

WATER LEGISLATION AMENDMENT (COMPETITION POLICY) BILL 2005

EXPLANATORY MEMORANDUM

The purpose of this Bill is to implement the water legislation reforms recommended by the National Competition Policy Reviews completed in 1999. The Review's recommendations received endorsement by Cabinet in December 1999 and in February 2004.

The National Competition Policy Agreement required that Western Australian water legislation be reviewed on the following basis:

- clarify the objectives of the relevant legislation;
- identify the nature of any restrictions on competition;
- analyse the likely effect of the restrictions on competition;
- assess and balance the costs and benefits of the restrictions;
- consider alternative means for achieving the same result including non-legislative approaches; and
- remove anti-competitive elements that cannot be justified.

The review made several significant recommendations for legislative change. The legislative amendments required as a consequence of the Review are outlined below. These are implemented in the Bill.

Country Areas Water Supply Act 1947

- repealing section 71 which allows the Water Corporation to control the purchase and on-sale of water that it has sold to a customer;
- extending the power in Section 81 to recover rates in Schedule 2 of the *Water Services Licensing Act 1995* and removing the provision for the sale of land in lieu of debts;
- repealing sections 84 to 104 dealing with the power to sell or lease land and including a provision to allow a memorial to be attached to the title for the land on which arrears are owed; and
- repealing the power of arrest of the Water Corporation in section 114.

Country Towns Sewerage Act 1948

- removing the preference given to local government to install sewerage services;
- removing the sections requiring water supply licence holders to supply water for cleansing at their own expense and the associated power of direction;
- removing the requirement capping interest rates at five per cent in respect of property sewer debts owed to the Water Corporation;
- repealing sections 83 to 98 regarding the power to sell or lease land and amend legislation to allow a memorial to be attached to the title for the land on which arrears are owed; and
- repealing section 112 relating to the power to arrest.

Metropolitan Water Supply, Sewerage and Drainage Act 1909

- extending the power to recover charges to all parts of Schedule 2 of the *Water Services Licensing Act 1995*;
- removing the powers to lease and sell property currently bestowed on Water Corporation;
- removing the restrictions on the resale of water;
- removing the power to arrest offenders from the Water Corporation; and
- removing the ability for the Water Corporation to recover criminal penalties.

Rights in Water and Irrigation Act 1914

- extending the section 39F appeals provisions to licence holders other than the Water Corporation by listing this section in Schedule 2 of the *Water Services Licensing Act 1995*; and
- removing the power to arrest offenders from the Water Corporation.

Water Agencies (Powers) Act 1984

- amending section 41 to allow the Water Corporation to exempt a customer from the application of by-laws;
- repealing section 41A and set water supply charges for country land;
- repealing section 41B removing the cap on increases in water supply charges; and
- extending the power to partially acquire land to other licence holders.

Water Services Licensing Act 1995

- amending the law on the compulsory acquisition of land by the Water Corporation and other water providers; and
- extending to other water service providers the power of the Water Corporation to attach a memorial to land so that when land is sold, arrears are collected from the sale price.

The Bill provides for the above outlined amendments to the State's water legislation consequential to the National Competition Policy Review, and will remove impediments to competition in the water industry.

As part of the Review penalties across the legislation were reviewed to ensure uniformity in fines for similar penalties. No penalties were increased or levelled above the highest penalty for a similar offence. Generally penalties were aligned with the *Rights in Water and Irrigation Act 1914* which was updated and amended under the *Rights in Water and Irrigation Amendment Act 2000*, which came into effect in 2001.

Deleted: ice

Outlined below is an examination of the contents of the Bill on a clause-by-clause basis.

Part 1 – Preliminary

Part 1 contains the title of the Act and the relevant commencement provisions.

Clause 1: Short title

This clause contains the short title and citation.

Clause 2: Commencement

This clause sets out the commencement provisions of the Act.

Part 2 – Country Areas Water Supply Act 1947

This Part of the Bill relates to the amendments required to the *Country Areas Water Supply Act 1947*.

Clause 3: The Act amended

This clause identifies the act to be amended within this Part as the *Country Areas Water Supply Act 1947*.

Clause 4: Section 5 amended

This clause inserts a definition of the “Registrar of Deeds” in the interpretation section of the Act.

A definition for Registrar of Deeds is also included in *the Country Towns Sewerage Act 1948* see clause 16 below, *Metropolitan Water Supply, Sewerage and Drainage Act 1909* see clause 37 and *Water Services Licensing Act 1995* see clause 64.

Clause 5: Section 14 amended

This clause contains amendments to section 14 of the *Country Areas Water Supply Act* which are consequential upon the insertion of “Division 8A-Powers relating to land” into the *Water Services Licensing Act* by clause 65 of the Bill. Division 8A replaces and redefines powers to take land that are to be removed from the *Water Agencies (Powers) Act* by clause 62.

Clause 6: Section 38 amended

This clause repeals section 38(2), which relates to the Corporation’s power to, by contract, exempt the purchaser or occupier of land from payment of charges under the *Water Agencies (Powers) Act 1984*. With the insertion of a new section 42 (See Clause 60) into the *Water Agencies (Powers) Act 1984* there is no longer a requirement for section 38(2) within the *Country Areas Water Supply Act*.

Clause 7: Section 71 repealed and consequential amendments (including to *Water Services Licensing Act 1995*)

Section 71 allows the Corporation or any private provider (who has had these powers conferred upon them by Section 45 of the *Water Services Licensing Act 1995*), to control the purchase and on-sale of water that it has sold to a customer. The purpose of this restriction in the Act was to protect water quality for health and safety reasons. These matters are now subject to regulation under the *Water Services Licensing Act 1995*. The Review recommended that section 71 be repealed and that the *Water Services Licensing Act 1995* Schedule 2 Part 2 be amended by the deletion of the

reference to s.71. Reference to section 71 is also removed from Sections 115(1) and 115(3). This clause implements the Review's recommendation.

Clause 8: Section 81 amended

Clause 8 amends section 81 which authorises the Water Corporation to take action to recover rates and also makes provision for the sale of the land to recover debts. The Review recommended that the general power to recover rates be included in Schedule 2 of the *Water Services Licensing Act 1995* but that the reference to the power to sell land be removed from section 81. Clause 8 accomplishes this recommendation.

Clause 66 amends the *Water Services Licensing Act* to provide for memorials to be placed on land so that dealing in the land cannot occur until the debt is paid.

Clause 67(2)(a) amends Schedule 2 Part 2 of the *Water Services Licensing Act 1995* by inserting section 81 as recommended by the Review. The power can then be made available to all licensed water supply providers.

Clause 27 amends section 79 of the *Country Towns Sewerage Act 1948*, clause 43 amends section 109 of the *Metropolitan Water Supply, Sewerage and Drainage Act 1909* and are related clauses which remove references to the sale of land to recover debts.

Clause 9: Section 82 repealed and consequential amendment

Clause 9 repeals section 82. Section 82 provides that if an occupier of any land refuses or wilfully omits to disclose their name to the Corporation or an officer of the Corporation he or she is guilty of an offence. The Review found that this provision is duplicated in 69(2) of the *Water Agencies (Powers) Act 1984*, and recommended that it be repealed.

Clause 10: Section 83 inserted

This clause inserts a new section 83, which provides for the expiry of Part VII Division 2 of the Act. Division 2 relates to the power of the Corporation to acquire or take possession of land where outstanding monies are due, once notice has been provided under Section 85(1). The new section 83 will prevent any further section 85(1) notices being issued and provides how the Division will be extinguished once there are no longer any outstanding section 85(1) notices. The Minister will publish a notice in the Government Gazette stating that the Division has expired.

Related clauses: clause 29 inserts a similar provision into the *Country Towns Sewerage Act 1948* and clause 44 inserts a similar provision into the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*.

Clause 11: Section 88A inserted

This clause inserts a new section 88A, which provides for the expiry of Part VII Division 3 which relates to the power of the Corporation to sell land where outstanding charges remain unpaid providing notice is given of same under Section 90.

The new section 88A will prevent any further section 90 notices being issued and provides how the Division will be extinguished once there are no longer any

outstanding section 85(1) notices. The Minister will publish a notice in the Government Gazette stating that the Division has expired.

Clause 12: Section 112 amended

This clause amends section 112, which relates to penalties for obstructing the Commission or Corporation in its performance of duty. The penalty is to be increased from \$500 to \$5 000 to align it with a similar offence in section 70 of the *Rights in Water and Irrigation Act 1914*.

Clause 13: Section 113 amended

This clause amends section 113(1), which relates to penalties for refusing to give up possession of works. The penalty contained within this section has been amended from \$4 000 or imprisonment for 12 months to \$10 000 to align it with section 71 of the *Rights in Water and Irrigation Act 1914*.

See clause 31 which amends section 111 of the *Country Towns Sewerage Act 1947* and clause 48 which amends section 157 of the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*.

Clause 14: Section 114 amended

This clause amends section 114 by deleting the reference to the Corporation. Section 114 relates to the power of the Corporation or the Commission to apprehend an offender. The Review found that this section conferred an advantage to the Water Corporation in dealing with offenders and inappropriate powers for a corporatised entity such as the Water Corporation. The Review recommended that the power to arrest should be removed from the Corporation, but retained by the Water and Rivers Commission in respect to its responsibilities.

The power of the Corporation to arrest has also been removed from section 112 of the *Country Towns Sewerage Act 1948* (Clause 32), section 158 of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* (Clause 49) and section 73 of the *Rights in Water and Irrigation Act 1914* (Clause 55).

Part 3 - Country Towns Sewerage Act 1948

This Part of the Bill relates to amendments required to the *Country Towns Sewerage Act 1948*.

Clause 15: The Act amended

This clause identifies the Act to be amended in this Part as the *Country Towns Sewerage Act 1948*.

Clause 16: Section 3 amended

This clause inserts a definition for the “Registrar of Deeds” in the interpretation section of the Act.

A definition for Registrar of Deeds is also included in the *Country Areas Water Supply Act 1947* see Clause 4 above, *Metropolitan Water Supply, Sewerage and Drainage Act 1909* see Clause 37 and *Water Services Licensing Act 1995* see Clause 64.

Clause 17: Section 11 amended

This clause makes amendments to section 11(1), which are consequential on the changes made to land acquisition powers by the insertion of new Division 8A into the *Water Services Licensing Act* by clause 65.

Clause 17 also deletes wording in section 11(1) giving preference to local government. Section 11 provides that the Corporation's powers to construct works shall not be exercised in a locality, not in a sewerage area where the local government of the district itself wishes to undertake such works. The Review found that this provision might result in inefficient sewerage services if local government is not the best organisation to undertake the works. It may result in local government selectively "claiming" viable sewerage schemes or the least costly ones. The review recommended the removal of the provision in section 11, which gives preference to local government over other sewerage service providers.

Clause 18: Section 24 amended

This clause amends section 24(2), which relates to the responsibility of the "Corporation to keep sewers clean". This provision places the cost of the water provided to cleanse the sewers onto the water supplier not the sewerage operator.

The Review found "requiring a water supply company to supply water for cleansing the sewers irrespective of the cost or risk of doing so is inconsistent with requiring them to act commercially. Where the water and sewerage systems are not jointly owned, the water supply company should be appropriately compensated for the water supplied. The operator of the sewer system should bear the full operational costs including the cost of cleansing water".

This clause amends section 24(2) accordingly by placing the expense and risk associated with cleaning sewers on the sewer operator which may be the Corporation or a private provider licensed to do so under the *Water Services Licensing Act 1995*.

Clause 18 also amends section 24(2) by removing the power of the Water Corporation to direct any water board supplying water for cleansing as this matter is covered by the duty to provide services under their respective operating licences.

Clause 19: Section 32 amended

This clause amends section 32 by amending the penalty for using unauthorised fittings from \$2 000 to \$10 000 for an individual and \$20 000 for a body corporate. This aligns the penalty with section 45 of the *Country Areas Water Supply Act 1947* and section 52 of the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*.

Clause 20: Section 33 amended

This clause amends section 33 by amending the penalty for not repairing fittings from \$1 000 to \$10 000 for an individual and \$20 000 for a body corporate. This aligns the penalty provision for the same offence with section 53 of the *Metropolitan Water Supply Sewerage, and Drainage Act 1909*.

Clause 21: Section 34 amended

This clause amends section 34 by amending the penalty for destroying valves from \$2 000 to \$10 000 for an individual and \$20 000 for a body corporate. The penalty is

increased to align with penalties for water supply offences such as section 54 of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*, which provides an equivalent penalty for destruction of valves and other fittings related to water supply.

This clause also amends section 34 to make damages recoverable as a debt by the Corporation.

Clause 22: Section 36 amended

This clause amends sections 36(3) by deleting the cap on interest charged on outstanding costs of 5%.

Clause 23: Section 37 amended

This clause amends sections 37(2) by deleting the cap on interest charged on outstanding costs of 5%.

Clause 24: Section 39 amended

Section 39(1) relates to penalties payable for failure to repair or cleanse a property sewer. The penalty provision in section 39 is amended by deleting wording related to forfeiture to the Corporation and inserting instead the wording “be liable to” to ensure consistent treatment of offence provisions.

The Review highlighted the need to provide for penalties for offences rather than simply amounts that are forfeited to the Corporation.

Clause 25: Section 42 amended

Section 42(2) relates to the penalty for failure to give notice to the Corporation of sanitary work prior to the commencement or continuation of such work. The penalty provision within this section is amended by deleting wording related to forfeiture to the Corporation and inserting instead the wording “be liable to” to ensure consistent treatment of offence provisions.

Clause 26: Section 44 amended

This clause amends section 44, which relates to penalties for giving use of a property sewer without permission, by deleting wording relating to forfeiture to the Corporation, and replacing it with wording imposing liability for a penalty.

Clause 27: Section 79 amended

This clause amends section 79, which provides how sewerage charges can be recovered. This section has been amended by deleting “or by sale as hereinafter mentioned”, to ensure a consistent approach with other acts reviewed. The Review found provisions entitling the Corporation or a provider to sell land, where charges are outstanding, are inappropriate and should be removed.

For similar amendments see clause 8 which amends section 81 of the *Country Areas Water Supply Act 1947*, and clause 43 which amends section 109 of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*.

Clause 28: Section 81 repealed and consequential amendment to *Water Services Licensing Act 1995*

Section 81 allows the Corporation to fine anyone who refuses to give the name of the person liable for sewerage charges. The Review found that similar provisions in the *Country Areas Water Supply Act 1947* (See clause 9 above) were duplicated in 69(2) of the *Water Agencies (Powers) Act 1984* and recommended that section 81 be repealed.

Clause 29: Section 82 inserted

This clause inserts a new section 82, which provides for the expiry of Part VII Division 2 which relates to the power of the Corporation to sell land where outstanding charges remain unpaid providing notice is given under section 84.

The new section 82 will prevent any further section 84 notices being issued and provides how the Division will be extinguished once there are no longer any outstanding section 84 notices. The Minister will publish a notice in the Government Gazette stating that the Division has expired.

See related clause 10 which inserts section 83 into the *Country Areas Water Supply Act 1947* and clause 44 which inserts section 112 into the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*.

Clause 30: Section 110 amended

Section 110 is amended by increasing the penalty for obstructing Water Corporation Officers in performance of their duty from \$500 to \$5 000 to create uniformity with section 70 of the *Rights in Water and Irrigation Act 1914* for a similar offence.

See clause 12 which amends section 112 of the *Country Areas Water Supply Act 1947* and clause 47 which amends section 156 of the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*.

Clause 31: Section 111 amended

Section 111 is amended by substituting a \$10 000 penalty for the existing penalty of \$4 000 and a term of imprisonment of a period not exceeding 12 months for the offence of refusing to give up possession of Water Corporation works. This creates uniformity with section 71 of the *Rights in Water and Irrigation Act 1914* for a similar offence.

See clause 13 which amends section 113 of the *Country Areas Water Supply Act 1947* and clause 48 which amends section 157 of the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*.

Clause 32: Section 112 repealed

This clause repeals section 112 of the *Country Towns Sewerage Act 1948* which deals with the power of an officer of the Water Corporation to arrest without warrant any person found committing an offence against the Act or by-laws if the offender refuses to give his or her name or address. The Review found that this section conferred an inappropriate power on the Water Corporation in dealing with an offender and recommended its repeal.

The power of the Water Corporation to arrest has also been removed from section 114 of the *Country Areas Water Supply Act 1947* (Clause 14), section 158 of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* (Clause 49) and section 73 of the *Rights in Water and Irrigation Act 1914* (Clause 55).

Part 4 – Land Administration Act 1997

This Part of the Bill relates to the amendments required to the *Land Administration Act 1997*.

Clause 33: The Act amended

This clause identifies the act to be amended within this Part as the *Land Administration Act 1997*.

Clause 34: Section 159 amended

This clause amends section 159 by inserting the Minister responsible for the *Water Services Licensing Act 1995* into the list of ministers to whom the minister responsible for administering the *Land Administration Act* may delegate any of his or her powers or duties under Parts 9 or 10 of that Act. This arrangement is part of a scheme to extend, subject to close Ministerial supervision, the power to take land to all water service providers.

Refer to the changes implemented in Clause 65.

Clause 35: Section 160 amended

This clause amends section 160(1) by providing that the Minister responsible for administering the *Water Services Licensing Act* to whom a power or duty has been delegated under section 159 may delegate the whole or part of the power or duty to the holder of a licence under the *Water Services Licensing Act* or to any officer of the licensee.

Part 5-Metropolitan Water Supply, Sewerage, and Drainage Act 1909

This Part of the Bill relates to the amendments required to the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*.

Clause 36: The Act amended

This clause identifies the Act to be amended within this Part as the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*.

Clause 37: Section 5 amended

Section 5(1) is amended by the insertion of a definition of “Registrar of Deeds” in the interpretation section of the Act.

A definition for Registrar of Deeds is also included in the *Country Areas Water Supply Act 1947* see clause 4, *Country Towns Sewerage Act 1948* see clause 16, and *Water Services Licensing Act 1995* see clause 64.

Clause 38: Section 15 amended

Section 15 deletes the power of the Water Corporation to take alienated land within the boundaries of any water reserve or catchment area under and subject to the

provisions of Part 9 of the *Land Administration Act 1997*. A general power to take land is to be established in the *Water Services Licensing Act 1995*.

Refer to the changes implemented in Clause 65.

Clause 39: Section 63 amended

Section 63(1) provides a penalty for failure to clean or repair property sewers and is amended by deleting “forfeit and pay” and inserting instead “be liable to”. This amendment is similar to amendments found in clauses 24 and 25 to the *Country Towns Sewerage Act 1948*.

Clause 40: Section 64 amended

Sub-clause (1) amends section 64(2) which provides for a penalty where a person commences sanitary works prior to approval from the Water Corporation or fails to follow any directions provided by the Water Corporation in relation to the works. It changes the penalty from \$80 to \$1 000 in line with the penalty in the corresponding provision in the *Country Towns Sewerage Act 1948*.

Sub-clause (2) amends section 64(4), which provides for a penalty where a person resumes or continues sanitary works before giving notice to the Water Corporation. It changes the penalty from \$40 to \$500 in line with the penalty in the corresponding provision in the *Country Towns Sewerage Act 1948*.

Clause 41: Section 68 amended

Section 68 provides for a penalty where a person gives use of a property sewer without obtaining consent from the Corporation. The wording of this section dealt with the forfeiture of monies rather than penalty for an offence. This section has been amended to delete the reference to forfeiture and to provide instead that an offender is liable for every such offence to a penalty not exceeding \$1 000 and shall, in addition, be liable to pay to the Corporation the full amount of any damage sustained. This amendment is consistent with amendments made to the *Country Towns Sewerage Act 1948* above.

Clause 42: Section 69 amended

This clause amends the penalty provision for the offence of the destruction or damage of a sewer or fittings under section 69. The penalty of \$2 000 has been amended to \$10 000 for an individual and \$20 000 for a body corporate to ensure consistency across similar legislation.

Clause 21 makes a similar amendment to section 34 of the *Country Towns Sewerage Act 1948* for the same offence.

Section 69 is also amended to make wording consistent across legislation and to provide that the Corporation can recover any expenses incurred by repairs needed to as a result of the destruction or damage as a debt in a court of competent jurisdiction.

Clause 43: Section 109 amended

This clause amends section 109 of the Act, which relates to how outstanding charges or interest may be recovered. This section is amended by deleting the wording “or by sale as hereinafter mentioned”.

For similar amendments see – clause 8 which amends section 81 of the *Country Areas Water Supply Act 1947*, and clause 27 which amends section 79 of the *Country Towns Sewerage Act 1948*.

Clause 44: Section 112 inserted

This clause inserts a new section 112, which provides for the expiry of Part VIII Division (ii) which deals with liability for and recovery of water charges. This Division allows the Water Corporation under certain circumstances and where charges due have been outstanding for a designated period, and notice under section 114 has been given, to take possession of, lease or sell land to recover these charges.

The new section 112 will prevent any further section 114(1) notices being issued and provides that the Division will be extinguished once there are no longer any outstanding section 114(1) notices by the publication by the Minister of a notice in the Government Gazette stating that the Division has expired.

Related clauses: similar provisions have been inserted into the *Country Areas Water Supply Act 1947* (see clauses 10 and 11) and the *Country Towns Sewerage Act 1948* (see clause 29).

Clause 45: Section 124A repealed and heading deleted

This clause repeals section 124A, which relates to prohibition on dealings in land. Under section 124A where there are outstanding water charges the Corporation may place a memorial on the title of land, this prevents any dealings on the land until the memorial is removed.

Section 124A is repealed, as it is no longer necessary because of the effect of clause 66. Clause 66 inserts a new division into the *Water Services Licensing Act 1995* – Division 8B – Powers for recovering charges. This division provides for a memorial to be placed on a title where there are outstanding charges. Clause 66 also provides for transitional arrangements to deal with any memorials placed on titles under section 124A of this Act prior to the commencement of the *Water Legislation Amendment (Competition Policy) Act 2005*.

Clause 46: Section 146 amended

This clause amends section 146(1)(20) to remove the power of the Water Corporation to prohibit the on-sale of water supplied by it. As these matters are now subject to regulation under the *Water Services Licensing Act 1995*, the Review recommended that the power to control the resale of water be removed.

Clause 47: Section 156 amended

Section 156 provides the penalty applicable for the offence of obstructing the Corporation or Commission or officers in performance of their duty. The penalty is increased from \$500 to \$5 000 to be consistent with section 70 of the *Rights in Water and Irrigation Act 1914*. Clauses 12 and 30 outlined above make amendment to the equivalent sections of the *Country Areas Water Supply Act 1947* (Section 112) and *Country Towns Sewerage Act 1948* (Section 110).

Clause 48: Section 157 amended

Section 157 details the penalty for the offence of refusing to give up possession of works. The penalty is increased from \$1000 to \$10 000 to bring it in line with section 71 of the *Rights in Water and Irrigation Act 1914*.

See clause 13 which amends section 113 of the *Country Areas Water Supply Act 1947* and clause 31 which amends section 111 of the *Country Towns Sewerage Act 1948*.

Clause 49: Section 158 amended

This clause deletes the power of the Corporation to arrest offenders from section 158. The Review recommended that the power to arrest should be removed from the Corporation.

The power of the Corporation to arrest has also been removed from, section 114 of the *Country Areas Water Supply Act 1947* (Clause 14), section 112 of the *Country Towns Sewerage Act 1948* (Clause 32) and section 73 of the *Rights in Water and Irrigation Act 1914* (Clause 55).

Clause 50: Section 158A amended

Section 158A provides a general penalty provision for offences under the Act not expressly prescribed. The existing penalty is \$200 and \$20 for every day during which the offence has continued. This penalty is increased to \$10 000 to bring it into line with section 72 of the *Rights in Water and Irrigation Act 1914*.

Clause 51: Section 160 amended

Section 160 is amended by removing its application to the Water Corporation. Section 160 provides that all penalties and forfeitures recovered under the *Metropolitan Water Authority Act 1982* or the *Metropolitan Water Supply, Sewerage and Drainage Act 1909* or bylaws shall be paid to the Water and Rivers Commission or the Corporation.

Clause 52: Seventh and Eight Schedules repealed

This clause repeals the Seventh and Eighth Schedules of the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*. These schedules contain proformas of Notices, which are served by the Corporation detailing that monies are outstanding and that the land will be leased or taken possession of after the lapse of three months from the notice. See related clause 43 above.

Clause 53: Sentencing Act 1995 amended

This clause amends Schedule 1 of the *Sentencing Act 1995* by deleting references to the *Metropolitan Water Authority Act 1982* and *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*. Schedule 1 lists acts, fines under which are not to be credited to the Consolidated Fund.

Part 6 – Rights in Water and Irrigation Act 1914

This Part of the Bill relates to the amendments required to the *Rights in Water and Irrigation Act 1914*.

Clause 54: The Act amended

This clause identifies the Act to be amended within this Part as the *Rights in Water and Irrigation Act 1914*.

Clause 55: Section 73 amended

Section 73 relates to the power of the Corporation and Commission to arrest offenders. Amendment is made to this section by deleting reference to the Corporation. The Review recommended that the power to arrest should be removed from the Corporation.

The power of the Corporation to arrest has also been removed from, section 114 of the *Country Areas Water Supply Act 1947* (Clause 14), section 112 of the *Country Towns Sewerage Act 1948* (Clause 32) and section 158 of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* (Clause 49).

Part 7– Water Agencies (Powers) Act 1984

This Part of the Bill relates to amendments required to the *Water Agencies (Powers) Act 1984*.

Clause 56: The Act amended

This clause identifies the Act to be amended within this Part as the *Water Agencies (Powers) Act 1984*.

Clause 57: Section 41 amended

Section 41 relates to powers to make by-laws for charges. This clause amends sections 41(1)(g) and (41(1)(k), by removing references to sections, 41A and 41B, which are repealed by clauses 58 and 59 see below.

Clause 58: Section 41A repealed

This clause repeals section 41A, which relates to limits on certain charges. The review recommended the repeal of section 41A on the ground that the restrictions in it that place upper limits on charges hinders pricing for water services that reflects full economic cost recovery.

Clause 59: Section 41B repealed

This clause repeals section 41B, which restricts water licensees in the water supply charge increase that they can fix in comparison to the previous year's charge. The review considered the specification of a maximum increase to be inefficient for service providers and recommended its repeal.

In spite of the removal of section 41B it will be possible to limit increases in charges through By-laws made under section 41(1)(g) which allows a maximum charge to be established in accordance with factors such as the percentage increase in land value.

Clause 60: Part III Division 2 inserted and consequential amendment to *Water Services Licensing Act 1995*

This clause inserts Part III Division 2 - Agreements as to charges into the *Water Agencies (Powers) Act 1984*.

New section 42 provides that the Water Corporation may enter into agreements with individuals in relation to charging. This allows the Corporation and customers to enter into agreements to pay the amount specified in the agreement rather than a statutory charge. The insertion of this new section is in line with the Review recommendation

that the Corporation be allowed to exempt a customer from the application of by-laws where payment for services is provided for in an agreement with that customer.

Sub-clause 60(2) amends the *Water Services Licensing Act 1995* by inserting section 42 into, Schedule 2 Part 1 of the Act. This will allow this provision to be extended to providers other than the Water Corporation.

Clause 61: Section 75 amended

This clause makes amendments to section 75 of the *Water Agencies (Powers) Act*, consequential to changes to the powers for taking land.

Refer to the changes implemented in Clause 65.

Clause 62: Section 81 amended

This clause makes consequential amendments to section 81 of the *Water Agencies (Powers) Act*, which relates to claims against the Water and Rivers Commission or the Water Corporation for the use of land and the application of the *Public Works Act 1902*. Section 81(4), (5), (6), (7), (8), (9), (10), (11), (12), and (13) are amended by deleting the reference to the Corporation in each place where it occurs. The provisions of Parts 9 and 10 of the *Land Administration Act* will now apply substantively unchanged to the compulsory acquisition of land by the Water Corporation and other water service providers.

Part 8 – Water Services Licensing Act 1995

This Part of the Bill relates to amendments made to the *Water Services Licensing Act 1995*.

Clause 63: The Act amended

This clause identifies the act to be amended by this Part 8 as the *Water Services Licensing Act 1995*.

Clause 64: Section 3 amended

This clause inserts a definition for the “Registrar of Deeds” into the interpretation section of the act.

A definition for Registrar of Deeds is also included in the *Country Areas Water Supply Act 1947* see clause 4, *Country Towns Sewerage Act 1948* see clause 16, and *Metropolitan Water Supply, Sewerage and Drainage Act 1909* see clause 37.

Clause 65: Part 3 Division 8A inserted

This clause inserts Part 3 Division 8A – Powers relating to land, into the act. In order to provide water services land must be acquired for works, such as dams, treatment plants and pipelines. If the landowner refuses to sell it is necessary to use the compulsory acquisition powers in Part 9 and 10 of the *Land Administration Act*. This clause re-establishes the power to use these Parts that has been deleted from the *Water Agencies (Powers) Act*.

Previously this power was only available to the Water Corporation, the power is now available to all licensed service providers and can only be exercised with Ministerial supervision. This Division provides that a licensee may take an interest in land or

easement over land under Part 9 of the *Land Administration Act 1997* as if for a public work within the meaning of that act on the recommendation of the Minister administering the *Water Services Licensing Act 1995*. If in the opinion of the Minister administering the *Water Services Licensing Act* an interest in land is appropriate to a licensee's needs in respect of works, that Minister is to advise the licensee of that opinion and the licensee is required to acquire that interest by agreement or by the taking of the land under Part 9 of the *Land Administration Act*.

Clause 66: Part 3 Division 8B inserted

This clause inserts Part 3 Division 8B - Powers for recovering charges, into the act. This clause provides that if in relation to any land, the payment of an amount due to a licensee in respect of any water services charge is in arrears, the licensee may lodge a memorial to that effect with the Registrar of Titles or the Registrar of Deeds, who on payment of the prescribed fee, is to register the memorial and make appropriate endorsements on the title and records relating to that land. Until the memorial is withdrawn, the Registrar is not to register, without the written consent of the licensee, an instrument affecting the land that was lodged for registration after the memorial was lodged. If the payment is no longer in arrears, the licensee is to have the memorial withdrawn.

The clause also provides that new section 44F will not apply to a prescribed licensee or to a prescribed class of licensees.

Clause 67: Schedule 2 amended

This clause makes a number of amendments to Schedule 2 of the *Water Services Licensing Act 1995* by inserting and deleting sections. Under section 45 of that act, a reference to the Water Corporation in a section listed in Schedule 2 may include another licensee if that licensee is prescribed by regulations made under section 61. The insertion of a section into Schedule 2 therefore enables enactments that refer to the Water Corporation to be extended to other licensees. This restriction is inserted to allow Regulations to be made to deny this power to service providers who do not require it or do not maintain satisfactory levels of corporate governance to properly discharge the power.