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WATER AND RIVERS
COMMISSION



Government of
Western Australia



Current Legislation

Rights in Water and Irrigation Act 1914
with extracts from the Water and Rivers Commission Act 1995
and Water Agencies (Powers) Act 1984

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 WESTERN AUSTRALIA**

This document is the third of a set of three titled:

Water law reform: Summary of legislative change

Water law reform: Guide to legislative change

Water law reform appendix: Current legislation.

The purpose of this document is to present the existing legislation to give the reader of the first and second volumes information on the current law.

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rights in water and irrigation act 1914

AN ACT relating to Rights in Natural Waters, to make provision for the Conservation and Utilization of Water for Industrial Irrigation, and for the Construction, Maintenance, and Management of Irrigation Works, and for other purposes.

Part I – Preliminary

Short title

1. This Act may be cited as the *Rights in Water and Irrigation Act 1914*

Interpretation

2. (1) In this Act, unless the contrary intention appears –

“**artesian well**” means a well, including all associated works, from which water flows, or has flowed, naturally to the surface;

“**bed**” with reference to any water-course, lake, lagoon, swamp or marsh means the land over which normally flows, or which is normally covered by, the water thereof, whether permanently or intermittently; but does not include land from time to time temporarily covered by the flood waters of such water-course, lake, lagoon, swamp or marsh, and abutting on or adjacent to such bed;

“**Commission**” means the Water and Rivers Commission established by section 4 of the *Water and Rivers Commission Act 1995*;

“**Corporation**” means the Water Corporation established by section 4 of the *Water Corporation Act 1995*;

“**Crown land**” means land vested in Her Majesty which is not for the time being dedicated to any public purpose, or subject to any grant, lease, licence, contract, or engagement made by or on behalf of Her Majesty;

“**District**” means an Irrigation District or “irrigation district” constituted under this Act;

“**former Authority**” means the Water Authority of Western Australia under the *Water Authority Act 1984* before the commencement of Part 2 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995*;

“**former Minister**” means a Minister administering this Act before, pursuant to the Water Authority Act 1984, the former Authority became charged with the administration of functions under this Act, whether in his capacity as a Minister of the Crown or as (pursuant to section 2 of the *Water Supply, Sewerage, and Drainage Act 1912* as read with this Act) a body corporate;

“**irrigation**” means any method of causing water from a water-course or works to flow upon and spread over land for the purpose of cultivation of any kind or of tillage or improvement of pasture, or of applying water to the surface of land for the like purpose;

“**irrigation charge**”, in relation to land, means a water charge in respect of that land relating to the provision of irrigation under this Act;

“**Lake, lagoon, swamp or marsh**” means a natural collection of water whether permanent or temporary, that is not part of a watercourse;

“**non-artesian well**” means a well, including all associated works, from which water does not flow, and has not flowed, naturally to the surface, but has to be raised, or has been raised, by pumping or other artificial means;

“**prescribed**” means prescribed under the *Water Agencies (Powers) Act 1984* for the purposes of this Act or that Act, as the case requires;



“spring” means a spring of water naturally rising to and flowing over the surface of land;

“water charge”, in relation to land, means a charge made under the *Water Agencies (Powers) Act 1984* in respect of that land relating to a water service provided under this Act;

“water-course” means –

- (a) any river, creek, stream or brook, whether artificially improved or altered or not;
- (b) any conduit that wholly or partially diverts a river, creek, stream or brook from its natural course and forms part of the river, creek, stream or brook;
- (c) any natural collection of water into, through or out of which any thing referred to in paragraph (a) or (b) flows, whether artificially improved or altered or not,

in which water flows or is contained whether permanently, intermittently or occasionally, together with the bed and banks of any thing referred to in paragraph (a), (b) or (c).

- (2) Terms not otherwise assigned a meaning under subsection (1) but referred to in section 3 of the *Water Agencies (Powers) Act 1984* as having a meaning assigned for the purposes of a relevant Act have that meaning in and for the purposes of this Act.

Part III – Control of Waters

Division 1 – Certain surface waters

Application of Division

- 6. (1) This Division does not apply to or in relation to –
 - (a) the water flowing from any spring the water of which rises to the surface on land that has been granted or demised by the Crown until it has passed beyond the boundaries of the land belonging to the owner or occupier of the land on which the water so rises; or
 - (b) the water in any lake, lagoon, swamp, or marsh the bed of which is on land that has been granted or demised by the Crown and is wholly within the boundaries of the land belonging to the owner or occupier of the land on which it is situate.
- (2) Subject to subsection (1) and any proclamation under subsection (3), this Division applies to and in relation to every water-course, lake, lagoon, swamp, or marsh that is for the time being situated within the boundaries of a District but not otherwise.
- (3) Subject to subsection (4), the Governor may, on the recommendation of the Minister, at any time and from time to time by proclamation declare that this Division –
 - (a) shall; or
 - (b) shall not,apply to and have effect in relation to any water-course, lake, lagoon, swamp, or marsh specified in the proclamation or situated in a portion of the State so specified and any such proclamation shall have effect according to its tenor.
- (4) A proclamation under subsection (3) shall not be made unless, at least 30 days before the proclamation is made, notice of the proposed proclamation has been given to each interested local authority for the purpose of enabling it to make such objections or representations as it sees fit.
- (5) For the purposes of subsection (4), where a water-course, lake, lagoon, swamp, or marsh runs through, is contiguous to, or is situated wholly or partly in, the district of a local authority that local authority is, in relation to a proposed proclamation under that subsection affecting that water-course, lake, lagoon, swamp or marsh, an interested local authority.

Saving

7. A proclamation made under section 27 (5) as enacted before the coming into operation of section 3 of the *Rights in Water and Irrigation Amendment Act 1984* and in force immediately, before the coming into operation of that section shall –
- (a) in the case of a proclamation under paragraph (a) or (b) thereof, be deemed to have been made under section 6 (3) (a);
 - (b) in the case of a proclamation under paragraph (c) thereof, be deemed to have been made under section 6 (3) (b),
- and a reference in any such proclamation to this Part shall be read as a reference to this Division.

Natural waters vest in the Crown

8. (1) The right to the use and flow and to the control of the water at any time in any water-course, lake, lagoon, swamp, marsh or spring shall, subject to this Act and until appropriated under this or any other Act, vest in the Crown.
- (2) This section shall not operate so as to prevent any person from draining any land, or making any dam or tank upon any land, of which he is the owner or occupier if the flow of water in any water-course or the amount of water in any lake, lagoon, swamp or marsh is not thereby sensibly diminished.

Riparian right defined

9. (1) Subject to this section, the owner or occupier of any land alienated from the Crown through or contiguous to which runs any watercourse, or contiguous to which, or partly within which, is situate any lake, lagoon, swamp or marsh, has the right, as such owner or occupier, to take water in that water-course, lake, lagoon, swamp or marsh, free of charge –
- (a) for the domestic and ordinary use of himself and of his family and servants; and
 - (b) for watering cattle or other stock,
- and every owner of land alienated from the Crown before the relevant day has a further right to take such water for the irrigation of a garden not exceeding 2 hectares in extent, being part of that land and used in connection with a dwelling.
- (2) For the purposes of this section –
- (a) “the relevant day”, in relation to land through or contiguous to which runs a water-course, or contiguous to which or partly within which is situate a lake, lagoon, swamp or marsh, means –
 - (i) where this Division applies to and has effect in relation to the water-course, lake, lagoon, swamp or marsh by reason of a proclamation under section 6 (3), the day on which that proclamation was published;
 - (ii) in any case, the day when this Act came into operation; and
 - (b) land that, on the relevant day, was or is in process of alienation shall be deemed to have been alienated before that day.
- (3) Where any public works of water supply constructed before or after the commencement of this Act wholly or partially supplies or augments the volume of water in any water-course, lake, lagoon, swamp or marsh, the right conferred by subsection (1) on an owner or occupier to take water in that water-course, lake, lagoon, swamp or marsh is subject to the limitations set out in subsection (4) and shall be exercised only in accordance with that subsection and the regulations.
- (4) After the construction of any public works of water supply a person is not entitled by subsection (1) to take any more of the water of the water-course, lake, lagoon, swamp or marsh concerned than –
- (a) 14 kilolitres per day for domestic and ordinary use and for watering cattle or other stock, in respect of every kilometre of frontage measured by the general course to such water-course, or to such lake, lagoon, swamp or marsh, and 8 500 cubic metres per annum for the irrigation of a garden not



- exceeding 2 hectares in extent, being part of the land adjoining the bed thereof, and used in connection with a dwelling; or
- (b) the amount of water that would be available to him and to which he would be so entitled but for the existence of such works,
- whichever is the lesser.

Other rights to water

10. (1) Any person may take water for domestic and ordinary use, and for watering cattle or other stock from any water-course, lake, lagoon, swamp or marsh, vested in the Crown and to which there is access by a public road or reserve.
- (2) No right to take and divert water from any water-course, lake, lagoon, swamp or marsh for use on any land adjacent to the bed thereof shall be acquired by any owner of such land, and no right to the permanent diversion or to the exclusive use of such water shall be acquired by any person, by length of use or otherwise, except under this or any other Act.

Other diversions to be licensed

11. A person who, not being authorized by section 9 or 10 or any other Act to do so, diverts or takes any water from any water-course, lake, lagoon, swamp or marsh or causes, suffers, or permits any of those things to be done except pursuant to a licence issued for that purpose under section 12 or 13 commits an offence and is liable to a fine not exceeding \$2 000 and, where the offence continues after conviction, \$200 for each day that the offence so continues.

Certain riparian owners may apply for special licences to divert and use water

12. (1) Where –
- (a) a proclamation is made, or deemed to have been made, under section 6 (3) (a) in respect of a water-course, lake, lagoon, swamp, or marsh; and
- (b) before the relevant day, the owner or occupier, or each of successive owners or occupiers, of land alienated from the Crown before the relevant day has permanently diverted, or at intervals during every year exclusively taken and used, the water of the water-course, lake, lagoon, swamp, or marsh for any purpose or use other than –
- (i) the domestic and ordinary use of himself and his family and servants;
- (ii) the watering of cattle or other stock, or
- (iii) the irrigation of a garden not exceeding 2 hectares in extent, being part of that land and used in connection with a dwelling,
- the owner or occupier of the land may, within 12 months after the relevant day, apply to the Commission for a special licence authorizing the continuation of such diversion, taking, or use for a period of 10 years after the relevant day.
- (2) For the purposes of subsection (1) –
- (a) “the relevant day”, in relation to a water-course, lake, lagoon, swamp or marsh referred to in that subsection, means the day on which the proclamation mentioned in that subsection was published; and
- (b) land that, on the relevant day, was or is in process of alienation shall be deemed to have been alienated before that day.
- (3) An application under subsection (1) shall be in the prescribed form duly completed and signed by the applicant or by his agent duly empowered in writing.
- (4) The Commission shall cause notice of every application under subsection (1) to be published in the Gazette, and in at least one issue of a newspaper circulating generally in the neighbourhood of the land, and shall direct copies of the notice to be served on such persons as it thinks fit, and shall appoint a time,

not more than 6 months from the date of the notice or of the first of such advertisements, within which objections to the application may be received.

- (5) Where an owner or occupier of land makes an application under subsection (1), an owner or occupier of any other land that is –
 - (a) within 4.8 kilometres of that land;
and
 - (b) contiguous to the water-course, lake, lagoon, swamp, or marsh to which the application relates,may make an objection to the application being granted, by writing addressed to the Commission and setting out the grounds of the objection.
- (6) The Commission after such inquiry into the subject matter of the application and of any objections thereto as the Commission thinks proper to direct may refuse the application or may grant the application either wholly or in part.
- (7) Where the Commission grants the application it shall issue to the applicant a special licence in respect of the land and user of the water specified in the application or of so much of such land and water as the Commission thinks fit.
- (8) A special licence under this section shall be subject to such special conditions and provisions, if any, as the Commission determines and to the provisions of this Act and, notwithstanding that it is expressed to be for a period of 10 years, may be determined or modified at any time in the event or manner prescribed by this section.
- (9) The holder of a special licence under this section may divert, take, and use water to the extent and in respect of the land and in the manner specified in the licence.
- (10) If at any time during the currency of a special licence under this section it is proved to the satisfaction of the Commission that the licensee has failed to observe and perform the conditions and provisions subject to which the licence was issued and held, or that it is expedient, in the interests of the public, that the licence should be determined or modified, the Commission may give the licensee notice in writing by registered post that the Commission intends, after the expiration of one month from the date of such notice, to determine or to modify the licence.
- (11) Unless the licensee, before the expiration of the month fixed under subsection (10), shows to the Commission sufficient cause why the licence should not be determined or modified the Commission may make an order determining or modifying the licence.
- (12) If an order under subsection (11) is made in the interests of the public the Commission may, with the approval of the Minister, recommend to the Governor payment to the licensee by way of compensation of such amount out of the Consolidated Fund as to the Commission seems equitable, and if the Governor approves of such recommendation effect shall be given thereto accordingly.

Licences, other than special licences

13. (1) The Commission may grant to any owner or occupier of land a licence, subject to such terms, limitations and conditions, if any, as may be specified or referred to therein or as may be prescribed for the purposes of this section, to take, divert, use, or dispose of water from any watercourse, lake, lagoon, swamp or marsh, and may from time to time thereafter renew any licence so granted.
- (2) Subject to subsection (3) a licence granted under this section shall have effect for such period as may be specified therein.
- (3) Subject to section 14, the Commission, at any time during the currency of a licence granted under this section, by notice in writing served on the licensee, may –
 - (a) vary the period for which the licence is to have effect;
 - (b) vary or add to the terms, limitations, or conditions imposed in relation to a licence; or



- (c) in the case of a licence which is not subject to any terms, limitations, or conditions, provide that it shall be subject to such terms, limitations or reasonable conditions as are specified in the notice.

Appeals

14. (1) A person who is aggrieved by the refusal of his application for a licence or the holder of a licence who is aggrieved by any term, limitation, condition, or provision imposed in relation to a licence granted or renewed under section 12 or 13 may, within 30 days after written notice of the decision appealed against is received, give to the Minister notice of his wish to be heard.
- (2) Where the Minister receives a notice under subsection (1), the Minister shall cause an inquiry to be conducted by such person or persons as he shall appoint and the person aggrieved has the right to be heard at that inquiry; and the Minister shall thereafter give such decision as he thinks fit and effect shall be given thereto.

The alveus of waters not alienated

15. (1) Subject to subsection (4), where a water-course, lake, lagoon, swamp or marsh forms the boundary or part of the boundary of a parcel of land that has at any time been alienated by the Crown, the bed thereof shall, for the purposes of this Act, be deemed to have remained the property of the Crown, and not to have passed with the land so alienated.
- (2) Subject to subsection (4), where a water-course, lake, lagoon, swamp or marsh forms the boundary, or part of the boundary of a parcel of land that is alienated by the Crown, the bed thereof shall, notwithstanding such alienation, remain the property of the Crown, and shall not pass with the land so alienated.
- (3) Subsections (1) and (2) apply notwithstanding that one and the same person has been or is the owner of the lands adjacent to both banks.
- (4) This section does not apply to –
- (a) the bed of a natural collection of water into and out of which flows a river, stream, or creek to the extent that it exceeds in width the width of the river, stream, or creek at its inlet to or outlet from that natural collection of water; or
- (b) the bed of a natural collection of water, whether or not it is part of a water-course, to the extent that it is cultivated, either wholly or in part, at any time during the year, or is capable of being drained and cultivated.

Owner of land adjacent to water-course to have certain rights

16. (1) Notwithstanding anything in section 15 –
- (a) the owner or occupier for the time being of any land adjacent to any water-course, lake, lagoon, swamp, or marsh, the bed whereof is by this Act declared to have remained the property of the Crown, shall have the like access to the portion of the bed to which that land is adjacent, and the like use of that portion as if this Act had not passed unless such portion has been actually appropriated by or is under the sanction of the Crown for any of the purposes of this Act; and
- (b) such owner or occupier may have and pursue against any person trespassing upon that portion of the land any remedy for trespass which he might have had and pursued if this Act had not been passed, and as if that person were a trespasser upon land in the possession of such owner or occupier.
- (2) The Commission may, with the approval of the Minister, in the name and on behalf of the Crown, grant to the owner or occupier of any land adjacent to any water-course, lake, lagoon, swamp, or marsh the bed whereof is by this Act declared to have remained the property of the Crown, permission subject to such conditions as the Commission out works at the expense of that owner or occupier for the protection of that land from damage by erosion or flooding, if in the opinion of the Commission such works will not injuriously affect the bed or unduly obstruct the water-course, lake, lagoon, swamp or marsh.

- (3) This section shall not be taken to restrict the right of the Crown to pursue any remedy against any person trespassing upon such bed nor shall this section entitle an owner or occupier to have or pursue any remedy for trespass against the Crown, the Commission, or a former Minister, or any person acting under the authority of the Crown, the Commission, or a former Minister.
- (4) A person exercising in respect of a bed a right of access or use conferred by subsection (1) does not by reason thereof trespass upon such bed.

Interference prohibited

17. (1) Where, whether before or after the coming into operation of this Act, land was or is granted or demised by the Crown, a person shall not, except as authorized by or under this or any other Act, obstruct, destroy, or interfere with any water-course, race, or drain flowing through or over the land, or any dam or reservoir, or the bed of any disused watercourse, race, or drain, that is on the land.
- (2) Subsection (1) applies notwithstanding that although the watercourse, race, or drain flowed through or over the land, or the dam or reservoir, or the bed of a disused water-course, race, or drain, was on the land at the time of the grant or demise of the land, an appropriate reservation or exception was not included in the Crown grant or lease.
- (3) A person shall not, except as authorized by or under this or any other Act, obstruct, destroy or interfere with the waters, bed or banks of any water-course flowing through or over, or lake, lagoon, swamp or marsh situate wholly or partly on, land that has not been granted or demised by the Crown.
- (4) Any person who obstructs, destroys, or interferes with anything contrary to subsection (1) or (3) is guilty of an offence against this section; and any person who, being the occupier of any land granted or demised as mentioned in subsection (1), continues or fails to remove any such obstruction or interference is guilty of an offence against this section on every day during which such obstruction or interference is continued or not removed after notice in writing to discontinue or to remove the same has been given by or on behalf of the Commission to such occupier.
- (5) A prosecution for an offence against this section may be commenced at any time within 2 years after the offence was committed and not afterwards.
- (6) The Commission may, by notice in writing, direct any person who has been convicted of an offence against this section to carry out such works and take such other measures as the Commission specifies in the notice for the purpose of restoring the bed or banks of the water-course, race, drain, lake, lagoon, swamp or marsh or minimizing the effect of the obstruction or destruction thereof or interference therewith.
- (7) Where a direction contained in a notice given under subsection (6) has not been complied with and the time allowed by the notice for compliance has expired the Commission may cause such works to be carried out and measures to be taken as the Commission considers appropriate for achieving the purposes of the notice, and the Commission may recover the expenses thereby reasonably incurred as a debt due from the person to whom the notice was given.

Obstruction of flow

18. Any person who conveys or discharges, or causes or permits to be conveyed or discharged any sludge, mud, earth, gravel, or other matter likely to obstruct the flow of the current, into any water-course, is guilty of an offence against this Act.

Division 2 – Other surface waters

Application of Division

19. (1) Subject to subsection (2), this Division applies to and has effect in relation to every water-course, lake, lagoon, swamp, or marsh to and in relation to which Division 1 does not apply.
- (2) This Division does not apply to or in relation to –



- (a) the water flowing from any spring the water of which rises to the surface on land that has been granted or demised by the Crown until it has passed beyond the boundaries of the land belonging to the owner or occupier of the land on which the water so rises;
- or
- (b) the water in any lake, lagoon, swamp, or marsh the bed of which is on land that has been granted or demised by the Crown and is wholly within the boundaries of the land belonging to the owner or occupier of the land on which it is situate.

Riparian right defined

20. (1) The owner or occupier of any land alienated from the Crown through or contiguous to which runs any water-course, or contiguous to which, or partly within which, is situate any lake, lagoon, swamp or marsh, has the right, as such owner or occupier, to take water in that water-course, lake, lagoon, swamp or marsh, free of charge –
- (a) for the domestic and ordinary use of himself and of his family and servants;
 - (b) for watering cattle or other stock;
 - and
 - (c) to the extent that the flow of water in the water-course or the amount of water in the lake, lagoon, swamp or marsh, as the case may be, is not thereby sensibly diminished, for any other purpose,
- and every owner of land alienated from the Crown before the commencement of this Act has a further right to take such water for the irrigation of a garden not exceeding 2 hectares in extent, being part of that land and used in connection with a dwelling.
- (2) For the purposes of this section, land in process of alienation at the commencement of this Act shall be deemed to have been alienated before the commencement of this Act.

Other rights to water

21. (1) Any person may take water –
- (a) for domestic and ordinary use;
 - (b) for watering cattle or other stock;
 - and
 - (c) to the extent that the flow of water in the water-course or the amount of water in the lake, lagoon, swamp or marsh, as the case may be, is not thereby sensibly diminished, for any other purpose,
- from any water-course, lake, lagoon, swamp or marsh that is vested in the Crown and to which there is access by a public road or reserve.
- (2) No right to take and divert water from any water-course, lake, lagoon, swamp or marsh for use on any land adjacent to the bed thereof shall be acquired by any owner of such land, and no right to the permanent diversion or to the exclusive use of such water shall be acquired by any person, by length of use or otherwise, except under this or any other Act.

Directions

22. (1) The Commission may, where the Commission is of the opinion that –
- (a) any person –
 - (i) having a right under section 20 or 21 to take water in a water-course, lake, lagoon, swamp, or marsh, has diverted, taken, or used such water for a purpose or to an extent not authorized by this Division; or
 - (ii) not having a right under section 20 or 21 to take water in a water-course, lake, lagoon, swamp, or marsh, has diverted, taken, or used such water; and
 - (b) the unauthorized diversion, taking, or use –
 - (i) resulted in or contributed to the interference with the enjoyment by any other person of a right conferred by this Division, or any damage or injury to the land of any other person; or

- (ii) should not, in the public interest, be permitted to continue, by notice in writing give directions to the person who has so diverted, taken, or used the water defining, where applicable, the purposes for which, or the extent to which, water may be diverted, taken, or used by that person in the exercise of those rights and specifying the extent, if any, to which, the manner in which, and the conditions upon which, that person may divert, take, or use such water otherwise than in the exercise of those rights.
- (2) A direction given by the Commission under subsection (1) may be varied or cancelled by the Commission by subsequent notice in writing.
- (3) A direction given under subsection (1) shall not permit the diversion, taking, or use of water otherwise than in the exercise of a right under section 20 or 21 unless the Commission is satisfied that such diversion, taking, or use will not result in or contribute to any interference, damage, or injury of the kind referred to in subsection (1) (b) (i).
- (4) Where by notice under subsection (1) or (2) the Commission gives to a person a direction or varies a direction previously given and, after the expiry of 30 days from the giving of the notice, the person to whom the notice was given diverts, takes, or uses water contrary to the direction so given or the direction as so varied that person commits an offence and is liable to a fine not exceeding \$500; and if the offence of which he is convicted is continued after the conviction he commits a further offence and is liable to a further fine not exceeding \$50 for every day on which the offence is so continued.

Appeals

23. (1) A person to whom a notice is given under section 22 or any other person who is aggrieved by a direction contained in a notice even under section 22 (1) or such a direction as varied may, within 30 days after he is given notice of the direction or variation or, where he is not the person to whom the notice is given, within 30 days after he has knowledge of the direction or variation, give to the Minister notice that he wishes to be heard.
- (2) Where the Minister receives a notice under subsection (1), the Minister shall cause an inquiry to be conducted by such person or persons as he shall appoint and the person aggrieved has the right to be heard at that inquiry; and the Minister shall thereafter give such decision as he thinks fit and effect shall be given thereto.
- (3) Every person appointed by the Minister under subsection (2) shall be chosen from amongst persons who are either a magistrate as defined by the *Justices Act 1902*, or who, due to their qualifications and experience, are otherwise suitable to conduct the inquiry.

Saving of civil remedy

24. Nothing contained in, or done under, this Division affects any remedy to which a person would otherwise be entitled in civil proceedings except that a person shall not be liable to be proceeded against in respect of any diversion, taking, or use of water that is permitted by a direction under section 22.

Offences

25. (1) A person shall not, except as authorized by or under this or any other Act, obstruct, destroy, or interfere with the waters, bed, or banks of any water-course flowing through or over, or lake, lagoon, swamp or marsh situate wholly or partly on, land that has not been granted or demised by the Crown.
- (2) Any person who obstructs, destroys, or interferes with anything contrary to subsection (1) is guilty of an offence against this section.
- (3) A prosecution for an offence against this section may be commenced at any time within 2 years after the offence was committed and not afterwards.
- (4) The Commission may, by notice in writing, direct any person who has been convicted of an offence against this section to carry out such works and take such other measures as the Commission specifies in



the notice for the purpose of restoring the bed or banks of the water-course, lake, lagoon, swamp or marsh or minimizing the effect of the obstruction or destruction thereof or interference therewith.

- (5) Where a direction contained in a notice given under subsection (4) has not been complied with and the time allowed by the notice for compliance has expired the Commission may cause such works to be carried out and measures to be taken as the Commission considers appropriate for achieving the purposes of the notice, and the Commission may recover the expenses thereby reasonably incurred as a debt due from the person to whom the notice was given.

Division 3 – Underground waters

Rights to underground waters vest in the Crown

26. The right to the use and flow and to the control of the water at any time in any underground source of supply shall, subject to this Act and until appropriated under this or any other Act, vest in the Crown.

Artesian wells to be licensed

- 26A.(1) A person shall not, except pursuant to a licence issued for that purpose under section 26D, commence, construct, enlarge, deepen, alter, or draw water from any artesian well or cause, suffer, or permit any of those things to be done.
- (2) A person who –
 - (a) being an owner or occupier of land, contravenes or fails to comply with subsection (1); or
 - (b) being a person engaged for the purpose of carrying out any work mentioned in subsection (1), commences or carries out any such work that is not authorized by a licence issued under section 26D, commits an offence and is liable to a fine not exceeding \$2 000 and, where the offence continues after conviction, \$200 for each day that the offence so continues.

Non-artesian wells in certain areas to be licensed

- 26B.(1) The Governor may by proclamation declare any part of the State named or defined in the proclamation, to be a proclaimed area for the purposes of this section; and may, by subsequent proclamation, vary or cancel any such proclamation.
- (2) Section 42 of the *Interpretation Act 1984*, applies to any proclamation made under subsection (1) as though the proclamation were a regulation.
 - (3) Subject to subsection (4) and section 26C, a person shall not, except pursuant to a licence issued for that purpose under section 26D, commence, construct, enlarge, deepen, alter or draw water from any non-artesian well that is situate in a proclaimed area, or cause, suffer or permit any of those things to be done.
 - (4) Where any work required by this section to be the subject of a licence has, on the day of the publication of a proclamation made under subsection (1) declaring the part of the State in which the well is situate to be a proclaimed area, been commenced and is not completed, the occupier of the land on which the work was commenced shall, within 2 months after that day, apply for a licence under section 26D for that work.
 - (5) Subject to section 26C, where an existing non-artesian well is, by operation of a proclamation made under this section, brought into a proclaimed area, the occupier of the land upon which the well is situate shall, within 2 months after the day of the publication of the proclamation, apply for a licence under section 26D to draw water from that well.
 - (6) A person who –
 - (a) being an owner or occupier of land, contravenes or fails to comply with this section; or
 - (b) being a person engaged for the purpose of carrying out any work mentioned in subsection (3), commences or carries out any such work that is not authorized by a licence issued under section 26D,

commits an offence and is liable to a fine not exceeding \$2 000 and, where the offence continues after conviction, \$200 for each day that the offence so continues.

Exemptions

- 26C. (1) In this section “**proclaimed area**” has the same meaning as it has in section 26B.
- (2) The Governor may, by Order in Council published in the *Gazette*, declare that sections 26B (3) to 26B (6) do not apply in relation to a non-artesian well situated, or to be situated, in a proclaimed area or part thereof specified in the Order if that well is used or to be used for the drawing of water for –
- (a) the domestic and ordinary use of the owner or occupier of the land on which the well is, or is to be, situated and of their respective families and servants;
 - (b) the watering of cattle or other stock; or
 - (c) any one or more of the purposes mentioned in paragraph (a) or (b),
- but no other purpose and an Order published under this subsection shall have effect according to its tenor.
- (3) The Governor may, by a subsequent Order in Council published in the *Gazette*, vary or cancel an Order under subsection (2).
- (4) Where an Order published under subsection (3) varies or cancels a previous Order so published –
- (a) a person does not contravene section 26B (3) or (6) by reason of the doing, within 2 months after the publication of the Order effecting the variation or cancellation, of anything that would not have contravened that provision had the previous Order not been so varied or cancelled;
 - (b) in relation to work that, but for the variation or cancellation of the previous Order, would, by reason of that Order, not have been required under section 26B to be the subject of a licence, section 26B (4) applies as if the day on which the Order effecting the variation or cancellation was published were the day on which a proclamation were made under section 26B (1) declaring the part of the State concerned to be a proclaimed area; and
 - (c) in relation to a non-artesian well from which, but for the variation or cancellation of the previous Order, a person would, by reason of that Order, not have been prevented from drawing water, section 26B (5) applies as if the day on which the Order effecting the variation or cancellation was published were the day on which a proclamation were made under section 26B (1) bringing the well into a proclaimed area.

Application for and issue of licences

- 26D. (1) Every application for a licence for the commencement or construction of an artesian well or a non-artesian well or for the enlargement, deepening or altering of, or the drawing of water from, an existing well shall be made to the Commission in the prescribed form and shall be accompanied by the prescribed plans and specifications, together with a statement of the purposes for which it is proposed to use the water.
- (2) The Commission may –
- (a) issue a licence to the applicant subject to such terms, limitations and conditions as the Commission thinks fit;
 - (b) before granting a licence, require such alterations to be made in, or in connection with, the work or the plans and specifications as the Commission thinks fit; or
 - (c) refuse a licence.
- (3) A licence shall be deemed to be held by, and shall operate for the benefit of, the lawful owner and the occupier, for the time being, of the land whereon the well is sunk or is proposed to be sunk.
- (4) An applicant for a licence who is aggrieved by any decision of the Commission made under this section may, within 30 days after receiving advice of the decision, give notice to the Minister of his wish to be heard, before the decision is implemented.



- (5) Where the Minister receives a notice such as is mentioned in subsection (4), the Minister shall cause an inquiry to be conducted by such persons as he shall appoint including at least one person nominated by the person aggrieved, and the person aggrieved has the right to be heard at any such inquiry; and the Minister shall thereafter give such decision as he thinks fit and effect shall be given thereto.

Information on non-artesian wells

26E.(1) Where after the coming into operation of section 3 of the *Rights in Water and Irrigation Amendment Act 1984* a non-artesian well is constructed or deepened, the person who carries out the work shall, within 1 month after completing the construction of or deepening of the well, furnish, in the prescribed form, to the Commission or to such other person as the Commission may direct such information in respect of the well as is prescribed.

Penalty: \$500.

- (2) The Commission may, by notice published in the *Gazette*, exempt persons from the requirement of complying with subsection (1) in respect of wells in any part of the State and may, by subsequent notice so published, vary or cancel any such notice.

Penalty for alterations in licensed well or contravention of licence

26F.(1) During the currency of a licence issued under section 26D no alterations shall be made in or in connection with the well, nor shall the water from the well be used for purposes other than those authorized by the licence but works necessary for the maintenance of the well in good order or occasioned by any unforeseen emergency may be carried out if written notice of all such works is given to the Commission within 7 days after the same are commenced.

- (2) Any person who contravenes this section, or contravenes or fails to carry out any condition of the licence, shall be liable to a penalty not exceeding \$2 000 and a further penalty of \$200 for each day during which the offence continues after conviction; and, in addition to the imposition of the said penalty, the Commission may cancel the licence given in respect of the well in regard to which the offence was committed; and a person shall not thereafter do, or cause, suffer or permit to be done, any thing that was authorized by the licence to be done.
- (3) The holder of any such licence may, during the currency thereof, apply for an amended licence allowing alterations in the well; and every such application shall be dealt with as is herein provided in respect of applications for a licence in the first instance.

Powers of Commission in case of improper use of water

26G.(1) If the Commission is of the opinion that water drawn from any artesian well or from a non-artesian well in relation to which section 26B (3) applies, whenever constructed –

- (a) is being improperly used;
- (b) is being wasted, whether by reason of neglect, failure to effect repairs or alterations reasonably necessary for the proper maintenance of the well or any other cause;
- (c) is having harmful effect; or
- (d) is not being used to the best advantage,

the Commission may, after giving 30 days notice of the intention in that regard, direct the closing or partial closing of the well or direct such other steps (including any reasonable repairs and alterations) to be taken as the Commission thinks necessary to prevent the continuance of any of the things mentioned in paragraph (a), (b), (c) or (d).

- (2) The Commission may, for the purpose of regulating the quantity of water to be drawn from any artesian or non-artesian underground water source, from time to time give directions as to the amount of water that may be drawn, and the rate of draw, for any artesian well or non-artesian well that draws water from that underground source.



- (3) A person who fails to comply with a direction given pursuant to this section commits an offence.
Penalty: \$500 and, where the offence is a continuing one, \$50 for each day that the offence continues after the direction is given.
- (4) Where a person is convicted of an offence against this section, the Commission may cancel any licence given in respect of the well in regard to which the offence was committed; and a person shall not thereafter do, or cause, suffer or permit to be done anything that was authorized by a licence so cancelled to be done.

Division 4 – Miscellaneous

Right of entry to the Crown

- 26H. (1) Subject to subsection (1a), the Commission, any officer of the Commission or any person authorized by the Commission, may in the exercise of the right of the Crown, to the control of the waters in water-courses, lakes, lagoons, swamps, marshes or underground sources or for any other purpose required by this Act, enter upon any land and inspect, that land and any dam, well, or other works thereon or therein and take such measures as may be necessary or convenient, whether in general or to meet particular cases, to carry out the objects and purposes of this Act and their duties thereunder including measures for the conservation and regulation of such water and for its preservation from pollution, and for the protection of the bed over or within which it flows or is contained, and for removing any obstruction from such bed, and for clearing and deepening and straightening and otherwise altering the channel of any such water-course, and may intervene summarily to prevent the undue, excessive, or illegal diversion, drawing, use, or pollution of such water or interference with such bed.
- (1a) The Commission shall comply with the provisions of Part VI of the *Water Agencies (Powers) Act 1984* in relation to any entry under subsection (1).
 - (2) Any person who obstructs, impedes or interferes with the Commission or any person acting in the exercise of an authorization conferred under subsection (1) by the Commission, in entering upon any land or in taking any measures under subsection (1), is guilty of an offence against this Act.

Commission entitled to institute proceedings

- 26J. (1) The Commission shall be entitled, in the name and on behalf of the Crown, to institute and maintain by any officer of the Commission authorized for that purpose by the Commission any proceeding in any court whether such proceeding be for any civil remedy or for the recovery or enforcement of any penalty against any person for illegally diverting or taking or for polluting the water of any water-course, lake, lagoon, swamp, marsh or underground water source, or for unlawfully interfering with the bed thereof.
- (2) In such proceedings it shall not be necessary for the Commission to show that either the Crown or the Commission or any person has sustained damage by such illegal diversion or taking or pollution of water or unlawful interference with such bed; nor that the Crown or the Commission is a riparian owner or otherwise entitled to the use or to the protection of the water-course, lake, lagoon, swamp, marsh or underground water source from which water is illegally diverted or taken, or the water of which is polluted, or the bed of which is unlawfully interfered with; but the Commission shall be entitled to judgment in the Commission's favour if it be proved that the water has been illegally diverted or taken or polluted, or that the bed has been unlawfully interfered with; and the Commission shall, in the discretion of the court, be entitled to the costs and expenses of the proceedings against the person by whom the court in its discretion shall order such costs and expenses to be paid.

This Part binds the Crown and statutory undertakers

- 26K. (1) Except so far as a provision of this Part may be inconsistent with a Government agreement this Part binds the Crown and a statutory undertaker.
- (2) The Governor may by order published in the *Gazette* provide for exemptions for the Crown or a statutory undertaker from any provision of this Part.



- (3) Section 43 (4) and (7) to (9) of the *Interpretation Act 1984* applies to an order under subsection (2) as though the order were subsidiary legislation.
- (4) In this section –
- “**Government agreement**” has the same meaning as it has in the Government Agreements Act 1979;
- “**statutory undertaker**” means a person performing a function that is authorized or provided for by or under a written law.

Regulations

27. (1) Without prejudice to the generality of that power, the power conferred by section 37 of the *Water Agencies (Powers) Act 1984* to make regulations may be exercised to make regulations prescribing all matters that are required or permitted by this Part to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this part and, in particular as to –
- (a) the establishment and functions of advisory committees for the purpose of assisting the Commission in the administration of this Part;
 - (b) the issue of, the conditions and provisions applicable to, and the privileges and obligations under, special licences, the consideration of objections thereto, and the operation, modification, or termination thereof, pursuant to section 12;
 - (c) the issue of, and the privileges and obligations under, licences pursuant to section 13 and generally as to such licences;
 - (d) the exercise of rights affected by section 9 (3) and (4);
 - (e) well licences, and artesian and non-artesian wells subject to licensing;
 - (f) the furnishing of information as to wells;
 - (g) the forms to be used and the fees payable in respect of applications and the grant, variation and renewal of licences;
 - (ga) charges that are to be paid by the holder of an operating licence (water supply services) or an operating licence (irrigation services) under the *Water Services Coordination Act 1995* in respect of water taken under the licence;
 - (h) the conduct and determination of inquiries and appeals under this Part;
- and
- (i) generally, the implementation of the licensing schemes provided for in this Part.
- (2) Without limiting the generality of paragraph (ga) of subsection (1) –
- (a) the charges referred to in that paragraph may be in the form of a royalty for water taken under a licence; and
 - (b) the volume of water so taken may be measured –
 - (i) at the point where it is taken; or
 - (ii) at a point that is as close as is practicable to the point at which it is diverted from its source and where measuring facilities can practicably be located.

Part IV – Irrigation Districts

Constitution of Irrigation Districts

28. (1) The Governor may, on the recommendation of the Minister by Order in Council –
- (a) Constitute any defined part of the State an Irrigation District for the purposes of this Act;
 - (b) Specify the boundaries of such District;
 - (c) Assign a name to such District;
 - (d) State the particulars of the scheme of local works for the service of such District;
 - (e) State the estimated cost of such scheme;



- (f) State the quantities of water assigned to such District and the sources from which, the seasons at which, and the conditions under and subject to which they are to be received.
- (2) Any such Order in Council may contain such provisions not inconsistent with this Act as according to the facts and circumstances of each case the Governor may think fit.
- (3) Every such Irrigation District, save as in this Act otherwise provided, shall be entitled to and shall receive the quantities of water assigned thereto by the Order in Council constituting such District, or by any subsequent order varying or amending such order, from the sources, at the seasons, and under and subject to the conditions set forth in such order, or such varying or amending order.

Governor may alter boundaries of Districts

29. The Governor may, at any time, on the recommendation of the Minister by Order in Council, do any of the following things: –
- (a) Unite any 2 or more Districts so as to form one District;
 - (b) Subdivide any District and constitute thereout 2 or more Districts;
 - (c) Excise any portion of a District;
 - (d) Add any portion excised from a District to any other District;
 - (e) Extend any District by the addition thereto of any land that has not theretofore formed part of a District;
 - (f) Apportion, settle, adjust, and determine the extent of the respective interests and obligations of the several parties in regard to any property, income, assets, rights, or liabilities in any case of the union or subdivision of Districts or, of excision from or addition to any District;
 - (g) Repeal, vary, or amend any of the provisions of any previous order relating to any District;
 - (h) Divide any District into sub-areas;
 - (i) Define the boundaries of any sub-area;
 - (j) Alter the boundaries of any sub-area;
 - (k) Abolish a sub-area.

Part VI – The Construction and Maintenance of Works

Works

33. Subject to this Act, the *Water Agencies (Powers) Act 1984*, and, where required by those Acts, to the approval of the Minister, the Corporation may construct and maintain irrigation works within any irrigation district.

No action maintainable for injury to riparian rights or for flooding

35. Notwithstanding anything in this Act or the *Water Agencies (Powers) Act 1984* contained, from and after the passing of this Act no action, suit, claim, or proceeding whatsoever shall be maintainable against the Crown, the Commission or the Corporation, or against any officer of the Commission or the Corporation, or contractor under the Crown the Commission or the Corporation, except as hereinafter provided, for or in respect of any of the following matters: –
- (a) Any injury, loss, or damage caused by any violation or infringement of any right to or easements over any water constantly or intermittently flowing in or through any place whatsoever;
 - (b) Any injury, loss, or damage to property caused by flooding or by water in any way sent on to such property.

Compensation

36. Subject to the provisions of this Act and of the *Water Agencies (Powers) Act 1984* compensation shall be made in respect of any injury to any rights to or easements over any water constantly or intermittently flowing or by flooding as aforesaid if notice in writing stating the nature and extent of the injury complained of has been furnished to the Commission or the Corporation within one year after the alleged injury has occurred of which



such notice is given, and after giving such notice the person claiming compensation proceeds without unreasonable delay to obtain such compensation in the manner hereinafter provided.

Disputes as to compensation

37. Where any claim is made by any person in respect of any such injury and such person and the Commission or the Corporation do not agree on the questions raised by such claim, the questions whether any, and, if so, what compensation shall be made to such person shall be determined by arbitration under the provisions of the *Commercial Arbitration Act 1985*.

Principals in awarding compensation

38. In determining whether any and what compensation is to be made under this Part, the arbitrator shall in each case have regard to and is hereby empowered and directed to apply the following principles: –

- (a) No compensation shall be awarded save in respect of some item set forth in the notice in writing stating the nature and extent of the injury complained of furnished to the Commission or the Corporation as hereinbefore provided.
- (b) No compensation shall be awarded for any diminution or deterioration of the supply of water to which any person may be entitled unless in the opinion of the arbitrator such diminution or deterioration is such as to deprive the claimant of a supply of water previously legally enjoyed by him and which supply was sufficient for domestic purposes, or for watering cattle or other stock, and the irrigation of a garden not exceeding 2 hectares in extent; and unless in the opinion of the arbitrator such diminution or deterioration is the direct and will be the permanent result of the completed works.
- (c) No compensation shall be made for the taking or diverting of any water which the Commission or the Corporation is empowered by or under this Act to take or divert, either permanently or temporarily, from any river, creek, stream or water-course, lake, lagoon, swamp or marsh.
- (d) There shall be considered, in reduction of all claims for compensation for injury, whether (by reason of the execution of any works by the Commission or the Corporation against which any claim is made) any and, if so, what enhancement in value of any property of the claimant wherever situate has been directly or indirectly caused, and whether any and, if so, what immediate or proximate benefit has been gained by or become available to such claimant by reason of the construction or use of such works or of any other works by the Commission or the Corporation under this Act or the *Water Agencies (Powers) Act 1984*; and a deduction shall be made accordingly from the amount which but for this provision would have been paid or payable as compensation.
- (e) The measure of damages shall in all cases be the direct pecuniary injury to the claimant by the loss of something of substantial benefit accrued or accruing, and shall not include remote, indirect, or speculative damages.
- (f) In any case where the injury complained of may appear to be of a permanent or continuing character or likely to be repeated, a sum may be awarded which the Court may declare to be a compensation for all injury, loss, or damage sustained in respect of the matter complained of to the date of the making of the award, and also for all future injury, loss, or damage in respect of the same matter; and after such award no further compensation shall be made in respect of any such future injury, loss, or damage.

Part VII – The Supply of Water and Water Charges

Appropriation of water for irrigation

39. After providing for the requirements of riparian rights as defined in Part III, the remainder of the available water supply may, subject to that Part, be appropriated by the Corporation for irrigation.



Unlawful taking of water an offence

39A. If any person shall take water from any irrigation works, in any quantity or in any manner or by any means not authorized or not permitted by this Act or to which he is not entitled he shall be guilty of an offence.

Penalty: \$1 000 or imprisonment for 12 months.

Objection to entry in rating records

39E. (1) Any person who is dissatisfied with any entry in the records kept under section 69A of the *Water Agencies (Powers) Act 1984*, and who is liable to a water charge assessed on the basis of that entry, may serve upon the Corporation a written objection to that entry.

- (2) An objection to an entry in the records mentioned in subsection (1) shall –
 - (a) be served within 42 days after the issue of the relevant assessment;
 - (b) describe the relevant land so as to identify it;
 - (c) identify the entry objected to; and
 - (d) set out fully and in detail the grounds of objection.
- (3) The grounds upon which an objection may be made include –
 - (a) that the land is not, according to by-laws made for the purposes of this Act, land in respect of which irrigation is provided under this Act;
 - (b) in the case of any land to which the system of rating on the area applies, that the area set out in the records is in excess of the actual area of the land.
- (4) The Corporation may, for reasonable cause shown by a person entitled to make an objection, extend the time for service of the objection for such period as the Corporation considers reasonable in the circumstances.
- (5) The Corporation shall, with all reasonable despatch, consider any objection and may either disallow it or allow it, wholly or in part.
- (6) The Corporation shall promptly serve upon the person by whom the objection was made written notice of the Corporation's decision on the objection and a brief statement of the Corporation's reasons for that decision.
- (7) If the Corporation decides to allow an objection, wholly or in part, the Corporation shall advise the person by whom the objection was made of any consequent amendment of the relevant entry in the records; and if the Corporation decides to disallow an objection, wholly or in part, the Corporation shall advise the person of the time within which and the manner in which an appeal against the decision may be made.

Appeal against decision of Corporation on objection

39F. (1) Any person who is dissatisfied with the decision of the Corporation on an objection by that person may, within 42 days (or such further period as the Corporation shall, for reasonable cause shown by the person, allow) after service of notice of the decision of the Corporation, serve on the Corporation a notice requiring that the Corporation treat the objection as an appeal against the relevant entry.

- (2) Upon receipt of such notice the Corporation shall promptly refer the objection to a Land Valuation Tribunal under the Land Valuation Tribunals Act 1978 as an appeal.

Appeal against refusal to extend time for objection on appeal

39G. (1) A person who is dissatisfied with a decision of the Corporation to refuse to extend the time for service of an objection or for service of a notice requiring the Corporation to treat an objection as an appeal may serve on the Corporation a notice requiring the Corporation to refer such decision to a Land Valuation Tribunal under the Land Valuation Tribunals Act 1978 as an appeal.

- (2) Upon receipt of such notice the Corporation shall promptly refer the decision to such a Tribunal as an appeal.



Objection or appeal not to affect liability to pay rates

39H. The making of an objection or an appeal shall not affect the liability of a person to pay the charges concerned pending determination of the objection or the appeal.

Corporation to amend rating records and assessment consequent on objections

- 39I. (1) The authority shall make any amendment of an entry in the records which shall be necessary in consequence of the allowance, wholly or in part, of an objection or an appeal under this Act.
- (2) The Corporation shall issue a notice of an amended assessment of a water charge when, in consequence of the allowance, wholly or in part, of an objection or appeal under this Act, amendment of an assessment is necessary.

Provisions concerning rates and charges

40C. Part VII of the *Country Areas Water Supply Act 1947* applies, with such modifications as are necessary, to water charges and to any other charges made for the purposes of this Act.

Supply of water for irrigation

41. (1) The Corporation may from time to time determine the periods during which a person who is entitled to be supplied by the Corporation with water for irrigation shall, as far as practicable, and subject to this Act, be supplied with water for irrigation and the quantities of water with which he is entitled to be supplied for irrigation during those periods.
- (2) Notice of a determination of the Corporation under subsection (1) shall be published in a newspaper circulating in the irrigation district to which the determination relates.
- (3) The by-laws may prescribe conditions to which the supply of water for irrigation, as mentioned in subsection (1), shall be subject.

Persons entitled to water for irrigation

42. (1) Subject to this Act the owners or occupiers of land in respect of which an irrigation charge has been made for a period and that is in the Irrigation District shall, in that period, alone be entitled to the supply of water for irrigation purposes:

Provided that the Corporation may, in its discretion, supply water for such purposes within or beyond the boundaries of an irrigation district to other persons, upon such terms, at such charges, and with such guarantees and securities for payment, and generally upon such conditions, as the Corporation thinks proper and that subject to the provisions of this Act and the by-laws and payment of the prescribed charges, the Corporation may, in its discretion, supply to a person who is entitled to be supplied with water for the purposes of irrigation, water in excess of that to which he is entitled.

- (2) The Corporation may, in its discretion, supply water for domestic purposes, or for the watering of stock, or for any other purpose approved by the Governor, on such terms and conditions as may be prescribed.

Installation of measuring instruments

- 42A.(1) The Corporation may cause a measuring instrument to be installed on any land to which it supplies water pursuant to the provisions of this Act.
- (2) Where a measuring instrument is so installed the owner or occupier of the land shall not, without the Corporation's consent, receive water on to the land unless it is measured by the measuring instrument except when, in the opinion of the Corporation, the measuring instrument is not functioning properly in which case the owner or occupier of the land shall not receive water on to the land otherwise than as prescribed.

Where supply of water insufficient, Corporation to supply proportionally

43. If at any time the supply of water at the disposal of the Corporation is insufficient, in the opinion of the Corporation, to afford to all consumers the supplies which they are respectively entitled to receive, the Corporation may deliver to such consumers such amount of water as is then at the disposal of the Corporation in quantities proportional to the quantities which such consumers would, if sufficient water had been available, have respectively been entitled to receive.

Governor may regulate order of supply in cases of deficiency

44. In the event of the water available to the Corporation for supply falling short of the quantity necessary to supply water in sufficient quantity to be of practical service to all consumers the Governor may, whenever and as often as he is satisfied of the actual or approaching insufficiency of such supply, from time to time make, alter, and repeal Orders in Council regulating the order of priority in which and the quantities with which the various consumers shall be entitled to be supplied.

Part X – By-Laws

Board may make by-laws

59. (1) Without prejudice to the generality of that power, the power conferred by section 34 of the *Water Agencies (Powers) Act 1984* to make by-laws may be exercised for the purposes of this Act with respect to the following matters, that is to say: –
- (8) Specifying the purposes for which, and the persons or classes of persons to whom, water may be supplied under agreement, and the general and special terms and conditions upon which water shall be so supplied.
- (10) The control in the public interest of the flow of artesian bores.

Part XI – General Provisions

Corporation may undertake work to render land fit for irrigation

63. The Corporation may, at the request of the owner or occupier of any land within a district, undertake and carry out any work upon such land that may be necessary to render the land or any portion thereof fit for irrigation, upon the repayment by such owner or occupier to the Corporation of the moneys expended with interest being secured to the satisfaction of the Corporation.

Water supply to railways

64. Nothing in this Act shall take away or prejudicially affect any rights in water lawfully acquired or enjoyed before or after the commencement of this Act for the purposes of supplying water to or in connection with any railway constructed under the authority of a special Act; and, subject only to riparian rights under this Act, water may be lawfully taken for such purposes.

Service of notices and demands

66. (1) Any notice or demand required by this Act to be given to or made upon any person may be served –
- (a) by delivering the same to such person;
- (b) by leaving the same at his usual or last known place of abode;
- (c) by forwarding the same by post in a prepaid letter addressed to such person at his usual or last known place of abode.
- (2) A notice or demand forwarded by post shall be deemed to have been given or made, and to have been received at the time when, by ordinary course of post, the letter would be delivered.
- (3) When a notice of demand under this Act is required to be given or made to any owner or occupier whose name or address is unknown to the Commission or the Corporation, as the case requires, it shall not be necessary to name such owner or occupier, and such notice or demand may be served by placing it on



some conspicuous part of the land of such owner or occupier, and by publishing it 3 times, at intervals of not less than a week between any 2 publications in a newspaper usually circulating in the district.

- (4) A notice or demand may be served on a corporation, or incorporated company, or the members of a partnership, by being delivered, left, or posted in a prepaid letter; the notice or demand being addressed in each case to the corporation, company, or partnership at the registered office or principal place of business thereof in the State.

Notices binding on persons claiming under owner or occupier

67. All notices and demands duly given to or made upon any owner or occupier shall be binding upon all persons claiming by, from, or under such owner or occupier.

Saving of civil remedy

69. The institution of any proceedings, or the conviction of any person for any offence against this Act, shall not affect any remedy which the Commission, the Corporation or any person aggrieved may be entitled to in any civil proceedings.

Obstructing authorized persons in performance of duty

70. Every person who obstructs the Commission, the Corporation, any officer of the Commission or the Corporation or any person authorized by the Commission or the Corporation in the performance of any act or thing which the Commission, the Corporation, that officer or that person is authorized or required to do in the execution of this Act or any by-law made for the purposes of this Act, shall be liable to a penalty not exceeding \$1 000.

Penalty for refusing to give up possession of works

71. Any person having charge of any works vested in or under the control of the Commission or the Corporation, who refuses, on lawful demand, to give up peaceable and quiet possession of the same to any person entitled to possession under the provisions of this Act, shall be guilty of an offence and shall be liable to a penalty not exceeding \$2 000 and to be imprisoned for any period not exceeding 6 months.

General penalty

72. Any person committing an offence against this Act shall, if no other penalty is imposed, be liable to a penalty not exceeding \$2 000.

Offender may be arrested

73. Any officer of the Commission or the Corporation may, without warrant, arrest any person found committing an offence against this Act or any by-law made for the purposes of this Act, if the offender refuses to give his name and address.

Recovery of penalties and forfeitures

74. All penalties and forfeitures incurred under this Act or any by-law made for the purposes of this Act may be recovered summarily before any 2 or more Justices of the Peace in the manner provided by the *Justices Act 1902*.

Any officer of the Commission or the Corporation may represent the Commission or the Corporation

75. In any proceedings in any Local Court or Court of Petty Sessions, or before any justice, any officer of the Commission or the Corporation may represent the Commission or the Corporation respectively in all respects as if he were the party concerned.

Proof of ownership or occupancy

79. In any legal proceedings under the Water Agencies (Powers) Act 1984 or this Act, in addition to any other method of proof available, –

- (1) Evidence that the person proceeded against has been charged as owner or occupier of any land; or

- (2) Evidence by the certificate, in writing, of –
- (a) the Registrar of Deeds or his deputy, that any person appears from any memorial of registration of any deed, conveyance or other instrument to be the owner of any land;
 - (b) The Registrar of Titles, or any assistant or deputy registrar, that any person's name appears in any register book kept under the *Transfer of Land Act 1893*, or the *Transfer of Land Act Amendment Act 1909*, as proprietor of any land; or
 - (c) The Permanent Head of the Department of Land Administration² or the Permanent Head of the Department of Mines, that any person is registered in the Department of Land Administration² or of Mines as the occupier or lessee of any land –
- shall, until the contrary is proved, be evidence that such person is the owner or occupier, as the case may be, of such land.

Proof of works

79A. A certificate under the hand of the chief executive officer of the Commission or the Corporation, as the case requires, that any specified dam, drain, channel, pipe or other work is included as portion thereof, in any works within the meaning of this Act (whether such works were constructed prior or subsequent to the commencement of this section) shall, for all purposes and in all courts be sufficient evidence of the fact as stated in such certificate.



extracts from the water and rivers commission act 1995

Section 13 – Delegation

(1) The Commission may, by instrument in writing, delegate the performance of any of its functions, except this power of delegation.

A delegation under subsection (1) may be made -

- (a) to a member or members of the board;
 - (b) to a member or members of staff; or
 - (c) with the approval of the Minister, to a committee or any other person.
- (3) A function performed by a delegate is to be taken to be performed by the Commission.
- (4) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section is to be read as limiting the ability of the Commission to act through its officers and agents in the normal course of business.

Section 34 – Confidentiality

A person who is or has been a member of the board or of a committee or a member of staff must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except -

- (a) for the purpose of performing functions under this Act;
- (b) as required or allowed by this Act or under another written law;
- (c) with the written consent of the person to whom the information relates; or
- (d) in prescribed circumstances.

Penalty: \$10 000 and imprisonment for 12 months.

Schedule 1

Division 1 – Provisions as to constitution and proceedings of board

Section 15 – Committees

- (1) The board may appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.
- (2) A committee may include persons who are not members of the board but, unless the Minister approves, must include at least one person who is -
 - (a) a member of the board; or
 - (b) an officer or other person referred to in section 23.
- 3) Subject to the directions of the board and to the terms of any delegation under section 13, a committee may determine its own procedures.

extracts from the water agencies (powers) act 1984

By-laws

34. (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 Commission, the Corporation or the Coordinator of their respective 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 Commission or the Corporation;
 - (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;
 - (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, water or the flow 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;
 - (n) prescribe the entitlements, if any, arising from the payment of any charges by way of a rate or otherwise.

Regulations and by-laws generally

36. (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;
 - (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;
 - (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 the Standards Association of Australia, the British Standards Institution, or other specified body, either wholly or in part or with modifications, as are specified.
 - (c) as to provide that where by reason of unavailability of materials or other reason that the Commission or the Corporation considers valid any requirement imposed by the Commission or the Corporation cannot be conformed to, the Commission or the Corporation may dispense with that requirement and in lieu authorize in writing in any particular case the use of materials or any other matters which it considers to be appropriate;



- (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 Commission or the Corporation 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;
 - (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 Commission or the Corporation to the offender;
 - (c) may provide that, in addition to the penalty, any expense, loss or damage incurred by the Commission or the Corporation in consequence of the offence shall be payable by the offender;
 - (d) may provide for fees to be payable to the Commission or the Corporation 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.
 - (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 Commission or the Corporation in consequence of the offence shall be payable by the offender shall, if requested by an officer of the Commission or the Corporation or a person authorized by the Commission or the Corporation, 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 Commission or the Corporation to institute any civil action or proceeding for the recovery of damages in any other court of competent jurisdiction against the person convicted.

Regulations

37. 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.

Liability for physical damage to land, etc.

62. (1) In the exercise of its 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 Commission or the Corporation 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 Commission or the Corporation 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 heard and determined by a Compensation Court duly constituted under the provisions of the *Public Works Act 1902*, and in the manner provided in that Act.
- (3) The Commission or the Corporation 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 Commission or the Corporation a claim, or notice of intention to make a claim, for such amount; and
 - (b) where there is no agreement with the Commission or the Corporation on the claim within 12 months after delivery of the claim or the notice, the person, within that time, brings an action against the Commission or the Corporation 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 authorized to take such amount, if any, into account.

Actions for damages generally

63. (1) The Commission or the Corporation 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 Commission or the Corporation or a statutory authority or a person authorized by the Commission or the Corporation or a statutory authority unless negligence is established.
- (2) No action shall be maintained against the Commission or the Corporation 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 Commission or the Corporation such period as the Commission or the Corporation may by notice in writing require of him where that request is made by the Commission or the Corporation within 3 calendar months of the commencement of proceedings in respect of that injury.

Agreements incidental to land matters

77. (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 Commission or the Corporation may enter into agreements relating to incidental matters and things necessary to give effect to the powers conferred on the Commission or the Corporation 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 Commission or the Corporation and the Commission or the Corporation at the time of the acquisition or subsequently does not require the exclusive use and occupation of that land, then the Commission or the Corporation 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 Commission or the Corporation; 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 section 29 of the *Public Works Act 1902*), 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 Commission or the Corporation then



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

- (3) Where the Commission or the Corporation exercises the powers conferred by subsection (2), then unless an agreement entered into between the Commission or the Corporation 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 Commission or the Corporation 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.

Claims against the Commission or the Corporation for the use of land and the application of the Public Works Act 1902

81. (1) Subject to subsection (3), the Commission or the Corporation 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 subsection (1) of section 84 applies or by virtue of the grant of the right of access deemed by subsection (2) of that section to be vested in the Commission or the Corporation.
- (2) No claim lies against the Commission or the Corporation 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 Commission or the Corporation on any land.
- (3) No claim lies against the Commission or the Corporation by reason only of the placing of any works of the Commission or the Corporation upon, in, over or under any land, other than a claim –
 - (a) pursuant to section 62; or
 - (b) under the *Public Works Act 1902*, as read with this Act, where the Commission or the Corporation –
 - (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, 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 Commission or the Corporation where negligence is established for the purposes of section 63.

- (4) Notwithstanding the powers conferred on the Commission or the Corporation by Part VI, the Commission or the Corporation is required to acquire, where practicable by agreement but otherwise pursuant to the *Public Works Act 1902* as read with this Act, such land, estate, or interest as may in the opinion of the Commission or the Corporation be appropriate to its needs in respect of –
 - (a) major works, other than works in relation to which the Minister has directed the Commission or the Corporation 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,

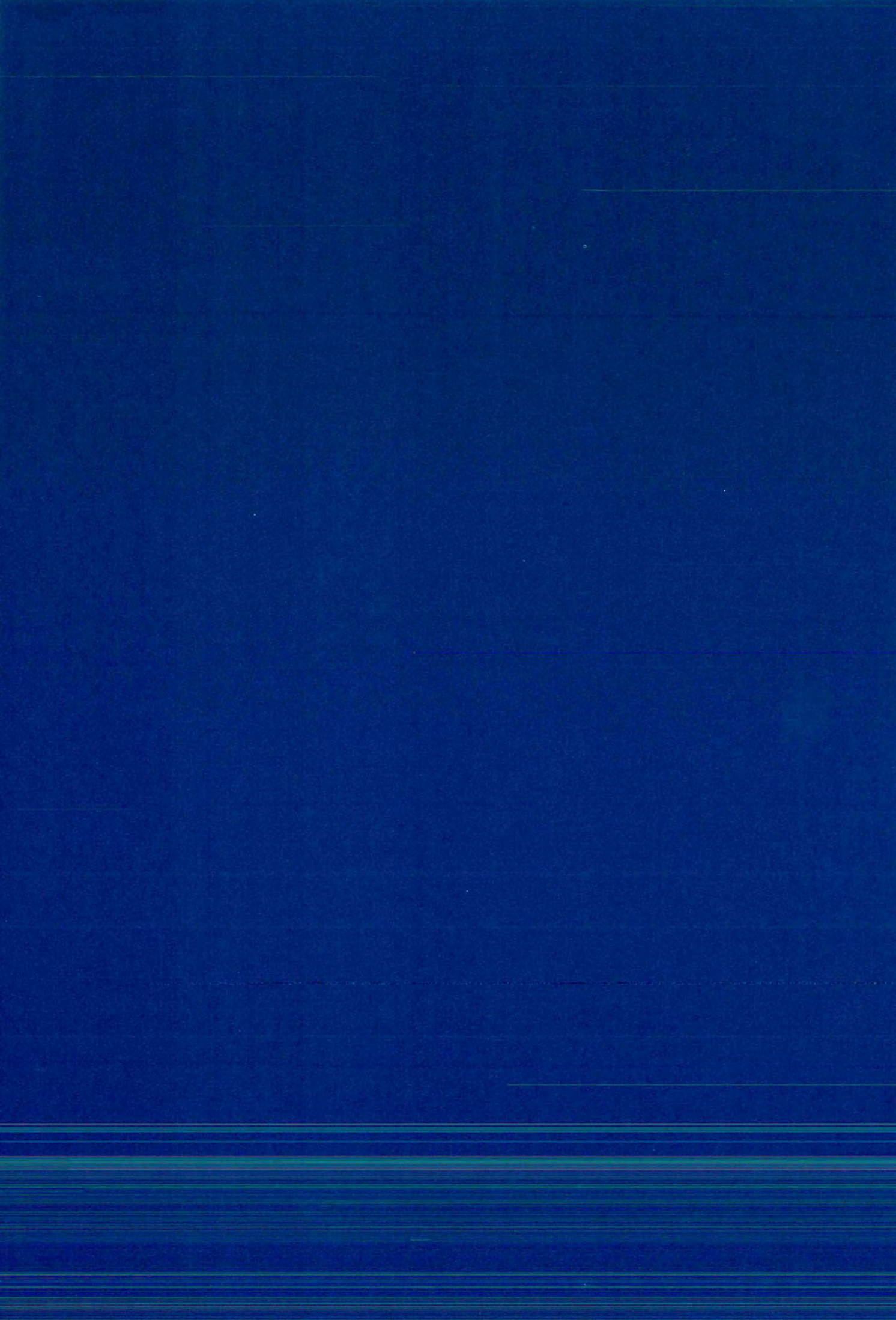
and regulations made under this Act may make provision for such restriction of any use of the land thereby affected by other persons as may in the opinion of the Commission or the Corporation be necessary.

- (5) Where for the purposes of this Act or a relevant Act the Commission or the Corporation determines that any land, or any estate or interest in land, is required to be acquired by the Commission or the Corporation otherwise than by agreement the power to do so shall be exercised under and in accordance with, and any compensation payable by the Commission or the Corporation in pursuance of such powers shall be assessed, determined and recovered under, the *Public Works Act 1902* 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 Commission or the Corporation no further claim in respect thereof shall lie against the Commission or the Corporation notwithstanding any subsequent works of the Commission

or the Corporation 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 authorized 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 Commission or the Corporation shall be deemed to be a local authority within the meaning of that Act authorized to effect that acquisition or undertake that public work.
- (8) For the purposes of this Act or a relevant Act, where the Commission or the Corporation so requires the Commission or the Corporation exercise any power that is by the *Public Works Act 1902* vested in the Minister responsible for the administration of that Act and in so far as that Act applies to or in relation to the compulsory taking or compulsory resumption of any land, or the entry upon, occupation or use of any land, pursuant to this Act or a relevant Act any reference in that Act to that Minister or the Department of Public Works may be read for the purposes of this Act or a relevant Act as a reference to the Commission or the Corporation and that Act may be construed accordingly.
- (9) Subsection (8) does not prevent the Minister administering the *Public Works Act 1902* from exercising his powers under that Act on behalf of the Commission or the Corporation when requested by the Commission or the Corporation so to do.
- (10) Where the Commission or the Corporation fails to serve an offer on a claimant against the Commission or the Corporation for compensation under the *Public Works Act 1902* within the time limited for that purpose by that Act, then the Minister administering that Act may serve an offer on behalf of the Commission or the Corporation, and such offer shall be deemed to be an offer duly made by the Commission or the Corporation for the purposes of that Act.
- (11) A written objection served pursuant to subparagraph (i) of section 17 (2) (d) of the *Public Works Act 1902* in relation to any proposed taking or resumption for the purposes of the Commission or the Corporation 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 Commission or the Corporation 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, after consultation with the Commission or the Corporation, may direct that the proposed taking or resumption be varied accordingly.
- (12) Where any land is compulsorily acquired pursuant to the *Public Works Act 1902* for the purposes of the Commission or the Corporation under this Act or any other Act that land shall, upon publication in the *Government Gazette* of the notice referred to in subsection (1) of section 17 of the *Public Works Act 1902*, be vested in the Commission or the Corporation for the public work specified in that notice, by force of section 18 of that Act as read with this subsection, save that the Governor may, by that notice, 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 Commission or the Corporation, or any specified part of that land, may continue for the period therein specified or until terminated by the Governor on further notice, 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 Commission or the Corporation and the land thereby affected is set apart, taken or resumed by any other person, body or authority under or by virtue of the *Public Works Act 1902* then notwithstanding section 18 of that Act –
 - (a) the land or the estate or interest vested in the Commission or the Corporation shall continue to be so vested, unless the Commission or the Corporation otherwise agrees; and
 - (b) the Commission or the Corporation shall be deemed to be a person having an interest in the land, estate or interest to be taken for the purposes of section 34 of that Act.







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