

Rights in Water and Irrigation Amendment Bill 1999

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Western Australia

LEGISLATIVE ASSEMBLY

Rights in Water and Irrigation Amendment Bill 1999

A Bill for

An Act to amend the *Rights in Water and Irrigation Act 1914* and to make consequential amendments to the —

- *Country Areas Water Supply Act 1947;*
- *Environmental Protection Act 1986;*
- *Metropolitan Water Supply, Sewerage, and Drainage Act 1909; and*
- *Mining Act 1978.*

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Rights in Water and Irrigation Amendment Act 1999*.

5 **2. Commencement**

This Act comes into operation on a day fixed by proclamation.

3. The Act amended

The amendments in this Act are to the *Rights in Water and Irrigation Act 1914**, unless otherwise indicated.

10 [* *Reprinted as at 2 April 1996.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 217.]

**Part 2 — Amendments relating to the long title,
definitions and other miscellaneous matters**

4. Long title replaced

The long title is repealed and the following long title is inserted instead —

5 “

**An Act to make provision for the regulation, management,
use and protection of water resources, to provide for
irrigation schemes, and for related purposes.**

10

”.

5. Section 2 amended

Section 2(1) is amended as follows:

(a) in the definition of “bed”, by deleting “, lake, lagoon,
swamp or marsh” where it first occurs and inserting
15 instead —

“ or wetland ”;

(b) in the definition of “bed”, by deleting “, lake, lagoon,
swamp or marsh,” and inserting instead —

“ or wetland ”;

20

(c) by deleting the definition of “irrigation”;

(d) by deleting the definition of “Lake, lagoon, swamp or
marsh” and inserting instead —

“

“local by-laws” means local by-laws made under
25 section 26L;

”;

(e) by deleting the definition of “spring” and inserting
instead the following definitions —

“

30

“spring” means a spring of water naturally rising to
and flowing over the surface of land, but does not
include the discharge of underground water

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Part 2 Amendments relating to the long title, definitions and other miscellaneous matters

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directly into a watercourse, wetland, reservoir or other body of water;

5 **“take”**, in relation to water, means to remove water from, or reduce the flow of water in, a watercourse, wetland or underground water source, including by —

- 10 (a) pumping or siphoning water;
- (b) stopping, impeding or diverting the flow of water;
- (c) releasing water from a wetland;
- (d) permitting water to flow under natural pressure from a well; or
- (e) permitting stock to drink from a watercourse or wetland,

15 and includes storing water during, or ancillary to, any of those processes or activities;

“the regulations” means regulations made as mentioned in section 27;

20 **“underground water”** or **“underground water source”** includes water that percolates from the ground into a well or other works;

”;

- (f) by deleting the definition of “water-course” and inserting the following definitions —

25 “

“watercourse” has the meaning given by section 3;

“water resources” includes —

- 30 (a) watercourses and wetlands together with their beds and banks;
- (b) other surface waters; and
- (c) aquifers and underground water;

“well” means an opening in the ground made or used to obtain access to underground water;

“wetland” means a natural collection of water, whether permanent or temporary, on the surface of any land and includes —

- (a) any lake, lagoon, swamp or marsh; and
- (b) a natural collection of water that has been artificially altered, but does not include a watercourse.

”.

6. Section 3 inserted

After section 2 the following section is inserted —

“

3. Meaning of “watercourse”

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

“watercourse” means —

- (a) any river, creek, stream or brook in which water flows;
- (b) any collection of water (including a reservoir) into, through or out of which any thing coming within paragraph (a) flows;
- (c) any place where water flows that is prescribed by local by-laws to be a watercourse,

and includes the bed and banks of any thing referred to in paragraph (a), (b) or (c).

(2) For the purposes of the definition in subsection (1) —

- (a) a flow or collection of water comes within that definition even though it is only intermittent or occasional;

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- (b) a river, creek, stream or brook includes a conduit that wholly or partially diverts it from its natural course and forms part of the river, creek, stream or brook; and
- 5 (c) it is immaterial that a river, creek, stream or brook or a natural collection of water may have been artificially improved or altered.

”.

7. Division 1 inserted in Part III

10 Immediately after the heading to Part III the following Division is inserted —

“

Division 1 — Objects and application of this Part

4. Objects

- 15 (1) The objects of this Part are —
- (a) to provide for the management of water resources, and in particular —
- 20 (i) for their sustainable use and development to meet the needs of current and future users; and
- (ii) for the protection of their ecosystems and the environment in which water resources are situated, including by the regulation of activities detrimental to them;
- 25 (b) to promote the orderly, equitable and efficient use of water resources;
- (c) to foster consultation with members of local communities in the local administration of this
- 30 Part, and to enable them to participate in that administration; and

- (d) to assist the integration of the management of water resources with the management of other natural resources.
- 5 (2) The reference to **“use and development”** in subsection (1)(a)(i) includes use and development for domestic, commercial, recreational, cultural and navigational purposes.
- 10 (3) The Commission is to seek to ensure that the objects stated in subsection (1) are achieved, and other persons are to do so to the extent that they have relevant functions under this Part.

4A. Meaning of “watercourse” in this Part

In this Part —

- 15 **“watercourse”** includes waters flowing from a spring to which this Part applies.

5. Waters to which this Part does not apply

- (1) This Part does not apply to or in relation to —
 - 20 (a) the water flowing from any spring the water of which rises to the surface on land that has been granted or demised by the Crown until it has passed beyond the boundaries of the land belonging to the owner or occupier of the land on which the water so rises; or
 - 25 (b) the water in any wetland the bed of which is on land that has been granted or demised by the Crown and is wholly within the boundaries of the land belonging to the owner or occupier of the land on which it is situated,
- 30 unless the spring or wetland is prescribed by local by-laws as being a spring or wetland to which this Part applies.

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- (2) A spring or wetland may not be prescribed as a spring or wetland to which this Part applies unless —
- (a) taking water from the spring or wetland will, in the opinion of the water resources committee established under Division 3C for the locality or localities in which the by-law is intended to apply, have a significant impact on the flow or level of a watercourse or wetland;
 - (b) that committee recommends to the Commission that this Part applies to or in relation to the spring or wetland; and
 - (c) the Commission recommends to the Minister that this Part applies to or in relation to the spring or wetland.

”.

8. Section 9 amended

- (1) Section 9(1) is amended by deleting “any lake, lagoon, swamp or marsh” and inserting instead —
- “ any wetland ”.
- (2) Section 9(1) is amended by deleting “, lake, lagoon, swamp or marsh,” and inserting instead —
- “ or wetland ”.
- (3) Section 9(2)(a) is amended as follows:
- (a) by deleting “lake, lagoon, swamp or marsh” and inserting instead —
- “ wetland ”;
- (b) in subparagraph (i), by deleting “, lake, lagoon, swamp or marsh” and inserting instead —
- “ or wetland ”.

9. Section 16 amended

Section 16(1)(a) is amended by deleting “, lake, lagoon, swamp, or marsh,” and inserting instead —

“ or wetland ”.

5 **10. Section 20 amended**

(1) Section 20(1) is amended by deleting “any lake, lagoon, swamp or marsh” and inserting instead —

“ any wetland ”.

10 (2) Section 20(1) is amended by deleting “, lake, lagoon, swamp or marsh,” and inserting instead —

“ or wetland ”.

(3) Section 20(1)(c) is amended by deleting “the lake, lagoon, swamp or marsh” and inserting instead —

“ the wetland ”.

15 **11. Section 21 amended**

(1) Section 21(1)(c) is amended by deleting “lake, lagoon, swamp or marsh” and inserting instead —

“ wetland ”.

20 (2) Section 21(1) is amended by deleting “, lake, lagoon, swamp or marsh” and inserting instead —

“ or wetland ”.

12. Section 26H amended

25 Section 26H(1) is amended by deleting “water-courses, lakes, lagoons, swamps, marshes or underground” and inserting instead —

“ watercourses, wetlands or underground water ”.

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13. Section 38 amended

Section 38(c) is amended by deleting “or water-course, lake, lagoon, swamp or marsh” and inserting instead —
“ , watercourse or wetland ”.

5 **14. References to “wetland” inserted instead of certain words in various sections**

(1) The Act is amended by deleting “, lake, lagoon, swamp or marsh” where it occurs in the provisions referred to in the table to this subsection and inserting instead —

10 “ or wetland ”.

Table

section 12(2)(a)	section 17(6)
section 15(1) and (2)	section 25(4)
section 16(2)	

(2) The Act is amended by deleting “, lake, lagoon, swamp or marsh,” where it occurs in the provisions referred to in the table to this subsection and inserting instead —

15 “ or wetland ”.

Table

section 6(5)	section 10(1)
--------------	---------------

(3) The Act is amended by deleting “, lake, lagoon, swamp, or marsh” where it occurs in the provisions referred to in the table to this subsection and inserting instead —

20 “ or wetland ”.

Table

section 6(2), (3) and (5)	section 19(1)
section 12(1)(a) and (b)	section 22(1)(a)(i) and (ii)
section 16(2)	

- (4) The Act is amended by deleting “lake, lagoon, swamp or marsh” where it occurs in the provisions referred to in the table to this subsection and inserting instead —

“ wetland ”.

5

Table

section 17(3)

section 25(1)

- (5) The Act is amended by deleting “lake, lagoon, swamp, marsh” where it occurs in the provisions referred to in the table to this subsection and inserting instead —

“ wetland ”.

10

Table

section 26J(1) and (2)

15. References to “water-course” changed to “watercourse” in various sections

The Act is amended by deleting “water-course” where it occurs in the provisions referred to in the table to this section and inserting instead —

15

“ watercourse ”.

Table

definition of “bed”(twice)	section 17(2), (3) and (6)
section 6(2) and (3)	section 18
section 6(5) (twice)	section 19(1)
section 9(1) (twice)	section 20(1) (twice)
section 9(2)(a)	section 20(1)(c)
section 9(2)(a)(i)	section 21(1)(c)
section 10(1)	section 21(1)
section 12(1)(a) and (b)	section 22(1)(a)(i) and (ii)
and (2)(a)	section 25(1) and (4)
section 15(1), (2) and (4)(b)	section 26H(1)
section 16(1)(a)	section 26J(1) and (2)
section 16(2) (twice)	section 39C
section 17(1) (twice)	

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Part 2 Amendments relating to the long title, definitions and other miscellaneous matters

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16. Section 70 amended

Section 70 is amended by inserting after “Act,” —

“ shall be guilty of an offence and ”.

Part 3 — Amendments relating to water rights

17. Heading to Part III amended

The heading to Part III is amended by deleting “WATERS” and inserting instead —

5 “ **Water Resources** ”.

18. Division 1A inserted in Part III

After Division 1 the following Division is inserted —

“

Division 1A — Ownership and control of waters

10 **5A. Natural waters vest in Crown**

The right to the use and flow, and to the control, of the water at any time in any —

- (a) watercourse;
- (b) wetland; or
- 15 (c) underground water source,

vests in the Crown except as appropriated under this Act or another written law.

5B. Saving for works

20 (1) The operation of section 5A does not prevent the owner or occupier of land —

- (a) subject to any relevant local by-laws, from —
 - (i) draining the land; or
 - (ii) making any dam or tank on the land, not on a watercourse or wetland,
 - 25 if as a result of doing so —
 - (iii) the flow of water in a watercourse, or the amount of water in a wetland, is not diminished; or

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- (iv) there is no significant adverse effect on the quality of water, or any ecosystem, in a watercourse, or a wetland; or
- (b) from making any dam or tank on the land, not on a watercourse or wetland, for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4).
- (2) In subsection (1) —
- “diminished”** means —
- (a) sensibly diminished; or
- (b) if local by-laws prescribe a greater diminution of the flow or amount of water for the purposes of this section, diminished to a greater extent than is so prescribed.

5C. Unauthorized taking of water prohibited

- (1) A person must not —
- (a) take water from any watercourse, wetland or underground water source to which this section applies; or
- (b) cause or permit any of those things to be done, except under and in accordance with —
- (c) a right conferred by —
- (i) section 9, 10, 20, 21, 22 or 25A;
- (ii) a local by-law of the kind referred to in section 26L(3)(d); or
- (iii) another written law;
- or
- (d) a licence under this section granted by the Commission in accordance with Schedule 1.

Penalty: \$10 000 and a daily penalty of \$1 000.

- (2) This section applies to —
- (a) a watercourse or wetland to which Division 1B applies;
 - (b) a watercourse or wetland to which Division 2 applies if it is —
 - (i) prescribed by the regulations to be subject to the operation of this section; or
 - (ii) situated within an area that is so prescribed;
 - (c) any artesian underground water; and
 - (d) any other underground water if it is —
 - (i) in a proclaimed area under section 26B; or
 - (ii) in an area that is prescribed by the regulations for the purposes of section 26B(3a).
- (3) Schedule 1 has effect to make provision for and in relation to the licences referred to in subsection(1)(d).

5D. Rights cannot be acquired by length of use

A right —

- (a) to take and divert water;
- (b) to the diversion of water; or
- (c) to the exclusive use of water,

cannot be acquired by any person, by length of time of use or otherwise, except under this Act or any other written law.

5E. Civil remedy where unlawful taking of water affects rights

- (1) Subsection (2) applies if —
- (a) a person contravenes section 5C; and

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- (b) the contravention affects —
- (i) the exercise by a person of a right referred to in section 5C(1)(c); or
 - (ii) the taking of water by a person under a licence under section 5C.
- (2) The contravention is a breach of statutory duty that is actionable at the suit of a person referred to in subsection (1)(b).
- (3) Subsection (2) has effect subject to the defences and other incidents applying to actions for breach of statutory duty.

”.

19. Heading to Division 1 of Part III amended

The heading to Division 1 of Part III is amended by deleting “Division 1” and inserting instead —

“ **Division 1B** ”.

20. Section 6 amended

- (1) Section 6(1) is repealed.
- (2) Section 6(2) is amended by deleting “subsection (1)” and inserting instead —
“ section 5 ”.
- (3) Section 6(4) is repealed and the following subsection is inserted instead —
“
(4) A proclamation under subsection (3) shall not be made unless —
 - (a) the Commission has given notice of the proposed proclamation —
 - (i) to each interested local government, within the meaning of subsection (5); and

- (ii) to each water resources committee established under Division 3C for the locality or localities to which the proclamation is intended to apply;
- 5 (b) the local governments and water resources committees have been given the opportunity to make submissions on the proposal to the Commission;
- 10 (c) the Commission has called for public comment on the proposal in accordance with subsection (6); and
- (d) the Commission has considered any submissions made under this section and given a report on them to the Minister.

15

”.

(4) After section 6(5) the following subsections are inserted —

“

- (6) The Commission is taken to comply with subsection (4)(c) by —
 - 20 (a) publishing in 2 issues of a daily newspaper circulating in the locality concerned a notice stating the proposal to make the proclamation; and
 - (b) including in the notice a statement —
 - 25 (i) specifying the places at which a copy of the proposed proclamation may be inspected or obtained;
 - (ii) indicating that written submissions on the proposed proclamation may be made by any person within a specified period; and
 - 30 (iii) showing the address to which submissions may be delivered or posted.

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(7) The period specified under subsection (6)(b)(ii) is to be not less than 30 days after both of the notices referred to in paragraph (a) of that subsection have been published.

5

”.

21. Section 8 repealed

Section 8 is repealed.

22. Section 9 amended

(1) Section 9(1) is amended as follows:

10

(a) by deleting paragraph (b) and inserting instead —

“

(b) for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4),

15

”;

(b) by inserting after “extent” —

“ and from which no produce is sold ”.

(2) Section 9(3) and (4) are repealed and the following subsection is inserted instead —

20

“

(3) This section has effect subject to Division 3A.

”.

23. Section 10 amended

(1) Section 10(1) is amended as follows:

25

(a) by inserting after “stock” —

“

, other than those being raised under intensive conditions as defined in section 21(4),

”;

- (b) by inserting after “reserve” —
“ at the point at which the water is taken ”.

- (2) Section 10(2) is repealed and the following subsection is inserted instead —

5 “ (2) This section has effect subject to Division 3A. ”.

24. Section 11 replaced

Section 11 is repealed and the following section inserted instead —

“

10 **11. Works for purposes of section 10**

- (1) Section 10 does not authorize a person for the purpose of taking water under that section —

- 15 (a) to do anything, or install any works or object, that causes obstruction of or interference to a watercourse or wetland or its bed or banks, unless the person holds a permit granted by the Commission authorizing the person to do so; or
20 (b) to do anything, or install any works or object, that causes obstruction or disturbance of or interference with a road or reserve, unless the person is authorized to do so by the body in which the control and management of the road or reserve is vested.

- 25 (2) The regulations may make provision for the permits referred to in subsection (1)(a), including provision for the matters set out in section 27B.

”.

28. Section 20 amended

(1) Section 20(1) is amended as follows:

(a) by inserting after “occupier of any land” —
“ (**“riparian land”**) ”;

5 (b) in paragraph (b) by inserting after “stock” —
“

, other than those being raised under intensive
conditions as defined in section 21(4)

”;

10 (c) by deleting the passage from “thereby sensibly
diminished” to the end of the subsection and inserting
instead —

“

15 thereby sensibly diminished, for any other
purpose,

but the right described in paragraph (c) may be made
inapplicable to, or be restricted in relation to, any
riparian land by the provisions of local by-laws that
apply to the land, and that paragraph is to be read
20 subject to any such provisions.

”.

(2) Section 20(2) is repealed and the following subsections are
inserted instead —

“

25 (2) Every owner of riparian land that was —

(a) alienated from the Crown before the
commencement of this Act; or

(b) in the process of alienation at that
commencement,

30 has the right, in addition to the rights conferred by
subsection (1), to take water described in that subsection

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for the irrigation of a garden not exceeding 2 hectares if no produce is sold from the garden and the garden —

- (c) is part of that land; and
- (d) is used in connection with a dwelling.

- 5 (3) The owner of riparian land also has the right conferred by subsection (2) in relation to a watercourse or wetland where, although paragraph (a) or (b) of that subsection does not apply —
 - 10 (a) Division 1B has ceased to apply to the watercourse or wetland; and
 - (b) immediately before that cessation a right of the kind described in subsection (2), in relation to that watercourse or wetland, was appurtenant to the land by virtue of section 9(1).
- 15 (4) This section has effect subject to Division 3A.

”.

29. Section 21 amended

(1) Section 21(1) is amended as follows:

- 20 (a) after paragraph (a) the following paragraph is inserted —
 - “ (aa) for firefighting; ”;
- (b) in paragraph (b) by inserting after “stock” —
 - “
 - 25 other than those being raised under intensive conditions
 - ”;
- (c) in paragraph (c) by inserting before “to the” —
 - “ subject to subsection (2), ”;

(d) by deleting “reserve” and inserting instead —

“

by a reserve for public access at the point where the
water is taken

5

”.

(2) Section 21(2) is repealed and the following subsections are
inserted instead —

“

(2) The right described in subsection (1)(c) may be made
inapplicable to, or be restricted in relation to, any
watercourse or wetland by the provisions of local by-laws
that apply to that watercourse or wetland, and that
paragraph is to be read subject to any such provisions.

10

(3) Subsection (1) has effect subject to Division 3A.

15

(4) In subsection (1)(b) —

“**intensive conditions**” means conditions in which the
cattle or stock —

(a) are confined to an area smaller than that
required for grazing under normal
conditions; and

20

(b) are usually fed by hand or by mechanical
means.

”.

30. Section 21A inserted

25

After section 21 the following section is inserted —

“

21A. Works for purposes of section 21

(1) Section 21 does not authorize a person for the purpose
of taking water under that section —

30

(a) to do anything, or install any works or object,
that causes obstruction of or interference to a

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watercourse or wetland or its bed or banks,
unless the person holds a permit granted by the
Commission authorizing the person to do so; or

5 (b) to do anything, or install any works or object,
that causes obstruction or disturbance of or
interference with a road or reserve, unless the
person is authorized to do so by the body in
which the control and management of the road
or reserve is vested.

10 (2) The regulations may make provision for the permits
referred to in subsection (1)(a), including provision for
the matters set out in section 27B.

”.

31. Section 22 amended

15 (1) Section 22(2) is repealed and the following subsections are
inserted instead —

“

(2) A direction given by the Commission under
subsection (1) —

20 (a) is to contain reasons for the direction; and
(b) may be varied or cancelled by the Commission
by subsequent notice in writing.

(2a) Clause 7(2) of Schedule 1 applies, with all necessary
changes, when the Commission is considering whether
25 to give or make, or is determining the contents of —

(a) any direction under subsection (1) as to the
diversion, taking or use of water otherwise than
in the exercise of a right referred to in that
subsection; or

30 (b) any variation of such a direction,
or is considering whether to cancel any such direction.

”.

- (2) Section 22(4) is amended by inserting after “of the notice” —
“ or such shorter time as is specified in the notice ”.

32. Section 24 amended

Section 24 is amended by inserting after “section 22” —

5

“

or authorized by a licence under section 5C or by a
local by-law

”.

33. Section 26 repealed and sections 25A and 26 inserted

10

Section 26 is repealed and the following sections are inserted
instead —

“

**25A. Rights to take water from non-artesian wells in
prescribed areas**

15

- (1) This section applies to any non-artesian well in an area
that is prescribed as mentioned in section 26B(3a), but
subject to the provisions of —

- (a) any local by-law referred to in section 26; and
(b) any other written law,

20

that are applicable to that well.

- (2) A person may take water from a non-artesian well to
which this section applies and to which the person has
lawful access —

25

- (a) for domestic and ordinary use;
(b) for firefighting;
(c) for watering cattle or other stock, other than
those being raised under intensive conditions as
defined in section 21(4); and

s. 34

(d) for any other purpose that is prescribed by a local by-law referred to in subsection (1).

(3) The right conferred by subsection (2) does not include authority to install any works or object on the land concerned.

5

26. Local by-laws for section 25A

Local by-laws may be made for the regulation and control of the taking of water under subsection (2) of section 25A, and may include a prohibition in particular circumstances on the taking of water for a purpose mentioned in that subsection.

10

”.

34. Section 26A amended

Section 26A(1) is amended by deleting “, alter, or draw water from” and inserting instead —

15

“ or alter ”.

35. Section 26B amended

(1) Section 26B(3), (4) and (5) are repealed and the following subsections are inserted instead —

20

“

(3) A person must not —

(a) commence, construct, enlarge, deepen or alter any non-artesian well that is situate in a proclaimed area; or

25

(b) cause, suffer or permit any of those things to be done,

unless one of the following applies —

(c) the person does so under and in accordance with a licence under section 26D;

- (d) the well is in an area specified in an order under section 26C(2) and is used, or to be used, for a purpose allowed by that order;
- (e) an exemption or exclusion contained in local by-laws referred to in section 26L(3)(c) applies; or
- (f) the work is allowed by subsection (4)(d).
- (3a) Subsection (3) also applies to —
- (a) all wells; or
- (b) all wells of a class prescribed by the regulations,
- that are not situated in a proclaimed area but are situated in an area that is prescribed by the regulations to be subject to the operation of that subsection.
- (4) Where any work required by this section to be the subject of a licence has been commenced and is not completed at the time when —
- (a) a proclamation made under subsection (1); or
- (b) regulations referred to in subsection (3a),
- come into operation, the occupier of the land on which the work was commenced —
- (c) must, within 2 months after that coming into operation, apply for a licence under section 26D for that work; and
- (d) may continue the work during that period and until the application is finally determined whether by the Commission or on appeal under section 26GI.

s. 36

(5) Subject to section 26C, where an existing non-artesian well is, by operation of —

(a) a proclamation made under subsection (1) brought into a proclaimed area; or

5 (b) regulations referred to in subsection (3a) brought under the operation of subsection (3),

the occupier of the land on which the well is situated —

10 (c) must, within 2 months after the proclamation or regulations come into operation, apply for a licence under section 5C to take water from that well; and

15 (d) may continue to take water from the well without a licence during that period and until the application is finally determined whether by the Commission or on appeal under section 26GI.

”.

20 (2) Section 26B(6) is amended by deleting “not authorized by a licence issued under section 26D” and inserting instead —

“ prohibited by that subsection ”.

36. Section 26C amended

(1) Section 26C(2) is amended as follows:

25 (a) by inserting after “declare that sections” —
“ 5C and ”;

(b) by inserting after “non-artesian well” —
“ , or a type or types of non-artesian wells, ”;

- (c) by deleting from “drawing” to the end of the subsection and inserting instead —

“

5

taking of water and an Order published under this subsection shall have effect according to its tenor.

”.

- (2) After section 26C(3) the following subsection is inserted —

“

10

- (3a) Clause 7(2) of Schedule 1 applies, with all necessary changes, when the Governor is considering whether to make, or is determining the contents of —

- (a) any order under subsection (1); or
(b) any variation of such an order,

or is considering whether to cancel any such order.

15

”.

- (3) Section 26C(4) is amended as follows:

- (a) in paragraph (a) by inserting after “contravene section” —

“ 5C or ”;

20

- (b) in paragraph (c) by deleting “drawing” and inserting instead —

“ taking ”.

37. Section 26D amended

25

Section 26D(1) is amended by deleting “, or the drawing of water from,”.

38. Section 26F amended

Section 26F(1) is amended by deleting “nor shall the water from the well be used for purposes other than those authorized by the licence”.

s. 39

39. Section 26G amended

- (1) Section 26G(1) is amended by deleting “drawn” and inserting instead —
“ taken ”.
- 5 (2) Section 26G(2) is amended as follows:
- (a) by deleting “drawn” in both places where it appears and inserting instead —
“ taken ”;
- (b) by deleting “of draw, for” and inserting instead —
10 “ at which it may be taken, from ”;
- (c) by deleting “draws water from” and inserting instead —
“ relates to ”.
- (3) After section 26G(2) the following subsections are inserted —
“
- 15 (2a) A notice served on a person under this section —
- (a) is to contain reasons for the direction; and
- (b) takes effect —
- (i) when it is served; or
- (ii) at the later time provided for in the notice.
- 20 (2b) The Commission may at any time revoke or vary a notice by further notice served on the person concerned.
- ”.

40. **Division 3A inserted in Part III**

After Division 3 of Part III the following Division is inserted —

“

**Division 3A — Limitations on rights conferred by and
under Divisions 1B, 2 and 3**

Subdivision 1 — Limitations where water is augmented

**26GA. Rights under sections 9, 10, 20 and 21 do not extend
to augmented volume of water**

(1) Where the volume of water in any watercourse or
wetland is augmented by the introduction of water by
works constructed for that purpose, the rights conferred
by sections 9, 10, 20 and 21 to take water in that
watercourse or wetland —

(a) are subject to the limitations set out in
subsection (2); and

(b) may be exercised only in accordance with that
subsection and the regulations.

(2) A person is not entitled by section 9, 10, 20 or 21 to
take any more of the water of the watercourse or
wetland concerned than —

(a) the amount prescribed by local by-laws; or

(b) if paragraph (a) does not apply, the amount
calculated in accordance with subsection (3).

(3) The amount for the purposes of subsection (2)(b) is —

(a) the aggregate of —

(i) 14 kilolitres per day for —

(I) domestic and ordinary use; and

s. 40

- (II) watering cattle or other stock,
in respect of every kilometre of frontage
measured by the general course to the
watercourse or wetland; and
- 5 (ii) where section 9 or 20 applies, 8 500
cubic metres per annum for the
irrigation of a garden as mentioned in
those sections;
- or
- 10 (b) the amount of water that would be available to
the person and to which the person would be so
entitled but for the augmentation referred to in
subsection (1),
whichever is the lesser.
- 15 (4) Local by-laws may, for particular cases or classes of
cases, specify the amount of water to which
subsection (3)(b) refers, and any such specification is
conclusive as to that amount.

Subdivision 2 — Limitations imposed by direction

20 **26GB. Definition**

In this Subdivision —

“**water resource**” means a watercourse, wetland or
underground water source to which section 26GC
applies.

26GC. Commission may give directions

(1) Where this section applies to a water resource, the Commission may by notice in writing served on a person give directions to the person —

5

(a) restricting —

(i) the amount of water that the person may take from the water resource;

(ii) the rate at which the water may be taken by the person from the water resource;
or

10

(iii) the purpose for which the water taken from the water resource may be used by the person;

(b) prohibiting —

15

(i) the taking of water by the person from the water resource; or

(ii) the purpose for which water taken from the water resource by the person may be used;

20

or

(c) imposing on the person obligations in terms of any combination of the matters in paragraphs (a) and (b).

(2) A person on whom a notice is served under subsection (1) must not —

25

(a) take or use water; or

(b) cause or permit water to be taken or used,

in contravention of the directions given to the person in the notice.

30

Penalty: \$4 000 and a daily penalty of \$400.

s. 40

- (3) A notice served on a person under subsection (1) —
- (a) is to contain reasons for the direction; and
 - (b) takes effect —
 - (i) when it is served; or
 - (ii) at the later time provided for in the notice.
- (4) The Commission may at any time revoke or vary a notice by further notice served on the person concerned.

10 **26GD. When section 26GC applies**

- (1) Section 26GC applies to a watercourse, wetland or underground water source if the Commission —
- (a) has made a determination that the quantity of water in the water resource is, or is likely to be, insufficient to meet demand, including any demand made by the needs of the environment; or
 - (b) has made, and published in the *Gazette*, an order declaring that a water shortage exists in the area in which the water resource is situated,
- and so long as any such determination or order has not been revoked.
- (2) Section 26GC also applies so as to enable the Commission to give directions to a person who is taking water from a water resource if in the opinion of the Commission the taking of the water is having a harmful effect on the water resource or the water being taken —
- (a) is being improperly used;
 - (b) is being wasted;
 - (c) is having a harmful effect; or
 - (d) is not being used to the best advantage.

26GE. Further provisions as to orders and determinations

5 (1) An order may only be made under section 26GD(1)(b) in respect of an area if the Commission considers that the water available in the area is, or is likely to be, insufficient to meet the demands for which it is managed as described in section 4(1)(a).

(2) The Commission must —
10 (a) revoke a determination under section 26GD(1)(a); and
(b) by order published in the *Gazette*, revoke an order under section 26GD(1)(b),

15 as soon as it is satisfied that an insufficiency of the kind referred to in subsection (1)(a) of that section or in subsection (1) of this section, as the case may be, no longer exists in relation to the water resource or area concerned.

20 (3) On the revocation of a determination or order in relation to a water resource or area any notice served on a person under section 26GC that applies to that water resource, or a water resource in that area, ceases to have effect.

26GF. Directions override other rights

25 (1) Where a notice is served on a person under section 26GC, any right that the person has —
(a) under section 9, 10, 20, 21 or 22;
(b) under the regulations or a local by-law; or
(c) by virtue of a licence under section 5C,

is displaced by, or has effect subject to, the provisions of the notice so long as it continues in force.

s. 41

- (2) If a direction given under section 26GC is inconsistent with a direction given under section 22 or 26G —
- (a) the direction under section 26GC prevails to the extent of the inconsistency; and
 - 5 (b) to that extent the other direction does not have effect.

41. Section 26H amended

10 Section 26H(1) is amended by deleting “drawing” and inserting instead —

“ taking ”.

42. Section 27 amended

- (1) Section 27(1)(b), (c) and (d) are deleted.
- (2) Section 27(1)(g) is amended by inserting after “licences” —
- 15 “ under section 26D ”.

43. Section 28 amended

Section 28 is amended as follows:

- (a) after paragraph (1)(e) by deleting the semi-colon and inserting a full stop;
- 20 (b) by deleting paragraph (1)(f); and
- (c) by repealing subsection (3).

**Part 4 — Amendments relating to local by-laws, water
resources committees and plans for the management of
water resources**

44. Divisions 3C and 3D inserted in Part III

5 After Division 3B of Part III, as inserted by section 64, the
following Divisions are inserted —

“

Division 3C — Local water resources committees

26GK. Establishment of committees

- 10 (1) The Minister may determine that a water resources
committee (a “**committee**”) is to be established for any
locality or area of the State.
- (2) Where subsection (1) applies, the Minister must,
subject to section 26GL, by order prescribe —
- 15 (a) the locality or area for which the committee is
established;
- (b) the name of the committee;
- (c) the manner in which the committee is to be
appointed; and
- 20 (d) other provisions relating to its membership,
constitution and procedures.
- (3) The Minister may at any time by further order amend
or revoke an order made under this section.
- 25 (4) An order made under this section is to be published in
the *Gazette* for public information.

26GL. Certain requirements for orders under section 26GK

- (1) An order made under section 26GK must make provision for the members of a committee, so far as is practicable, to be drawn —
- 5 (a) substantially from persons who —
- (i) are residents of; or
- (ii) employed in, or operate, a business in, the locality or area for which the committee is established; and
- 10 (b) from persons who —
- (i) are representatives of a local government;
- (ii) are officers of public authorities having functions in the locality or area;
- 15 (iii) have knowledge and experience relating to the water needs and practices of local communities, including Aboriginal communities; or
- (iv) are members of the board of management of the Commission, or members of staff as defined in the *Water and Rivers Commission Act 1995*.
- (2) An order made under section 26GK must also make provision for the members of a committee, so far as is practicable, to be collectively persons who have knowledge of and experience in all or any of the following —
- 25 (a) the management or development of water resources or other natural resources;
- 30 (b) the use of water resources;
- (c) conservation of ecosystems;
- (d) local government.

(3) If the functions of a committee relate mainly to the use of water resources, persons who are users of those resources are, as far as is practicable, to form a majority of committee members.

5 (4) An order made under section 26GK must make provision for notice of appointments to a committee to be published in the *Gazette* for public information.

26GM. Functions of committees

- 10 (1) The functions of a committee are, in respect of the locality or area for which it is established —
- (a) to provide the Commission with —
 - (i) assistance; and
 - (ii) advice,on matters relating to the functions of the Commission to the extent that the Commission asks the committee to do so;
 - (b) to perform the functions given to it —
 - (i) by section 26N(2), in respect of local by-laws; and
 - 20 (ii) by section 26GZ, in respect of a plan under Division 3D;
 - (c) to perform any function of the Commission that may be delegated to it by the Commission under section 26GP;
 - 25 (d) to ensure that the Commission is informed of, and has access to, community views on matters relating to water resources; and
 - (e) to assist the Commission in the resolution of disputes about the use of water resources involving persons having rights under this Act or persons affected by the exercise of those rights.
 - 30

s. 44

- (2) A committee in performing its functions is subject to the direction and control of the Commission.

26GN. Particular duties of members

- 5 (1) A member of a committee must at all times act honestly and diligently in performing the member's functions under this Act.
- 10 (2) If a matter is before a meeting of a committee for consideration and a member present at the meeting has a direct or indirect pecuniary interest in the matter, the member must disclose to the other members present at the meeting, as soon as possible after the relevant facts have come to the member's knowledge, that he or she has an interest, and —
- 15 (a) the disclosure is to be recorded in the minutes of the meeting; and
- (b) the member must not subsequently be present during any consideration or discussion of, and is not to vote on any determination of, the matter.
- 20 (3) An interest need not be disclosed under subsection (2) if it is an interest common to a significant number of residents of the locality or area for which the committee is established.
- 25 (4) Subsection (2)(b) does not apply if the committee has, without the presence of the member who has disclosed the interest, at any time passed a resolution that —
- 30 (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

- 5
- (5) A member of a committee must not disclose any information acquired by virtue of the performance of any function under this Act unless the disclosure is made in connection with the carrying out of this Act or under a legal duty.
- 10
- (6) A member of a committee must not make use of any information acquired by virtue of the performance of the member's functions to gain, directly or indirectly, an improper advantage for the member or to cause detriment to any person.
- 15
- (7) A member of a committee who commits a breach of any provision of this section —
- (a) is liable to the Crown for any profit made by the member as a result of the breach of that provision; and
- (b) commits an offence and is liable to a fine of \$10 000.
- 20
- (8) This section is in addition to and not in derogation of any other law relating to the duty or liability of the holder of a public office.

26GO. Procedure

Subject to this Division, a committee is to determine its own procedure.

26GP. Delegation

- 25
- (1) The Commission may, by instrument in writing, delegate to a committee the performance of any function conferred on the Commission by this Act, other than this power of delegation.
- 30
- (2) A function performed by a committee as delegate of the Commission is to be taken to be performed by the Commission.

- (3) A committee performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

26GQ. Commission to provide support

5 The Commission is to provide a committee with such —
(a) administrative support; and
(b) facilities,
as it reasonably requires for the performance of its
10 functions.

26GR. Remuneration

Members of a committee are entitled to such remuneration and allowances as the Minister determines on the recommendation of the Minister for
15 Public Sector Management.

26GS. Protection from liability

- (1) An action in tort does not lie against a member of a committee for anything that the member has, in good faith, done in the performance or purported
20 performance of a function under this Act.
- (2) The protection given by this section applies even though the thing done in the performance or purported performance of a function of a committee may have been capable of being done whether or not this Act had
25 been enacted.
- (3) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

26GT. Execution of documents by committee

- 5
- (1) A committee may, by resolution in writing, authorize a member or members of the committee to sign documents on behalf of the committee, either generally or subject to such conditions or restrictions as are specified in the resolution.
- (2) A document is duly executed by a committee if it is signed on behalf of the committee by a person or persons authorized to do so under subsection (1).
- 10
- (3) A document purporting to be executed on behalf of a committee is to be presumed to be duly executed until the contrary is shown.

**Division 3D — Plans for management of
water resources**

15

Subdivision 1 — Plans and their contents

26GU. Preparation of plans

- (1) A plan for the purposes of this Act —
- 20
- (a) is to be prepared by the Commission if the Minister directs the Commission to do so; and
- (b) may be prepared by the Commission if in the opinion of the Commission it is desirable to do so.
- (2) A plan does not have effect unless it is approved under section 26GZE after the requirements of Subdivision 2
- 25
- have been complied with.

26GV. Classification of plans

- (1) A plan may be —
- (a) a regional management plan;

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- (b) a sub-regional management plan; or
 - (c) a local area management plan.
- (2) A regional management plan, a sub-regional management plan and a local area management plan may relate to more than one region, sub-region and local area respectively.
- (3) A regional management plan, sub-regional management plans for that region and local area management plans for the areas in that region may be combined in one document.

26GW. Purposes of regional management plans

- (1) A regional management plan must indicate the region to which it applies.
- (2) The purpose of a regional management plan is to set out the matters that are to guide the general management by the Commission of water resources in the region to which it applies, in relation to —
- (a) the definition of water resource values, including environmental values, and the protection of those values;
 - (b) the use of water resources; and
 - (c) the integration of water resources planning and management with land use planning and management.

26GX. Purposes of sub-regional management plans

- (1) A sub-regional management plan must indicate the part of a region to which it applies.
- (2) The purpose of a sub-regional management plan is to set out particular matters that are to guide the

management by the Commission of water resources in
the sub-region to which it applies, including —

- 5
- (a) how the investigation and development of
water resources are to be facilitated by the
Commission;
- (b) how rights in respect of water are to be
allocated to meet various needs, including the
needs of the environment;
- 10
- (c) the matters of sub-regional significance that,
consistently with this Act, will be taken into
account by the Commission in considering —
- (i) applications for licences made under
Division 2 of Schedule 1;
- 15
- (ii) the exercise of powers to renew, amend,
suspend and cancel licences under
Divisions 5 and 6 of that Schedule; and
- (iii) applications for the Commission's
approval of transfers of licences and
water entitlements made under
20
- Division 7 of that Schedule;
- (d) the Commission's assessment of —
- (i) the capacity of water sources to provide
water at sustainable levels of use; and
- 25
- (ii) the environmental impact of developing
those sources;
- and
- (e) the strategies that will be adopted or developed
to implement the plan.
- 30
- (3) A sub-regional management plan must not be
inconsistent with the relevant regional management
plan.

26GY. Purposes of local area management plans

- (1) A local area management plan must indicate the area or areas in the relevant sub-region to which it applies.
- (2) The purpose of a local area management plan is to set out particular matters that are to guide the management by the Commission of water resources in the area or areas to which it applies, including —
- (a) how rights in respect of water are to be allocated, and water may be taken and used, to meet various needs including the needs of the environment;
- (b) the matters that, consistently with this Act, will be taken into account by the Commission in considering —
- (i) applications for licences made under Division 2 of Schedule 1;
- (ii) the exercise of powers to renew, amend, suspend and cancel licences under Divisions 5 and 6 of that Schedule; and
- (iii) applications for the Commission's approval of transfers of licences and water entitlements made under Division 7 of that Schedule;
- and
- (c) the nature and extent of the delegated authority that will be conferred on a relevant water resource committee under section 26GP, and the conditions and restrictions that will apply to the exercise of that authority.
- (3) A local area management plan must not be inconsistent with the relevant regional management plan and sub-regional management plan.

26GZ. Consultation with water resource committees

A plan, or an amendment to a plan, may only be —

- (a) prepared;
- 5 (b) modified under section 26GZC(3)(a) or 26GZD; or
- (c) 10 revoked and a new plan substituted for it under section 26GZG,

after consultation with any water resources committee under Division 3C that is in existence for the region, sub-region or area to which the plan relates.

Subdivision 2 — Public consultation and approval of plans

26GZA. Plan to be publicly notified

- 15 (1) Public notification that a proposed plan has been prepared must be given in accordance with subsections (2) and (3).
- (2) A notice complying with subsection (3) must be published —
 - (a) in the *Gazette*; and
 - 20 (b) in 2 issues of a daily newspaper circulating throughout the State.
- (3) The notice must —
 - (a) specify the region, sub-region or area to which the plan relates;
 - 25 (b) describe in general terms the purpose for which the plan is to be made;
 - (c) specify the places at which —
 - (i) a copy of the plan may be inspected; and
 - (ii) 30 copies of the plan may be obtained;
 - and

s. 44

- (d) state the effect of section 26GZB and specify the period and the address or addresses referred to in that section.

26GZB. Public submissions

- 5 Written submissions on the proposed plan may be made by any body or person —
- (a) within a period determined by the Commission, which period must be not less than 2 months after the day on which the notice under
 - 10 section 26GZA is published in the *Gazette*; and
 - (b) by delivering or posting them, so that they are received within that period at an address designated by the Commission.

26GZC. Referral of plan to other bodies

- 15 (1) If in the opinion of the Commission the proposed plan may affect the functions of a body that is responsible for the planning for, or management of, a natural resource, the Commission must submit the proposed plan to that body.
- 20 (2) The Commission may submit the proposed plan to any other body or person it thinks appropriate.
- (3) A plan submitted under subsection (1) or (2) —
 - 25 (a) is to be as it may be modified by the Commission after considering submissions made under section 26GZB; and
 - (b) in any case is to be accompanied by a summary of those submissions.
- 30 (4) If any such body or person considers that the Commission should amend the plan, it may within one month after receipt of the proposed plan under subsection (1) or (2), in writing, request the Commission to make the amendment.

26GZD. Modification of plan

The Commission may modify the proposed plan as it thinks fit to give effect to —

- 5
- (a) submissions made under section 26GZB; and
 - (b) any request under section 26GZC(4).

26GZE. Approval of plan

- 10
- (1) The Commission must, except where subsection (4) applies, submit the proposed plan, modified as it thinks fit under section 26GZD, to the Minister for approval.
 - (2) The plan as so submitted must be accompanied by —
 - 15 (a) a summary of all submissions made under section 26GZB and requests made under section 26GZC(4); and
 - (b) a report of the Commission indicating its opinion of the merits of those submissions and requests.
 - (3) The Minister may approve the proposed plan, or approve it with such modifications as the Minister thinks fit.
 - 20 (4) The Minister may by instrument delegate to the Commission the exercise of the powers vested in the Minister by subsection (3) in relation to —
 - (a) all plans to which this Division applies; or
 - (b) any particular class or description of plans.
 - 25 (5) Anything done by the Commission under such a delegation is to be taken to have been done by the Minister.

26GZF. Notice and commencement

- 5
- (1) Notice that a plan has been approved must be published in the *Gazette*, together with a note showing —
- (a) whether any modifications were made under section 26GZE(3); and
- (b) where a copy of the plan may be inspected or obtained.
- (2) A plan has effect from —
- 10 (a) the day of publication in the *Gazette* of a notice under subsection (1); or
- (b) such later day as is specified in the plan.

26GZG. Revocation, amendment and correction of plan

- 15 (1) A plan may be amended, or revoked and a new plan substituted for it, subject to compliance with sections 26GZA to 26GZF which are to apply with all necessary changes.
- (2) The Commission may —
- 20 (a) correct any clerical mistake, error or inaccuracy in, or accidental omission from, a plan; or
- (b) replace any factual information set out in a plan if the information has become out of date.
- (3) Notice of any such correction or replacement must be published in the *Gazette* for public information.

25 **45. Sections 26L, 26M and 26N inserted**

After section 26K the following sections are inserted —

“

26L. Local by-laws

- 30 (1) The Minister may make by-laws for the purposes of this Act (“**local by-laws**”) that are applicable in a

locality or localities in the State specified in the
by-laws.

(2) Local by-laws may be made under subsection (1)
prescribing or providing for any matter —

5

(a) that is required or permitted by this Act to be
prescribed or provided for by local by-laws; or

(b) that is necessary or convenient to be prescribed
for the purpose of achieving the objects of this
Act.

10

(3) Without limiting subsection (2), local by-laws may
make provision for and in relation to —

(a) the construction, provision, maintenance, repair
and removal of works relating to water
resources;

15

(b) the manner in which water may be taken;

(c) the exemption or exclusion of —

(i) acts, persons or things; or

(ii) acts, persons or things in a specified
area,

20

from the application of particular provisions of
this Act, the regulations or the by-laws;

(d) the authorization of persons to take water from
a watercourse, wetland or underground
source —

25

(i) for particular purposes; or

(ii) under particular circumstances,

or both of those kinds of cases; and

(e) the duties of licensees and other persons on
whom rights are conferred by or under this Act,
including duties in respect of —

30

(i) monitoring and reporting on water
resources;

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(ii) the recording and supply of information;
and

(iii) the taking and analysis of samples of
water.

5 (4) If a provision of local by-laws is inconsistent with a
provision of the regulations, the latter provision
prevails to the extent of the inconsistency.

10 (5) If a provision of local by-laws is inconsistent with a
provision of by-laws made under section 34 of the
Water Agencies (Powers) Act 1984, the former
provision prevails to the extent of the inconsistency.

(6) Section 34(3)(a) of the *Water Agencies (Powers)
Act 1984* does not apply to any local by-law.

26M. Licensing schemes under local by-laws

15 Local by-laws that provide for the licensing of persons
to do anything that is otherwise prohibited may make
provision for —

20 (a) the matters that are to be, or may be, taken into
account in considering applications for
licences;

(b) fees that are to be paid in connection with
licences;

(c) different licences to authorize the doing of
different things under the by-laws;

25 (d) the conditions and restrictions that may be
attached to licences, whether at the time of
grant or later, and the cancellation, variation
and enforcement of conditions and restrictions;

(e) the duration of licences and their renewal;

30 (f) the cancellation, suspension, amendment and
transfer of licences; and

- (g) appeals against decisions relating to applications made and licences granted under the by-laws.

26N. Prerequisites for making local by-laws

- 5 (1) Before the Minister makes, amends or repeals any local by-laws under section 26L the Minister is to be satisfied that the requirements of this section, and where relevant, section 5, have been complied with.
- 10 (2) The requirements are that —
 - 15 (a) a draft of a proposed legislative scheme for the by-laws, or the amendment or the repeal, must have been referred by the Commission to any water resources committee established under Division 3C for the locality or localities in which the by-laws are intended to apply;
 - 20 (b) any such committee must have been given the opportunity to make submissions on the proposal to the Commission;
 - 25 (c) if the Commission is of the opinion that the proposal may affect the functions of a body that is responsible for the planning for, or management of, a natural resource, the Commission is to submit the proposal to that body;
 - (d) the Commission must have called for public comment on the proposal in accordance with subsection (3); and
 - (e) the Commission must have considered any submissions made under this section and given a report on them to the Minister.
- 30 (3) The Commission is taken to comply with subsection (2)(c) by —
 - (a) publishing in 2 issues of a daily newspaper circulating in the locality concerned a notice

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stating the proposal to make, amend or repeal the by-laws; and

(b) including in the notice a statement —

5

(i) specifying the places at which a copy of the proposed legislative scheme for the by-laws, or the amendment or repeal, may be inspected or obtained;

10

(ii) indicating that written submissions on the proposed scheme or amendment or repeal may be made by any person within a specified period; and

(iii) showing the address to which submissions may be delivered or posted.

15

(4) The period specified under subsection (3)(b)(ii) is not to be less than 30 days after both of the notices referred to in paragraph (a) of that subsection have been published.

”.

46. Section 39 replaced

20

Section 39 is repealed and the following section is inserted instead —

“

39. Appropriation of water for irrigation

25

Subject to Part III, the Commission may appropriate water for the purposes of this Part.

”.

47. Section 59 amended

Section 59(1)(10) is deleted.

Part 5 — Amendments relating to licensing

48. Division 3E inserted in Part III

After Division 3D of Part III, as inserted by section 44, the following Division is inserted —

5 “

Division 3E — Register of instruments

26GZH. Definition

In this Division —

“**instrument**” means —

- 10 (a) a licence under section 5C;
(b) an exemption under section 26C; and
(c) a direction under section 22, 26G or 26GC;

15 “**security interest**” means an interest in a licence (however arising) that secures payment of a debt or other pecuniary obligation or the performance of any other obligation.

26GZI. Register

- 20 (1) The Commission is to keep a register of instruments.
(2) The register may be kept in such form as the Commission thinks fit.
(3) The register must be available for public inspection, subject to payment of the prescribed fee (if any), during normal office hours at —
25 (a) the Commission’s principal office; and
(b) at other offices of the Commission determined by the Commission.
(4) A person may, upon application to the Commission and payment of the prescribed fee, if any, obtain a copy of an entry in, or an extract from, the register.

- (5) The Commission may, subject to payment of the prescribed fee, if any, allow a person access to the register in electronic form.

26GZJ. Information to be included in register

- 5 (1) The register must set out the following details in respect of each instrument —
- (a) the nature of the instrument and the provision or provisions of this Act under which it has effect;
 - (b) the period for which it is in force;
 - 10 (c) the name and business address —
 - (i) in the case of a licence under section 5C, of the person who for the time being holds the licence; or
 - 15 (ii) in the case of a direction under section 22, 26G or 26GC, of the person who is bound by the direction;
 - (d) a description of the water resource to which the instrument relates, including the locality in which, and a legal description of the land on which, it is situated;
 - 20 (e) in the case of a licence, details relating to any security interest in the licence that the Commission is required to note on the register under section 26GZM;
 - 25 (f) details of any conviction of a person referred to in paragraph (c) for an offence against this Act; and
 - (g) any other details that are prescribed by the regulations.
- 30 (2) In the case of a licence under section 5C held by the holder of an operating licence, the details referred to in subsection (1) are to be set out in a separate part of the register.

(3) In subsection (2) —

“operating licence” means —

(a) an operating licence (water supply services);
or

5

(b) an operating licence (irrigation services),
under the *Water Services Coordination Act 1995*.

26GZK. Transfer of licence to be recorded

10

(1) Where a transfer of a licence or a water entitlement
under a licence is approved by the Commission under
clause 31 of Schedule 1, the Commission is to enter in
the register, as the holder of the licence, the name and
business address of the transferee.

15

(2) The application of subsection (1) extends, with
necessary modifications, to a transfer of a licence or a
water entitlement for a limited period.

26GZL. Application for notation of security interest

20

A licensee may apply to the Commission in a form
approved by the Commission to have noted on the
register that a specified person has a security interest in
the licence.

26GZM. Notation of security interest

25

(1) The Commission must —

(a) on application being made under
section 26GZL; and

(b) payment of the prescribed fee, if any,

make a notation on the register that the person
specified in the application has a security interest in the
relevant licence.

- (2) The notation must set out the following details in respect of the security interest —
- (a) a general description of the nature of the security interest;
 - 5 (b) the name and business address of the person who has the security interest; and
 - (c) such other details, if any, as are prescribed.

26GZN. Commission not to be concerned with certain matters

- 10 (1) The Commission is not to be concerned with —
- (a) the nature of any security interest that is the subject of an application under section 26GZL; or
 - 15 (b) whether or not the person specified in the application as having the security interest actually has that interest.
- (2) A notation on the register that a person has a security interest in a licence does not give the interest any force that it would not have had if this Division had not been
- 20 enacted.

26GZO. Person who has security interest to be notified of certain events

- If the register contains a notation made under section 26GZM that a person has a security interest in a
- 25 licence and —
- (a) the licensee is convicted of an offence against this Act;
 - (b) application is made to the Commission —
 - 30 (i) under clause 23 of Schedule 1 to amend the licence; or

- (ii) under clause 32 of that Schedule for approval of the transfer of the licence;
- (c) the Commission proposes —
- 5 (i) not to renew the licence under clause 22 of Schedule 1;
- (ii) to amend the licence under clause 24 of that Schedule; or
- (iii) to cancel or suspend the licence under clause 25 of that Schedule;
- 10 or
- (d) the Commission is notified that the licensee wishes to surrender the licence under clause 27 of Schedule 1,

15 the Commission must as soon as practicable give or cause to be given to the person specified in the notation written details of that fact.

26GZP. Coordinator of Water Services to be notified of certain events

- (1) If —
- 20 (a) a licence is recorded in the part of the register mentioned in section 26GZJ(2); and
- (b) any of the events described in section 26GZO occurs in relation to the licence,

25 the Commission must as soon as practicable give or cause to be given to the Coordinator of Water Services written details of that fact.

- (2) In subsection (1) —
- 30 **“Coordinator of Water Services”** means the holder of the office referred to in section 4 of the *Water Services Coordination Act 1995*.

26GZQ. Removal or variation of notation

- 5 (1) If the register contains a notation that a person has a security interest in a licence, the licensee may apply to the Commission in a form approved by the Commission to —
- (a) remove the notation from the register; or
 - (b) vary any details relating to the security interest.
- 10 (2) Where an application is made under subsection (1), the Commission —
- (a) is to give notice of the application to a person noted on the register as having a security interest in the licence; and
 - (b) must not remove the notation of the security interest from the register or vary the details in the register (as the case requires) unless —
 - 15 (i) each person noted on the register as having a security interest in the licence consents in writing to it doing so; or
 - 20 (ii) a court authorizes or directs the Commission to do so, at the suit of the licensee, a person referred to in subparagraph (i) or some other interested person.

26GZR. Register may be amended

25 The Commission may amend, add to and correct the register in such manner as is necessary to make the register an accurate record of the details it contains.

26GZS. No compensation payable

30 No compensation is payable in respect of anything done or omitted to be done in good faith by the Commission in the performance or purported

performance of any duty, or the exercise or purported exercise of any power, under this Division.

26GZT. Regulations relating to register

The regulations may —

- 5
- (a) prescribe fees and charges payable in respect of anything done under this Division; and
 - (b) provide for any other matter relating to the register.

”.

10 **49. Section 26Q inserted**

After section 26P, as inserted by section 54, the following section is inserted —

“

26Q. Commission may undertake certain work

- 15
- (1) The Commission may, with the approval of the Minister, by agreement with a person or group of persons holding any water entitlement, perform work or supply services relating to the inspection or monitoring of a water resource for the benefit of the person or group of persons.
 - 20
 - (2) An agreement made by the Commission under subsection (1) may provide for the payment to the Commission by the person or persons of an agreed amount for the work performed or the services supplied.
 - 25
 - (3) In this section —
“**water entitlement**” means a right to take water under this Act or under a licence granted under this Act.

”.

50. Sections 27A and 27B inserted

After section 27 the following sections are inserted —

“

27A. Regulations may require other acts to be licensed

- 5 (1) The regulations may —
- (a) prohibit a person from engaging in any work or activity to which this section applies unless the person is authorized to do so by a licence granted by the Commission under the regulations;
- 10 (b) impose penalties —
- (i) not exceeding \$10 000 and a daily penalty of \$1 000 for engaging in any work or activity to which this section applies otherwise than under such a licence; and
- 15 (ii) not exceeding \$2 000 and a daily penalty of \$200 for any other breach of regulations made under this section;
- 20 and
- (c) confer on the Commission powers —
- (i) to direct that works that contravene regulations so made be removed at the expense of the owner or occupier of the land on which the works are situate; and
- 25 (ii) if a direction is not complied with to —
- (I) effect the removal; and
- (II) recover the cost of doing so from that owner or occupier,
- 30 and making provision incidental and supplementary to those powers.

- (2) This section applies to work or activity that —
- (a) involves the discharge of water that results in a significant increase in the flow or level of water in a watercourse, wetland or underground water source;
 - (b) is likely to cause or result in damage to an aquifer; or
 - (c) consists of the construction or operation of drainage or dewatering works that are likely to affect the water in a watercourse, wetland or underground water source.

27B. Regulations as to licences and permits

Where this Act authorizes or requires the regulations to provide for the grant of a licence or permit by the Commission, the regulations may make provision for —

- (a) the matters that are to be, or may be, taken into account by the Commission in considering applications for licences or permits;
- (b) fees that are to be paid in connection with licences or permits;
- (c) different licences or permits to authorize the doing of different things under the regulations;
- (d) the conditions and restrictions that may be attached to licences or permits, whether at the time of grant or later, and the cancellation, variation and enforcement of conditions and restrictions;
- (e) the duration of licences or permits and their renewal;
- (f) the cancellation, suspension, amendment and transfer of licences or permits;

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- (g) the combination of a licence or permit under the regulations and a licence under section 5C in a single instrument; and
 - (h) appeals against decisions relating to applications made and licences or permits granted under the regulations.
- ”.

51. Schedule 1 added

After Part XI the following Schedule is added —

10 “

Schedule 1 — Licensing and related provisions

[s. 5C(1)(d) and (3)]

Division 1 — Preliminary

1. Definition

15

In this Schedule, unless the contrary intention appears —
“**licence**” means a licence under section 5C.

2. Licences for different purposes

20

- (1) Licences of different descriptions may be granted under section 5C to authorize the doing of different things that come within that section.
- (2) Licences to authorize the doing of different things that come within section 5C may be contained in a single instrument.
- (3) Where a person is granted —
 - (a) a licence under section 5C; and
 - (b) a licence under section 26D,

25

in respect of a well the licences may be combined in a single instrument.

3. Persons who are eligible to hold licences

A person is eligible to hold a licence if —

- 5
- (a) the person is an owner or occupier of the land to which the licence relates;
 - (b) the person does not come within paragraph (a) but satisfies the Commission —
 - 10 (i) that the owner and any occupier of the land to which the licence relates have agreed in writing to the person —
 - (I) being on the land; and
 - (II) doing there the things that may be done under the licence;
 - and
 - (ii) that the agreement is likely to have effect for a sufficient period to enable the licence concerned to operate;
 - (c) the person is a public utility that has powers under a written law in relation to water on or under any land, but those powers are exercisable in accordance with a licence;
 - 20 (d) the person is —
 - (i) authorized by or under a written law to engage in an activity in relation to land or water; and
 - 25 (ii) satisfies the Commission that the doing of the things that may be done under the licence is recognized by that written law as being related or incidental to that activity;
 - or
 - 30 (e) the person is within a class or description of persons that is prescribed by local by-laws for the purposes of this clause.

Division 2 — Applications and licensing decisions

4. Applications for licences

- (1) An application for a licence —
- (a) may only be made by a person who is eligible to hold the licence, or who satisfies the Commission that he or she is interested in being such a person and is likely to do so;
 - (b) must be made in the form specified for the purpose by the Commission;
 - (c) must include, or be accompanied by, any plans or other information that are stated in the form to be required; and
 - (d) must be accompanied by the prescribed fee.
- (2) An applicant for a licence must provide the Commission with any further information that the Commission may require.
- (3) Paragraph (a) of subclause (1) does not prevent an agent from signing an application made by a person referred to in that paragraph.

5. Advertising of applications

The regulations may provide for and in relation to —

- (a) the public notification of —
 - (i) applications, or specified kinds of applications, for the grant or renewal of a licence; or
 - (ii) applications that the Commission determines are to be publicly notified;
- (b) a right to make submissions to the Commission on applications mentioned in paragraph (a); and
- (c) the persons who are to have that right.

6. Right to make representations

- (1) This clause applies where the Commission proposes —
- (a) to refuse an application for a licence; or
 - (b) to grant, or undertake to grant, a licence subject to the inclusion of a term, condition or restriction that it considers is inconsistent with the terms of the application.
- (2) The Commission is to notify the applicant —
- (a) of its proposal; and
 - (b) that the applicant has a right to be heard by, or to make written submissions to, the Commission before the Commission makes a decision on the application.
- (3) Written submissions may be made by the applicant, as mentioned in subclause (2)(b), within 30 days after the applicant is given notice under that subclause.
- (4) The Commission is to have regard to any submissions made by the applicant under subclause (3) before it makes its final decision.

7. Grant or refusal at Commission's discretion

- (1) The grant or refusal of an application for a licence and the terms, conditions and restrictions to be included in the licence are, subject to clause 8, at the discretion of the Commission.
- (2) In exercising that discretion the Commission is to have regard to all matters that it considers relevant, including whether the proposed taking and use of water —
- (a) are in the public interest;
 - (b) are ecologically sustainable;
 - (c) are environmentally acceptable;
 - (d) may prejudice other current and future needs for water;

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- (e) would, in the opinion of the Commission, have a detrimental effect on another person;
 - (f) could be provided for by another source;
 - (g) are in keeping with —
 - (i) local practices;
 - (ii) a relevant local by-law;
 - (iii) a plan approved under Part III Division 3D Subdivision 2; or
 - (iv) relevant previous decisions of the Commission;
 - or
 - (h) are consistent with —
 - (i) land use planning instruments;
 - (ii) the requirements and policies of other government agencies; or
 - (iii) any intergovernmental agreement or arrangement.
- (3) The Commission may refuse to grant a licence to a person on the ground that the person has been convicted of an offence against this Act.
- (4) The Commission may refuse to grant a licence to a person if it is not satisfied that the person has the resources, including the financial resources, to carry out the activities to which the licence relates.
- (5) Without limiting subclause (1), terms, conditions and restrictions prescribed or imposed for the purposes of that subclause may relate to any matter provided for by the Appendix to this Schedule.

8. When Commission must refuse licence

The Commission must refuse to grant a licence to a person if it considers that the person would not be willing or able to comply with the terms, conditions and restrictions that would be included in the licence.

9. Where applicant is not a person eligible to hold a licence

- (1) The Commission may only grant a licence to a person who is eligible in terms of clause 3 to hold the licence.
- (2) If the Commission would grant a licence to an applicant but for the fact that the applicant is not a person who is eligible in terms of clause 3 to hold the licence, the Commission may undertake to grant the licence to the person if the person becomes eligible to hold the licence within the period of time specified in the undertaking.

10. Commission to give certain information

- (1) The Commission is to notify the outcome of the application, including details of any undertaking given under clause 9 and the terms, conditions and restrictions to be included in the licence —
- (a) to the applicant for a licence; and
- (b) if the application was required to be publicly notified under regulations referred to in clause 5, to any person who made a submission under those regulations.
- (2) If the Commission —
- (a) refuses the application; or
- (b) grants, or undertakes to grant, the application subject to the inclusion of a term, condition or restriction that the Commission considers is inconsistent with the terms of the application,
- the Commission is to notify the applicant of the reasons for the decision.

11. Licences may be combined

A licence may relate to more than one place, facility or well at or from which water may be taken.

12. Duration of licences

- (1) A licence may be granted or renewed for —
- (a) a fixed period; or

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(b) an indefinite duration,

as stated in the licence or the renewal.

(2) A licence for an indefinite duration continues in force until it is —

5

(a) terminated under clause 13(1);

(b) suspended or cancelled under clause 25; or

(c) surrendered under clause 27.

(3) A licence granted on the making of an application as mentioned in section 12(1) —

10

(a) is, despite subclause (1), to be granted for the period of 10 years referred to in that section; and

(b) is not renewable as a licence for the purposes of that section.

13. Licensee becoming ineligible

15

(1) Subject to subclause (2) and clause 14, a licence is terminated if the licensee ceases to be eligible in terms of clause 3 to hold the licence.

(2) The regulations may make provision applicable to cases other than those referred to in clause 14 —

20

(a) for the time at which termination under subclause (1) has effect; and

(b) in relation to the transfer of the licence, or a water entitlement under the licence, under Division 7 where the licensee ceases to be eligible in terms of clause 3 to hold the licence.

25

14. Licensee ceasing to be owner or occupier of land

Where —

(a) the licensee is the owner or occupier of the land to which the licence relates; and

(b) another person becomes the owner or occupier of the land in place of the licensee,

clause 13(1) applies subject to the following provisions —

5

(c) the licensee is allowed a period of 30 days from the day of change of ownership or occupancy to make an application under Division 7 for approval of the transfer of the licence to the new owner or occupier;

10

(d) the new owner or occupier is taken to be the licensee —

(i) during that period; and

(ii) if an application referred to in paragraph (c) is made within that period, until the Commission has determined the application;

15

and

20

(e) the Commission must approve the application for the transfer of the licence to the new owner or occupier if all of the terms, conditions and restrictions included in the licence have been complied with.

Division 3 — Terms, conditions and restrictions

15. Inclusion of terms, conditions and restrictions in licences

25

(1) The regulations may prescribe terms, conditions and restrictions that are to be taken to be included in —

(a) all licences;

(b) licences of a particular kind;

(c) licences relating to a particular area; or

(d) licences of a particular kind relating to a particular area.

30

(2) The Commission may, at its discretion, include in a licence any term, condition or restriction additional to those referred to in subclause (1), but clause 7(2) applies to the exercise of that discretion.

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- (3) Without limiting subclause (1) or (2), terms, conditions and restrictions prescribed or imposed for the purposes of those subclauses may relate to any matter provided for by the Appendix to this Schedule.

5 **16. Compliance with condition when licence inoperative**

A licence may require that a term, condition or restriction included in the licence must be complied with, or must continue to be complied with, even though the acts or series of acts authorized to be done under the licence have been completed.

10

17. Condition for payment of money to another licensee

- (1) This clause applies if —

- (a) the grant of a licence to a person; or
(b) the amendment of a licence held by a person,

15

will, in the opinion of the Commission, result in the quantity of water that any other licensee or person (“**an affected person**”) will be able to take being reduced to less than the water entitlement of that person.

- (2) Where this clause applies, the Commission may, if it considers that equity so requires, include in the licence referred to in paragraph (a) or (b) of subclause (1) a condition that the person referred to in that paragraph (“**the benefiting licensee**”) pay an amount of money, or periodical amounts of money, to an affected person for or towards —

20

- (a) direct pecuniary loss; or
(b) loss of profits,

or both (if any), suffered by that person as a result of the reduction.

25

- (3) A condition may be in terms that an amount is to be —

- (a) as agreed between an affected person and the benefiting licensee; or

(b) failing agreement within a specified period, as determined —

(i) by the Commission; or

(ii) by arbitration under the *Commercial Arbitration Act 1985*.

5

(4) In this clause —

“**water entitlement**” means the quantity of water that a person is entitled to take under this Act or under a licence.

10

18. Commission may direct compliance with licence condition

(1) If a licensee fails to comply with any term, condition or restriction included in a licence, the Commission may direct the licensee to comply with that term, condition or restriction.

15

(2) A direction under subclause (1) must —

(a) be given by notice in writing served on the licensee; and

(b) specify the time within which the direction is to be complied with.

20

(3) If a licensee to whom a direction has been given does not comply with the direction within the specified time, or any additional time allowed by the Commission —

(a) the licensee commits an offence and is liable to a fine of \$2 500 and a daily penalty of \$250; and

25

(b) the Commission may —

(i) do all or part of whatever the direction requires to be done; and

(ii) recover the costs and expenses incurred by it as a debt due by the licensee.

30

Division 4 — Notation on licence of interest of third party

19. When clause 20 applies

Clause 20 applies where —

(a) the Commission is satisfied that —

- 5 (i) a licensee is obliged by an agreement with any person (“**the third party**”) in relation to the whole or a part of the water taken under the licence; and
- 10 (ii) it is appropriate for the Commission to recognize that obligation;

and

(b) the licence has been endorsed by the Commission with a notation showing that the licence is subject to clause 20.

15 **20. Restrictions on dealing with licence**

If this clause applies the following things cannot be done without the consent in writing of the third party —

(a) an application which, if granted, will affect matters to which the agreement relates cannot be made

20 under —

- (i) clause 23 to amend the licence; or
- (ii) clause 32 for approval of the transfer of the licence;

and

25 (b) the licence cannot be surrendered under clause 27.

21. Further provisions as to notation

A notation referred to in clause 19(b) —

- (a) must identify the agreement and the third party concerned; and
- 30 (b) does not give the agreement to which it relates any force it would not otherwise have had.

Division 5 — Renewal of licences

22. Renewal of licences

- (1) An application for the renewal of a licence that is in force for a fixed period —
- 5 (a) must be made in the form specified for the purpose by the Commission; and
- (b) must be accompanied by the prescribed fee.
- (2) On an application for renewal of a licence, the licence is to be renewed unless —
- 10 (a) the renewal would be inconsistent with —
- (i) a relevant local by-law; or
- (ii) a plan approved under Part III Division 3D Subdivision 2;
- 15 (b) the Commission is of the opinion that, if the application for renewal was an application for the grant of a licence, it would exercise its discretion under clause 7(2) to refuse to grant the licence;
- (c) it is a term of the licence that it is not renewable;
- 20 (d) a term, condition or restriction included in the licence has not been complied with; or
- (e) in the opinion of the Commission there are sufficient grounds for the exercise of the power to cancel the licence under clause 25.
- (3) Clause 6(2), (3) and (4) apply where the Commission proposes —
- 25 (a) to refuse an application for renewal of a licence; or
- (b) to renew a licence subject to the inclusion of a term, restriction or condition that it considers is inconsistent with the terms of the application for
- 30 renewal,
- in the same way as they apply to an application for a licence.

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- 5
- (4) Clauses 8 and 10(2) apply to an application for renewal in the same way as they apply to an application for a licence.
 - (5) A licence which would otherwise expire after application has been made for its renewal but before the Commission has made a decision as to that renewal remains in force until that decision is made.

Division 6 — Amendment, suspension, cancellation and surrender of licences

23. Application by licensee for amendment of licence

- 10
- (1) A licensee may apply to the Commission at any time for amendment of the licence.
 - (2) Clauses 4, 6, 7, 10 and 12 and Division 3 apply, with all necessary modifications, to an application under subclause (1) as if it were an application for the grant of a licence.
 - (3) Despite subclause (2), a fee may be prescribed for an application under subclause (1) that is different from that prescribed for the purposes of clause 4(1)(d).
- 15

24. Commission may amend licence

- 20
- (1) The Commission may, subject to this clause and clause 26, by notice in writing given to the licensee —
 - (a) vary the duration of a licence;
 - (b) vary, add to or remove any term, condition or restriction included in the licence; or
 - (c) include any new term, condition or restriction in the licence.
 - (2) The Commission may only exercise a power described in subclause (1) in relation to a licence if —
 - (a) the licensee consents to the Commission doing so;
 - (b) in the opinion of the Commission, the exercise of the power is necessary or desirable —
 - (i) due to the detrimental effect of actions authorized by the licence on another person;
- 25
- 30

- 5
- (ii) to protect the water resource to which the licence relates from unacceptable damage;
or
- (iii) to protect the associated environment from unacceptable damage;
- (c) in the opinion of the Commission, the exercise of the power is necessary to prevent serious damage to life or property;
- 10 (d) in the opinion of the Commission, the licensee has consistently not taken the quantity of water that the licensee is entitled to take under the licence;
- (e) in the opinion of the Commission, the exercise of the power is necessary or desirable —
- 15 (i) in the public interest;
- (ii) because the water resource to which the licence relates is insufficient to meet demand or expected demand; or
- (iii) otherwise to more effectively regulate the use of that water resource;
- 20 (f) there has been an alteration to —
- (i) a plan approved under Part III Division 3D Subdivision 2; or
- (ii) relevant local by-laws,
- 25 and the exercise of the power is necessary, in the opinion of the Commission, to prevent the licence from being seriously inconsistent with the plan or the by-laws;
- (g) the licensee is convicted of an offence against this Act;
- 30 (h) in the opinion of the Commission, the exercise of the power is necessary to comply with another written law of the State or a law of the Commonwealth;
- 35 (i) the licensee has applied under clause 32 for approval of the transfer of the licence or a water entitlement under the licence, and the exercise of

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the power is necessary or desirable to give effect to the transfer; or

- (j) the licence confers authority for the Commission to do so.

5 **25. Commission may suspend or cancel licence**

(1) The Commission may, subject to this clause and clause 26, by notice in writing given to the licensee —

(a) suspend a licence —

- 10 (i) for a fixed period specified in the notice; or
- (ii) until such time as the licensee is notified by the Commission that the suspension no longer applies;

or

(b) cancel a licence.

15 (2) The Commission may only exercise a power described in subclause (1) in relation to a licence if —

(a) in the opinion of the Commission, the exercise of the power is necessary or desirable —

- 20 (i) due to the detrimental effect of actions authorized by the licence on another person;
- (ii) to protect the water resource to which the licence relates from unacceptable damage; or
- (iii) to protect the associated environment from unacceptable damage;

(b) there has been an alteration to —

- 25 (i) a plan approved under Part III Division 3D Subdivision 2; or
- (ii) relevant local by-laws,

30 and, in the opinion of the Commission, the licence cannot be amended under clause 24 to make it consistent with the plan or the by-laws;

- 5
- (c) the licensee —
- (i) is convicted of an offence against this Act;
or
- (ii) has contravened or failed to comply with
any term, condition or restriction included
in the licence;
- 10
- (d) in the opinion of the Commission, the exercise of
the power is necessary to comply with another
written law of the State or a law of the
Commonwealth;
- (e) in the opinion of the Commission, the exercise of
the power is necessary or desirable in the public
interest;
- 15
- (f) the licence confers authority for the Commission to
do so; or
- (g) prescribed circumstances apply.
- (3) The suspension or cancellation of a licence has effect to
suspend or cancel the rights and privileges conferred by the
licence but does not affect the duties imposed by the licence.
- 20
- 26. Licensee's rights before licence amended, suspended or
cancelled**
- (1) Except as provided by subclauses (2) and (3), this clause
applies where the Commission proposes to exercise a power
conferred by clause 24 or 25.
- 25
- (2) This clause does not apply to the proposed exercise of a
power conferred by clause 24 or 25 —
- (a) if the Commission is of the opinion that the exercise
of the power is necessary to prevent loss of life or
property or serious injury to persons or property; or
- 30
- (b) if the power is to be exercised in circumstances
prescribed by the regulations.
- (3) This clause does not apply to the proposed exercise of a
power conferred by —
- 35
- (a) clause 24 in the circumstances mentioned in
subclause (2)(a) of that clause; or

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- (b) clause 25 in the circumstances mentioned in subclause (2)(c)(i) of that clause.
- (4) Where this clause applies, the Commission is to notify the licensee —
- 5 (a) of its proposal; and
- (b) that the applicant has a right to be heard by, or to make written submissions to, the Commission before the Commission makes a decision to exercise the power.
- 10 (5) Written submissions may be made by the licensee, as mentioned in subclause (4)(b), within such period after the applicant is given notice under that subclause as is specified in the notice.
- 15 (6) The Commission is to have regard to any submissions made by the licensee under subclause (5) before it makes its final decision.

27. Surrender of licences

A licence may be surrendered at any time to the Commission if the licensee has complied with any terms, conditions or restrictions included in the licence relating to its surrender.

20

Division 7 — Transfers of licences and water entitlements

28. Definition

In this Division —

25 **“water entitlement”**, in relation to a licence, means the quantity of water that the licensee is entitled to take under the licence, and includes part of a water entitlement.

29. Transfers of licences and entitlements

- 30 (1) Subject to this Division, the holder of a licence may —
- (a) transfer the licence to another person; or

(b) transfer the licensee's water entitlement under the licence to a person who holds, or is eligible in terms of clause 3 to hold, a licence of the same kind.

5 (2) Subclause (1)(a) does not apply to a licence of a particular kind to the extent that a relevant local by-law prohibits the transfer of licences of that kind.

(3) A transfer of a water entitlement under a licence between licensees may be made by the Commission amending the transferring and receiving licences.

10 **30. Transfer may be absolute or for a period**

(1) A transfer of a licence or a water entitlement may be absolute or for a limited period.

15 (2) A licence that has been transferred for a limited period reverts automatically to the transferor when the period expires.

(3) A water entitlement that has been transferred for a limited period reverts automatically to the transferor's licence when the period expires.

31. Approval of Commission required

20 (1) A transfer of a licence or a water entitlement cannot be made without the approval of the Commission.

(2) The Commission must refuse to approve the transfer of a licence to a person who is not eligible under clause 3 to hold the licence.

25 (3) Subject to subclause (2), the grant or refusal of approval to the transfer of a licence or a water entitlement is at the discretion of the Commission.

30 (4) In exercising that discretion the Commission is to have regard to all matters that it considers relevant, including those set out in clause 7(2).

(5) Without limiting subclause (2), the Commission may refuse to approve the transfer of a water licence or a water entitlement to a person who has committed an offence against this Act.

32. Application for Commission's approval

- (1) An application for approval of the transfer of a licence or a water entitlement —
- (a) must be made in the form specified for the purpose by the Commission;
 - (b) must include information that is stated in the form to be required; and
 - (c) must be accompanied by the prescribed fee.
- (2) An applicant must provide the Commission with any further information that the Commission may require.

33. Commission may direct that assessment be made

Before determining an application made under clause 32 the Commission may direct that an assessment of the effect of granting the application be made, at the expense of the applicant, by an expert appointed or approved by the Commission.

34. Consent of persons having a security interest

Where a person is noted on the register referred to in section 26GZI as having a security interest (as defined in Part III Division 3E) in a licence, the Commission must not approve the transfer of the licence or the water entitlement under the licence without the written consent of that person.

35. Requirement for notice of application in certain cases

- (1) This clause applies to applications under clause 32 of a kind prescribed by local by-laws for the purposes of this clause.
- (2) Notice of the application must be given by the Commission to any person required by local by-laws to be notified.
- (3) A person to whom notice has been given may, in accordance with the regulations, make submissions in writing to the Commission in relation to the grant or refusal of the application.

- 5
- (4) The Commission must give the applicant a copy of any submissions made and allow the applicant an opportunity to respond in writing to the submissions.
- (5) The response referred to in subclause (4) must be made within the number of days prescribed by the regulations after the relevant material is given to the applicant.
- 10
- (6) The Commission may allow a person, who, in submissions made, requested an appearance before the Commission, a reasonable opportunity to appear personally or by representative before and make submissions to —
- (a) the Commission; or
- (b) a water resources committee established for the area under Part III Division 3C.
- 15
- (7) If a person so appears, the Commission must also allow the applicant a reasonable opportunity, on request, to appear personally or by representative in order to respond to any relevant matter.
- (8) The Commission must give to each person who made submissions notice of —
- 20
- (a) its decision on the application; and
- (b) the date of the decision.
- (9) A notice under subclause (8) must be given not later than 7 days after the date of the decision.

36. Endorsement and record of dealings

- 25
- The Commission must —
- (a) endorse on a licence the name and address of the person to whom the licence has been transferred; and
- 30
- (b) in the case of the transfer of the water entitlement under a licence, endorse on both licences affected such particulars as it thinks fit relating to the transfer.

Division 8 — Transfer of licences and water entitlements to the Commission

37. Definition

In this Division —

5 “**water entitlement**”, in relation to a licence, means the quantity of water that the licensee is entitled to take under the licence, and includes part of a water entitlement.

38. Authority of Commission to receive transfers

- 10 (1) This clause applies in relation to a licence if —
- (a) the regulations authorize the Commission to enter into an agreement under this clause in relation to licences of the class to which the licence belongs;
 - 15 (b) the Commission considers that the water entitlement under the licence is not being used in whole or in part;
 - (c) the purpose for which water taken under the licence is being used is no longer a purpose for which a licence would be granted by the Commission; or
 - 20 (d) the Commission considers that it would be in the public interest for it to enter into an agreement under this clause in relation to the licence.
- (2) Where this clause applies in relation to a licence, the Commission may enter into and give effect to an agreement
- 25 with the licensee under which —
- (a) the licensee is to transfer —
 - (i) the licence; or
 - (ii) a water entitlement,to the Commission; and
 - 30 (b) the Commission is to pay an agreed amount to the licensee as consideration for the transfer.

- 5
- (3) An agreement under subclause (2) may also contain provisions incidental and supplementary to the matters mentioned in that subclause.
- (4) A transfer of a licence or a water entitlement under this clause may be absolute or for a limited period.
- (5) A licence that has been transferred under this clause for a limited period reverts automatically to the transferor when the period expires.
- 10 (6) A water entitlement that has been transferred under this clause for a limited period reverts automatically to the transferor's licence when the period expires.
- 15 (7) Where a person is noted on the register referred to in section 26GZI as having a security interest (as defined in Part III Division 3E) in a licence, the Commission must not enter into an agreement under subclause (2) in respect of the licence without the written consent of that person.

Division 9 — Compensation

39. Compensation

- 20 (1) If a person suffers damage, including loss of profit —
- (a) due to the exercise of a power under clause 24(2)(e)(i) in relation to a licence held by the person;
- (b) due to the exercise of a power under clause 25(2)(e) in relation to a licence held by the person; or
- 25 (c) in circumstances prescribed by a local by-law,
- the Commission is, in accordance with this clause, to compensate that person for the damage if the person requests compensation.
- 30 (2) Damage may be compensated for only if —
- (a) it is due to the loss of a use which was reasonable, authorized by the relevant licence and consistent with the objects of this Act; and

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- (b) the person requesting compensation is not responsible for the damage and has attempted to offset or mitigate the damage as far as is practicable.
- 5 (3) Local by-laws may prescribe —
- (a) the time within which compensation may be claimed and the procedures for making claims;
- (b) the types of damage for which compensation is to be made; and
- 10 (c) how compensation is to be assessed.
- (4) A dispute about the amount of compensation is to be determined by arbitration under the provisions of the *Commercial Arbitration Act 1985*, unless the parties agree on some other method of determination.
- 15 (5) Compensation under this clause, and any costs incurred by the Commission under subclause (4), are to be charged to the Consolidated Fund, which this section appropriates to the necessary extent.

Division 10 — Issue of licences and transfer of licences and water entitlements by the Commission for a premium

20

40. Authority of Commission to issue licences at a premium

- (1) This clause applies in relation to the grant of a licence if —
- (a) the regulations authorize the Commission to enter into an agreement under this clause in relation to the grant of licences of the class to which the licence belongs; or
- 25 (b) the Commission has established the facilities by the use of which water may be taken under the licence.
- (2) Where this clause applies in relation to the grant of a licence, the Commission may enter into and give effect to an agreement with a person under which —
- 30 (a) the Commission is to grant a licence to the person; and

(b) the person is to pay an agreed amount to the Commission as a premium for the grant of the licence.

5

(3) An agreement under subclause (2) may also contain provisions incidental and supplementary to the matters mentioned in that subclause.

41. Authority of Commission to transfer licences etc. for a premium

10

(1) This clause applies in relation to a licence or a water entitlement if —

(a) the regulations authorize the Commission to enter into an agreement under this clause in relation to licences or water entitlements of the class to which the licence belongs; or

15

(b) the licence or water entitlement has been transferred to the Commission by an agreement made under clause 38.

20

(2) Where this clause applies in relation to a licence or a water entitlement, the Commission may enter into and give effect to an agreement with a person who is eligible to hold a licence under which —

(a) the Commission is to transfer —

(i) the licence; or

(ii) the water entitlement,

25

to the person; and

(b) the person is to pay an agreed amount to the Commission as consideration for the transfer.

30

(3) The amount to be paid as consideration may be established by public auction or tender or by private treaty.

(4) An agreement under subclause (2) may also contain provisions incidental and supplementary to the matters mentioned in that subclause.

(5) A transfer of a licence or a water entitlement under this clause may be absolute or for a limited period.

- (6) A licence or a water entitlement that has been transferred under this clause for a limited period reverts automatically to the Commission when the period expires.

Division 11 — Miscellaneous

5 **42. Notification to be given to Registrars**

(1) If —

(a) a licence under section 5C is —

- 10 (i) granted;
(ii) renewed under clause 22;
(iii) amended under clause 24;
(iv) suspended or cancelled under clause 25;
(v) surrendered under clause 27; or
(vi) transferred under clause 29;

or

15 (b) a security interest (as defined in Part III Division 3E) in a licence —

- (i) is noted on the register referred to in section 26GZI; or
20 (ii) the notation referring to such a security interest is removed from the register or any details of the notation in the register are varied, under section 26GZQ,

the Commission is to give notice of the event to the Registrar in the form approved by the Registrar.

25 (2) The Registrar is to record the notification, or remove a record relating to the notification, as is appropriate, in the relevant documents relating to the land in the appropriate manner.

(3) In this clause —

30 **“Registrar”** means the Registrar of Titles under the *Transfer of Land Act 1893* or the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*, as the case requires.

43. Licensee to maintain facilities

A licensee must maintain works, facilities and equipment to which the licence refers in good order and condition.

Penalty: \$2 000.

5 **44. Licensee to notify change of circumstances**

A licensee must without delay inform the Commission in writing of any material change to the facts or circumstances stated by the licensee in an application for the grant or renewal of the licence.

10 Penalty: \$2 000.

45. Duplicate licences

If the Commission is satisfied that a licence has been lost or destroyed the Commission may issue a duplicate licence on payment of the prescribed fee.

15 **46. Meters**

(1) The Commission may —

(a) cause a meter or meters to be placed or otherwise installed; or

20 (b) require a licensee to provide and place or otherwise install a meter or meters,

on any well or other facility that is the subject of a licence for taking water.

(2) A licensee who is required to provide a meter under subclause (1) must —

25 (a) maintain the meter in good condition; and

(b) use every reasonable endeavour to ensure that the meter is operating accurately.

Penalty: \$2 000.

(3) The Commission may at any time —

30 (a) cause a meter placed or installed by a licensee under subclause (1) to be tested; or

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- (b) require the testing of such a meter by a person approved by the Commission.
- (4) The regulations may prescribe fees —
- 5 (a) for the cost and installation of a meter by the Commission;
- (b) for the maintenance, testing and replacement of a meter provided by the Commission; or
- (c) for the reading of a meter,
- 10 and may combine a fee authorized under this subclause with the fee under clause 4(1)(d).
- (5) In this clause —
- “meter” means any device for measuring or estimating the volume or flow of water that is approved, or is of a description that is approved, by the Commission by order published in the *Gazette*.
- 15

47. Meter reading to be presumed correct

20 The quantity of water shown by a meter placed or installed under clause 46 as having passed through the meter is to be presumed, in the absence of evidence to the contrary, to be the amount of water that has actually been taken by the licensee.

Appendix to Schedule 1

Matters to which licence terms, conditions or restrictions may relate

- 25 [cls. 7(5) and 15(3) of Sch. 1]
1. The taking, use or disposal of water, including —
- (a) arrangements for water, whether from one source or different sources, to be shared by a licensee with, or supplied by a licensee to, other persons; and
- 30 (b) requirements to be met in relation to the taking, use or disposal of water by a licensee who is the holder of an operating licence under the *Water Services Coordination Act 1995*.

2. The use, management, protection and enhancement of —
 - (a) any water resource and its ecosystem; or
 - (b) the environment in which the water resource is situated.
3. The amendment, renewal or surrender of a licence.
- 5 4. The transfer of a licence or water entitlement (as defined in Division 7) by the licensee to another person, including a prohibition or restriction on any such transfer of a licence or water entitlement.
- 10 5. The transfer of a licence or water entitlement (as defined in Division 7) that relates to any place so that it relates to another place of the same kind, including a prohibition or restriction on any such transfer of a licence or water entitlement.
- 15 6. The construction, alteration, maintenance or operation of works, structures and equipment including the qualifications of persons who are responsible for any of those things.
7. The removal of works, structures and equipment, the making good of land or premises, or the condition in which works, structures, equipment, land or premises are to be left.
8. The monitoring of —
 - 20 (a) any water resource and its ecosystem; or
 - (b) the environment in which the water resource is situated.
9. The provision of information to the Commission including information by way of periodical returns at specified times.

”.

Part 6 — Amendments relating to dams and drainage

52. Section 17 amended

(1) Section 17(1) and (3) are amended by deleting “or under this or” and inserting instead —

5 “ a permit or by ”.

(2) After section 17(3) the following subsection is inserted —

“

(3a) Without limiting subsection (1) or (3) —

- 10 (a) the construction or alteration of a dam is to be taken to be prohibited by that subsection; and
- (b) the reference in that subsection to a permit is a reference to the grant of a permit by the Commission under regulations referred to in section 17B.

15 ”.

(3) After section 17(4) the following subsections are inserted —

“

- 20 (4a) Despite subsections (1) and (3), this section does not apply to the construction or alteration of a dam in an area, or of a size or type, excluded from the operation of this section by local by-laws if the dam is constructed or altered in accordance with such by-laws.
- (4b) Despite section 19, this section applies to a watercourse to which Division 2 applies that is —
- 25 (a) prescribed for the purposes of this section by local by-laws; or
- (b) situated within an area that is so prescribed.

”.

(4) After section 17(7) the following subsection is inserted —

“

(8) In this section and in section 17A —

“**dam**” includes any artificial barrier or levee, whether
temporary or permanent, which does or could
impound, divert or control water, silt, debris or
liquid borne materials, together with its
appurtenant works.

”.

53. Sections 17A and 17B inserted

After section 17 the following sections are inserted —

“

17A. Saving for existing dams

(1) Nothing in section 17 is to be taken to require a permit
as mentioned in subsection (3a)(b) of that section for
the construction or alteration of a dam if that
construction or alteration was commenced before the
coming into operation of section 52 of the *Rights in
Water and Irrigation Amendment Act 1999* (“**the
commencement day**”).

(2) Subsection (1) does not affect —

(a) the application of section 17 to the alteration,
after the commencement day, of a dam the
construction of which is exempted from that
section by subsection (1); or

(b) any breach of that section that occurred before
that day.

17B. Regulations as to permits for section 17

The regulations may make provision for the permits
that are required under section 17(1) and (3), including
provision for the matters set out in section 27B.

”.

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54. Sections 26O and 26P inserted

After section 26N, as inserted by section 45, the following sections are inserted —

“

5 **26O. Local by-laws for control of drainage**

(1) Local by-laws may be made to provide for the regulation and control of drainage and dewatering so far as they affect or are likely to affect the use or management of water resources under this Act.

10 (2) By-laws referred to in subsection (1) may —

(a) prohibit the construction, use, alteration or removal of drainage and dewatering works except under and in accordance with a licence; and

15 (b) impose penalties —

(i) not exceeding \$5 000 and a daily penalty of \$500 for a breach of any such prohibition; and

20 (ii) not exceeding \$2 000 and a daily penalty of \$200 for any other breach of by-laws made under this section.

(3) In this section —

“**dewatering**” means removing underground water to facilitate construction or other activity.

25 **26P. Local by-laws relating to flood protection works**

Local by-laws may be made —

(a) providing for the regulation and control of flood protection levees so far as they obstruct or interfere with the flow of a watercourse, including the flow of its flood waters;

30

- 5
- (b) imposing penalties —
- (i) not exceeding \$5 000 and a daily penalty of \$500 for a breach of any prohibition on the construction, alteration, use or removal of a flood protection levee; and
 - (ii) not exceeding \$2 000 and a daily penalty of \$200 for any other breach of by-laws made under this section;
- 10 and
- (c) conferring on the Commission powers —
- (i) to direct that works that contravene the by-laws be removed at the expense of the owner or occupier of the land on which the works are situate; and
 - (ii) if a direction is not complied with to —
 - (I) effect the removal; and
 - (II) recover the cost of doing so from that owner or occupier,
- 15
- 20 and making provision incidental and supplementary to those powers.

”.

**Part 7 — Amendments relating to penalties
and appeals**

55. Section 14 repealed

Section 14 is repealed.

5 **56. Section 22 amended**

Section 22(4) is amended by deleting the passage from “\$500; and” to the end of the subsection and inserting instead —

“ \$4 000 and a daily penalty of \$400. ”.

57. Section 23 repealed

10 Section 23 is repealed.

58. Section 26A amended

Section 26A(2) is amended by deleting the passage from “\$2 000 and,” to the end of the subsection and inserting instead —

15 “ \$10 000 and a daily penalty of \$1 000. ”.

59. Section 26B amended

Section 26B(6) is amended by deleting the passage from “\$2 000 and,” to the end of the subsection and inserting instead —

20 “ \$10 000 and a daily penalty of \$1 000. ”.

60. Section 26D amended

Section 26D(4) and (5) are repealed.

61. Section 26E amended

25 Section 26E(1) is amended, in the penalty provision at the foot of the subsection, by deleting “\$500” and inserting instead —

“ \$1 000 ”.

62. Section 26F amended

Section 26F(2) is amended by deleting “\$2 000 and a further penalty of \$200 for each day during which the offence continues after conviction” and inserting instead —

5 “ \$10 000 and a daily penalty of \$1 000 ”.

63. Section 26G amended

Section 26G(3) is amended by deleting the penalty provision at the foot of the subsection and inserting the following provision instead —

10 “ Penalty: \$5 000 and a daily penalty of \$500. ”.

64. Division 3B inserted in Part III

After Part III Division 3A, as inserted by section 40, the following Division is inserted —

“

15 **Division 3B — Appeals**

26GG. Appeals relating to licences to take water

(1) A person referred to in subsection (2) may appeal to the Minister if the person is aggrieved by a decision of the Commission under Schedule 1 —

- 20 (a) to refuse an application for the grant or renewal of a licence under section 5C (“**a licence**”);
- (b) as to the period for which a licence is granted or renewed;
- 25 (c) as to any term, condition or restriction included in a licence;
- (d) to undertake to grant a licence, including as to any term, condition, or restriction undertaken to be included in the licence;
- (e) to amend, suspend or cancel a licence; or

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(f) to refuse to approve the transfer of a licence or of a water entitlement under a licence.

5 (2) A person may appeal under subsection (1) only if the person is an applicant for the licence, the licensee or, if the appeal is made under subsection (1)(f), a person to whom the licence or water entitlement would be transferred.

26GH. Appeals relating to directions as to the taking of water

10 A person given a direction, or variation of a direction, under section 22, 26G or 26GC may appeal to the Minister if the person is aggrieved by the direction or variation.

26GI. Appeals relating to licences under Division 3

15 An applicant for a licence under section 26D may appeal to the Minister if the person is aggrieved by a decision of the Commission —

- 20 (a) to refuse a licence under section 26D(2)(c);
(b) as to any term, limitation or condition included in a licence under that section; or
(c) to require alterations to be made as mentioned in section 26D(2)(b).

26GJ. Schedule 2 applies to appeals

25 An appeal under this Division is to be brought, dealt with and determined in accordance with the provisions of Schedule 2.

”.

65. Section 27 amended

Section 27 is amended as follows:

- (a) after paragraph (ga) by inserting —
“ and ”;
- 5 (b) by deleting paragraph (h) and “and” after it.

66. Section 70 amended

Section 70 is amended by deleting “\$1 000” and inserting instead —

“ \$5 000 ”.

10 **67. Section 71 amended**

Section 71 is amended by deleting “\$2 000” and inserting instead —

“ \$10 000 ”.

68. Section 72 amended

15 Section 72 is amended by deleting “\$2 000” and inserting instead —

“ \$10 000 ”.

69. Schedule 2 added

20 After Schedule 1, added by section 51, the following Schedule is added —

“

Schedule 2 — Appeal provisions

[s. 26GJ]

1. Definition

25 In this Schedule —

“**appeal**” means an appeal under Part III Division 3B;

“**decision**” means a decision, direction or variation of a direction against which an appeal may be brought under that Division.

2. Bringing an appeal

- 5 (1) A person who is entitled to bring an appeal against a decision may do so by lodging a written notice of appeal with the Minister within 30 days of being given notice of the decision.
- 10 (2) The Minister may accept a notice of appeal after the expiry of the period of 30 days referred to in subclause (1) if the Minister considers it would be equitable to do so.
- (3) An agent may bring an appeal on behalf of a person entitled to bring the appeal, but the agent must, if required by the Minister, satisfy the Minister of the agent’s authority.

15 **3. Notice of appeal**

A notice of appeal must —

- (a) state the name and address of the appellant;
- (b) set out or otherwise identify sufficiently the decision appealed against;
- 20 (c) set out the grounds of the appeal and state briefly the facts on which the appellant relies; and
- (d) indicate whether the appellant wishes the Minister to exercise the power conferred on the Minister by clause 4.

25 **4. Decision may be suspended**

The Minister may suspend the operation of the decision appealed against during the period when the appeal is pending, but otherwise the bringing of an appeal does not affect the decision during that period.

30 **5. Action that Minister may take**

- (1) On receiving a notice of appeal, the Minister is to cause an inquiry to be conducted concerning the matters raised in the

appeal by such person or persons as the Minister appoints in writing for the purpose.

5 (2) The Minister may, before taking action under subclause (1), appoint a person to assist the appellant and the Commission to resolve the issues on which the appeal is brought with a view to the appeal being withdrawn in whole or in part.

(3) The Minister may —

10 (a) direct that any person who is appointed under this clause is to be paid remuneration or allowances, or both; and

(b) determine the amount of any such payments on the recommendation of the Minister for Public Sector Management.

6. Conduct of inquiry

15 (1) The following persons are to be given a reasonable opportunity of making oral and written submissions to the person conducting the inquiry —

(a) the appellant;

(b) the Commission; and

20 (c) where there is a water resources committee under Part III Division 3C for the locality to which the subject-matter of the appeal relates, that committee or, in the case of oral submissions, a representative of that committee nominated by it for the purposes of this clause.

25 (2) An inquiry is to be conducted according to equity and the substantial merits of the case without regard to legal technicalities.

30 (3) A person conducting an inquiry is not bound by any rules of evidence and, subject to subclause (2), may conduct the inquiry and obtain information in any manner that person considers appropriate.

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- (4) On completing the inquiry, the person conducting it is to report to the Minister giving that person's findings and recommendations in respect of the appeal.

7. Appellant to be given copy of report

5 The person who conducted the inquiry is to give the appellant —

- (a) a copy of the report referred to in clause 6(4); or
(b) if the person considers that the report contains confidential information, an edited copy from which that information has been deleted.
- 10

8. Stating a case to District Court

- (1) If a person conducting an inquiry considers it desirable to do so, the person may —

- (a) of his or her own initiative; or
(b) on the application of the appellant or the Commission,
- 15

refer a question of law arising in the inquiry for determination by the District Court.

- (2) Where a question of law has been referred to the District Court, the conduct of the inquiry is not to be concluded until the determination of the District Court has been made and taken into account.
- 20

9. Decision of Minister on the appeal

- (1) On receipt of the report under clause 6(4), the Minister is to consider, and make a decision on, the appeal and may —
- 25

- (a) allow the appeal wholly or in part;
(b) dismiss the appeal; or
(c) refer the appeal back to the person conducting the inquiry with a request for consideration or further consideration of some fact or issue.
- 30

- 5
- (2) In deciding an appeal, the Minister is to have regard to, but is not bound by, the findings and recommendations of the inquiry.
- (3) If the Minister allows an appeal the Minister may give to the Commission directions in respect of the matter that are consistent with this Act.
- 10
- (4) The decision of the Minister on an appeal is final and the Commission is to give effect to the decision and any directions given to it under subclause (3).
- ”.

Part 8 — Transitional provisions

70. Definitions

In this Part, unless the contrary intention appears —

5 **“principal Act”** means the *Rights in Water and Irrigation Act 1914*.

71. Interpretation Act 1984 not affected

The provisions of this Part do not affect the application of the *Interpretation Act 1984*, so far as it is consistent with those provisions, to the amendments made by this Act.

10 72. Appeals in progress

If —

(a) before —

15 (i) the commencement of section 55 of this Act notice has been given to the Minister under section 14(1) of the principal Act;

(ii) the commencement of section 57 of this Act notice has been given to the Minister under section 23(1) of the principal Act; or

20 (iii) the commencement of section 60 of this Act notice has been given to the Minister under section 26D(4) of the principal Act;

but

25 (b) the steps and procedures under section 14(2), 23(2) or 26D(5) of the principal Act, as the case may be, have not been completed,

the notice does not lapse on that commencement but the relevant repealed provision mentioned in paragraph (b) continues to have effect in respect of the notice as if the repeal had not occurred.

73. Applications made for licences to take water

- (1) This clause applies to an application for —
- (a) a special licence under section 12 of the principal Act that was made before the commencement of section 25 of this Act; and
 - (b) a licence under section 13 of the principal Act that was made before the commencement of section 26 of this Act,

but that was not before the relevant commencement finally disposed of by the grant or refusal of a licence or withdrawn.

- (2) An application to which this clause applies is to continue to be governed by the principal Act, including section 14, as if this Act had not been enacted.

- (3) However, if a licence is granted on the application —

- (a) it is to be treated after the grant as if it were a licence under section 5C of the principal Act; and
- (b) after the grant, the provisions of the principal Act apply to it in the same way as they apply to a licence under section 5C granted under the principal Act as amended by this Act.

74. Applications made for licences in respect of wells

- (1) This clause applies to an application for a licence under section 26D of the principal Act that —

- (a) was made before the commencement of section 37 of this Act; but
- (b) was not before that commencement finally disposed of by the grant or refusal of a licence or withdrawn.

- (2) An application to which this clause applies is to continue to be governed by the principal Act, including section 26D(4) and (5), as if this Act had not been enacted.

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- (3) However, if a licence is granted on the application —
- (a) it is to be treated after the grant as if it were —
 - (i) so far as it relates to the taking of water, a licence under section 5C of the principal Act authorizing that taking; and
 - (ii) so far as it relates to the carrying out of work, a licence under section 26D of the principal Act authorizing the carrying out of that work;
 - (b) those licences may be combined in a single instrument; and
 - (c) after the grant, the provisions of the principal Act apply to the licences in the same way as they apply to a licence under section 5C or 26D, as the case may be, granted under the principal Act as amended by this Act.

75. Licences under section 12 or 13

- (1) This section applies to a licence that —
- (a) immediately before the commencement of section 25 of this Act was in force under section 12 of the principal Act; or
 - (b) immediately before the commencement of section 26 of this Act was in force under section 13 of the principal Act.
- (2) A licence referred to in subsection (1) —
- (a) is taken on the commencement of section 25 or 26 as the case may be, to be a licence under section 5C of the principal Act; and
 - (b) subject to subsection (3), continues in force for the remainder of its term.
- (3) After the commencement of section 25 or 26, as the case may be, the provisions of the principal Act as amended by this Act apply to a licence referred to in subsection (1) in the same way

as they apply to a licence under section 5C of the principal Act granted after that commencement.

76. Licences under section 26D

- 5 (1) This section applies to a licence that immediately before the commencement of section 37 of this Act was in force under section 26D of the principal Act.
- (2) A licence referred to in subsection (1) is taken on the commencement of section 37 —
- 10 (a) so far as it relates to the taking of water (and whether it refers to taking or to drawing), to be a licence under section 5C of the principal Act authorizing that taking; and
- (b) so far as it relates to the carrying out of work, to be a licence under section 26D of the principal Act
- 15 authorizing the carrying out of that work,
- and those licences are taken to be licences combined in a single instrument as mentioned in clause 2(3) of Schedule 1 to the principal Act.
- 20 (3) Subject to subsection (4), a licence referred to in subsection (2)(a) continues in force for the remainder of its term.
- (4) After the commencement of section 37 of this Act, the provisions of the principal Act as amended by this Act apply to a licence referred to in subsection (2)(a) in the same way as they
- 25 apply to a licence under section 5C of the principal Act granted after that commencement.

77. Civil remedy under section 5E

30 The right of action created by section 5E inserted in the principal Act by section 18 of this Act does not apply to a contravention of section 5C of the principal Act that occurred before the commencement of section 18.

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78. Time running for purposes of section 26B(4) or (5)

5 If at the commencement of section 35(1) of this Act time is running in respect of the period of 2 months mentioned in repealed section 26B(4) or (5) of the principal Act, the time is to be treated as running for the purpose of subsection (4)(c) or (5)(c) of that section as inserted in the principal Act by section 35(1).

79. Existing augmentations of water volumes

10 The application of section 26GA inserted in the principal Act by section 40 of this Act extends to a situation where —

- 15 (a) at or after the commencement of section 40 the volume of water in a watercourse or wetland is augmented by the introduction of water by artificial means, whether the augmentation is of the kind referred to in section 9(3) of the principal Act repealed by section 22 of this Act or otherwise; and
- (b) the augmentation is caused by things done before that commencement.

80. Orders under section 26C

20 An order under section 26C of the principal Act that was in force immediately before the commencement of section 36 of this Act is taken on that commencement to declare that section 5C, as well as section 26B(3) to (6), is not to apply in relation to the non-artesian well or wells specified in the order and on and after that commencement has effect accordingly.

25

81. Powers in relation to transitional provisions

- 30 (1) If there is no sufficient provision in this Part for any matter or thing necessary or convenient to give effect to the transition from the principal Act, as in force before the commencement of any provision of this Act, to the principal Act as in force after

that commencement, the Governor may make that provision by order published in the *Gazette*.

- 5
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision of this Part the Governor may by order published in the *Gazette* —
- (a) modify that provision to remove the anomaly; and
 - (b) make such provision as is necessary or expedient to carry out the intention of that provision.
- 10
- (3) An order under this section in relation to an amendment made to the principal Act by this Act may be made so as to have effect from the commencement of that amendment.
- (4) To the extent that a provision of any such order has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as —
- 15
- (a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of its publication; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before
- 20
- the day of publication.

Part 9 — Consequential amendments to other Acts

82. Country Areas Water Supply Act 1947

Section 11(2)(a) of the *Country Areas Water Supply Act 1947* * is amended by deleting “Division 1” and inserting instead —

5 “ Division 1B ”.

[* *Reprinted as at 19 March 1999.*]

83. Environmental Protection Act 1986

Section 57(5)(c) of the *Environmental Protection Act 1986** is amended by deleting “Division 1” and inserting instead —

10 “ Division 1B ”.

[* *Reprinted as at 7 March 1996.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 83.]

84. Metropolitan Water Supply, Sewerage, and Drainage Act 1909

15 Section 14(2)(a) of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909** is amended by deleting “Division 1” and inserting instead —

“ Division 1B ”.

[* *Reprinted as at 28 May 1996.*

20 *For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 163.*]

85. Mining Act 1978

Section 162(2)(p) of the *Mining Act 1978** is deleted.

[* *Reprinted as at 27 February 1996.*

25 *For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 167.*]



