



Western Australia

## **Water Agencies (Powers) Act 1984**



# Water Agencies (Powers) Act 1984

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Western Australia

## **Water Agencies (Powers) Act 1984**

**An Act to give the Minister functions and powers, to make other provisions in respect of the Minister's functions, to establish the Water Resources Ministerial Body and the Water Resources Council, and for related and other purposes.**

*[Long title inserted: No. 73 of 1995 s. 4; amended: No. 67 of 2003 Sch. 2 cl. 73; No. 38 of 2007 s. 104; No. 25 of 2012 s. 76.]*

## **Part I — Preliminary, and other matters**

*[Heading amended: No. 73 of 1995 s. 5.]*

*[Division 1 heading deleted: No. 73 of 1995 s. 6.]*

### **1. Short title**

This Act may be cited as the *Water Agencies (Powers) Act 1984*.

*[Section 1 amended: No. 73 of 1995 s. 7.]*

### **2. Commencement**

The provisions of this Act shall come into operation on a day to be fixed by proclamation.

### **3. Terms used**

- (1) In this Act and in and for the purposes of any relevant Act, unless that term is otherwise defined in that relevant Act, unless the context otherwise requires —

***CEO*** means the chief executive officer of the Department;

***conduit*** includes a pipe or culvert;

***Department*** means the department of the Public Service principally assisting in the administration of this Act;

***drain*** means —

- (a) a conduit on or under any land; or
- (b) a channel,

whether natural or constructed, which was or is used or intended to be used to carry surplus water, and includes any part of such a conduit or channel;

***fittings*** includes all pipes, meters, or other apparatus used for or in connection with the supply of water, and all pipes, cisterns, traps, syphons, manholes, ventilators, and all other apparatus



connected with and requisite to secure the safe and proper working of any drain, sewer or property sewer;

**fixtures**, in relation to sewerage, includes all apparatus that may be attached to the plumbing system of a property for the collection, pumping or retention of any wastewater for ultimate discharge into the sewerage system and includes closet pans, urinals, baths, sinks, basins, troughs and pumps connected with the sewerage system;

**former Authority** means the Water Authority of Western Australia under this Act before the commencement of Part 2 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995*;

**former Commission** means the Water and Rivers Commission established by section 4 of the *Water and Rivers Commission Act 1995*<sup>1</sup> and in existence before the repeal of that Act;

**former Minister** means a Minister of the Crown who has at any time been charged with the administration of a relevant Act;

**functions** include powers, duties and authorities;

**government department** or **department** includes any branch of the Public Service of the State established as a department within the meaning of that term as defined in the *Public Sector Management Act 1994*<sup>2</sup>, but also means any other body established by an Act being a body that —

- (a) administers or carries out in the State functions in the public interest on behalf of the Crown in right of the State, or which carries out the function of a public utility; and
- (b) is declared by the Governor, by Order in Council, to be deemed to be a government department for the purposes of this Act or a relevant Act;

**land** includes any building or other structure on, over or under the land, and any tenement or hereditament of any tenure related to the land;

**Metropolitan Water, Sewerage, and Drainage Area** means the area constituted under section 6 of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*;

**Ministerial Body** means the Water Resources Ministerial Body established by section 11;

**occupier** means the person in actual occupation of land, or if there is no person in actual occupation, the person entitled to possession of the land;

**owner** has the meaning assigned in the *Local Government Act 1995*;

**pipe** means a main, reticulation, or service pipe used for water services, and includes any plug, stop-cock, water-cock, syphon, branch or apparatus used in connection with such pipe and any part of a pipe;

**plant** includes machinery, equipment, vehicles, boats or other apparatus utilised in the provision of water services;

**premises** means any land, street, structure or other place;

**property sewer** means a conduit, through, on or under any street or other land, whether public or private, laid wholly or partly by or at the expense of the owner or occupier of any premises for the carriage therefrom of any sewage or wastewater to any sewer, and any part of such a conduit;

**relevant Act** means an Act referred to in section 5(1);

**reservoir** means a reservoir, dam, tank or cistern;

**road** has the same meaning as street;

**sewage** has the same meaning as wastewater;

**sewer** means a conduit through, on or under any street or other land, whether public or private, for the carriage of any sewage or wastewater, and includes any part of such a conduit but does not include a conduit that is a property sewer;

**statutory authority** means —

- (a) a Minister of the Crown in right of the State when acting in the capacity of a body corporate; or

(b) any person or body, corporate or unincorporate, other than a Minister of the Crown in right of the State, who or which administered or administers, or carried out or carries out on behalf of the Crown in right of the State functions in the public interest (being functions which the Minister or the CEO, as the case requires, is by this Act authorised to administer) pursuant to, a relevant Act;

**street** includes any highway, thoroughfare, lane, alley, square, court, place of public passage, public wharf, jetty or bridge and any private road maintained by a local government or other public authority;

**surplus water** means storm water, surface water or underground water which accumulates or may accumulate to the detriment or disadvantage of any person;

**wastewater** means liquid waste, whether domestic or otherwise, and includes faecal matter and urine;

**water resources** includes —

- (a) watercourses, reservoirs, wetlands, estuaries and inlets, together with their beds and banks; and
- (b) aquifers and underground water; and
- (c) drainage, surface and surplus water;

**water services** means water supply, sewerage, drainage or irrigation services;

**watercourse** has the meaning given to that term in section 2(1) of the *Rights in Water and Irrigation Act 1914*;

**well** means a pit, excavation, shaft, hole, bore or other opening made for the purpose of obtaining a supply of underground water;

**wetland** has the meaning given to that term in section 2(1) of the *Rights in Water and Irrigation Act 1914*;

**works** includes waterworks, sewerage works, drainage works, gauging works, wells, weirs and irrigation works including surveys, excavations, structures, buildings and plant provided by

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or used or intended to be used by the Minister for the assessment, control or management of water resources and the term may be construed as including the land upon which works are constructed or provided.

- (2) For the purpose of construing regulations or by-laws made under a relevant Act prior to the coming into operation of this Act, whether or not subsequently amended —
- (a) any reference therein to a term assigned a meaning by subsection (1) shall have that meaning, unless the context otherwise requires; and
  - (b) any reference in a regulation or by-law to the Act under which it was made shall be deemed to include a reference to this Act.
- (3) Where a provision of this Act or a relevant Act authorises the Minister to enter upon, carry out works in, on, over or under, or exercise any other power in relation to, any land, premises or thing for any purpose the provision shall be deemed as also to authorise an officer of the Department or other person acting on behalf of the Minister, together with such workmen and other persons, vehicles, vessels or plant as may be necessary for the purpose, to exercise that power and to occupy the land so far as is necessary for the purposes of this Act and any reference to a power of, or to an obligation or liability of, the Minister may, where the context so requires, be construed accordingly.

*[Section 3 amended: No. 25 of 1985 s. 3; No. 110 of 1985 s. 4; No. 24 of 1987 s. 3<sup>3</sup>; No. 113 of 1987 s. 32; No. 73 of 1995 s. 8 and 42; No. 14 of 1996 s. 4; No. 67 of 2003 Sch. 2 cl. 74; No. 38 of 2007 s. 105; No. 25 of 2012 s. 77 and 109.]*

*[4. Deleted: No. 73 of 1995 s. 9.]*

**5. Relevant Acts**

- (1) For the purposes of this Act each of the enactments following is a relevant Act —
- (a) *Metropolitan Arterial Drainage Act 1982;*

- (b) *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*;
  - (c) *Rights in Water and Irrigation Act 1914*;
  - [(d), (e) deleted]*
  - (f) *Country Areas Water Supply Act 1947*.
- (2) In a provision of this Act that has effect by reference to a past event or status, a reference to a relevant Act includes a reference to an Act referred to subsection (1) as in force immediately before the commencement of the *Water Services Legislation Amendment and Repeal Act 2012* section 78.
- [Section 5 amended: No. 25 of 1985 s. 5; No. 73 of 1994 s. 4; No. 73 of 1995 s. 10; No. 19 of 2010 s. 51; No. 25 of 2012 s. 78.]*

*[Division 2 (s. 6) deleted: No. 73 of 1995 s. 11<sup>4</sup>.]*

*[Part II heading deleted: No. 73 of 1995 s. 12.]*

*[Division 1 heading deleted: No. 73 of 1995 s. 13.]*

*[7. Deleted: No. 73 of 1995 s. 14.]*

## **8. Vesting interest in land in Minister**

*[(1), (2) deleted]*

- (3) Where the Governor (after, in the case of an interest previously vested in some other Minister of the Crown in right of the State, consultation with that other Minister) by Order in Council so directs, any interest in land specified therein previously vested in the former Authority, a statutory authority, the Crown or some other Minister of the Crown in right of the State which is, or is to be, used by the Minister for the purposes of this or a relevant Act, shall, by operation of this section, be vested in the Minister, and on receipt of any such Order the Registrar of Titles or the Registrar of Deeds and Transfers (as the relevant category of title may require) shall, by reference to the terms of

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the Order, cause the like record to be made in the document of title or by memorial in the register relating to the title to the land in question to evidence the interest of the Minister as could have been made if a transfer or agreement relating to the vesting had been executed in full form.

*[Section 8 amended: No. 110 of 1985 s. 5; No. 73 of 1995 s. 15; No. 31 of 1997 s. 137(1); No. 38 of 2007 s. 106; No. 47 of 2011 s. 16; No. 25 of 2012 s. 79.]*

## **Part II — The Minister and the Water Resources Ministerial Body**

*[Heading inserted: No. 38 of 2007 s. 107.]*

### **Division 1 — General functions and powers of the Minister**

*[Heading inserted: No. 38 of 2007 s. 107.]*

#### **9. General functions and powers of Minister**

- (1) The Minister has the general functions of —
  - (a) conserving, protecting and managing water resources;
  - (b) assessing water resources;
  - (c) planning for the use of water resources;
  - (d) promoting the efficient use of water resources;
  - (e) promoting the efficient provision of water services;
  - (f) developing plans for and providing advice on flood management.
- (2) The Minister has power to do all things necessary or convenient to be done for or in connection with the performance of the Minister's functions.
- (3) Without limiting subsection (2), the Minister may acquire, hold, manage, improve, develop, dispose of and otherwise deal in real and personal property, including for the general purposes of the Department.
- (4) In performing the Minister's functions under this section —
  - (a) the Minister is to have regard to water recycling and efficient water use measures when planning the development of new water resources; and
  - (b) the Minister, where appropriate, is to promote decision making processes that involve public consultation.

*[Section 9 inserted: No. 38 of 2007 s. 107.]*

**10. Functions and powers of Minister — relation to other functions and powers**

- (1) A function or power given to the Minister by this Act is in addition to any other function or power of the Minister.

*[(2) deleted]*

*[Section 10 inserted: No. 38 of 2007 s. 107; amended: No. 25 of 2012 s. 80.]*

**Division 2 — The Water Resources Ministerial Body**

*[Heading inserted: No. 38 of 2007 s. 107.]*

**11. Water Resources Ministerial Body established**

- (1) The Water Resources Ministerial Body is established.
- (2) The Ministerial Body is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Ministerial Body in its corporate name.
- (4) The Ministerial Body is to be governed by the Minister.
- (5) The Ministerial Body is an agent of the Crown and has the status, immunities and privileges of the Crown.

*[Section 11 inserted: No. 38 of 2007 s. 107.]*

**12. Purpose and nature of Ministerial Body**

- (1) The Ministerial Body is established to provide a body corporate through which the Minister can perform any of the Minister's functions under this Act, a relevant Act, the *Land Administration Act 1997* or the *Public Works Act 1902* that can more conveniently be performed by a body corporate than an individual.
- (2) Despite the employment under the *Public Sector Management Act 1994* of ministerial officers for the purpose of assisting the



Minister to perform functions that the Minister performs through the Ministerial Body, the Ministerial Body and those officers are not an organisation for the purposes of that Act.

*[Section 12 inserted: No. 38 of 2007 s. 107.]*

**13. Execution of documents by Ministerial Body**

- (1) The Ministerial Body is to have a common seal.
- (2) A document is duly executed by the Ministerial Body if —
  - (a) the common seal of the Ministerial Body is affixed to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Ministerial Body by the Minister; or
  - (c) it is signed on behalf of the Ministerial Body, as authorised under subsection (5), by the CEO or another officer of the Department.
- (3) The common seal of the Ministerial Body is not to be affixed to a document except as authorised by the Ministerial Body.
- (4) The common seal of the Ministerial Body is to be affixed to a document in the presence of the Minister, and the Minister is to sign the document to attest that the common seal was so affixed.
- (5) The Ministerial Body may, by writing under its seal, authorise the CEO or another officer of the Department to sign documents on behalf of the Ministerial Body, either generally or subject to any conditions or restrictions specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) A document executed by the CEO or another person under this section without the common seal of the Ministerial Body is not to be regarded as a deed unless it is executed as a deed as authorised under subsection (5).

- (8) When a document is produced bearing a seal purporting to be the common seal of the Ministerial Body, it is to be presumed that the seal is the common seal of the Ministerial Body until the contrary is shown.
- (9) For the purposes of this Act, a facsimile of —
- (a) the Ministerial Body's seal; or
  - (b) the signature of the Minister or a person authorised under subsection (5) to execute deeds or other documents,

may be used, and a deed or other document purporting to be endorsed with such a facsimile is, until the contrary is shown, to be regarded as bearing the facsimile under this subsection.

*[Section 13 inserted: No. 38 of 2007 s. 107.]*

**Division 3 — Minister to have access to certain information**

*[Heading inserted: No. 38 of 2007 s. 107.]*

**14. Minister may get certain information from water service licensees**

- (1) The Minister may direct a water service licensee to give the Minister specified information, or information relevant to a specified matter, that the Minister considers is relevant to the Minister's functions under, or relating to, this Act or a relevant Act.
- (2) The direction must be in writing, must specify the time period (in days) within which it must be complied with and may specify the form and manner in which the information is to be provided.
- (3) The licensee must comply with the direction even though the direction requires the licensee to give the Minister information that is confidential or commercially sensitive.

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- (4) If the licensee objects to the direction the licensee is to notify the Minister, in writing within 7 days of receipt of the direction, of its objection and any reasons for it.
- (5) If the licensee gives a notice to the Minister under subsection (4) —
- (a) the Minister is to consult with the ERA Minister and, having regard to those consultations, is to cancel or confirm the direction; and
  - (b) the licensee is not required to comply with the direction unless it is confirmed.
- (6) If the Minister confirms a direction —
- (a) the Minister must notify the licensee; and
  - (b) the time period within which the direction must be complied with commences on the day on which it is confirmed.
- (7) The licensee, a subsidiary of the licensee or a person performing functions for or on behalf of the licensee or subsidiary incurs no civil or criminal liability as a result of complying with the direction, and is not to be regarded for any purpose as being in breach of any duty of confidentiality.
- (8) A water services licensee that does not comply with a direction that has not been objected to or that has been confirmed commits an offence.  
Penalty: \$5 000.
- (9) The Minister must cause a copy of a direction under subsection (1) (other than a direction that has been cancelled) to be laid before each House of Parliament, or dealt with under section 110, within 14 days after the day on which the direction is given or confirmed (which ever is the later).
- (10) The annual report submitted by the accountable authority of the Department under Part 5 of the *Financial Management Act 2006* is to list each direction under subsection (1) in the year (other than a direction that has been cancelled).

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(11) For the purposes of subsection (9) or (10), the Minister or the accountable authority (which ever is relevant) may obliterate or omit so much of the direction as is necessary to avoid disclosing confidential or commercially sensitive material.

(12) In this section —

**ERA Minister** means the Minister administering the *Economic Regulation Authority Act 2003*;

**water services licensee** means a licensee as defined in the *Water Services Act 2012* section 3(1).

[Section 14 inserted: No. 38 of 2007 s. 107; amended: No. 25 of 2012 s. 81.]

**15. Use or disclosure of information obtained under s. 14**

(1) This section applies to the Minister, a ministerial officer assisting the Minister, an officer of the Department and a person who was such a person.

(2) Despite anything else in this Act or a relevant Act, a person to whom this section applies must not disclose information obtained, whether directly or indirectly, under section 14 unless —

(a) it is disclosed in the course of duty to a person who is an officer of the Department; or

(b) the Minister considers the disclosure to be in the public interest; or

(c) it is disclosed under a written law.

Penalty: \$12 000 and imprisonment for one year.

(3) If the Minister proposes to disclose information under subsection (2)(b), the Minister must notify the person who gave the information under section 14, unless the Minister considers that it would be contrary to the public interest to delay the disclosure.

- (4) The Minister must take into account any comments or objections received, within 7 days of giving the notification, from the person notified.
- (5) This section does not apply to the extent to which —
- (a) the information is already in the public domain; or
  - (b) the information is summary or statistical information that could not reasonably be expected to enable particulars relating to a person or a particular commercial operation to be ascertained; or
  - (c) the disclosure of the information is authorised by the person who gave the information under section 14.
- (6) In this section —
- ministerial officer*** has the meaning given to that term in the *Public Sector Management Act 1994*.

*[Section 15 inserted: No. 38 of 2007 s. 107.]*

## **Part IIA — The Water Resources Council**

*[Heading inserted: No. 38 of 2007 s. 107.]*

### **16. Water Resources Council established**

The Minister is to appoint 6, 7 or 8 persons to be the members of a body called the Water Resources Council.

*[Section 16 inserted: No. 38 of 2007 s. 107.]*

### **17. Membership of Council**

- (1) The Minister is, to the extent practicable, to choose the members of the Council in such a way that its membership covers or includes —
  - (a) expertise or experience in water resources management; and
  - (b) expertise or experience in conservation; and
  - (c) expertise or experience in economic development; and
  - (d) expertise or experience in community interests; and
  - (e) expertise or experience in law (in the natural resources field); and
  - (f) expertise or experience in mining; and
  - (g) expertise or experience in agriculture; and
  - (h) an indigenous person; and
  - (i) a person who lives in regional Western Australia.
- (2) The Minister is to designate one of the members as the chairman.

*[Section 17 inserted: No. 38 of 2007 s. 107.]*

### **18. Functions of Council**

- (1) The Council has the following functions —
  - (a) advising the Minister in relation to the management of water resources generally and on any matter that the Minister refers to it for advice;

- (b) consulting with persons, or bodies, having functions under, or related to the purposes of, a water resources Act;
- (c) advising the Minister on whether the objectives of each water resources Act are being achieved.

(2) In this section —

**water resources Act** means an Act that the Minister administers, to the extent to which the Act relates to water resources.

*[Section 18 inserted: No. 38 of 2007 s. 107.]*

**19. Term of office**

- (1) The term for which a person is appointed to be a member of the Council is to be fixed in the instrument of appointment and is not to exceed 3 years.
- (2) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.

*[Section 19 inserted: No. 38 of 2007 s. 107.]*

**20. Casual vacancy**

- (1) A member of the Council may at any time resign from office by notice in writing given to the Minister.
- (2) The Minister may remove a person who is a member of the Council from office on the grounds of —
  - (a) mental or physical incapacity to carry out the person's duties in a satisfactory manner; or
  - (b) the person being an insolvent under administration within the meaning of that term in the *Corporations Act 2001* of the Commonwealth; or
  - (c) neglect of duty; or
  - (d) misconduct.

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- (3) If a member of the Council dies, resigns, or is removed from office, the office of the member becomes vacant.

*[Section 20 inserted: No. 38 of 2007 s. 107.]*

**21. Remuneration and allowances**

Members of the Council are entitled to any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.

*[Section 21 inserted: No. 38 of 2007 s. 107; amended: No. 39 of 2010 s. 89.]*

**22. Quorum**

A quorum for a meeting of the Council is any 4 members.

*[Section 22 inserted: No. 38 of 2007 s. 107.]*

**23. Who presides at meetings**

- (1) The chairman, if present, is to preside at a meeting of the Council.
- (2) If the chairman is not presiding under subsection (1), the members present at the meeting are to appoint one of their number to preside.

*[Section 23 inserted: No. 38 of 2007 s. 107.]*

**24. Disclosure of interests**

- (1) A member of the Council who has a direct or indirect pecuniary interest in a matter that is before a meeting of the Council must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Council members who are at that meeting.
- (2) If a member of the Council has, in the opinion of the person presiding at a meeting of the Council, a direct or indirect pecuniary interest in a matter before that meeting, the person



presiding may call on the member to disclose the nature of that interest and, in default of any such disclosure, may determine that that interest exists.

- (3) A disclosure by a member of an interest in a matter or a determination that a member is interested in a matter must be recorded in the record of the meeting concerned.
- (4) A member who has made a disclosure of an interest in a matter, or in respect of whom a determination has been made in relation to a matter, may take part in the consideration or discussion of the matter, but not in advising, or any decision related to advising, the Minister on the matter.
- (5) An interest need not be disclosed under this section if it is an interest common to a significant number of persons in the State.

*[Section 24 inserted: No. 38 of 2007 s. 107.]*

## **25. Procedure at meetings**

Except as otherwise stated in this Act, the Council is to determine its own meeting procedures.

*[Section 25 inserted: No. 38 of 2007 s. 107.]*

## **26. Minutes**

The Council is to cause accurate minutes to be kept of the proceedings at its meetings.

*[Section 26 inserted: No. 38 of 2007 s. 107.]*

## **27. Staff and other resources**

- (1) There is to be an executive officer of the Council.
- (2) The executive officer and any other staff whose assistance the executive officer needs are to be made available by the CEO on terms agreed to by the chairman of the Council and the CEO.

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- (3) The Council may make use of the services and facilities of the Department on terms agreed to by the chairman of the Council and the CEO.

*[Section 27 inserted: No. 38 of 2007 s. 107.]*

**28.    Application of *Financial Management Act 2006***

Acts or things done by or for the Council under this or a relevant Act are to be regarded —

- (a) as services under the control of the Department for the purposes of section 52 of the *Financial Management Act 2006*; and
- (b) as part of the operations of the Department for the purposes of Part 5 of that Act.

*[Section 28 inserted: No. 38 of 2007 s. 107.]*

## **Part IIB — Regulations and by-laws**

*[Heading inserted: No. 38 of 2007 s. 107.]*

*[29-32. Deleted: No. 73 of 1995 s. 17.]*

*[33. Deleted: No. 73 of 1995 s. 19.]*

### **34. By-laws**

- (1) The Minister may make by-laws prescribing all matters that are required or permitted by this Act or any relevant Act to be prescribed, or are necessary or convenient to be prescribed, for the purposes of the performance by the Minister of functions under this Act or any relevant Act.
- (2) By-laws made under subsection (1) shall be subject to any regulations made under this Act or a relevant Act and where any such by-law is in any respect inconsistent with or repugnant to any such regulation the regulation shall prevail and the by-law shall be read and be construed and have effect accordingly.
- (3) Without limiting subsection (1), by-laws made under that subsection may —
  - (a) amend by-laws made under a relevant Act; or provide that those by-laws shall be deemed to have been made under this Act, or do both;
  - (b) provide for the due management and use of water, works, water services, water resources and property of the Minister;
  - (c) include measures for the protection of works, water services or water resources, and for preventing or remedying the waste, misuse, undue consumption, fouling or contamination of, water;
  - (d) regulate or prohibit the deposit of anything likely to cause fouling or contamination in, or within a prescribed distance of, any works, water services, watercourse, surface water or underground water;

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- (e) provide for the construction, provision, maintenance, repair and cleansing of works and water services;
- (f) control or limit the use of, or interference with, any watercourse or the flow of water;
- (fa) prohibit, impose restrictions on or otherwise regulate the use of water;
- (g) regulate the flow or require the disinfection, cleansing or other treatment of wastewater or other substances, discharged into or otherwise entering any works, reservoir, water services or watercourse.

*[Section 34 amended: No. 25 of 1985 s. 10; No. 110 of 1985 s. 8; No. 24 of 1987 s. 6<sup>3</sup>; No. 73 of 1995 s. 20<sup>5</sup> and 41; No. 32 of 1997 s. 18; No. 57 of 1997 s. 126(1); No. 39 of 1999 s. 11(7); No. 67 of 2003 Sch. 2 cl. 75; No. 38 of 2007 s. 108 and 135; No. 25 of 2012 s. 82 and 109.]*

[35. Deleted: No. 73 of 1995 s. 21.]

**36. Regulations and by-laws generally**

- (1) Regulations or by-laws made for the purposes of this Act or a relevant Act may be so made —
  - (a) as to apply —
    - (i) generally, or in a specified class of case or in a specified case; and
    - (ii) at all times, or at specified times or at a specified time; and
    - (iii) throughout the State, or in specified parts of the State or in a specified place;
  - or
  - (b) as to adopt, by reference to the text as amended and for the time being in force at the time of adoption of the by-law, unless a particular text is otherwise specified —
    - (i) such rules, regulations, codes, instructions or other subordinate legislation made, determined or

- issued under any other Act, or under any Act of the Parliament of the Commonwealth or of the Parliament of the United Kingdom; or
- (ii) such standards, rules, codes or specifications issued by Standards Australia, the British Standards Institution, or other specified body, either wholly or in part or with modifications, as are specified; or
  - (c) as to provide that where, by reason of the unavailability of materials or any other reason that the Minister considers valid, any requirement imposed by the Minister cannot be conformed to in any particular case, the Minister may in writing dispense with that requirement and instead require the use of materials or any other matters which the Minister considers to be appropriate; or
  - (d) as to provide that, in a specified case or a specified class of case, whether on specified conditions or unconditionally, a person or thing or a class of persons or things, may be exempted from the provisions of those regulations or by-laws either wholly or to such extent as is specified; or
  - (e) as to require a matter affected by them to be in accordance with a specified standard, specification or requirement or to be as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body, or so as to confer on a specified person or body or a specified class of person or body a discretionary authority.
- (2) Where regulations or by-laws, or any provision of regulations or by-laws, made under and for the purposes of a relevant Act are necessary or convenient for other purposes under this Act regulations or by-laws made under this Act may adopt, by reference to the text as from time to time amended and for the time being in force, any such regulation, by-law or provision,

either wholly or in part or with modifications, as may be specified.

- (3) The Governor, a Minister or a statutory authority may, for the purposes of the Minister under this Act, exercise a power conferred by a relevant Act to make, or to grant dispensation from the observance of, regulations or by-laws under that Act as though the power to do so had been conferred by the relevant Act.
- (4) Regulations or by-laws made under this Act —
  - (a) may provide that contravention or failure to comply constitutes an offence; and
  - (b) may make provision for penalties not exceeding \$2 000 for any such offence and if the offence is a continuing one a further penalty not exceeding \$200 for every day or part of a day during which the offence continues after notice of the offence has been given by or on behalf of the Minister to the offender; and
  - (c) may provide that, in addition to the penalty, any expense, loss or damage incurred by the Minister in consequence of the offence shall be payable by the offender; and
  - (d) may provide for fees to be payable to the Minister in relation to specified matters and make provision as to the recovery of any such fees; and
  - (e) may prescribe forms and other documents for the purposes of this Act or a relevant Act, and for the circumstances in which they are required and the manner in which information required is to be provided or verified; and
  - (f) without limiting paragraph (e), may provide for notices to be given, sent or served under this Act by electronic communication (as defined in the *Electronic Transactions Act 2011* section 5(1)) and for the proof of that giving, sending or service.

- (5) In this section, *specified* means specified in the regulation or by-law in relation to which the term is used.
- (6) The court, when convicting a person for an offence constituted by a contravention of a regulation or by-law which provides that any expense, loss or damage incurred by the Minister in consequence of the offence shall be payable by the offender shall, if requested by an officer of the Department or a person authorised by the Minister, assess the amount of the expense, loss or damage so incurred and payable by the person convicted and make an order for payment of the total amount assessed, and the amount specified in the order is recoverable in the same manner as it would be recoverable if it were a fine.
- (7) Nothing in subsection (6) prejudices or affects the right of the Minister to institute any civil action or proceeding for the recovery of damages in any other court of competent jurisdiction against the person convicted.

*[Section 36 amended: No. 25 of 1985 s. 11; No. 24 of 1987 s. 7<sup>3</sup>; No. 73 of 1995 s. 42; No. 74 of 2003 s. 125(2); No. 38 of 2007 s. 109 and 135; No. 25 of 2012 s. 109; No. 34 of 2020 s. 78.]*

**37. Regulations**

Regulations may be made under this Act for or in respect of all matters that are required or permitted, or are necessary or convenient, to be prescribed for the purposes of this Act or any relevant Act.

*[Section 37 amended: No. 73 of 1995 s. 22.]*

**38. Revocation or amendment of local laws and planning schemes**

- (1) Where any local law has been or is made by a local government under the *Local Government Act 1995* or any other Act, or any local planning scheme is in force under the *Planning and Development Act 2005*, or the Swan Valley Planning Scheme is

in force under the *Swan Valley Planning Act 2020*, and that local law or scheme, or any provision of such a local law or scheme, is on the advice of the Minister determined by the Governor to be repugnant to or inconsistent with the provisions of this Act or a relevant Act the Governor may, by Order published in the *Government Gazette*, revoke or amend that local law or scheme, or the relevant provision, in so far as it is so repugnant or inconsistent and effect shall be given to any such revocation or amendment but without affecting the validity, or curing the invalidity, of any thing done, or of the omission of any thing, in the meantime.

- (2) The Minister shall cause a copy of any Order published under this section to be laid before each House of Parliament within 6 sitting days of that House next following the publication, and if either House of Parliament passes a resolution of which notice has been given within the first 14 sitting days of that House after the copy of an Order under this section has been laid before that House that the Order be disallowed, the Order thereupon ceases to have effect, but the disallowance of the Order does not affect or invalidate anything done in good faith before the passing of the resolution.

*[Section 38 amended: No. 73 of 1995 s. 23; No. 14 of 1996 s. 4; No. 67 of 2003 Sch. 2 cl. 76; No. 38 of 2005 s. 15; No. 38 of 2007 s. 110; No. 45 of 2020 s. 144.]*



### **Part III — Liability, indemnity etc.**

*[Heading inserted: No. 25 of 2012 s. 83.]*

*[Division 1 (s. 39, 40) deleted: No. 73 of 1995 s. 24.]*

*[Division 1A: s. 41, 41C-41N deleted: No. 25 of 2012 s. 84;  
s. 41A deleted: No. 25 of 2005 s. 58;  
s. 41B deleted: No. 25 of 2005 s. 59.]*

*[Division 2: s. 42 deleted: No. 25 of 2012 s. 84;  
s. 43 deleted: No. 73 of 1995 s. 26;  
s. 44-48 deleted: No. 98 of 1985 s. 3.]*

*[Divisions 3-5 (s. 49-60) deleted: No. 73 of 1995 s. 26.]*

*[Heading deleted: No. 25 of 2012 s. 85.]*

*[61. Deleted: No. 73 of 1995 s. 27.]*

**62. Damage to land etc. by Minister or Corporation,  
compensation for etc.**

- (1) In the exercise of the Minister's powers of entry on to land or to carry out works under this Act or any relevant Act, except where the Act or an agreement relating to the exercise of the power otherwise provides, the Minister shall, in so far as that is practicable, forthwith make good or pay for the making good of, and, in so far as the making good is not practicable pay compensation for, the physical damage done to that land, or any premises or thing on that land, by the Minister in the course and at the time of, and the proximate cause of which is, the exercise or purported exercise of such a power, whether that damage is of a temporary character or a permanent character.
- (2) Any dispute as to the manner of making good of, or the amount of any payment in respect of, damage under subsection (1), shall be referred to the State Administrative Tribunal and dealt with as if it had come before the Tribunal under Part 10 of the *Land Administration Act 1997*.

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- (3) The Crown shall not be liable to pay to any person any amount in respect of damage under subsection (1) unless —
- (a) within 3 months after the damage is sustained, or within such further period as the Minister may allow, the person delivers in writing to the Minister a claim, or notice of intention to make a claim, for such amount; and
  - (b) where there is no agreement with the Minister on the claim within 12 months after delivery of the claim or the notice, the person, within that time, brings an action against the Crown to establish the requirement for, and entitlement to, payment.
- (4) In calculating the amount payable under this section regard shall be had to any compensation received for the damage by the claimant pursuant to any other Act, and the amount payable under this section shall be adjusted accordingly.
- (5) In calculating compensation payable under any other Act regard shall be had to any amount received for the damage by the claimant pursuant to this section, and the body or court so calculating is hereby authorised to take such amount, if any, into account.

*[Section 62 amended: No. 25 of 1985 s. 14; No. 73 of 1995 s. 42; No. 31 of 1997 s. 137(2); No. 55 of 2004 s. 571; No. 38 of 2007 s. 111 and 135; No. 25 of 2012 s. 109.]*

**63. Actions for damages generally**

- (1) The Crown shall not be liable for any injury or damage, other than damage of the kind referred to in section 62, occasioned in the exercise or purported exercise of a power conferred by this Act or any relevant Act and attributable to the Minister or a statutory authority or a person authorised by the Minister or a statutory authority unless negligence is established.
- (2) No action shall be maintained against the Crown in respect of any injury to the person, where the person injured fails without

reasonable excuse to submit himself to medical examination by a specified medical practitioner or practitioners nominated by the CEO within such period as the CEO may by notice in writing require of him where that request is made by the CEO within 3 calendar months of the commencement of proceedings in respect of that injury.

*[Section 63 amended: No. 73 of 1995 s. 42; No. 38 of 2007 s. 112; No. 25 of 2012 s. 109.]*

*[Part IV (s. 64-67, 67A, 67B) deleted: No. 25 of 2012 s. 86.]*

*[Part V (s. 68-69, 69A, 69B) deleted: No. 25 of 2012 s. 86.]*

## **Part VI — Entry onto land**

*[Heading inserted: No. 25 of 1985 s. 17; amended: No. 73 of 1995 s. 30.]*

### **70. Power of entry**

- (1) Except where otherwise specifically provided by this Act or a relevant Act, entry by or on behalf of the Minister onto any land, premises or thing shall not be lawful unless —
  - (a) the consent of the owner or occupier has been obtained; or
  - (b) due notice under this Act, a relevant Act, or Part 9 of the *Land Administration Act 1997* has been served.
- (2) Where due notice is served pursuant to subsection (1) the Minister may, unless the owner or occupier or a person authorised by the owner or occupier objects to the exercise of that power by the Minister, lawfully enter onto any land, premises or thing notwithstanding that the Minister has not obtained the consent of the owner or occupier.
- (3) The exercise of a power of entry conferred by this Part shall not be taken to require the Minister to acquire any interest in any land unless —
  - (a) the Minister elects to acquire the interest by agreement; or
  - (b) the Minister elects to take an interest under and in accordance with Part 9 of the *Land Administration Act 1997*, as read with this Act; or
  - (c) the Minister is required to acquire an interest pursuant to section 81(4) of this Act or section 176 of the *Land Administration Act 1997*.
- (4) A notice required by this Act to be given in relation to any entry shall specify the purpose for which entry is required and shall continue to have effect for so long as that requirement subsists,

and successive entries for that purpose shall be taken to be entries to which the notice relates.

*[Section 70 inserted: No. 25 of 1985 s. 17; amended: No. 73 of 1995 s. 42; No. 31 of 1997 s. 137(3) and 142; No. 38 of 2007 s. 114 and 135; No. 25 of 2012 s. 87 and 109.]*

**71. Power of inspection etc.**

- (1) For the purposes of this Act and any relevant Act, the Minister —
- (a) may, subject to section 72(1), enter and re-enter at all reasonable times any land, premises or thing —
    - [(i) deleted]*
    - (ii) in, on, over or under which any works of the Minister are lawfully situate,  
for the purpose of routine inspection, or routine maintenance and no notice under this Act is required unless an agreement in writing entered into by the owner or occupier of the land, premises or thing with the Minister in relation thereto otherwise provides; and
  - (b) may, without notice, enter at all reasonable times any land, premises or thing and take such measures as may be necessary to ascertain whether any offence against this Act or a relevant Act has been or is being committed.
- (2) Notwithstanding that the powers conferred by Subdivision 2 of Division 3, or Division 4, of Part 9 of the *Land Administration Act 1997* or section 82 or 83A of the *Public Works Act 1902* may in any particular case not be applicable, the Minister may enter upon any land if, in the opinion of the Minister, entry upon that land is necessary for the purposes of inspecting or examining the land to determine the feasibility of the use of that land for the purposes of this Act or a relevant Act, or as preliminary to any prospective or intended acquisition of the land or any estate or interest in that land.

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- (3) Whenever the Minister enters or has entered on or into any land, premises or thing the person responsible for the conduct of the entry shall, on request, produce evidence of his designation or appointment and give particulars of the power conferred on the Minister by virtue of which the person claims a right of entry.

*[Section 71 inserted: No. 25 of 1985 s. 17; amended: No. 73 of 1995 s. 31, 41 and 42; No. 31 of 1997 s. 137(4); No. 38 of 2007 s. 115 and 135; No. 25 of 2012 s. 88 and 109.]*

**72. Notice of entry**

- (1) Notwithstanding that, by reason of section 71(1), a notice would not have been required to have been given where entry was required for the purpose of routine inspection or routine maintenance, where the Minister intends to exercise any of the powers conferred by this Part or section 83 and the purpose of entry is to carry out works that may affect the land, notice in writing of that intention shall, where practicable, be given by the Minister to the owner or occupier of the land, premises or thing to be affected not less than 48 hours before the power is to be exercised, save where this Act or a relevant Act otherwise provides.
- (2) Where the Minister enters onto any land, premises, or thing without prior notice, whether or not such notice was required under this or any other Act, for the purpose of exercising any power of the Minister to carry out works thereon then, wherever practicable, as soon as may be thereafter notice in writing of the entry and of the works carried out, and of any further intention of the Minister relating thereto, shall be given to the owner or occupier of the land affected.
- (3) Where the owner of any unoccupied land, premises or thing is not within the State, or for any other sufficient reason it is not possible to give to any person, body or authority the notice required by this Act, then for the purposes of this Act the notice shall be deemed to have been given if it has been affixed or displayed on or over a conspicuous part of the land, premises or

thing concerned and left so affixed or displayed for at least 48 hours.

- (4) The Minister may without prior notice enter on any street under the control of a local government or department and there exercise the powers conferred by section 83, but, except where entry is effected pursuant to section 73, notice pursuant to section 100 shall be given by the Minister to the local government or department concerned where that section applies.
- (5) A notice served pursuant to this Act for the purpose only of the exercise of the power of entry shall not be taken to have effect as a notice in relation to the taking of any land under Part 9 of the *Land Administration Act 1997*.
- (6) Where it is shown to the satisfaction of a justice that entry on or into any land, premises or thing is reasonably required by the Minister for the purpose of the exercise of a power conferred by this Act or a relevant Act but that entry has been refused or the entry is opposed or prevented, or in any case where such land, premises or thing is unoccupied and access cannot be obtained or a notice required by this Act or a relevant Act cannot be served without undue delay or difficulty, the justice may, by warrant in the form prescribed by regulations made under this Act, authorise an officer of the Department, together with such other persons as are named in the warrant, or any police officer, to enter upon the land, premises or thing, using such force as may be necessary, for the purpose therein specified and any such warrant shall continue to have effect until the purpose for which it was granted has been satisfied.
- (7) Where in the opinion of the Minister circumstances have arisen that may occasion undue delay in effecting entry on or into any land, premises or thing or in the carrying out of any works but the provisions of subsection (6) are not appropriate to the circumstances, the Minister may apply to the Supreme Court *ex parte* by notice of motion, notwithstanding that no cause or matter between the parties is before the Court or that no previous notice has been given to any party affected thereby, for

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the grant of an injunction prohibiting the persons therein specified from opposing or preventing the exercise by the Minister of the Minister's powers, or for an order directing the Minister as to the exercise of powers conferred by this Act or a relevant Act in the circumstances specified in that order, or for both such an injunction and such an order.

*[Section 72 inserted: No. 25 of 1985 s. 17; amended: No. 73 of 1995 s. 42; No. 14 of 1996 s. 4; No. 31 of 1997 s. 137(5); No. 38 of 2007 s. 116 and 135; No. 25 of 2012 s. 89 and 109.]*

**73. Rights as to entry etc. in emergency**

- (1) Where it appears to the Minister, an officer of the Department or any other person who pursuant to section 3(3) is deemed to be authorised to exercise a power of the Minister, that by reason of —
- (a) actual or apprehended danger or health risk to any person or in relation to any property; or
  - (b) the occurrence of injury, disease or damage attributable, or which might be attributable, to any defect in, or any malfunction, misuse or improper use of, the works of the Minister; or
  - [(c), (d) deleted]*
  - (e) any other matter,

the circumstances are such that an emergency situation exists which makes compliance with the normal requirements of this Act or a relevant Act impractical or unreasonable, then, while those circumstances subsist and for so long thereafter as is reasonably required in relation thereto, the Minister or that person may lawfully effect immediate entry on or into any land, premises or thing necessary to deal with the emergency situation, and there exercise all such powers as are by this Act or a relevant Act conferred on the Minister or that person and are reasonably required to deal with that situation, and may in so far as is necessary use reasonable force to effect entry, without any



requirement for notice or warrant and by force of this subsection.

- (2) Notwithstanding that no notice is required under subsection (1), where it is practicable so to do notice of an entry effected under subsection (1) shall be given to all persons who are, or are the owners or occupiers of land which is, likely to be affected.
- (3) Any question as to what is a necessary entry may be determined by the officer of the Department or other person authorised by this section to effect or direct the entry, and any question as to what powers are reasonably required to deal with a situation to which subsection (1) refers may be determined by the person responsible for the exercise of the power, and in any proceedings arising therefrom such a determination shall be presumed, in the absence of evidence to the contrary, to have been made in good faith.
- (4) The Minister or a person exercising powers pursuant to this section shall, as soon as may be, remove anything left on the land, premises or thing entered and shall make good any damage, or effect restoration, rehabilitation or restitution and section 62 has effect as though a reference in that section to the Minister included a reference to a person exercising powers pursuant to this section.

*[Section 73 inserted: No. 25 of 1985 s. 17; amended: No. 73 of 1995 s. 32 and 42; No. 38 of 2007 s. 117 and 135; No. 25 of 2012 s. 90 and 109.]*

## **Part VII — Acquisition of land or interests in land**

*[Heading inserted: No. 25 of 1985 s. 18; amended: No. 73 of 1995 s. 33.]*

### **74. Term used: land**

For the purposes of this Part, and in the *Land Administration Act 1997* when construed for the purposes of this Part, a reference to **land** shall be read as extending to any land, or to any portion of any land, or to the subsoil, surface or airspace relating thereto, and to any legal or equitable estate, right, title, easement, lease, licence, privilege, or other interest, in, over, under, affecting, or in connection with that land or any portion, stratum or other specified sector of that land (whether or not that interest is an interest recognised by the Common Law) the extent of which is ascertainable by reference to the documents purporting to relate thereto.

*[Section 74 inserted: No. 25 of 1985 s. 18; amended: No. 31 of 1997 s. 137(6).]*

### **75. Partial interests in land, acquisition of**

- (1) Where, whether by way of agreement or by way of a compulsory taking under Part 9 of the *Land Administration Act 1997*, the Minister seeks the acquisition of an estate or interest in or relating to any land that is less than is held by the person from whom the acquisition is sought, the lesser estate or interest may, subject to section 81(11), be acquired instead of acquiring the whole of the estate or interest held by that person.
- (2) Where an estate or interest of the Minister of the kind referred to in subsection (1) is recorded on, or by way of memorial in the register relating to, the title to the land —
  - (a) that estate or interest shall enure for the benefit of the Minister and run with the land notwithstanding any sale, subdivision or other dealing with that land by the owner

- or occupier for the time being, but any such estate or interest may be relinquished by the Minister; and
- (b) the benefit of any right, restriction or covenant in relation to the use of land granted to or held by the Minister may be enforced by the Minister to the like extent as if the Minister were possessed of adjacent land for the benefit of which the same was to enure.

*[Section 75 inserted: No. 25 of 1985 s. 18; amended: No. 73 of 1995 s. 34 and 42; No. 31 of 1997 s. 137(7); No. 25 of 2005 s. 61; No. 38 of 2007 s. 135; No. 25 of 2012 s. 109.]*

*[76. Deleted: No. 73 of 1995 s. 35.]*

**77. Agreements incidental to land matters**

- (1) In order to facilitate the acquisition of, or dealing with, land to be acquired for the purposes of this Act or a relevant Act, the Minister may enter into agreements relating to incidental matters and things necessary to give effect to the powers conferred on the Minister by this Act or a relevant Act.
- (2) Where the fee simple of, or any other estate or interest in, any land is vested in the Minister and the Minister at the time of the acquisition or subsequently does not require the exclusive use and occupation of that land, then the Minister may in writing grant —
- (a) a lease or licence to occupy the land or any part of the land, either exclusively or concurrently with the Minister; or
- (b) any interest in or right to use that land or any part of the land,

to any other person (subject to the provisions of subsection (3) and of Division 5 of Part 9 of the *Land Administration Act 1997*), and where the lease, licence or other interest or right so granted is stated in that grant as being given by way of consideration for the acquisition of the land by the Minister then

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that lease, licence, interest or right shall not be revoked without compensation unless the parties otherwise agree.

- (3) Where the Minister exercises the powers conferred by subsection (2), then unless an agreement entered into between the Minister and the person to whom the lease, licence, interest or right is granted otherwise provides, the grant —
- (a) shall be deemed to be subject to a condition that the Minister shall be indemnified against any costs, damages, claims, or expenses arising therefrom; and
  - (b) subject to subsection (2), may be terminated without any liability for compensation thereby arising, on not less than 21 days prior written notice.

*[Section 77 inserted: No. 25 of 1985 s. 18; amended: No. 73 of 1995 s. 42; No. 31 of 1997 s. 137(8); No. 38 of 2007 s. 135; No. 25 of 2012 s. 109.]*

**78. Power to dispose of acquired land no longer needed for statutory purpose**

- (1) Subject to subsection (2) and to section 12EB(2) of the *Country Areas Water Supply Act 1947* but otherwise in accordance with Part 9 of the *Land Administration Act 1997*, the Minister may sell or otherwise deal with any land, or any estate or interest in land, acquired by a former Minister, a statutory authority, the former Commission or the Minister and vested in the Minister for the purposes of this Act or a relevant Act and no longer required for such purposes.
- (2) Where any such land, estate or interest acquired by a former Minister, a statutory authority, the former Commission or the Minister was not acquired under this Act or any other Act by way of compulsory taking for any public work, sections 187, 188, 189, 190, and 191 of the *Land Administration Act 1997* shall not have effect in relation thereto.

*[Section 78 inserted: No. 25 of 1985 s. 18; amended: No. 73 of 1995 s. 42; No. 31 of 1997 s. 137(9) and 142; No. 38 of 2007 s. 118; No. 25 of 2012 s. 91.]*

**79. Subdivision of acquired land**

For the purposes of section 135 of the *Planning and Development Act 2005*, the Minister may submit to the Western Australian Planning Commission plans of a subdivision of land acquired, or to be acquired, by the Minister notwithstanding that the Minister is not the owner of the land, and approval under that Act may be given thereto.

*[Section 79 inserted: No. 25 of 1985 s. 18; amended: No. 84 of 1994 s. 46; No. 73 of 1995 s. 42; No. 38 of 2005 s. 15; No. 38 of 2007 s. 119; No. 25 of 2012 s. 109.]*

*[80. Deleted: No. 73 of 1995 s. 35.]*

**81. Claims against Crown for use of land and application of *Public Works Act 1902***

- (1) Subject to subsection (3), the Crown shall not be liable to pay compensation for, or in respect of any damage attributable to, the placing of any works or other things to which section 84(1) or (1a) applies or by virtue of the grant of the right of access deemed by section 84(2) to be vested in the Minister.
- (2) No claim lies against the Crown by reason only of any loss of enjoyment or amenity value, or by reason of any change in the aesthetic environment, alleged to be occasioned by the placing of works of the Minister on any land.
- (3) No claim lies against the Crown by reason only of the placing of any works of the Minister upon, in, over or under any land, other than a claim —
  - (a) pursuant to section 62; or
  - (b) under Part 10 of the *Land Administration Act 1997*, as read with this Act, where the Minister —
    - (i) is by this or any other Act required; or
    - (ii) by reason of the nature of the works there placed, the nature of the locality in which the works are placed, the safeguarding of particular works,

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public safety, future development proposals, or otherwise, elects,

to acquire the land or an estate or interest in the land,

but this subsection does not affect any liability of the Crown where negligence is established for the purposes of section 63.

- (4) Notwithstanding the powers conferred on the Minister by Part VI, the Minister is required to acquire, where practicable by agreement but otherwise pursuant to Part 9 of the *Land Administration Act 1997* as read with this Act, such land, estate, or interest as may in the opinion of the Minister be appropriate to the Minister's needs in respect of —
- (a) major works, other than works in relation to which the Minister has decided that this subsection is not to have effect; and
  - (b) such other works as may be prescribed by regulation under this Act as works to which this subsection shall apply,

and regulations made under this Act may make provision for such restriction of any use of the land thereby affected by other persons.

- (5) Where for the purposes of this Act or a relevant Act the Minister determines that any land, or any estate or interest in land, is to be acquired by the Minister otherwise than by agreement the power to do so shall be exercised under and in accordance with, and any compensation payable by the Minister in pursuance of such powers shall be assessed, determined and recovered under, Parts 9 and 10 of the *Land Administration Act 1997* as read with this Act.
- (6) A claim for compensation made under this section may only be made once, and where any land, estate, or interest is acquired by the Minister no further claim in respect thereof shall lie against the Crown notwithstanding any subsequent works of the Minister affecting that land, estate or interest unless it is shown

that the original claim paid did not take into account the nature of the damage subsequently occurring.

- (7) Any entry upon, or acquisition of, land authorised by or under this Act or a relevant Act and any works carried out pursuant to this Act or a relevant Act shall be deemed to be for the purposes of a public work within the meaning of the *Public Works Act 1902*, and the Minister shall be deemed to be a local authority within the meaning of that Act authorised to effect that acquisition or undertake that public work.
- (8) For the purposes of this Act or a relevant Act, the Minister may exercise or delegate any power that is by the *Public Works Act 1902* or Parts 9 and 10 of the *Land Administration Act 1997* vested in the relevant Minister and in so far as that Act applies, or those Parts apply, to or in relation to the compulsory taking of any land, or the entry on, occupation or use of any land, under this Act or a relevant Act, any reference in that Act or those Parts —
- (a) to the relevant Minister, may be read for the purposes of this Act or a relevant Act as a reference to the Minister; and
  - (b) to the department of the Public Service principally assisting the relevant Minister in the administration of that Act or those Parts, may be read for the purposes of this Act or a relevant Act as a reference to the Department,

and that Act or those Parts may be construed accordingly.

- (9) Subsection (8) does not prevent the relevant Minister from exercising the relevant Minister's powers under the *Public Works Act 1902* or Parts 9 and 10 of the *Land Administration Act 1997* on behalf of the Minister when requested by the Minister to do so.

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*[(10) deleted]*

- (11) A written objection served pursuant to section 175 of the *Land Administration Act 1997* in relation to any proposed taking for the purposes of the Minister may request —
- (a) that instead of the whole estate or interest in the land being acquired, such a lesser estate or interest as is sufficient for the purposes of the Minister be acquired; or
  - (b) that instead of an estate or interest less than the whole being acquired, the whole estate or interest in the land be acquired,

and the Minister may vary the taking accordingly.

- (12) Where any land is compulsorily acquired under Part 9 of the *Land Administration Act 1997* for the purposes of the Minister under this Act or any other Act that land shall, on the registration of the relevant taking order made under section 177 of that Act, be vested in the Minister for the purpose of the public work for which the land is acquired, by force of section 179 of that Act as read with this subsection, save that the Land Administration Minister may, by that taking order, declare that any specified estate, interest, right or privilege of any person to the use, occupation or enjoyment of the land so acquired by the Minister, or any specified part of that land, may continue for the period therein specified or until terminated by the Land Administration Minister by a subsequent order under that Act, and may provide that such continued use, occupation or enjoyment shall not be taken to be in satisfaction or part satisfaction of the compensation claimed, and effect shall be given thereto.
- (13) Where, whether by agreement or compulsory acquisition, any land (including any estate or interest in land to which section 74 applies), is vested in the Minister and the land thereby affected is taken by any other person, body or authority under or by



virtue of Part 9 of the *Land Administration Act 1997* then notwithstanding section 179 of that Act —

- (a) the land or the estate or interest vested in the Minister shall continue to be so vested, unless the Minister otherwise agrees; and
- (b) the Minister shall be deemed to be a person having an interest in the land, estate or interest to be taken for the purposes of section 202 of that Act.

(14) In this section —

***Land Administration Minister*** means the Minister administering the *Land Administration Act 1997*;

***relevant Minister*** means the Minister administering the *Public Works Act 1902* or Parts 9 and 10 of the *Land Administration Act 1997*, as the case requires.

*[Section 81 inserted: No. 25 of 1985 s. 18; amended: No. 73 of 1995 s. 36 and 42; No. 31 of 1997 s. 137(10)-(17) and 142; No. 25 of 2005 s. 62(1)<sup>7</sup>; No. 38 of 2007 s. 120 and 135; No. 25 of 2012 s. 109.]*

## **Part VIII — Works**

*[Heading inserted: No. 25 of 1985 s. 19.]*

### **Division 1 — Carrying out of works under this Part**

*[Heading inserted: No. 25 of 1985 s. 19.]*

#### **82. Power to carry out works**

(1) Subject to this Act and any relevant Act, the Minister may carry out works for the purposes of this Act or any relevant Act that are related to the conservation, protection or management of water resources.

(1aa) The conservation, protection or management of water resources is to be regarded as a public work for the purposes of this Act and Part 9 of the *Land Administration Act 1997*, even though the conservation, protection or management of water resources may be achieved on or in relation to an area of land without any works being carried out on the land.

*[(1a) deleted]*

(2) The provisions of this Part have effect in relation to works carried out under and for the purposes of a relevant Act, except in so far as that relevant Act contains provisions inconsistent with the provisions of this Part in which case effect shall be given to the provisions of the relevant Act.

*[Section 82 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 37; No. 67 of 2003 Sch. 2 cl. 79; No. 38 of 2007 s. 121 and 135; No. 25 of 2012 s. 92.]*

#### **83. Powers relating to works**

*[(1) deleted]*

(1a) For the purposes of the Minister's functions under this Act or a relevant Act the Minister, subject to Part VI, may —

(a) enter upon any land, street, premises or thing and acquire, provide or construct wells, reservoirs, dams and

such other works as in the Minister's opinion may be required for the purposes of the conservation or management of water; and

- (b) carry out such other works including the construction of premises and provision of facilities as may be necessary for the purposes of this Act or any relevant Act.
- (2) Without limiting the generality of subsection (1a) the Minister, for the purposes of this Act or a relevant Act, may —
- (a) exercise the powers conferred by sections 82, 83A, 93, and 94 of the *Public Works Act 1902* and Division 4 of Part 9 of the *Land Administration Act 1997*, save that those sections shall be read and construed as though —
    - (i) a reference therein to the Minister administering that Act or that Part were a reference to the Minister; and
    - (ii) the provisions of this Act relating to entry on to land and the giving of notice had effect in substitution for the provisions of the *Land Administration Act 1997* and the *Public Works Act 1902* relating to those matters, and the powers conferred by those sections shall be deemed to include the power to carry out general or specific investigations, tests, borings, explorations and other surface or underground studies —
    - (iii) to ascertain the existence, nature and extent of water resources including underground water resources; and
    - (iv) to formulate schemes for the provision, extension or alteration of water services; and
    - (v) to determine the feasibility and requirements of works or proposed works; and
    - (vi) to survey or demarcate land;

- (b) for the purposes of this section —
  - (i) drain, pump, excavate or otherwise remove any water, soil or obstruction; or
  - (ii) remove or use any earth, rock, trees and other things taken from any land; or
  - (iii) take water, soil or other samples; or
  - (iv) acquire, provide, remove or reconstruct buildings, pumps and other structures or plant; or
  - (v) open, or alter the position of, any pipe, sewer, drain, channel, tunnel, wire or other fitting or apparatus within or under any land, including any street or premises; or
  - (vi) remove, or make a gate in, or erect, any fence (taking all reasonable steps to notify the owner and occupier of the land on which, or on the boundary of which, the fence is, or is to be, erected).
- (3) In the exercise of the powers conferred by this section the Minister shall ensure that so far as is reasonable and practicable —
  - (a) the free use of any land, street or premises is not obstructed; and
  - (b) as little detriment or inconvenience is caused and as little damage is done as is possible,

and section 62 applies in respect of damage thereby occasioned.

*[Section 83 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 38, 41 and 42; No. 31 of 1997 s. 137(18); No. 38 of 2007 s. 122 and 135; No. 25 of 2012 s. 93 and 109.]*

**84. Property in works**

*[(1) deleted]*

- (1a) Where the Minister places or has placed, or causes or permits or has caused or permitted any works or other things to be placed

upon, in, over or under any land for the purposes of this Act or a relevant Act those works or other things shall be taken to have been lawfully so placed.

- (2) Those works or other things shall at all times continue to be the property of the Minister, unless the Minister has otherwise agreed or may otherwise determine, and the Minister shall be deemed to have a right of access thereto for the purposes of this Act and any relevant Act.
- (3) The Minister may remove from, or demolish or destroy on, any land which is or has been occupied by the Minister, any plant, buildings, road, or other works placed or caused to be placed thereon by the Minister or by permission of the Minister.
- (4) In this section, a reference to the Minister includes a reference to a former Minister, to the former Authority, to the former Commission and to a statutory authority.

*[Section 84 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 39 and 42; No. 38 of 2007 s. 123 and 135; No. 25 of 2012 s. 94 and 109.]*

[85. *Deleted: No. 25 of 2012 s. 95.]*

## **Division 2 — Preliminaries to works**

*[Heading inserted: No. 25 of 1985 s. 19.]*

### **Subdivision A — Interpretation**

*[Heading inserted: No. 25 of 1985 s. 19.]*

#### **86. Terms used**

In this Part and in Part VII —

***exempt works*** means —

- (a) the maintenance, repair, minor alteration, reinstatement or replacement of existing works; and
- (b) the construction or provision of other works —
  - (i) not being major or general works; or

- (ii) being works in, on, under or over private land, which are constructed or provided on, and at the request of the owner of, the land served or to be served by the water services in respect of which the works are required; or
- (iii) being works in, on, under or over Crown land or road reserves and required to link other exempt works to existing works;

and

- (c) alterations to general works and additions or extensions to general works in, on, under or over land vested in the Minister; and
- (d) alterations, extensions or additions to major works where section 91 does not apply; and
- (e) such other works of the nature specified in the Order as the Governor may, from time to time by Order in Council, declare to be exempt works for the purposes of this Act or a relevant Act, notwithstanding that such works may form part of or be related to general works or major works;

***general works*** means the construction or provision of —

- (a) trunk and distribution water mains, pumping stations, pumping mains, control and metering stations, main and branch sewers, main drains, irrigation channels, compensating basins and water and sewerage reticulation mains, being reticulation mains not constructed at the request of the owner of the land affected; and
- (b) such other works of a kind similar to the works referred to in paragraph (a) of this definition as the Governor may, from time to time by Order in Council declare to be general works for the purposes of this Act or a relevant Act; and
- (c) works in, on, under or over private land, other than exempt works;

**major works** means the construction or provision of —

- (a) dams, service reservoirs, bulk water storage facilities, groundwater schemes, irrigation schemes, wastewater treatment plants or water treatment plants; and
- (b) such other works as the Minister considers, by virtue of their location, size or nature, to be of sufficient public interest to require public advertisement and that an opportunity to object or comment thereon should be given.

*[Section 86 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 42; No. 38 of 2007 s. 124; No. 25 of 2012 s. 96 and 109.]*

#### **Subdivision B — Major works**

*[Heading inserted: No. 25 of 1985 s. 19.]*

#### **87. Power to carry out major works**

*[(1) deleted]*

- (2) The Minister may carry out, or undertake the construction or provision of, major works, if —
  - (a) the Minister has complied with sections 88 and 89; and
  - (b) the Minister is satisfied that any objections or comments lodged under section 89 have been met by amendment of the proposal for the major works or that it is not in the public interest to amend the proposal; and
  - (c) a notice of the decision to carry out, or undertake the construction of or provide, the works has been published in the *Government Gazette*.

*[Section 87 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 42; No. 38 of 2007 s. 125; No. 25 of 2012 s. 97.]*

**88. Advertisements and notices to occupiers etc. of proposed major works**

- (1) The Minister must, before carrying out, construction or provision of major works —
- (a) cause to be prepared plans of the area affected together with the current proposals for the works, and cause those plans and proposals, or certified copies, to be deposited in the office of the Department nearest to the locality in which the proposed works are to be situated; and
  - (b) cause an advertisement to be published in the *Government Gazette*, and in one or more newspapers generally circulating in the locality in which the proposed works are to be situate, specifying —
    - (i) a description of the proposed works; and
    - (ii) the localities in which they will be situate; and
    - (iii) the purposes for which they are required; and
    - (iv) the times when, and places at which, the plans and proposals may be inspected;and
  - (c) cause a notice specifying the details referred to in paragraph (b) to be served on —
    - (i) the owner and occupier of any land which is to be entered for the purposes of the proposed works or which is, in the opinion of the Minister, likely to be affected; and
    - (ii) any local government in the area of which the proposed works will be situate or which, in the opinion of the Minister, has a material interest in the proposal or the services to be provided by the works.



- (2) The plans and proposals referred to in subsection (1) shall be open to inspection by any person interested, at the times and places specified in the advertisement.

*[Section 88 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 42; No. 14 of 1996 s. 4; No. 38 of 2007 s. 126 and 135; No. 25 of 2012 s. 98 and 109.]*

**89. Objections to and comments on proposed major works**

- (1) Any local government or person interested may, in writing, object to or comment on the carrying out, construction or provision of proposed major works.
- (2) Every such objection or comment shall be lodged with the Minister within one month from the date of the publication of the advertisement referred to in section 88(1).
- (3) Where the Minister so determines, and whether or not by reason of objections or comments received, the Minister may amend the proposal by making alterations to the plans or proposals so deposited and advise the persons who are, in the opinion of the Minister, likely to be affected by such alterations.

*[Section 89 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 42; No. 14 of 1996 s. 4; No. 38 of 2007 s. 127 and 135; No. 25 of 2012 s. 99 and 109.]*

*[90. Deleted: No. 25 of 2012 s. 100.]*

**91. Alteration or extension of major works, Minister's powers as to**

*[(1)-(3) deleted]*

- (4) If the Minister proposes that major work be substantially altered or extended, the Minister must decide whether the procedures in sections 88 and 89 should be complied with in relation to the alteration or extension.

- (5) If the Minister decides that the procedures in sections 88 and 89 should be complied with in relation to the alteration or extension, section 87(2) applies in relation to the alteration or extension as if the references to major works were references to the alteration or extension.

*[Section 91 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 42; No. 38 of 2007 s. 129; No. 25 of 2012 s. 101.]*

### **Subdivision C — General works**

*[Heading inserted: No. 25 of 1985 s. 19.]*

#### **92. Power to carry out general works**

The Minister may carry out, or undertake the construction or provision of, general works, if the Minister has complied with sections 93, 94 and 95, but not otherwise.

*[Section 92 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 42; No. 38 of 2007 s. 135; No. 25 of 2012 s. 109.]*

#### **93. Notices to occupiers etc. of proposed general works**

- (1) The Minister shall —
- (a) cause to be prepared plans and a description of proposed general works and cause those plans and that description, or certified copies, to be deposited in the office of the Department nearest to the locality in which the proposed works are to be situated; and
  - (b) cause a notice, and an extract or illustration of the plans and a copy of the description referred to in paragraph (a) sufficient to indicate the nature and extent of the proposed general works, to be served on —
    - (i) the owner and the occupier of any land which is to be entered for the purposes of the proposed works or is, or the use of which is, in the opinion of the Minister, likely to be adversely affected; and

- (ii) any local government in the area of which the proposed works will be situate or which, in the opinion of the Minister, has a material interest in the proposal or the services to be provided by the works,

specifying the details set forth in section 88(1)(b)(i), (ii), (iii) and (iv) and nominating a date, which shall be a date not earlier than 7 days after service of the notice, by which all objections to, or comments upon, the proposal must be received by the Minister.

- (2) The plans and description referred to in subsection (1) shall be made available by the Minister for inspection by any person or local government upon whom or which a notice has been served pursuant to subsection (1)(b), at the times and places specified in the notice.

*[Section 93 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 42; No. 14 of 1996 s. 4; No. 57 of 1997 s. 126(3); No. 38 of 2007 s. 130 and 135; No. 25 of 2012 s. 109.]*

#### **94. Objections to and comments on proposed general works**

- (1) Any person or local government upon whom or which notice has been served pursuant to section 93 may, in writing, object to or comment upon the carrying out, construction or provision of the proposed works.
- (2) Every such objection or comment shall be lodged with the Minister by the date specified in the notice.
- (3) Where the Minister so determines, and whether or not by reason of objections or comments received, the Minister may amend the proposal by making alterations to the plans or description so deposited, whether to meet objections or comments or otherwise, but shall advise the persons who are, in the opinion of the Minister, likely to be adversely affected by such alterations.

*[Section 94 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 42; No. 14 of 1996 s. 4; No. 38 of 2007 s. 135; No. 25 of 2012 s. 109.]*

**95. Authorisation for general works**

*[(1)-(4) deleted]*

- (5) Where the Minister has complied with the requirements of sections 93 and 94 and —
- (a) no objections or comments have been received by the time specified in the notices served pursuant to section 93(1); or
  - (b) the Minister is satisfied that any objections or comments material to the proposal have been met or that it is not in the public interest that they be met,

the Minister is authorised to proceed to carry out, construct or provide the general works.

*[Section 95 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 42; No. 38 of 2007 s. 131; No. 25 of 2012 s. 102.]*

**Subdivision D — Exempt works**

*[Heading inserted: No. 25 of 1985 s. 19.]*

**96. Minister to carry out exempt works**

Exempt works may be carried out, undertaken, constructed or provided by or on behalf of the Minister without any requirement for notification or advertisement of those works.

*[Section 96 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 42; No. 38 of 2007 s. 135; No. 25 of 2012 s. 109.]*

**Subdivision E — Deviation and modification**

*[Heading inserted: No. 25 of 1985 s. 19.]*

**97. Certain deviations from and modifications of proposed works permitted**

- (1) Where the Minister is of the opinion that any deviation from the proposed line of works may be necessary, the Minister may, in preparing the plans of the proposed works pursuant to section 88 or section 93, show on those plans a limit within which the line of works as constructed may deviate to accommodate changes in location not inconsistent with the general proposal and any such deviation shall, if the works are authorised, be taken to be authorised.
- (2) Whether or not a limit within which the line of works may deviate during construction is shown on the plans of authorised works, the Minister in carrying out the works may deviate not more than 20 m from the location shown on those plans if —
  - (a) the change is of a nature not inconsistent with the general proposal; and
  - (b) where the proposed works are to be constructed or provided on land other than —
    - (i) unoccupied Crown land; or
    - (ii) a road reserve,the deviation is agreed in writing by the owner and occupier of the affected land.
- (3) The Minister may, during the carrying out, construction or provision of works, depart from any description, proposal or plans of authorised works, and may make such modifications as are required by the circumstances, if the departure is agreed in writing by the owner and occupier of the affected land.
- (4) Where the Minister is satisfied that a deviation or modification of a kind to which subsection (1), (2) or (3) does not apply —
  - (a) is not inconsistent with the general proposal; and

- (b) is necessary in the public interest; and
- (c) does not adversely affect the interest of any person who is the owner or occupier of the land where the works are to be situate,

the Minister may carry out the works as so varied, despite the provisions of sections 88 and 89, or 93, 94 and 95, not having been complied with.

*[Section 97 inserted: No. 25 of 1985 s. 19; amended: No. 73 of 1995 s. 42; No. 38 of 2007 s. 132 and 135; No. 25 of 2012 s. 103 and 109.]*

*[Division 3 (s. 98-101) deleted: No. 25 of 2012 s. 104.]*

*[Division 4 (s. 102) deleted: No. 25 of 2012 s. 104.]*

## Part IX — Infringement notices

[Heading inserted: No. 25 of 1985 s. 20.]

### 103. Infringement notices

(1) In this section —

***alleged offence***, in relation to an infringement notice, means offence to which the infringement notice relates;

***alleged offender***, in relation to an infringement notice, means the person to whom the infringement notice is given;

***authorised person*** means a person authorised, or of a class authorised, under the regulations to give infringement notices in respect of the offences specified in relation to that person or class in the regulations;

***designated person*** means a person designated, or of a class designated, under the regulations to whom payment may be made of modified penalties for the offences specified in relation to that person or class in the regulations;

***infringement notice*** means a notice given under subsection (2);

***modified penalty***, in respect of an offence to which an infringement notice relates, means the amount of money specified in the notice as being the modified penalty for that offence;

***prescribed person*** means a person whom the regulations prescribe to be a prescribed person for the purposes of this section.

(2) An authorised person who has reason to believe that a person has committed an offence against this Act or a relevant Act that is prescribed to be an offence that may be dealt with under this section and is an offence in respect of which the person is authorised to give a notice under this section may give to that person a notice in the prescribed form informing him that if he does not wish to be prosecuted for the alleged offence in a court he may, within a period of 21 days after the giving of the notice, pay to a person specified in the notice, other than the person

giving the notice, the amount of money specified in the notice as being the modified penalty for that offence.

- (3) In an infringement notice —
  - (a) the amount of money specified as being the modified penalty for an offence to which the infringement notice relates shall be the amount that is, when the infringement notice is given, for the time being prescribed to apply in respect of the offence if it is dealt with under this section; and
  - (b) the persons specified as being persons to whom the modified penalty may be paid shall be designated persons.
- (4) An infringement notice may be given to an alleged offender personally at or about the time the alleged offence is believed to have been committed or, where the offence is one that is committed by the owner or occupier of land in relation to which the offence is committed, by posting it to him at his address as shown in rating records kept for the purposes of this Act or a relevant Act.
- (5) A person to whom an infringement notice is given may decline to be dealt with under this section and, if the modified penalty is not paid within the period specified in the notice or within such further time as may, whether before or after the expiry of that period, be allowed by a prescribed person, is deemed to have declined to be so dealt with.
- (6) A prescribed person may, whether or not the modified penalty has been paid, withdraw an infringement notice, other than an infringement notice given by that person, at any time within a period of 28 days after it was given by sending to the alleged offender a notice in the prescribed form, signed by the prescribed person, advising the alleged offender that the infringement notice has been withdrawn.



- (7) Any amount paid by way of modified penalty pursuant to an infringement notice that has been withdrawn under subsection (6) shall be refunded.
- (8) Where, pursuant to an infringement notice, the modified penalty has been paid in accordance with the notice within the period specified therein or within such further time as is allowed and the infringement notice has not been withdrawn under subsection (6), no proceedings shall be brought or penalty shall be imposed that could not be brought or imposed if the person to whom the infringement notice was given had been convicted by a court of, and punished for, the alleged offence.
- (9) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (7), be dealt with as if it were a fine imposed by a court as a penalty for an offence.

*[(10) deleted]*

- (11) The CEO and the chief executive officer of a water corporation (as defined in section 106(1A)) must issue to any member of staff who is an authorised person a certificate in the prescribed form which that person shall produce whenever required to do so by a person to whom he has given or is about to give an infringement notice.

*[Section 103 inserted: No. 25 of 1985 s. 20; amended: No. 110 of 1985 s. 11; No. 73 of 1995 s. 40; No. 78 of 1995 s. 130; No. 84 of 2004 s. 80; No. 38 of 2007 s. 133; No. 25 of 2012 s. 105.]*

## **Part X — Administrative provisions**

*[Heading inserted: No. 38 of 2007 s. 134.]*

### **104. Delegation by Minister**

- (1) The Minister may delegate to —
  - (a) the CEO; or
  - (b) another officer of the Department; or
  - (c) an officer of another department or an employee of an organisation; or
  - (d) another Minister; or
  - (e) the employing authority of another department or organisation; or
  - (f) any other person or body (whether incorporated or not),any power or duty of the Minister under a provision of this or a relevant Act (other than this section and sections 14 and 106).
- (2) Without limiting the things that may be delegated to the CEO under subsection (1), they include things that are to be done in the course of governing the affairs of the Ministerial Body under section 11(4).
- (3) The delegation must be in writing signed by the Minister.
- (4) A person to whom a power or duty is delegated under subsection (1)(b), (c) or (f) cannot delegate that power or duty.
- (5) A delegation under subsection (1)(d) may expressly authorise the other Minister to further delegate the power or duty but only to an officer or employee of a department administered by the other Minister.
- (6) A delegation under subsection (1)(a) or (e) may expressly authorise the delegate to further delegate the power or duty but only to an officer or employee of the department or organisation.

- (7) A person exercising or performing a power or duty that has been delegated to the person under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (8) Nothing in this section limits the ability of —
  - (a) the Minister to perform a function through an officer or agent; and
  - (b) a Minister or employing authority to whom a power or duty is delegated under this section from exercising that power or performing that duty through an officer or agent.
- (9) In this section, **department**, **employing authority** and **organisation** each have the meaning given to them in section 3 of the *Public Sector Management Act 1994*.

*[Section 104 inserted: No. 38 of 2007 s. 134.]*

#### **105. Delegation by CEO**

- (1) The CEO may delegate to —
  - (a) another officer of the Department; or
  - (b) the employing authority of another department or an organisation; or
  - (c) an officer of another department or an employee of an organisation; or
  - (d) any other person or body (whether incorporated or not),any power or duty of the CEO under another provision of this or a relevant Act.
- (2) The delegation must be in writing signed by the CEO.
- (3) Except in the case of an officer of the Department, a power or duty can only be delegated to a person or body under subsection (1) if the person or body has been approved, or is in a class of person or body approved, by the Minister for the purposes of this section.

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- (4) A person to whom a power or duty is delegated under subsection (1)(a), (c) or (d) cannot delegate that power or duty.
- (5) A delegation under subsection (1)(b) may expressly authorise the delegate to further delegate the power or duty but only to an officer or employee of the department or organisation.
- (6) A person or body exercising or performing a power or duty that has been delegated to the person or body under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of —
  - (a) the CEO to perform a function through an officer or agent; and
  - (b) an employing authority to whom a power or duty is delegated under this section from exercising that power or performing that duty through an officer or agent.
- (8) In this section, *department*, *employing authority* and *organisation* each have the meaning given to them in section 3 of the *Public Sector Management Act 1994*.

[Section 105 inserted: No. 38 of 2007 s. 134.]

**106. Directions to Corporation etc. about Government policy**

- (1A) In this section —

*water corporation* means a corporation as defined in the *Water Corporations Act 1995* section 3(1).
- (1) The Minister may, in writing, direct a water corporation to have regard to a general policy of the Government relating to water resources, to the extent specified in the direction.
- (2) The Minister must cause a copy of a direction under subsection (1) to be laid before each House of Parliament, or dealt with under section 110, within 14 days after the day on which the direction is given.

- (3) The text of a direction under subsection (1) is to be included in the annual report submitted by the accountable authority of the Department under Part 5 of the *Financial Management Act 2006*.

*[Section 106 inserted: No. 38 of 2007 s. 134; amended: No. 25 of 2012 s. 106.]*

**107. Non-public sector staff for Department**

- (1) The CEO may engage persons as wages staff otherwise than under the *Public Sector Management Act 1994*.
- (2) Persons referred to in subsection (1) are to be employed, subject to any relevant industrial award, order or agreement, on such terms and conditions as the CEO determines.
- (3) Nothing in subsection (2) affects the operation of the *Workplace Agreements Act 1993*<sup>8</sup> or Part VID of the *Industrial Relations Act 1979* or section 100 of the *Public Sector Management Act 1994*.

*[Section 107 inserted: No. 38 of 2007 s. 134.]*

**108. Provision of departmental staff, services and facilities to related entities**

- (1) The CEO may arrange with a related entity to provide it with the use of —
- (a) the services of any officer or employee of the Department; and
  - (b) any services or facilities of the Department,
- that are necessary for the entity to perform its functions.
- (2) This section does not limit any power the related entity has to engage its own staff or provide its own facilities, or to enter into any other arrangement for the provision to it of staff, services or facilities.

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(3) In this section —

*related entity* means —

- (a) a body (whether incorporated or not); or
- (b) the holder of an office; or
- (c) a person,

established by or under, or having functions under, this Act or a relevant Act.

*[Section 108 inserted: No. 38 of 2007 s. 134.]*

**109. Advisory committees**

- (1) The Minister may establish committees for the purpose of advising the Minister on any aspect of the administration of this or a relevant Act, with terms of reference in each case determined by the Minister.
- (2) A member of a committee is entitled to the remuneration and allowances (if any) determined by the Minister, on the recommendation of the Public Sector Commissioner.
- (3) The terms and conditions, other than those referred to in subsection (2), applicable to or in relation to a person appointed to a committee are to be determined by the Minister, from time to time either generally or with respect to a particular appointment.
- (4) This section does not limit the Minister's power to establish committees for any other purpose.

*[Section 109 inserted: No. 38 of 2007 s. 134; amended: No. 39 of 2010 s. 89.]*

**110. Laying documents before Parliament**

- (1) If a provision of this Act requires the Minister to cause a document to be laid before each House of Parliament, or be dealt with under this section, within a period and —
  - (a) at the commencement of the period, a House of Parliament is not sitting; and

- (b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a document that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

*[Section 110 inserted: No. 38 of 2007 s. 134.]*

**111. Protection from personal liability**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this or a relevant Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this or the relevant Act had been enacted.
- (3) Despite subsection (1), the Crown is not relieved of any liability that it might have for another person having done anything as described in that subsection.

*[(4) deleted]*

- (5) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

*[Section 111 inserted: No. 38 of 2007 s. 134; amended: No. 25 of 2012 s. 107.]*

**s. 112**

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**112. Confidential information**

- (1) A person who misuses confidential information obtained by reason of any function that person has, or at any time had, in the administration of this or a relevant Act commits an offence.  
Penalty: \$12 000 and imprisonment for one year.
- (2) A person misuses confidential information if it is, directly or indirectly, recorded, used or disclosed to another person, other than —
- (a) in the course of duty; or
  - (b) under this or a relevant Act or any other written law; or
  - (c) with the written permission of the CEO; or
  - (d) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence; or
  - (e) with the consent of the person or persons to whom the information relates; or
  - (f) in circumstances prescribed by the regulations.
- (3) This section does not apply —
- [(a) deleted]*
  - (b) to information to which section 15 applies.
- (4) In this section —
- confidential information** means information that has not been made public and that —
- (a) is by its nature confidential; or
  - (b) was specified to be confidential by the person who supplied it; or
  - (c) is known by the person using or disclosing it to be confidential.

*[Section 112 inserted: No. 38 of 2007 s. 134; amended: No. 25 of 2012 s. 108.]*



## Notes

This is a compilation of the *Water Agencies (Powers) Act 1984* and includes amendments made by other written laws<sup>9</sup>. For provisions that have come into operation, and for information about any reprints, see the compilation table.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Water Authority Act 1984</i> <sup>10</sup>	3 of 1984	18 May 1984	1 Jul 1985 (see s. 2 and <i>Gazette</i> 7 Jun 1985 p. 1931)
<i>Acts Amendment and Repeal (Water Authorities) Act 1985 Pt. II</i>	25 of 1985	6 May 1985	1 Jul 1985 (see s. 2 and <i>Gazette</i> 7 Jun 1985 p. 1931)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Water Authorities) Act 1985 Pt. II</i>	110 of 1985 (as amended by No. 24 of 1987 s. 156; No. 74 of 2003 s. 24)	17 Dec 1985	s. 3-7, 9-11 and 13: 14 Mar 1986 (see s. 2 and <i>Gazette</i> 14 Mar 1986 p. 726); s. 8: 1 Feb 1990 (see s. 2 and <i>Gazette</i> 5 Jan 1990 p. 38); s. 12 repealed by No. 74 of 2003 s. 24
<i>Acts Amendment (Water Authority Rates and Charges) Act 1987 Pt. I</i> <sup>3</sup>	24 of 1987	25 Jun 1987	14 Jul 1987 (see s. 2 and <i>Gazette</i> 14 Jul 1987 p. 2647)
<i>Water Authority Amendment Act 1987</i>	48 of 1987	3 Oct 1987	s. 1 and 2: 3 Oct 1987; Act other than s. 1 and 2: 13 Nov 1987 (see s. 2 and <i>Gazette</i> 13 Nov 1987 p. 4141)
<i>Acts Amendment (Public Service) Act 1987 s. 32</i>	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Acts Amendment (Land Administration) Act 1987 Pt. XVII</i>	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and <i>Gazette</i> 16 Sep 1988 p. 3637)
<i>Financial Administration Legislation Amendment Act 1993 s. 11 and 15</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))

**Water Agencies (Powers) Act 1984****Notes**

## Compilation table

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Acts Amendment (Annual Valuations and Land Tax) Act 1993</i> s. 13 <sup>5</sup>	17 of 1993	29 Nov 1993	29 Nov 1993 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Water Authority Amendment Act 1994</i>	34 of 1994	8 Jul 1994	8 Jul 1994 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Planning Legislation Amendment Act (No. 2) 1994</i> s. 46(4)	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> Pt. 2 <sup>4, 5, 11</sup>	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 80	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<b>Reprint of the <i>Water Agencies (Powers) Act 1984</i> as at 30 Apr 1996</b> (includes amendments listed above except those in the <i>Acts Amendment (Water Authorities) Act 1985</i> s. 12 and the <i>Sentencing (Consequential Provisions) Act 1995</i> )			
<i>Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996</i> Pt. 3 <sup>6</sup>	12 of 1996	28 Jun 1996	28 Jun 1996 (see s. 2)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 64 and s. 142	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Water Legislation Amendment Act 1997</i> Pt. 5	32 of 1997	3 Oct 1997	15 Apr 1998 (see s. 2 and <i>Gazette</i> 15 Apr 1998 p. 2041)

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 126	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Water Services Coordination Amendment Act 1999</i> s. 11(7)	39 of 1999	9 Nov 1999	19 Jun 2000 (see s. 2 and <i>Gazette</i> 16 Jun 2000 p. 2939)
<b>Reprint of the Water Agencies (Powers) Act 1984 as at 4 Jan 2000</b> (includes amendments listed above except those in the <i>Acts Amendment (Water Authorities) Act 1985</i> s. 12 and the <i>Water Services Coordination Amendment Act 1999</i> )			
<i>Economic Regulation Authority Act 2003</i> Sch. 2 Div. 15	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 125	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> s. 571 <sup>12</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Water Legislation Amendment (Competition Policy) Act 2005</i> Pt. 7 <sup>7</sup>	25 of 2005	12 Dec 2005	3 Jun 2006 (see s. 2 and <i>Gazette</i> 2 Jun 2006 p. 1985)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<b>Reprint 3: The Water Agencies (Powers) Act 1984 as at 4 Aug 2006</b> (includes amendments listed above)			
<i>Water Resources Legislation Amendment Act 2007</i> Pt. 6	38 of 2007	21 Dec 2007	1 Feb 2008 (see s. 2(2) and <i>Gazette</i> 31 Jan 2008 p. 251)
<i>Standardisation of Formatting Act 2010</i> s. 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

## Water Agencies (Powers) Act 1984

### Notes Other notes

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Short title	Number and year	Assent	Commencement
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<b>Reprint 4: The Water Agencies (Powers) Act 1984 as at 7 Jan 2011</b> (includes amendments listed above)			
<i>Building Act 2011</i> s. 175	24 of 2011	11 Jul 2011	2 Apr 2012 (see s. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033)
<i>Statutes (Repeals and Minor Amendments) Act 2011</i> s. 16	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))
<i>Water Services Legislation Amendment and Repeal Act 2012</i> Pt. 6	25 of 2012	3 Sep 2012	Pt. 6 (other than s. 77(1), 82(1) and 83-85): 18 Nov 2013 (see s. 2(b) and <i>Gazette</i> 14 Nov 2013 p. 5028); s. 77(1), 82(1) and 83-85: 1 Jul 2014 (see s. 2(b) and <i>Gazette</i> 14 Nov 2013 p. 5028)
<b>Reprint 5: The Water Agencies (Powers) Act 1984 as at 17 Jan 2014</b> (includes amendments listed above except those in the <i>Water Services Legislation Amendment and Repeal Act 2012</i> s. 77(1), 82(1) and 83-85 )			
<i>COVID-19 Response and Economic Recovery Omnibus Act 2020</i> Pt. 5 Div. 2 Subdiv. 5	34 of 2020	11 Sep 2020	12 Sep 2020 (see s. 2(b))
<i>Swan Valley Planning Act 2020</i> Pt. 10 Div. 16	45 of 2020	9 Dec 2020	1 Aug 2021 (see s. 2(1)(e) and SL 2021/124 cl. 2)

### Other notes

- <sup>1</sup> Repealed by the *Water Resources Legislation Amendment Act 2007* s. 189.
- <sup>2</sup> Under the *Public Sector Management Act 1994* s. 112(1) a reference to the *Public Service Act 1978* is to be read as a reference to the *Public Sector Management Act 1994*. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).
- <sup>3</sup> The *Acts Amendment (Water Authority Rates and Charges) Act 1987* s. 4 reads as follows:

#### 4. Application of Part

The amendments effected by this part are of no effect in relation to the *Land Drainage Act 1925* or the doing of anything under or for

the purposes of that Act and the principal Act applies in relation thereto as if this Part had not been enacted.

<sup>4</sup> The *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* s. 11(2) and (3) read as follows:

- (2) The repeal of section 6(1) of the principal Act by this section does not affect the application of any regulations, by-laws or rules that continued to apply under that subsection and were in force immediately before the commencement of this section.
- (3) Regulations, by-laws or rules referred to in subsection (2) may be amended or repealed —
  - (a) in the case of regulations or by-laws, as if they were made under the principal Act as amended by this Act; and
  - (b) in the case of rules, as if they were by-laws made under the principal Act as amended by this Act.

<sup>5</sup> The *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* s. 20(2) reads as follows:

- (2) Any by-laws made or deemed to be made under section 34(1) of the principal Act as in force immediately before the commencement of this section are to continue in operation and have effect for all purposes as if made under that subsection as amended by this section.

<sup>6</sup> The *Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996* s. 9 reads as follows:

**9. Application**

- (1) The amendments made by section 10 apply only in relation to a charge in respect of a lot created through a subdivisional plan or diagram approved by the Western Australian Planning Commission after 30 June 1996.
- (2) The amendments made by section 11 apply if the request to defer payment of an amount in respect of headworks is made after 30 June 1996, regardless of whether the requirement to pay the amount was imposed before or after this Act commenced.

<sup>7</sup> The *Water Legislation Amendment (Competition Policy) Act 2005* s. 62(2) and (3) read as follows:

- (2) Any procedure that —
- (a) has begun under the *Water Agencies (Powers) Act 1984* section 81 in relation to —
    - (i) the acquisition by the Corporation of land or an estate or interest in land; or
    - (ii) the claiming, determination, assessment or recovery of compensation payable by the Corporation in relation to such an acquisition;
  - and
  - (b) has not been completed immediately before the commencement of this section,
- may be continued and completed under section 81 of that Act as if subsection (1) had not been enacted.
- (3) In subsection (2) —
- Corporation** has the meaning given to that term in the *Water Agencies (Powers) Act 1984* section 3(1).

<sup>8</sup> The *Workplace Agreements Act 1993* expired on 14 September 2003.

<sup>9</sup> The *Water Resources Legislation Amendment Act 2007* Pt. 11 deals with certain transitional issues some of which may be relevant for this Act.

<sup>10</sup> Now known as the *Water Agencies (Powers) Act 1984*; short title changed (see note under s. 1).

<sup>11</sup> The *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* Pt. 14 contains transitional provisions relating to the replacement of the Water Authority and Waterways Commission with the Water Corporation, Water and Rivers Commission and the Coordinator of Water Services.

<sup>12</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
alleged offence .....	103(1)
alleged offender .....	103(1)
authorised person .....	103(1)
CEO .....	3(1)
conduit .....	3(1)
confidential information.....	112(4)
Department.....	3(1)
department .....	3(1), 104(9), 105(8)
designated person.....	103(1)
drain .....	3(1)
employing authority .....	104(9), 105(8)
ERA Minister .....	14(12)
exempt works .....	86
fittings .....	3(1)
fixtures .....	3(1)
former Authority .....	3(1)
former Commission .....	3(1)
former Minister .....	3(1)
functions .....	3(1)
general works .....	86
government department .....	3(1)
infringement notice .....	103(1)
land .....	3(1), 74
Land Administration Minister.....	81(14)
major works .....	86
Metropolitan Water, Sewerage, and Drainage Area .....	3(1)
Ministerial Body .....	3(1)
ministerial officer.....	15(6)
modified penalty .....	103(1)
occupier.....	3(1)
organisation.....	104(9), 105(8)
owner .....	3(1)
pipe .....	3(1)
plant .....	3(1)
premises .....	3(1)
prescribed person .....	103(1)
property sewer.....	3(1)
related entity .....	108(3)
relevant Act.....	3(1)
relevant Minister .....	81(14)

Defined terms

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reservoir .....	3(1)
road .....	3(1)
sewage.....	3(1)
sewer .....	3(1)
specified .....	36(5)
statutory authority .....	3(1)
street.....	3(1)
surplus water .....	3(1)
wastewater .....	3(1)
water corporation .....	106(1A)
water resources .....	3(1)
water resources Act.....	18(2)
water services.....	3(1)
water services licensee .....	14(12)
watercourse .....	3(1)
well .....	3(1)
wetland.....	3(1)
works.....	3(1)