according to the purposes for which it is allocated, supplied or taken; providing for a variation in the price of water supplied in excess of a specified quantity; determination of the times at which charges for water are payable whether in advance or otherwise.

**Recovery of charges for water**

**23A.** For charges levied under item 23—

## SCHEDULE (continued)

- (a) persons required to pay the charges; and
- (b) notification to persons required to pay the charges, including what is taken to be sufficient notification; and
- (c) discounts; and
- (d) conditions of payment of charges; and
- (e) recovery of unpaid charges; and
- (f) under item 36, interest that must be paid if the charges are not paid as required, conditions of payment and recovery of unpaid interest.

**Drainage rates and charges**

**24.** The making and levying of rates and charges in respect of drainage works in irrigation areas; fixing the basis or bases upon which those rates and charges may be made and levied; prescription of other matters incidental thereto.

**Local services and charges therefor**

**25.** The supply and regulation of stormwater drainage and other drainage, sanitary, sewerage and garbage systems, the suppression of nuisances, the removal and disposal of garbage, nightsoil, filth and other refuse with respect to land vested in the corporation or under the control of the corporation or chief executive; the fixing, payment, collection and recovery by the chief executive of charges for the rendering of services specified in this section.

**Riparian owners and occupiers**

**26.** Regulation and control of the exercise of rights for the purpose of securing the distribution of water partly or wholly supplied from works of the corporation 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



**SCHEDULE (continued)**

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 corporation.

**Prevention of waste and the like of water**

**27.** The prevention of and provision of remedies for the waste, misuse, undue or unauthorised consumption or pollution of water contained in or supplied from water storages or works of the corporation or underground sources of water supply.

**Water allocations**

**28.** Provision for all matters and things with respect to water allocations, the surrender, transfer or termination thereof, agreements as to use of water thereunder and the apportionment thereof and for all matters and things in connection therewith or incidental thereto and the regulation and control thereof; methods of and procedures for applying water to land within an area that may be permitted.

**Carryovers and forward draws of water allocations**

**28A.** For any nominal allocation—

- (a) the carryover of unused water from 1 period for which there is an announced allocation to the next period; and
- (b) the forward draw of water from 1 period for which there is or will be an announced allocation into the previous period; and
- (c) conditions, including charges under item 23, for the carryover or forward draw of water.

**Furnishing information and returns re works**

**29.** The furnishing of information and returns by owners and occupiers on those matters and things prescribed with respect to artesian and sub-artesian bores and other works for water supply or quests for water,

## SCHEDULE (continued)

commenced, constructed or abandoned whether before or after the commencement of this Act; the forms of returns; the manner of and procedures for verifying information and returns.

**Furnishing of information and returns re controlled quarry material**

**30.** The information and returns to be furnished by a person with respect to controlled quarry material or other material taken and removed by the person on or from the bed and banks of a watercourse or lake; the times when and the persons by and to whom information and returns are to be furnished; the forms of returns; the manner of verifying information and returns.

**Sale of controlled quarry material by auction and the like**

**31.** Prescription, regulation and control of the methods and procedures for the sale whether by auction or after tender of controlled quarry material; fixing upset prices or charges with respect to sales; drawing up price lists for various classes of controlled quarry material.

**Designated areas, catchment areas**

**32.** The regulation and control of designated areas (including preparation or approval of plans of preferred development thereof) and catchment areas and works thereon and the use of the land and water therein or thereon.

**Fees and the like**

**33.** Fees, charges, allowances, royalty, costs and expenses payable to or to be paid by the corporation or chief executive or other persons under or for the purposes of this Act and the fixing thereof; matters and things in respect of which they are payable or to be paid; methods of collection thereof; manner, time and place of payment thereof; persons by whom and to whom they are payable; all matters and things with respect to the recovery thereof.

## SCHEDULE (continued)

**Control of bores**

**34.** Regulation and control in the public interest of the flow of water from an artesian bore or a subartesian bore.

**Penalties**

**35.** Penalties that may be imposed for a contravention of or failure to comply with any of the regulations, not exceeding in each case 40 penalty units; providing for different penalties in cases of successive breaches; providing that in addition to imposing a penalty, the court may order that costs and expenses incurred by the corporation or chief executive consequent upon a contravention of or failure to comply with a regulation must be paid by the offender.

**Interest**

**36.** Providing that moneys payable to the corporation or chief executive must be subject to the payment of interest on amounts thereof remaining unpaid; fixing the classes of charges on which and the date from which interest becomes payable and the rate of interest; all matters and things with respect to the recovery thereof.

**ENDNOTES****1 Index to endnotes**

	Page
2 Date to which amendments incorporated . . . . .	258
3 Key . . . . .	259
4 Table of earlier reprints . . . . .	259
5 Tables in earlier reprints . . . . .	260
6 List of legislation . . . . .	260
7 List of annotations . . . . .	262
8 List of forms . . . . .	283
9 Table of renumbered provisions . . . . .	283
10 Provisions that have not commenced and are not incorporated into reprint .	297

**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 31 March 2000. Future amendments of the Water Resources Act 1989 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

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

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 70 of 1993	26 May 1994
2	to Act No. 10 of 1995	1 June 1995
3	to Act No. 57 of 1995	20 December 1995
3A	to Act No. 54 of 1996	4 December 1996
3B	to Act No. 68 of 1996	21 February 1997
3C	to Act No. 78 of 1997	24 February 1998
4	to Act No. 25 of 1998	20 July 1998
4A	to Act No. 48 of 1998	18 December 1998
4B	to Act No. 86 of 1999	11 February 2000

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1, 2, 3
Changed names and titles	1, 2, 3
Corrected minor errors	1, 2, 4
Obsolete and redundant provisions	1, 2
Renumbered provisions	1, 2

## 6 List of legislation

### **Water Resources Act 1989 No. 112**

date of assent 31 October 1989

ss 1–1.2 commenced on date of assent

pts 6 and 7 commenced 18 May 1991 (proc pubd gaz 18 May 1991 p 258)

remaining provisions commenced 1 February 1990 (proc pubd gaz 25 November 1989 p 2248)

as amended by—

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

date of assent 14 November 1990

commenced on date of assent

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

date of assent 13 May 1992

ss 1–2 commenced on date of assent

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

### **Water Resources Amendment Act 1993 No. 7**

date of assent 26 March 1993

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act 1993 No. 32 ss 1–3 sch 1**

date of assent 3 June 1993

commenced on date of assent

### **Local Government Act 1993 No. 70 ss 1–2, 804 sch**

date of assent 7 December 1993

ss 1–2 commenced on date of assent

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

### **Fossicking Act 1994 No. 63 ss 1–2, 110(2) sch**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1994 (1994 SL No. 465)

**Land Act 1994 No. 81 ss 1–2, 527 sch 5 (as amd 1995 No. 10 s 37 (as from 5 April 1995))**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (1995 SL No. 185)

**Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 ss 1–3 sch 2**

date of assent 1 December 1994

commenced on date of assent

**Water Resources Amendment Act 1995 No. 10**

date of assent 5 April 1995

s 3 sch amdts 8, 9, 47–49, 72 commenced 1 July 1995 (see s 2 and 1995 SL No. 185)

remaining provisions commenced on date of assent

**Statutory Authorities Superannuation Legislation Amendment Act 1995 No. 36 ss 1–2, 9 sch 2**

date of assent 16 June 1995

commenced on date of assent

**Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1 (as amd 1995 No. 58 ss 1–2, 4 sch 1 (as from 28 November 1995 (see s 2(1) sch 1)))**

date of assent 28 November 1995

commenced on date of assent

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch**

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

**Natural Resources Legislation Amendment Act 1996 No. 68 pts 1, 3**

date of assent 9 December 1996

commenced on date of assent

**Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997 No. 17 ss 1–2, 74 sch**

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

**Natural Resources Legislation Amendment Act 1997 No. 41 ss 1, 2(2) pt 4**

date of assent 25 August 1997

ss 30, 31, 33 commenced 5 December 1997 (see s 2(2) and 1997 SL No. 421)

remaining provisions commenced on date of assent (see s 2(2))

**Natural Resources and Other Legislation Amendment Act 1997 No. 78 pts 1, 12**

date of assent 5 December 1997  
 commenced on date of assent

**Water Resources Amendment Act 1998 No. 25**

date of assent 14 May 1998  
 s 9 commenced 17 July 1998 (see s 2 and 1998 SL No. 207)  
 remaining provisions commenced on date of assent

**Valuation of Land and Other Legislation Amendment Act 1998 No. 48 pt 1 s 17 sch**

date of assent 27 November 1998  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 18 December 1998 (1998 SL No. 364)

**South East Queensland Water Board (Reform Facilitation) Act 1999 No. 46 ss 1–2, pt 4**

date of assent 17 September 1999  
 ss 1–2, 14 commenced on date of assent  
 remaining provisions commenced 17 March 2000 (see ss 2(2), 8 and notice  
 pubd gaz 16 March 2000 p 989)

**Sugar Industry Act 1999 No. 51 ss 1, 2(2), 228 sch 1**

date of assent 18 November 1999  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced on 1 January 2000 (see s 2(2))

**Water Resources Amendment Act 1999 No. 86**

date of assent 14 December 1999  
 s 14 commenced 17 March 2000 (see s 2(1), 8 and notice pubd gaz 16 March  
 2000 p 989)  
 remaining provisions commenced on date of assent (see s 2(2))

**Land Court Act 2000 No. 1 ss 1–2, 86 sch 1**

date of assent 8 March 2000  
 ss 1–2 commenced on date of assent  
 remaining provisions not yet proclaimed into force

**Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 373 sch 3**

date of assent 23 March 2000  
 ss 1–2, 373 commenced on date of assent (see s 2(2))  
 remaining provisions not yet proclaimed into force (see s 2(1), (3))

**7 List of annotations**

**This reprint has been renumbered—see table of renumbered provisions in endnote 8.**

**Title**

amd 1992 No. 15 s 13 sch; 1993 No. 7 s 3; 1996 No. 68 s 5; 1997 No. 41  
 s 13; 1997 No. 78 s 134



**Commencement**

s 1.2 om R2 (see RA s 37)

**Repeals and savings**

s 1.3 om 1992 No. 15 s 13 sch

**Interpretation**

s 2 amd 1992 No. 15 s 13 sch; 1993 No. 7 s 4(2); 1997 No. 41 s 14  
 def “**approved form**” ins 1995 No. 57 s 4 sch 1  
 def “**Assistant Commissioner**” om 1992 No. 15 s 13 sch  
 def “**authorised officer**” amd 1992 No. 15 s 13 sch  
 def “**catchment area**” sub 1995 No. 10 s 4(1)–(2)  
 def “**chief executive**” ins 1992 No. 15 s 13 sch  
     om R1 (see RA s 39)  
 def “**Commission**” om 1992 No. 15 s 13 sch  
 def “**Commissioner**” om 1992 No. 15 s 13 sch  
 def “**controlled works**” amd 1992 No. 15 s 13 sch; 1995 No. 10 s 4(3)  
 def “**corporation**” ins 1992 No. 15 s 13 sch  
 def “**Crown holding**” amd 1994 No. 81 s 527 sch 5  
 def “**declared subartesian area**” ins 1997 No. 78 s 135(1)  
 def “**Deputy Commissioner**” om 1992 No. 15 s 13 sch  
 def “**designated area**” sub 1995 No. 10 s 4(1)–(2)  
 def “**Director-General**” ins 1990 No. 80 s 3 sch 7  
     om 1992 No. 15 s 13 sch  
 def “**driller’s licence**” ins 1997 No. 78 s 135(1)  
 def “**holding**” amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch  
 def “**irrigation undertaking**” amd 1992 No. 15 s 13 sch  
 def “**lake**” sub 1995 No. 10 s 3 sch  
 def “**land**” om 1992 No. 15 s 13 sch  
 def “**Land Administration Commission**” om 1995 No. 10 s 4(1)  
 def “**Land Appeal Court**” om 1992 No. 15 s 13 sch  
 def “**Land Court**” om 1992 No. 15 s 13 sch  
 def “**local authority**” om 1992 No. 15 s 13 sch  
 def “**Minister**” om 1992 No. 15 s 13 sch  
 def “**rate**” amd 1992 No. 15 s 13 sch  
 def “**ratepayer**” amd 1992 No. 15 s 13 sch  
 def “**referable dam**” amd 1992 No. 15 s 13 sch  
 def “**road**” amd 1992 No. 15 s 13 sch  
 def “**subdivision**” amd 1995 No. 10 s 3 sch  
     sub 1998 No. 48 s 17 sch  
 def “**Treasurer**” om 1992 No. 15 s 13 sch  
 def “**water allocation**” amd 1992 No. 15 s 13 sch; 1997 No. 78 s 135(2)  
 def “**water available for allocation**” ins 1997 No. 78 s 135(1)  
 def “**water management plan**” ins 1996 No. 68 s 6  
 def “**watercourse**” amd 1992 No. 15 s 13 sch; 1993 No. 7 s 4(1)  
 def “**works**” amd 1992 No. 15 s 13 sch

**Restrictions on rights in water vested in Crown**

s 4 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch

**Division 1—General****div hdg** sub 1992 No. 15 s 13 sch**Delegation by Minister****s 6** amd 1990 No. 80 s 3 sch 7  
prev om 1992 No. 15 s 13 sch  
pres ins 1995 No. 10 s 3 sch**Appointment of authorised officers****s 6A** ins 1996 No. 68 s 7**Limitation of authorised officer's powers****s 6B** ins 1996 No. 68 s 7**Authorised officer's identity card****s 6C** ins 1996 No. 68 s 7**Production or display of authorised officer's identity card****s 6D** ins 1996 No. 68 s 7**Water Resources Commission****s 3.2** om 1992 No. 15 s 13 sch**Appointment of officers****s 3.3** amd 1990 No. 80 s 3 sch 7  
om 1992 No. 15 s 13 sch**Qualifications of commissioner and deputy commissioner****s 3.4** om 1992 No. 15 s 13 sch**Continuance in office of certain persons****s 3.5** om 1992 No. 15 s 13 sch**Power of delegation by commission****s 3.6** om 1992 No. 15 s 13 sch**Property to vest in commission****s 3.7** om 1992 No. 15 s 13 sch**Authentication of documents****s 3.9** om 1992 No. 15 s 13 sch**Application of s 28A of Acts Interpretation Act****s 3.10** om 1995 No. 10 s 3 sch**Division 2—Powers of corporation and chief executive****div hdg** sub 1992 No. 15 s 13 sch**General powers etc. of corporation and chief executive****prov hdg** amd 1992 No. 15 s 13 sch  
**s 8** amd 1992 No. 15 s 13 sch; 1993 No. 7 s 5; 1995 No. 10 s 3 sch; 1997  
No. 78 s 136**Duty of commissioner to advise Minister and make recommendations****s 3.12** om 1992 No. 15 s 13 sch

**Powers of corporation with respect to works etc.**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 9** amd 1992 No. 15 s 13 sch

**Powers etc. of corporation as to ancillary works and the like**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 10** amd 1992 No. 15 s 13 sch

**Entry upon land**

**s 11** amd 1992 No. 15 s 13 sch

**Grant of land to Commission**

**s 3.16** om 1992 No. 15 s 13 sch

**Acquisition of land by corporation**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 12** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch

**Power of corporation to lease or dispose of land or works**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 13** amd 1992 No. 15 s 13 sch

**Powers of corporation where water supply area or drainage area not constituted or proposed to be abolished**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 14** amd 1992 No. 15 s 13 sch

**Power of corporation to supply water by agreement**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 15** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 5; 1997 No. 41 s 15

**General power to make and enter into contracts**

**s 3.21** om 1992 No. 15 s 13 sch

**Mode of making or entering into contracts or agreements**

**s 3.22** om 1992 No. 15 s 13 sch

**Declaration as to downstream limit along a watercourse above which the chief executive may exercise powers etc.**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 16** amd 1992 No. 15 s 13 sch

**Power of chief executive to carry out investigations, prepare estimates etc. on behalf of person**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 17** amd 1992 No. 15 s 13 sch

**Power of chief executive with respect to pipes etc. to be used for certain purposes**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 18** amd 1992 No. 15 s 13 sch

**Establishment and functions**

**s 19** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch

**Membership**

s 20 amd 1995 No. 10 s 3 sch

**Further matters about the operation of a council or committee**

prov hdg amd 1995 No. 10 s 6(1)

s 21 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 6(2)–(5)

**Duty of chief executive**

prov hdg amd 1992 No. 15 s 13 sch

s 22 amd 1992 No. 15 s 13 sch

**Corporation is statutory body**

s 23 amd 1992 No. 15 s 13 sch

sub 1996 No. 54 s 9 sch

**Stamp duty**

s 24 amd 1992 No. 15 s 13 sch

**Power to remit payment of charges or interest thereon**

s 25 amd 1992 No. 15 s 13 sch

**PART 3A—WATER MANAGEMENT PLANS****Division 1—Preliminary**

div hdg ins 1996 No. 68 s 8

**Definitions for pt 3A**

25A ins 1996 No. 68 s 8

**Division 2—Preparation and approval of water management plans**

div hdg ins 1996 No. 86 s 8

**Water management plans may be made**

s 25B ins 1996 No. 68 s 8

**Content of water management plans**

s 26C ins 1996 No. 68 s 8

**Public notice of proposal to prepare draft water management plan**

s 25D ins 1996 No. 68 s 8

**Principles and policies for draft water management plan**

s 25E ins 1996 No. 68 s 8

**Public notice inviting submissions on draft water management plan**

s 25F ins 1996 No. 68 s 8

**Submissions to be considered before water management plan made**

s 25G ins 1996 No. 68 s 8

**Draft plan must be readvertised if changed**

s 25H ins 1996 No. 68 s 8

amd 1999 No. 86 s 4

**Approval of water management plan**

s 25I ins 1996 No. 68 s 8

**Notice of intention not to proceed further toward making water management plan**

s 25J ins 1996 No. 68 s 8

**Amendment of water management plan**

s 25K ins 1996 No. 68 s 8

**Public inspection and purchase of plans**

s 25L ins 1996 No. 68 s 8

**Regulatory impact statements**

s 25M ins 1996 No. 68 s 8

**Division 3—Effect of notice of proposal to prepare plan**

div hdg ins 1996 No. 68 s 8

**Effect of notice under s 25D on applications, agreements, sales, etc.**s 25N ins 1996 No. 68 s 8  
amd 1999 No. 86 s 5**Exceptions to s 25N**

s 25O ins 1996 No. 68 s 8

**Division 4—Compliance with plan**

div hdg ins 1996 No. 86 s 8

**Actions must not be inconsistent with water management plan**s 25P ins 1996 No. 68 s 8  
amd 1999 No. 86 s 6**Annual report**

s 3.33 om 1992 No. 15 s 13 sch

**Power of Governor in Council to vest in the Crown bed and banks of a watercourse or lake not forming boundary of a parcel of land at commencement of this Act**

s 26 amd 1995 No. 10 sch

**Control over catchment area**s 27 amd 1992 No. 15 s 13 sch  
sub 1995 No. 10 s 7**Wastage of water from artesian or subartesian bore**

s 29 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 137

**Supply of surplus water from artesian or subartesian bore**

s 30 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 138

**Operation of the Act about subartesian bores**s 31 sub 1995 No. 10 s 3 sch  
om 1997 No. 78 s 139**Exemption of subartesian water supplies for domestic purposes**s 32 amd 1995 No. 10 s 3 sch  
om 1997 No. 139 s 139

**Right to take water by prescription or use prohibited**

s 35      amd 1992 No. 15 s 13 sch

**Ordinary riparian rights to use water**

s 36      amd 1992 No. 15 s 13 sch

**Control of certain quarry material**

s 37      amd 1992 No. 15 s 13 sch; 1997 No. 78 s 139A

**Division 1A—Certain specific provisions about subartesian bores**

div 1A (ss 37A–37B) ins 1997 No. 78 s 140

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

prov hdg    sub 1997 No. 78 s 141(1)

s 38      amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 1997 No. 78 s 141(2)–(7)

**Rights of non-riparian owner to licence**

s 39      amd 1992 No. 15 s 13 sch

**Power of court upon conviction for an offence against s 38**

s 40      amd 1992 No. 15 s 13 sch

**Alterations other than for repair or maintenance of works prohibited**

s 41      amd 1997 No. 78 s 142

**Application for licence**

s 42      amd 1992 No. 15 s 13 sch; 1995 No. 10 s 9

**Inquiry by chief executive and grant or refusal of application**

prov hdg    amd 1992 No. 15 s 13 sch

s 43      amd 1992 No. 15 s 13 sch; 1996 No. 68 s 9; 1997 No. 41 s 16; 1997 No. 78 s 143

**Certain decisions of the chief executive to be published in newspapers**

prov hdg    sub 1997 No. 78 s 144(1)

s 43A      ins 1996 No. 68 s 10

amd 1997 No. 78 s 144(2)

**Notice of decision about constructing or using artesian or subartesian bores**s 43B      ins 1997 No. 78 s 145; 2000 No. 1 s 86 sch 1**Licences**

s 44      amd 1992 No. 15 s 13 sch; 1995 No. 10 s 10; 1997 No. 41 s 17; 1998 No. 25 s 4; 1999 No. 86 s 7

**Renewal of licence**

s 46      amd 1992 No. 15 s 13 sch; 1999 No. 86 s 8

**Transferring licences**

s 47      amd 1992 No. 15 s 13 sch

sub 1995 No. 10 s 11

**Surrender of licence**

s 48      amd 1992 No. 15 s 13 sch

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

s 48A ins 1997 No. 78 s 146

**Effect of disposal of subdivided land**

s 49 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 12

**Amendment, variation, cancellation, revocation or suspension of licence**

s 50 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 13; 1997 No. 78 s 147

**Procedure for internal review of decision about driller's licences**

s 50A ins 1997 No. 78 s 148

**Stay of operation of original decisions**

s 50B ins 1997 No. 78 s 148

**Appeal to Land Court**s 51 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 14; 1996 No. 68 s 11; 1997 No. 41 s 18; 1997 No. 78 s 149; 2000 No. 1 s 86 sch 1**Application for reduction in water entitlement or area of land**

s 52 amd 1992 No. 15 s 13 sch

**Requirement as to licensing and employment of drillers**

s 53 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 150

**Licence in substitution**

s 54 amd 1992 No. 15 s 13 sch

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

s 55 amd 1992 No. 15 s 13 sch

**Power to issue permit to government department, other person or body to take water**

s 56 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 151

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

s 57 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 152

**Application for and issue of permit in respect of quarry material**

s 58 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 153

**Procedure before dealing with controlled quarry material on Crown holding**

s 59 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 151

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

s 60 amd 1992 No. 15 s 13 sch

**Sale of controlled quarry material**

s 61 amd 1992 No. 15 s 13 sch

**Sale of controlled quarry materials to fossicker**

s 62 ins 1994 No. 63 s 110(2) sch

**Royalty or price**

s 63 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 154

**Amendment, variation, cancellation, revocation or suspension of permit**

**s 64** amd 1992 No. 15 s 13 sch

**Notice to stop unauthorised quarrying activities etc.**

**s 64A** ins 1997 No. 78 s 155

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

**s 65** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 1997 No. 78 s 156

**Offences as to dealing with water**

**s 66** amd 1992 No. 15 s 13 sch; 1993 No. 7 s 6; 1997 No. 78 s 157

**Powers of chief executive with respect to unauthorised works**

**prov hdg** amd 1992 No. 15 s 13 sch

**s 67** amd 1992 No. 15 s 13 sch; 1997 No. 78 s 158

**Division 5—Protecting and improving the physical integrity of watercourses**

**div hdg** ins 1993 No. 7 s 7

**Definitions**

**s 68** ins 1993 No. 7 s 7

amd 1997 No. 78 s 159

**Division binds the Crown**

**s 69** ins 1993 No. 7 s 7

**Destruction of vegetation, excavation or placing of fill**

**s 70** ins 1993 No. 7 s 7

amd 1997 No. 78 s 160

**Permit to destroy vegetation or to excavate or fill**

**s 71** ins 1993 No. 7 s 7

amd 1997 No. 78 s 161

**Matters to be considered by chief executive**

**s 72** ins 1993 No. 7 s 7

amd 1997 No. 78 s 162

**Cancellation of permit or amendment of terms of permit**

**s 73** ins 1993 No. 7 s 7

amd 1997 No. 78 s 163

**Suspension of permit in exceptional circumstances**

**s 74** ins 1993 No. 7 s 7

amd 1997 No. 78 s 164

**Limited nature of permit**

**s 75** ins 1993 No. 7 s 7

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

**s 76** ins 1993 No. 7 s 7

sub 1997 No. 78 s 165

**Notice to remove vegetation etc.**

**s 77** ins 1993 No. 7 s 7

amd 1997 No. 78 s 166



**Appeals**

**s 78** ins 1993 No. 7 s 7  
amd 1995 No. 10 s 16

**Purpose of this part**

**s 79** amd 1997 SL No. 41 s 19

**PART 5—SALE OF WATER ENTITLEMENTS**

**pt hdg** ins 1995 No. 10 s 17

**Purpose of this part**

**s 79** ins 1995 No. 10 s 17; amd 1997 No. 41 s 19

**Definitions for pt 5**

**prov hdg** amd 1997 No. 41 s 20(1)

**s 80** ins 1995 No. 10 s 17  
def “**agreement party**” ins 1997 No. 41 s 20(2)  
def “**entitlement**” amd 1997 No. 41 s 20(3)  
def “**entitlement information**” amd 1997 No. 41 s 20(4)  
def “**potential agreement**” ins 1997 No. 41 s 20(2)

**Chief executive may publish notice**

**s 81** ins 1995 No. 10 s 17

**Where notice must be published**

**s 82** ins 1995 No. 10 s 17

**Inquiry before publication of notice of intention to sell**

**s 83** ins 1995 No. 10 s 17  
amd 1997 No. 41 s 21

**Persons who are eligible to give objections**

**s 84** ins 1995 No. 10 s 17  
amd 1997 No. 41 s 22

**Chief executive must inquire into objections**

**s 85** ins 1995 No. 10 s 17  
amd 1997 No. 41 s 23

**Chief executive may amend notice of intention to sell**

**s 86** ins 1995 No. 10 s 17  
amd 1997 No. 41 s 24

**Objections to amendment**

**s 87** ins 1995 No. 10 s 17

**Steps to be taken after inquiry**

**s 88** ins 1995 No. 10 s 17

**Chief executive may sell entitlements after notice is published**

**s 89** ins 1995 No. 10 s 17

**Issue of licence on sale of entitlement**

**s 90** amd 1997 No. 41 s 25  
ins 1995 No. 10 s 17

**Entering into agreement on sale of entitlement**

**s 90A** ins 1997 No. 41 s 26

**Control of referable dams**

**prov hdg** amd 1997 No. 41 s 27(1)

**s 91** amd 1992 No. 15 s 13 sch; 1997 No. 41 s 27(2)

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

**prov hdg** amd 1992 No. 15 s 13 sch

**s 92** amd 1992 No. 15 s 13 sch; 1997 No. 41 s 28

**Requirements by chief executive as to referable dam**

**prov hdg** amd 1992 No. 15 s 13 sch

**s 93** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 18; 1997 No. 41 s 29; 1997 No. 78 s 167

**Exemption of owner of referable dam from provisions of Act**

**s 94** amd 1992 No. 15 s 13 sch

**Protection against liability for failure or collapse of referable dam**

**s 95** amd 1990 No. 80 s 3 sch 7; 1992 No. 15 s 13 sch

**Meaning of special works**

**s 96** amd 1998 No. 25 s 5

**Recommendation re certain works**

**s 97** amd 1992 No. 15 s 13 sch; 1998 No. 25 s 6

**Power of Governor in Council**

**s 98** amd 1998 No. 25 s 7

**Application with respect to special works**

**s 99** amd 1992 No. 15 s 13 sch; 1998 No. 25 s 8

**Approval of agreement**

**s 101** sub 1995 No. 10 s 3 sch

**Effect of agreement**

**prov hdg** amd 1995 No. 10 s 3 sch

**s 102** amd 1995 No. 10 s 3 sch

**Recording agreement**

**s 103** amd 1992 No. 15 s 13 sch

sub 1994 No. 81 s 527 sch 5 (as amd 1995 No. 10 s 37)

amd 1995 No. 10 s 3 sch

**Non-application of part**

**s 7.1** om 1993 No. 70 s 804 sch

**Constitution of designated area**

**s 104** amd 1995 No. 10 s 19

**Procedure before making regulation about designated area**

**s 105** amd 1992 No. 15 s 13 sch

sub 1995 No. 10 s 20

**General powers of chief executive**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 106** amd 1992 No. 15 s 13 sch

**Power of chief executive to control levee banks to which s. 47(24) of the Local Government Act applies**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 7.5** amd 1992 No. 15 s 13 sch  
om 1993 No. 70 s 804 sch

**Licence for controlled works**

**s 107** amd 1992 No. 15 s 13 sch

**Levee banks under Local Government Act not controlled works**

**s 108** ins 1993 No. 70 s 804 sch

**No right to compensation**

**s 109** amd 1992 No. 15 s 13 sch

**Irrigation undertaking to be approved by Governor in Council**

**s 110** amd 1995 No. 10 s 3 sch

**Procedure on proposal for irrigation undertaking**

**s 111** amd 1992 No. 15 s 13 sch

**Minister to provide report to Governor in Council**

**s 112** sub 1995 No. 10 s 21

**Establishing the irrigation undertaking**

**s 113** sub 1995 No. 10 s 22

**Power to construct works and do necessary acts and things in connection with irrigation undertaking**

**s 114** amd 1992 No. 15 s 13 sch

**Constitution of area**

**s 115** amd 1995 No. 10 s 3 sch

**Drainage works**

**s 116** amd 1992 No. 15 s 13 sch

**Assessment on owners of sugar mills and other premises**

**s 117** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 1999 No. 51 s 228 sch 1

**Powers of chief executive with respect to treatment, destruction or removal of trees, other vegetation, litter or refuse in irrigation area**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 118** amd 1992 No. 15 s 13 sch

**Subdivision of freehold land within irrigation area**

**s 119** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 1998 No. 48 s 17 sch

**Determination of holding**

**s 8.11** amd 1992 No. 15 s 13 sch  
om 1995 No. 10 s 23

**Grant of water allocation**

**s 120**      amd 1992 No. 15 s 13 sch  
               sub 1995 No. 10 s 24

**Licence for water allocation for land**

**prov hdg**    sub 1995 No. 10 s 25(1)  
**s 121**      amd 1992 No. 15 s 13 sch; 1995 No. 10 s 25(2)–(3)

**Surrender of nominal allocation**

**s 122**      amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch

**Chief executive's power if nominal allocation land is subdivided**

**prov hdg**    amd 1992 No. 15 s 13 sch  
**s 123**      amd 1992 No. 15 s 13 sch  
               sub 1995 No. 10 s 26

**Power to discontinue water supply upon non-payment of charges**

**s 124**      amd 1992 No. 15 s 13 sch

**Powers of corporation to authorise person to construct channels**

**prov hdg**    amd 1992 No. 15 s 13 sch  
**s 126**      amd 1992 No. 15 s 13 sch

**Access across irrigation channel**

**s 127**      amd 1992 No. 15 s 13 sch

**Access where land is resumed**

**s 128**      amd 1992 No. 15 s 13 sch

**PART 10—WATER SUPPLY AREAS AND DRAINAGE AREAS****Constitution of area and establishment of board**

**prov hdg**    sub 1995 No. 10 s 27(1); 1999 No. 86 s 9(1)  
**s 129**      amd 1995 No. 10 s 27(2)–(7); 1996 No. 68 s 12; 1999 No. 86 s 9(2)–(3)

**Procedure for preliminary advertisement of proposal for water supply or drainage area and establishment of steering committee**

**s 130**      amd 1992 No. 15 s 13 sch

**Procedure before making regulation**

**prov hdg**    sub 1995 No. 10 s 28(1)  
**s 131**      amd 1992 No. 15 s 13 sch; 1995 No. 10 s 28 (2)–(4); 1999 No. 86 s 10

**Division 2—Membership of boards**

**div hdg**    sub 1999 No. 86 s 11

**Membership**

**prov hdg**    sub 1999 No. 86 s 12  
**s 132**      sub 1995 No. 10 s 29

**Term of office**

**s 133**      ins 1995 No. 10 s 29

**Appointment of board members**

**s 134**      ins 1995 No. 10 s 29

**Election of board members**

s 135 ins 1995 No. 10 s 29

**Persons qualified to be elected**

s 136 ins 1995 No. 10 s 29

**Amalgamation of boards**

s 137 ins 1995 No. 10 s 29

**Further powers of Governor in Council with respect to board**

s 138 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch

**Powers etc. of chief executive**

prov hdg amd 1992 No. 15 s 13 sch

s 139 amd 1992 No. 15 s 13 sch

**Superannuation schemes**

s 144 amd 1995 No. 10 s 3 sch

sub 1995 No. 36 s 9 sch 2

**General powers, authorities, functions and duties**

s 145 amd 1992 No. 15 s 13 sch; 1995 No. 10 ss 30, 3 sch

**Disposal of surplus water**

s 151 amd 1992 No. 15 s 13 sch

**Supply of water to local government or corporation**

s 152 amd 1995 No. 10 s 31

**Interference with works of local government**

s 155 amd 1995 No. 10 s 32

**Power to make by-laws**

s 156 amd 1995 No. 10 s 3 sch; 1997 No. 78 s 156

**Boards are statutory bodies**

s 159 sub 1996 No. 54 s 9 sch

**Investment of certain moneys**

s 161 om 1996 No. 54 s 9 sch

**Financial administration**

s 162 om 1995 No. 57 s 4 sch 1

**Funds of board**

s 163 amd 1997 No. 17 s 74 sch

**Audit of accounts**

s 169 amd 1995 No. 39 s 9 sch 1

**Budget of board**

s 170 amd 1992 No. 15 s 13 sch

**Observance of budget and disbursements in emergent circumstances**

s 171 amd 1992 No. 15 s 13 sch

**Basis of rating and levying charges**

s 173 amd 1995 No. 10 s 3 sch

**Making and levying assessments**

**prov hdg** sub 1998 No. 25 s 9(1)  
**s 175** amd 1995 No. 10 s 3 sch; 1998 No. 25 s 9(2)–(5)

**Appeal to Land Court**

**s 181** amd 2000 No. 1 s 86 sch 1

**Power of chief executive where rates and assessments insufficient to meet board's commitments**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 182** amd 1992 No. 15 s 13 sch

**Land subject to or exempt from rating**

**s 183** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch

**Procedure as to payment of rates and charges upon forfeiture or surrender of lease**

**s 186** amd 1994 No. 81 s 527 sch 5; 1995 No. 10 s 3 sch

**Meetings**

**s 190** amd 1995 No. 10 s 3 sch

**Chairperson**

**s 191** amd 1995 No. 10 s 3 sch

**Prohibition on voting by member having pecuniary interest**

**s 194** amd 1995 No. 10 s 33; 1997 No. 78 s 169

**Quorum**

**s 195** amd 1995 No. 10 s 3 sch

**Review of performance and operation of board**

**s 207** amd 1992 No. 15 s 13 sch

**Transfer of functions of board to local government**

**s 208** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch

**Appointment of chief executive to administer area**

**prov hdg** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch  
**s 209** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 1999 No. 86 s 13

**Power of chief executive to undertake certain works on behalf of board**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 210** amd 1992 No. 15 s 13 sch

**Power of board to require occupier or owner to maintain works connected to works of board**

**s 211** amd 1992 No. 15 s 13 sch

**Restriction as to breaking up railway and tramway or altering position of road**

**s 212** amd 1995 No. 10 s 3 sch

**Obstruction of member of board, officer or other person**

**s 213** amd 1997 No. 78 s 170

**Fees and expenses payable to member of board**

**s 215** amd 1995 No. 10 s 3 sch; 1996 No. 37 s 147 sch 2

**PART 10A—BULK WATER SUPPLY IN SOUTH-EAST QUEENSLAND****pt hdg** ins 1999 No. 46 s 13**Division 1—Preliminary****div hdg** ins 1999 No. 46 s 13**Definitions for pt 10A****s 215A** ins 1999 No. 46 s 13**Application of pt 10A****s 215B** ins 1999 No. 46 s 13**Division 2—Flood mitigation****div hdg** ins 1999 No. 46 s 13**Establishment of technical advisory committee****s 215C** ins 1999 No. 46 s 13**Functions of committee****s 215D** ins 1999 No. 46 s 13**Committee meetings****s 215E** ins 1999 No. 46 s 13**Minister's approval of flood mitigation manual****s 215F** ins 1999 No. 46 s 13**Protection from liability****s 215G** ins 1999 No. 46 s 13  
amd 1999 No. 86 s 14**Division 3—Protection of water quality****div hdg** ins 1999 No. 46 s 13**Purpose of div 3****s 215H** ins 1999 No. 46 s 13**Regulation of land use in catchment area****s 215I** ins 1999 No. 46 s 13**Effect of regulation****s 215J** ins 1999 No. 46 s 13**Division 4—Protection of existing water allocations****div hdg** ins 1999 No. 46 s 13**Purpose of div 4****s 215K** ins 1999 No. 46 s 13**Existing entitlements to water continue****s 215L** ins 1999 No. 46 s 13**Division 5—Company's power to access and maintain its facilities****div hdg** ins 1999 No. 46 s 13**Definition for div 5****s 215M** ins 1999 No. 46 s 13

**Appointment of authorised persons**

s 215N ins 1999 No. 46 s 13

**Identity card for company's authorised persons**

s 215O ins 1999 No. 46 s 13

**Failure to return identity card**

s 215P ins 1999 No. 46 s 13

**Display of authorised person's identity card**

s 215Q ins 1999 No. 46 s 13

**Power to enter places**

s 215R ins 1999 No. 46 s 13

**Power to carry out activities**

s 215S ins 1999 No. 46 s 13

**Compensation**

s 215T ins 1999 No. 46 s 13

**Company to give notice of damage**

s 215U ins 1999 No. 46 s 13

**Division 6—Information request**

div hdg ins 1999 No. 46 s 13

**Chief executive's power to require information from the company**

s 215V ins 1999 No. 46 s 13

**Commercially sensitive information**

s 215W ins 1999 No. 46 s 13

**Division 7—General provisions about the company**

div hdg ins 1999 No. 46 s 13

**Application of Financial Administration and Audit Act 1977**

s 215X ins 1999 No. 46 s 13

**Division 8—Transitional**

div hdg ins 1999 No. 46 s 13

**Existing approved manual of operational procedures for flood mitigation**

s 215Y ins 1999 No. 46 s 13

**Offences generally and penalty**

s 10.1 om 1995 No. 10 s 3 sch

**Proceedings for offences**

s 216 amd 1992 No. 15 s 13 sch

**Saving of other proceedings and recovery of moneys**

s 217 amd 1992 No. 15 s 13 sch

**Obstruction of officer or other person**

s 218 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 171



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

s 222      amd 1992 No. 15 s 13 sch; 1997 No. 41 s 30; 1997 No. 78 s 172

**Unlawful taking, getting or removal of quarry material**

s 223      amd 1992 No. 15 s 13 sch; 1997 No. 78 s 173

**Contravention of licences and certain permits**

s 224      sub 1997 No. 78 s 174

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

div hdg    ins 1997 No. 78 s 175

**Power to require name and address**

s 224A     ins 1997 No. 78 s 175  
            amd 2000 No. 5 s 373 sch 3

**Power to require answers to questions**

s 224B     ins 1997 No. 78 s 175

**Power to require production of documents**

s 224C     ins 1997 No. 78 s 175

**Failure to give name and address etc.**

s 224D     ins 1997 No. 78 s 175

**Failure to answer questions**

s 224E     ins 1997 No. 78 s 175

**Failure to produce documents**

s 224F     ins 1997 No. 78 s 175

**False, misleading or incomplete documents**

s 224G     ins 1997 No. 78 s 175

**False or misleading information**

s 224H     ins 1997 No. 78 s 175

**Impersonation of authorised officer**

s 224I     ins 1997 No. 78 s 175

**Division 1B—Enforcement of certain notices**

div hdg    ins 1997 No. 78 s 175

**Definitions for div 1B**

s 224J     ins 1997 No. 78 s 175

**Orders to enforce notice under compliance section**

s 224K     ins 1997 No. 78 s 175

**Consent injunctions**

s 224L     ins 1997 No. 78 s 175

**Interim injunctions**

s 224M     ins 1997 No. 78 s 175

**Factors relevant to granting restraining injunction**

s 224N     ins 1997 No. 78 s 175

**Factors relevant to granting mandatory injunction**

s 224O ins 1997 No. 78 s 175

**Discharge or variation of injunction or order**

s 224P ins 1997 No. 78 s 175

**Trespass and unlawful occupation**

s 225 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 176

**Removal of trespassers**

s 226 amd 1992 No. 15 s 13 sch; 1994 No. 81 s 527 sch 5

**Water charges**s 227 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 34  
om 1997 No. 41 s 31**Payment of water charge, interest thereon and recovery thereof**s 228 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch  
om 1997 No. 41 s 31**Power to supply water in excess of entitlement under announced allocation**

s 229 amd 1992 No. 15 s 13 sch

**Rights of chief executive upon surrender of nominal allocation**

prov hdg amd 1992 No. 15 s 13 sch

s 230 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch

**Agreements as to transfer of water under allocation**

s 231 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch

**Person may sell right to nominal allocation**s 232 ins 1995 No. 10 s 35  
amd 1997 No. 41 s 32; 1999 No. 86 s 15**Unlawful construction of works or interference with works**

s 233 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 1997 No. 78 s 177

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

prov hdg amd 1992 No. 15 s 13 sch

s 234 amd 1992 No. 15 s 13 sch; 1997 No. 78 s 178

**Warrant to enter land or premises**

s 235 amd 1992 No. 15 s 13 sch

**Diversion of watercourse or lake and reclamation of certain land**

s 236 amd 1992 No. 15 s 13 sch; 1994 No. 81 s 527 sch 5; 1995 No. 10 s 3 sch

**Appeal to Minister**

s 237 amd 1992 No. 15 s 13 sch; 1995 No. 10 ss 36, 3, sch

**Compensation for injury, loss or damage**

s 238 amd 1992 No. 15 s 13 sch

**Claim for compensation**

s 239 amd 1992 No. 15 s 13 sch

**Procedure upon failure to reach agreement as to amount of compensation**

s 240 amd 1992 No. 15 s 13 sch

**Apportionment of joint liability**

s 243 amd 1992 No. 15 s 13 sch

**Notice of transfer of land**

s 244 amd 1992 No. 15 s 13 sch

**Searches in public offices**

s 245 amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch; 1995 No. 57 s 4 sch 1

**Service of documents**

s 247 amd 1992 No. 15 s 13 sch

**Protection against liability**

s 248 amd 1990 No. 80 s 3 sch 7; 1992 No. 15 s 13 sch; 1995 No. 57 s 4 sch 1

**Evidentiary provisions**

s 249 amd 1992 No. 15 s 13 sch

**Approval of forms**

s 250 amd 1992 No. 15 s 13 sch  
sub 1995 No. 57 s 4 sch 1  
amd 1997 No. 78 s 179

**Regulation-making power**

s 250A ins 1995 No. 57 s 4 sch 1  
amd 1999 No. 46 s 14

**Validation of agreement**

s 10.36 ins 1993 No. 32 s 3 sch 1  
om 1995 No. 10 s 3 sch

**References to repealed Act**

s 251 ins 1994 No. 87 s 3 sch 2

**PART 12—TRANSITIONAL AND VALIDATION**

pt hdg ins 1997 No. 41 s 33  
sub 1998 No. 25 s 10

**Transitional provision for Natural Resources Amendment Legislation Act 1997**

s 252 prev s 252 ins 1995 No. 10 s 3 sch  
sub 1995 No. 57 s 4 sch 1 (as amd 1995 No. 58 s 4 sch 1)  
exp 28 February 1996 (see s 252(3))  
pres s 252 ins 1997 No. 41 s 33

**Localities declared under a regulation**

s 253 prev s 253 ins 1995 No. 10 s 3 sch  
om 1995 No. 57 s 4 sch 1  
pres s 253 ins 1997 No. 78 s 180  
exp 5 December 1998 (see s 253(3))

**Licence to construct bore etc.**

s 254 ins 1997 No. 78 s 180  
exp 5 December 1999 (see s 254(3))

**Driller's licences**

**s 255** ins 1997 No. 78 s 180  
exp 5 December 1998 (see s 255(3))

**Validation of terms**

**s 256** ins 1998 No. 25 s 11

**Numbering and renumbering of Act**

**s 10.40** ins 1995 No. 10 s 3 sch  
om R2 (see RA s 37)

**Areas continued in existence**

**s 257** ins 1999 No. 86 s 16

**Remaking certain subordinate legislation**

**s 258** ins 1999 No. 86 s 16  
exp 30 June 2000 (see s 258(3))

**SCHEDULE—SUBJECT MATTER FOR REGULATIONS**

prev sch 1 om 1992 No. 15 s 13 sch  
pres sch (prev sch 2) renum 1995 No. 57 s 4 sch 1

**Officers and other persons**

**prov hdg** amd 1992 No. 15 s 13 sch  
**s 1** amd 1992 No. 15 s 13 sch

**Notices and the like**

**s 4** amd 1995 No. 57 s 4 sch 1

**Materials for works or things**

**s 8** amd 1992 No. 15 s 13 sch

**Management of works**

**s 9** amd 1992 No. 15 s 13 sch

**Straying stock**

**s 10** amd 1992 No. 15 s 13 sch

**Traffic**

**s 12** amd 1992 No. 15 s 13 sch

**Improvements**

**s 14** amd 1992 No. 15 s 13 sch; 1995 No. 10 s 3 sch

**Protection of water and works**

**s 15** amd 1992 No. 15 s 13 sch

**Nuisances**

**s 16** amd 1992 No. 15 s 13 sch

**Provision etc. of recreational or tourist facilities**

**s 18** amd 1992 No. 15 s 13 sch

**Recreational activities**

**s 19** amd 1992 No. 15 s 13 sch

**Charges for water**

s 23 amd 1997 No. 41 s 34(1)

**Recovery of charges for water**

s 23A ins 1997 No. 41 s 34(2)

**Local services and charges therefor**

s 25 amd 1992 No. 15 s 13 sch

**Riparian owners and occupiers**

s 26 amd 1992 No. 15 s 13 sch

**Prevention of waste and the like of water**

s 27 amd 1992 No. 15 s 13 sch

**Carryovers and forward draws of water allocations**

s 28A ins 1997 No. 41 s 34(2)

**Fees and the like**

s 33 amd 1992 No. 15 s 13 sch

**Penalties**s 35 prev s 35 om 1995 No. 57 s 4 sch 1  
pres s 35 (prev s 36) amd 1992 No. 15 s 13 sch  
renum 1995 No. 57 s 4 sch 1**Interest**s 36 (prev s 37) amd 1992 No. 15 s 13 sch  
renum 1995 No. 57 s 4 sch 1**Matters prescribed**

s 38 om 1995 No. 57 s 4 sch 1

## 8 List of forms

**Form WT.01—General Application for Wet Tropics Permit**

pubd gaz 25 September 1998 p 324

**Form WT.02—Supplementary Information for Wet Tropics Permit**

pubd gaz 25 September 1998 p 324

## 9 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS [Reprint No. 2]  
under the Reprints Act 1992 s 43 as required by the Water Resources Act 1989  
s 10.40

Previous	Renumbered as
1.1 .....	1
1.4 .....	2

---

1.4(2AA) .....	2(3)
1.4(2A) .....	2(4)
1.4(3) .....	2(5)
2.1 .....	3
2.2 .....	4
2.3 .....	5
3.1 .....	6
3.8 .....	7
3.11 .....	8
3.11(2) .....	8(1)
3.11(3) .....	8(2)
3.11(3)(fa) .....	8(2)(g)
3.11(3)(fb) .....	8(2)(h)
3.11(3)(g) .....	8(2)(i)
3.11(3)(h) .....	8(2)(j)
3.13 .....	9
3.14 .....	10
3.15 .....	11
3.17 .....	12
3.17(6A) .....	12(7)
3.17(6B) .....	12(8)
3.17(7) .....	12(9)
3.17(7A) .....	12(10)
3.17(7B) .....	12(11)
3.17(7C) .....	12(12)
3.17(7D) .....	12(13)
3.17(7E) .....	12(14)
3.17(8) .....	12(15)
3.17(9) .....	12(16)
3.17(10) .....	12(17)
3.17(11) .....	12(18)
3.18 .....	13
3.19 .....	14
3.20 .....	15
3.20(1A) .....	15(2)
3.20(1B) .....	15(3)
3.20(1C) .....	15(4)
3.20(2) .....	15(5)
3.20(3) .....	15(6)
3.20(3A) .....	15(7)
3.20(4) .....	15(8)
3.20(5) .....	15(9)
3.23 .....	16
3.24 .....	17
3.25 .....	18
3.26 .....	19

3.27	20
3.28	21
3.29	22
3.30	23
3.31	24
3.32	25
4.1	26
4.2	27
4.3	28
4.4	29
4.4(3A)	29(4)
4.4(4)	29(5)
4.5	30
4.5(2A)	30(3)
4.5(2B)	30(4)
4.5(3)	30(5)
4.5(4)	30(6)
4.6	31
4.7	32
4.8	33
4.9	34
4.10	35
4.11	36
4.12	37
4.12(1A)	37(2)
4.12(2)	37(3)
4.13	38
4.13(1)(ba)	38(1)(c)
4.13(1)(c)	38(1)(d)
4.13(1)(d)	38(1)(e)
4.13(1)(e)	38(1)(f)
4.13(1)(f)	38(1)(g)
4.13(1)(g)	38(1)(h)
4.13(1)(h)	38(1)(i)
4.13(1)(i)	38(1)(j)
4.13(1)(j)	38(1)(k)
4.13(3A)	38(4)
4.13(3B)	38(5)
4.13(4)	38(6)
4.13(5)	38(7)
4.13(6)	38(8)
4.13(6A)	38(9)
4.13(7)	38(10)
4.14	39
4.14(2A)	39(3)
4.14(3)	39(4)

4.14(4) . . . . .	39(5)
4.14(5) . . . . .	39(6)
4.14(5A) . . . . .	39(7)
4.14(6) . . . . .	39(8)
4.14(7) . . . . .	39(9)
4.14(8) . . . . .	39(10)
4.14(9) . . . . .	39(11)
4.15 . . . . .	40
4.16 . . . . .	41
4.17 . . . . .	42
4.17(1A) . . . . .	42(2)
4.17(1AA) . . . . .	42(3)
4.17(1B) . . . . .	42(4)
4.17(1C) . . . . .	42(5)
4.17(2) . . . . .	42(6)
4.17(2AA) . . . . .	42(7)
4.17(2A) . . . . .	42(8)
4.17(3) . . . . .	42(9)
4.17(3A) . . . . .	42(10)
4.17(3B) . . . . .	42(11)
4.17(3C) . . . . .	42(12)
4.17(4) . . . . .	42(13)
4.18 . . . . .	43
4.19 . . . . .	44
4.19(2A) . . . . .	44(3)
4.19(2B) . . . . .	44(4)
4.19(3) . . . . .	44(5)
4.20 . . . . .	45
4.21 . . . . .	46
4.21(1A) . . . . .	46(2)
4.21(2) . . . . .	46(3)
4.21(3) . . . . .	46(4)
4.21(4) . . . . .	46(5)
4.22 . . . . .	47
4.23 . . . . .	48
4.24 . . . . .	49
4.24(1A) . . . . .	49(2)
4.24(2) . . . . .	49(3)
4.25 . . . . .	50
4.26 . . . . .	51
4.26(1A) . . . . .	51(2)
4.26(2) . . . . .	51(3)
4.26(2)(aa) . . . . .	51(3)(b)
4.26(2)(b) . . . . .	51(3)(c)
4.26(2)(c) . . . . .	51(3)(d)
4.26(2)(d) . . . . .	51(3)(e)



4.26(2)(e) .....	51(3)(f)
4.26(3) .....	51(4)
4.26(3A) .....	51(5)
4.26(3B) .....	51(6)
4.26(4) .....	51(7)
4.26(4A) .....	51(8)
4.26(4B) .....	51(9)
4.26(5) .....	51(10)
4.26(6) .....	51(11)
4.26(7) .....	51(12)
4.27 .....	52
4.27(1A) .....	52(2)
4.27(2) .....	52(3)
4.28 .....	53
4.29 .....	54
4.30 .....	55
4.31 .....	56
4.32 .....	57
4.32(1A) .....	57(2)
4.32(2) .....	57(3)
4.32(2A) .....	57(4)
4.32(2B) .....	57(5)
4.32(3) .....	57(6)
4.33 .....	58
4.33(1A) .....	58(2)
4.33(2) .....	58(3)
4.33(3) .....	58(4)
4.33(3A) .....	58(5)
4.33(3B) .....	58(6)
4.33(3C) .....	58(7)
4.33(3D) .....	58(8)
4.33(4) .....	58(9)
4.33(5) .....	58(10)
4.33(5A) .....	58(11)
4.33(6) .....	58(12)
4.33(7) .....	58(13)
4.33(8) .....	58(14)
4.34 .....	59
4.34(1A) .....	59(2)
4.34(2) .....	59(3)
4.34(3) .....	59(4)
4.34(3A) .....	59(5)
4.34(3B) .....	59(6)
4.34(4) .....	59(7)
4.34(5) .....	59(8)
4.34(6) .....	59(9)

---

4.34(7) . . . . .	59(10)
4.34(8) . . . . .	59(11)
4.34(9) . . . . .	59(12)
4.35 . . . . .	60
4.35(3A) . . . . .	60(4)
4.35(4) . . . . .	60(5)
4.35(5) . . . . .	60(6)
4.35(6) . . . . .	60(7)
4.35(7) . . . . .	60(8)
4.36 . . . . .	61
4.36A . . . . .	62
4.37 . . . . .	63
4.38 . . . . .	64
4.39 . . . . .	65
4.39(1A) . . . . .	65(2)
4.39(2) . . . . .	65(3)
4.40 . . . . .	66
4.40(1A) . . . . .	66(2)
4.40(2) . . . . .	66(3)
4.40(2A) . . . . .	66(4)
4.40(2B) . . . . .	66(5)
4.40(3) . . . . .	66(6)
4.40(4) . . . . .	66(7)
4.41 . . . . .	67
4.41(1A) . . . . .	67(2)
4.41(2) . . . . .	67(3)
4.41(3) . . . . .	67(4)
4.42 . . . . .	68
4.43 . . . . .	69
4.44 . . . . .	70
4.45 . . . . .	71
4.46 . . . . .	72
4.47 . . . . .	73
4.48 . . . . .	74
4.49 . . . . .	75
4.50 . . . . .	76
4.51 . . . . .	77
4.52 . . . . .	78
pt 4A . . . . .	pt 5
4A.1 . . . . .	79
4A.2 . . . . .	80
4A.3 . . . . .	81
4A.4 . . . . .	82
4A.5 . . . . .	83
4A.6 . . . . .	84
4A.7 . . . . .	85

4A.8	86
4A.9	87
4A.10	88
4A.11	89
4A.12	90
pt 5	pt 6
5.1	91
5.2	92
5.3	93
5.4	94
5.5	95
pt 6	pt 7
6.1	96
6.2	97
6.3	98
6.4	99
6.4(2A)	99(3)
6.4(3)	99(4)
6.4(3A)	99(5)
6.4(3B)	99(6)
6.4(4)	99(7)
6.5	100
6.6	101
6.7(2)	102
6.8	103
6.8(4A)	103(5)
6.8(5)	103(6)
pt 7	pt 8
7.2	104
7.3	105
7.4	106
7.6	107
7.6A	108
7.7	109
pt 8	pt 9
8.1	110
8.2	111
8.2(2)(ca)	111(2)(d)
8.2(2)(d)	111(2)(e)
8.2(2)(e)	111(2)(f)
8.2(2)(f)	111(2)(g)
8.2(2)(g)	111(2)(h)
8.2(2)(h)	111(2)(i)
8.3	112
8.4	113
8.5	114

---

8.6	115
8.7	116
8.8	117
8.9	118
8.10	119
8.10(2A)	119(3)
8.10(2B)	119(4)
8.10(2C)	119(5)
8.10(2D)	119(6)
8.10(3)	119(7)
8.10(3A)	119(8)
8.10(4)	119(9)
8.10(5)	119(10)
8.10(5A)	119(11)
8.10(5B)	119(12)
8.10(6)	119(13)
8.10(7)	119(14)
8.10(8)	119(15)
8.10(9)	119(16)
8.12	120
8.13	121
8.14	122
8.15	123
8.16	124
8.17	125
8.18	126
8.19	127
8.19(1A)	127(2)
8.19(2)	127(3)
8.19(2A)	127(4)
8.19(3)	127(5)
8.19(4)	127(6)
8.19(5)	127(7)
8.20	128
8.20(1A)	128(2)
8.20(2)	128(3)
pt 9	pt 10
9.1	129
9.1(1A)	129(2)
9.1(1B)	129(3)
9.1(1C)	129(4)
9.1(1D)	129(5)
9.1(1E)	129(6)
9.1(1F)	129(7)
9.1(2)	129(8)
9.1(3)	129(9)

9.1(4) .....	129(10)
9.1(5) .....	129(11)
9.2 .....	130
9.2(2A) .....	130(3)
9.2(3) .....	130(4)
9.2(4) .....	130(5)
9.2(5) .....	130(6)
9.2(6) .....	130(7)
9.3 .....	131
9.3(1A) .....	131(2)
9.3(2) .....	131(3)
9.3(3) .....	131(4)
9.3(4) .....	131(5)
9.3(5) .....	131(6)
9.3(6) .....	131(7)
9.4 .....	132
9.4A .....	133
9.4B .....	134
9.4C .....	135
9.4D .....	136
9.4E .....	137
9.5 .....	138
9.6 .....	139
9.7 .....	140
9.8 .....	141
9.9 .....	142
9.10 .....	143
9.11 .....	144
9.12 .....	145
9.12(1A) .....	145(2)
9.12(2) .....	145(3)
9.12(3) .....	145(4)
9.12(4) .....	145(5)
9.12(5) .....	145(6)
9.12(6) .....	145(7)
9.12(7) .....	145(8)
9.13 .....	146
9.14 .....	147
9.15 .....	148
9.15(2A) .....	148(3)
9.15(3) .....	148(4)
9.15(4) .....	148(5)
9.16 .....	149
9.16(5A) .....	149(6)
9.16(5B) .....	149(7)
9.16(5C) .....	149(8)

9.16(5D) .....	149(9)
9.16(6) .....	149(10)
9.16(7) .....	149(11)
9.16(8) .....	149(12)
9.17 .....	150
9.18 .....	151
9.19 .....	152
9.20 .....	153
9.21 .....	154
9.22 .....	155
9.22(2A) .....	155(3)
9.22(3) .....	155(4)
9.22(3A) .....	155(5)
9.22(4) .....	155(6)
9.22(5) .....	155(7)
9.22(6) .....	155(8)
9.22(7) .....	155(9)
9.22(8) .....	155(10)
9.22(9) .....	155(11)
9.22(10) .....	155(12)
9.23 .....	156
9.23(1)(ea) .....	156(1)(f)
9.23(1)(f) .....	156(1)(g)
9.23(1)(g) .....	156(1)(h)
9.23(1)(h) .....	156(1)(i)
9.23(1)(i) .....	156(1)(j)
9.23(1)(j) .....	156(1)(k)
9.23(1)(k) .....	156(1)(l)
9.23(1)(ka) .....	156(1)(m)
9.23(1)(kb) .....	156(1)(n)
9.23(1)(kc) .....	156(1)(o)
9.23(1)(l) .....	156(1)(p)
9.23(1)(m) .....	156(1)(q)
9.23(1)(n) .....	156(1)(r)
9.23(1)(o) .....	156(1)(s)
9.23(3A) .....	156(4)
9.23(3B) .....	156(5)
9.23(4) .....	156(6)
9.24 .....	157
9.25 .....	158
9.26 .....	159
9.27 .....	160
9.27(1A) .....	160(2)
9.27(2) .....	160(3)
9.27(3) .....	160(4)
9.27(4) .....	160(5)

9.27(5) .....	160(6)
9.28 .....	161
9.29 .....	162
9.30 .....	163
9.31 .....	164
9.32 .....	165
9.33 .....	166
9.34 .....	167
9.35 .....	168
9.36 .....	169
9.37 .....	170
9.38 .....	171
9.38(3A) .....	171(4)
9.38(4) .....	171(5)
9.38(5) .....	171(6)
9.39 .....	172
9.39(1A) .....	172(2)
9.39(2) .....	172(3)
9.39(3) .....	172(4)
9.40 .....	173
9.40(1)(aa) .....	173(1)(b)
9.40(1)(b) .....	173(1)(c)
9.40(1)(c) .....	173(1)(d)
9.41 .....	174
9.42 .....	175
9.42(1A) .....	175(2)
9.42(2) .....	175(3)
9.42(3) .....	175(4)
9.42(4) .....	175(5)
9.42(5) .....	175(6)
9.42(6) .....	175(7)
9.42(7) .....	175(8)
9.42(8) .....	175(9)
9.42(9) .....	175(10)
9.43 .....	176
9.44 .....	177
9.45 .....	178
9.46 .....	179
9.47 .....	180
9.48 .....	181
9.48(2A) .....	181(3)
9.48(2B) .....	181(4)
9.48(3) .....	181(5)
9.48(3A) .....	181(6)
9.48(3B) .....	181(7)
9.48(4) .....	181(8)

9.48(5) .....	181(9)
9.48(6) .....	181(10)
9.48(7) .....	181(11)
9.48(8) .....	181(12)
9.49 .....	182
9.50 .....	183
9.51 .....	184
9.52 .....	185
9.53 .....	186
9.54 .....	187
9.55 .....	188
9.56 .....	189
9.57 .....	190
9.57(1A) .....	190(2)
9.57(1B) .....	190(3)
9.57(2) .....	190(4)
9.58 .....	191
9.59 .....	192
9.60 .....	193
9.61 .....	194
9.62 .....	195
9.63 .....	196
9.64 .....	197
9.65 .....	198
9.66 .....	199
9.67 .....	200
9.68 .....	201
9.69 .....	202
9.70 .....	203
9.71 .....	204
9.72 .....	205
9.73 .....	206
9.74 .....	207
9.74(1A) .....	207(2)
9.74(1B) .....	207(3)
9.74(2) .....	207(4)
9.74(3) .....	207(5)
9.74(4) .....	207(6)
9.74(5) .....	207(7)
9.75 .....	208
9.75(1A) .....	208(2)
9.75(2) .....	208(3)
9.75(3) .....	208(4)
9.75(3A) .....	208(5)
9.75(3B) .....	208(6)
9.75(3C) .....	208(7)



9.75(3D) .....	208(8)
9.75(4) .....	208(9)
9.75(5) .....	208(10)
9.76 .....	209
9.77 .....	210
9.78 .....	211
9.78(1A) .....	211(2)
9.78(2) .....	211(3)
9.78(2A) .....	211(4)
9.78(2B) .....	211(5)
9.78(3) .....	211(6)
9.78(4) .....	211(7)
9.78(5) .....	211(8)
9.78(6) .....	211(9)
9.78(7) .....	211(10)
9.79 .....	212
9.80 .....	213
9.81 .....	214
9.82 .....	215
pt 10 .....	pt 11
10.2 .....	216
10.3 .....	217
10.4 .....	218
10.5 .....	219
10.6 .....	220
10.7 .....	221
10.8 .....	222
10.9 .....	223
10.10 .....	224
10.11 .....	225
10.11(3A) .....	225(4)
10.11(4) .....	225(5)
10.12 .....	226
10.12(1A) .....	226(2)
10.12(1B) .....	226(3)
10.12(2) .....	226(4)
10.12(3) .....	226(5)
10.12(4) .....	226(6)
10.12(5) .....	226(7)
10.12(6) .....	226(8)
10.12(7) .....	226(9)
10.12(8) .....	226(10)
10.12(9) .....	226(11)
10.13 .....	227
10.14 .....	228
10.15 .....	229

10.15(4A) .....	229(5)
10.15(5) .....	229(6)
10.16 .....	230
10.17 .....	231
10.17(4A) .....	231(5)
10.17(5) .....	231(6)
10.17(6) .....	231(7)
10.17(7) .....	231(8)
10.17(8) .....	231(9)
10.17(9) .....	231(10)
10.17A .....	232
10.18 .....	233
10.18(3A) .....	233(4)
10.18(4) .....	233(5)
10.18(4A) .....	233(6)
10.18(4B) .....	233(7)
10.18(4C) .....	233(8)
10.18(5) .....	233(9)
10.19 .....	234
10.19(2A) .....	234(3)
10.19(3) .....	234(4)
10.19(4) .....	234(5)
10.19(5) .....	234(6)
10.20 .....	235
10.21 .....	236
10.22 .....	237
10.22(2A) .....	237(3)
10.22(3) .....	237(4)
10.22(4) .....	237(5)
10.22(5) .....	237(6)
10.23 .....	238
10.24 .....	239
10.25 .....	240
10.25(1A) .....	240(2)
10.25(1B) .....	240(3)
10.25(2) .....	240(4)
10.25(3) .....	240(5)
10.25(4) .....	240(6)
10.25(5) .....	240(7)
10.26 .....	241
10.27 .....	242
10.28 .....	243
10.29 .....	244
10.30 .....	245
10.31 .....	246
10.32 .....	247

10.33 .....	248
10.34 .....	249
10.35 .....	250
10.37 .....	251
10.38 .....	252
10.39 .....	253
sch 2 .....	sch 1

## **10 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5 (c)).

**Land Court Act 2000 No. 1 ss 86 sch 1 reads as follows—**

### **1. Sections 43B(3)(b), 51(2) and (4) and 181(2), ‘within 30 days’—**

*omit, insert—*

‘within 42 days’.

### **2. Section 51(10)—**

*omit.*

**Police Powers and Responsibilities Act 2000 No. 5 s 373 sch 3 reads as follows—**

### **1. Section 224A(4)—**

*omit.*