

SOUTH AUSTRALIA

WATER RESOURCES ACT 1990

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 30 May 1996.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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WATER RESOURCES ACT 1990

being

Water Resources Act 1990 No. 37 of 1990
[Assented to 3 May 1990]¹

as amended by

Environment Protection Act 1993 No. 76 of 1993 [Assented to 27 October 1993]²

Catchment Water Management Act 1995 No. 37 of 1995 [Assented to 27 April 1995]³

Water Resources (Imposition of Levies) Amendment Act 1995 No. 107 of 1995 [Assented to 14 December 1995]⁴

¹ Came into operation 1 July 1990: *Gaz.* 7 June 1990, p. 1550.

² Came into operation 1 May 1995: *Gaz.* 27 April 1995, p. 1563.

³ Came into operation 4 May 1995: *Gaz.* 4 May 1995, p. 1704.

⁴ Came into operation (except ss. 7 and 12) 30 May 1996: *Gaz.* 30 May 1996, p. 2636; ss. 7 and 12 had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

An Act to provide for the management of the water resources of the State; to preserve water quality and to provide for the sharing of available water on a fair basis; to repeal the Water Resources Act 1976; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Water Resources Act 1990*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Repeal

3. The *Water Resources Act 1976* is repealed.

Interpretation

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

"**authorised officer**" means an authorised officer appointed under this Act;

"**committee**" means a water resources committee established under this Act;

"**the Court**" means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;

"**the Council**" means the South Australian Water Resources Council established by this Act;

"**domestic purpose**" in relation to the taking of water does not include—

- (a) taking water for the purpose of watering or irrigating more than 0.4 of a hectare of land; or
- (b) taking water to be used in carrying on a business (except for the personal use of employees of the business);

"**to drill**" in relation to a well means to drill the well or to excavate the well in any other manner and includes to deepen or widen an existing well;

"**intensive farming**" means a method of farming animals in which the animals are confined to a small space or area;

"**lake**" means a natural lake and includes a natural lagoon, swamp, marsh and spring;

"**land**" includes any building or structure on land;

"**licensed well driller**" means a person who holds a licence to drill wells under this Act;

"**occupier**" of land means a person who has, or is entitled to, possession or control of the land;

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"**owner**" of land means—

- (a) in relation to land alienated from the Crown by grant in fee simple—the holder of the fee simple;
- (b) in relation to land held under Crown lease or licence—the lessee or licensee;
- (c) in relation to land held under an agreement to purchase from the Crown—the person entitled to the benefit of the agreement;
- (d) in relation to any other land—the Minister who is responsible for the care, control and management of the land or, if no Minister is responsible for the land, the Minister of Lands,

and includes an occupier of the land;

"**proclaimed lake**" means a lake declared to be a proclaimed lake under this Act;

"**proclaimed watercourse**" means a watercourse declared to be a proclaimed watercourse under this Act;

"**proclaimed well**" means a well declared to be a proclaimed well under this Act;

"**record**" means—

- (a) a documentary record;
- (b) a record made by an electronic, electro-magnetic, photographic or optical process;
- (c) any other kind of record;

"**the repealed Act**" means the *Water Resources Act 1976* repealed by this Act;

"**surface water**" means water in a watercourse or lake;

"**to take**" in relation to water includes—

- (a) to stop or impede the flow of water in a watercourse for the purpose of collecting the water;
- (b) to divert the flow of water in a watercourse from the watercourse;
- (c) to release water from a lake;
- (d) to permit water to flow under natural pressure from a well;
- (e) to permit stock to drink from a watercourse or lake;

"**underground water**" means—

- (a) water occurring naturally below ground level;
- (b) water pumped, diverted or released into a well for storage underground;

"water allocation"—

- (a) in respect of a licence means the volume of water that the licensee is entitled to take pursuant to the licence;
- (b) in respect of water taken pursuant to an authorisation under section 39 means the maximum volume of water that can be taken pursuant to the authorisation;

"watercourse" means—

- (a) a river, creek or other natural watercourse (whether modified or not);
- (b) an artificial channel (but not a channel declared by regulation to be excluded from the ambit of this definition);

"water recovery licence" means a licence granted under this Act or the repealed Act entitling the holder to take water from a watercourse, lake or well;

"well" means—

- (a) an opening in the ground excavated for the purpose of obtaining access to underground water;
- (b) an opening in the ground excavated for some other purpose but that gives access to underground water;
- (c) a natural opening in the ground that gives access to underground water;

"well driller's licence" means a licence granted under this Act entitling the holder to drill wells.

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Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Act binds Crown

5. This Act binds the Crown.

Application of Act

6. This Act is subject to the agreements and Acts set out in schedule 1.

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**PART 2
OBJECTS OF THIS ACT**

Objects

7. The objects of this Act are as follows—

- (a) to promote recognition of the fact that water is one of the most important natural resources of the State and that it is a limited resource;
- (b) to establish a system ensuring—
 - (i) the efficient use of the State's water resources at a sustainable level; and
 - (ii) the maintenance of water quality; and
 - (iii) the sharing of available water on a fair basis;
- (c) in establishing and managing that system—
 - (i) to recognise the importance of surface and underground water in the environment; and
 - (ii) to preserve, as far as possible, wetlands and other ecosystems and areas of scenic beauty; and
 - (iii) to interfere as little as possible with sites of scientific, historical, cultural or archaeological importance.

Administration of Act

8. The Minister, the Council, a committee and any other body or person involved in the administration of this Act must act consistently with, and seek to further, the objects of this Act.

**PART 3
ADMINISTRATION**

DIVISION 1—THE MINISTER

The Minister's functions

9. (1) The Minister has the following functions—

- (a) to assess and keep under review the extent of the water resources of the State and the quality and availability of those resources;
- (b) to develop policies for the administration of this Act in accordance with its objects including the formulation of plans of management of water resources;
- (c) to promote public awareness of the importance of the State's water resources and to encourage the conservation of those resources;
- (d) to encourage public commitment to achieving the objects of this Act;
- (e) to integrate Government policies relating to water resource management, land management and the environment and for that purpose to consult, if necessary, with any other Minister who has responsibility in relation to land management or the planning laws of the State;
- (f) such other functions as are assigned to the Minister by this Act.

(2) The Minister must encourage, as far as practicable, the participation of members of the public in the formulation of plans of management of water resources.

Powers of the Minister

10. (1) For the purposes of this Act the Minister may install, maintain and operate any machinery and erect or construct and maintain any building, structure or works for the purpose of—

- (a) controlling the flow (including the prevention or mitigation of flooding) of water in a watercourse;
- (b) using any surface or underground water;
- (c) protecting or improving the quality of any surface or underground water;
- (d) assessing or controlling any material that may degrade the quality of surface or underground water;
- (e) draining, treating, storing or discharging water used for irrigation;
- (f) storing water in groundwater basins;

(2) The Minister may, subject to and in accordance with the *Land Acquisition Act 1969*, acquire land for the purposes of this Act.

Power of Minister to delegate

11. (1) The Minister may delegate any of the Minister's powers or functions under this Act (except this power of delegation)—

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- (a) to a water resources committee; or
- (b) to any other body or person; or
- (c) to the person for the time being occupying a particular office or position.

(2) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the Minister to act in any matter; and
- (d) is revocable at will by the Minister.

DIVISION 2—THE SOUTH AUSTRALIAN WATER RESOURCES COUNCIL

Establishment of Council

12. (1) The *South Australian Water Resources Council* is established.

(2) The Council consists of—

(a) the Chief Executive Officers for the time being of the following departments:

- (i) the Engineering and Water Supply Department; and
- (ii) the Department of Lands; and
- (iii) the Department of Agriculture; and
- (iv) the Department of Environment and Planning; and
- (v) the Department of Mines and Energy; and

(b) the following members appointed by the Governor:

- (i) a member selected by the Minister from a panel of three persons nominated, at the invitation of the Minister, by one or more organisations that represent the interests of municipal or district councils;
- (ii) a member selected by the Minister from a panel of three persons nominated, at the invitation of the Minister, by one or more organisations that represent commercial or industrial interests;
- (iii) a member selected by the Minister from a panel of three persons who have experience in irrigated farming nominated, at the invitation of the Minister, by one or more organisations that represent farmers;
- (iv) a member selected by the Minister from a panel of three persons nominated, at the invitation of the Minister, by one or more organisations that represent employees;

- (v) a member selected by the Minister from a panel of three persons who have knowledge and experience of the relationship between the management of water resources and conservation of the natural environment nominated, at the invitation of the Minister, by one or more organisations concerned with environmental conservation;
 - (vi) a member nominated by the Minister to represent the public interest in relation to the domestic use of water; and
- (c) not more than four members appointed by the Governor pursuant to subsection (3).

(3) The Governor may, on the recommendation of the Minister, appoint members who have knowledge or experience that will, in the Minister's opinion, be of value to the Council in carrying out its functions.

(4) In appointing members to the Council the Governor must ensure that Public Service employees (including the Chief Executive Officers referred to in subsection (2)(a)) comprise less than one-half of the number of members of the Council.

(5) At least one member of the Council must be a woman and one must be a man.

(6) The Governor may appoint suitable persons to be deputies to the members of the Council and a deputy to a member appointed under subsection (2)(b) must be appointed in the same manner as the member was appointed and must have the qualifications (if any) for membership of the Council required by subsection (2)(b).

(7) A deputy may, in the absence of a member, act as a member of the Council.

Appointment of presiding member

13. The Minister must appoint a member (the presiding member) to preside at meetings of the Council and another member (the deputy presiding member) to preside at meetings of the Council in the absence of the presiding member.

Conditions of office

14. (1) A member of the Council appointed by the Governor will be appointed for a term not exceeding three years and will, on the expiration of a term of office, be eligible for reappointment.

(2) A member appointed by the Governor may be removed from office by the Governor—

- (a) for misconduct; or
- (b) for neglect of duty; or
- (c) for incompetence; or
- (d) for mental or physical incapacity to carry out the duties of office satisfactorily.

(3) The office of a member appointed by the Governor becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice addressed to the Minister; or

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(d) is removed from office by the Governor under subsection (2).

(4) Upon the office of a member appointed by the Governor becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

Allowances and expenses

15. A member of the Council is entitled to such allowances and expenses as the Minister may determine.

Procedures at meetings of the Council

16. (1) The presiding member will preside at meetings of the Council or, in his or her absence, the deputy presiding member will preside or, in the absence of both of them, a member chosen by those present will preside.

(2) Subject to subsection (3) the Council may act notwithstanding vacancies in its membership.

(3) The number of members that constitute a quorum is determined as follows—

(a) if the number of members is even—half that number plus one;

(b) if the number of members is odd—the first integer that is greater than half that number.

(4) A decision in which a majority of the members present at a meeting concur is a decision of the Council but if the members are equally divided the decision of the person presiding at the meeting is the decision of the Council.

(5) Subject to this Act, the Council may determine its own procedures.

The Council's function

17. (1) The Council's function is to advise the Minister in relation to—

(a) policies for the administration of this Act or any other Act dealing with the water resources of the State;

(b) the most effective and efficient use of available resources in reference to the administration of this Act and other Acts dealing with the water resources of the State.

(2) The Council may, if it thinks fit, give the Minister advice under subsection (1) on its own initiative without first receiving a request from the Minister.

Personal interest of member

18. A member who has a personal interest or a direct or indirect pecuniary interest in a matter under consideration by the Council is disqualified from participating in the Council's consideration of the matter.

DIVISION 3—WATER RESOURCES COMMITTEES

Establishment of water resources committees

19. (1) The Minister must, by notice published in the *Gazette*, establish a water resources committee in relation to each proclaimed watercourse and lake and each part of the State in which proclaimed wells are situated.

(2) The notice must set out—

- (a) the watercourse, lake or part of the State in relation to which the committee is established; and
- (b) the name of the committee.

(3) The members of a committee must have knowledge or experience that will be of value to the committee in carrying out its functions.

(4) A committee will have the following functions:

- (a) to advise the Council in relation to policy, and the application of resources, affecting the watercourse, lake or part of the State for which the committee is responsible;
- (b) to advise the Minister on any other matter relating to the administration of this Act as it affects the watercourse, lake or part of the State for which the committee is responsible;
- (c) such other functions as the Minister delegates to it,

and a committee must, in performing those functions, take into account as far as practicable the views of the local community.

(5) A committee may, if it thinks fit, give the Minister advice under subsection (4) on its own initiative without first receiving a request from the Minister.

(6) The Minister may, by notice published in the *Gazette*, establish a water resources committee for any other purpose related to the administration of this Act or any other Act dealing with the water resources of the State.

(7) The notice must set out—

- (a) the functions of the committee; and
- (b) the name of the committee.

(8) A committee established under subsection (1) or (6) will have such powers as the Minister delegates to it or as are given to it by regulation.

(9) The Minister may, by subsequent notice published in the *Gazette*, vary a notice under subsection (1) or (6) or may, by revoking the notice, dissolve the committee established by the notice.

(10) The Minister must establish under this section a water resources committee (to be named the "Water Well Drilling Committee") to examine intending applicants for licences to drill wells and the committee will have such other functions as are prescribed by regulation.

Allowances and expenses

20. A member of a committee is entitled to such allowances and expenses as the Minister may determine.

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DIVISION 5—AUTHORISED OFFICERS

Appointment of authorised officers

28. (1) The Minister may appoint such persons to be authorised officers for the purposes of this Act as the Minister thinks fit.

(2) A person may be appointed by name or by reference to the office or position that he or she is holding or acting in for the time being.

(3) An appointment—

(a) will be for a period stated in the instrument of appointment; and

(b) may be made subject to conditions limiting the area within which, or the purposes for which, the appointee may exercise the powers of an authorised officer.

(4) A person appointed as an authorised officer must be issued with an identity card in a form approved by the Minister.

(5) The Minister may, by notice in writing served on an authorised officer—

(a) vary or revoke a condition of the appointment; or

(b) revoke the appointment.

Powers of authorised officers

29. (1) An authorised officer may, at any reasonable time, exercise any of the following powers—

(a) enter any land;

(b) inspect any land (including any stratum lying below the surface of the land) and the surface and underground water on or under any land;

(c) measure the flow of surface or underground water on or under any land;

(ca) inspect and read a meter or other instrument installed to measure the volume of water taken from a watercourse, lake or well and record the reading or other information provided by the meter or instrument;

(d) where the authorised officer has reason to believe that an offence against this Act has been, is being, or is about to be, committed—enter or inspect any vehicle, vessel or aircraft and for that purpose give a direction to stop or move the vehicle, vessel or aircraft;

(e) take samples of surface and underground water on or under any land;

(f) take samples of any material of a kind that, in the officer's opinion, has entered or may enter surface or underground water;

(g) inspect any machinery or equipment on land or on a vehicle, vessel or aircraft;

(h) inspect any well on land and any pipes, fittings or equipment connected to or used in conjunction with any well;

- (i) take photographs, films or video recordings;
- (j) put to any person on land or to the person in charge of a vehicle, vessel or aircraft any question relating to the administration of this Act;
- (k) require any person on land or the person in charge of a vehicle, vessel or aircraft to produce for inspection or inspection and copying—
 - (i) any document or record that, in the opinion of the authorised officer, will be, or may be, of assistance in the administration of this Act;
 - (ii) without limiting subparagraph (i), any document or records relating to any material that, in the officer's opinion, has, or may have, entered or may enter surface or underground water;
- (ka) in the case of a document or record referred to in paragraph (k) that is not in English, require the person to produce a written statement in English of the contents of the document or record;
- (l) require a person who the officer reasonably suspects has committed, or is about to commit, an offence against this Act to state the person's full name and usual place of residence;
- (m) require a person holding or required to hold a licence or permit under this Act to produce the licence or permit for inspection.

(2) An authorised officer in exercising powers under this section may be accompanied by such assistants as are reasonably necessary in the circumstances.

(3) An authorised officer must at the request of the owner of land, the owner's agent or the person in charge of a vehicle, vessel or aircraft, produce the identity card issued to the officer.

(4) An authorised officer may use force to enter land, a building or structure on land or a vehicle, vessel or aircraft—

- (a) on the authority of a warrant issued by a justice; or
- (b) if the officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.

(5) A justice must not issue a warrant under subsection (4) unless satisfied, on information given on oath—

- (a) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be, committed; or
- (b) that the warrant is reasonably required in the circumstances.

(6) An authorised officer, or a person assisting an authorised officer, who—

- (a) addresses offensive language to any other person; or

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- (b) without lawful authority or a reasonable belief as to lawful authority, hinders or obstructs, or uses or threatens to use force in relation to, any other person,

is guilty of an offence.

Penalty: Division 6 fine.

Hindering, etc., persons engaged in the administration of this Act

30. (1) A person who—

- (a) without reasonable excuse hinders or obstructs an authorised officer or other person engaged in the administration of this Act; or
- (b) fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or
- (c) produces a written statement of the contents of a record that he or she knows, or ought to know, is false or misleading in a material particular; or
- (d) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act; or
- (e) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (f) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

(2) A person may not decline on grounds of self-incrimination to answer a question put by an authorised officer under this Act but the answer to any such question is not admissible except in proceedings for an offence against this section.

(3) A person who is guilty of an offence against subsection (1) is liable to a division 6 fine.

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**PART 4
TAKING OF WATER**

DIVISION 1—RIGHTS TO TAKE WATER

Right of Minister to water

31. (1) The Minister may take water from any watercourse, lake or well notwithstanding that the right of any other person to take water from that or any other watercourse, lake or well is prejudicially affected.

(2) The Minister must endeavour, as far as practicable, to avoid prejudicially affecting the right of a person to take water for domestic purposes or for the purposes of providing stock (other than stock subject to intensive farming) with drinking water.

Riparian rights

32. Riparian rights in respect of surface and underground water continue in existence but—

- (a) are subject to the right of the Minister to take such quantities of water as he or she thinks fit and to the right of any other person to take water pursuant to a water recovery licence; and
- (b) in the case of water taken from a proclaimed watercourse, lake or well, are limited to taking water for domestic purposes or to provide stock kept on land adjacent to the watercourse, lake or well (other than stock subject to intensive farming) with drinking water.

**DIVISION 2—TAKING WATER FROM PROCLAIMED WATERCOURSES,
LAKES AND WELLS**

Proclamation of watercourses, lakes and wells

33. (1) The Governor may, by proclamation, declare that a watercourse or lake is a proclaimed watercourse or lake.

(2) The Governor may, by proclamation, declare that wells situated in a specified part of the State when the proclamation is made are proclaimed wells and that wells drilled in that part of the State after the making of the proclamation will be proclaimed wells.

(3) A proclamation under this section may specify watercourses, lakes or wells individually or by class.

(4) The Governor may by subsequent proclamation vary or revoke a proclamation under this section.

Taking of water from proclaimed watercourse, etc.

34. (1) Notwithstanding any other Act or law to the contrary, a person must not take water from a proclaimed watercourse, lake or well unless authorised by or under this Act.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(2) Subsection (1) is subject to the *Roxby Downs (Indenture Ratification) Act 1982*.

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(3) Where a person takes water in contravention of subsection (1) the Minister may estimate the quantity of water taken and charge the person for that quantity at the excess rate prescribed by regulation.

(4) If, in proceedings for an offence against subsection (1), it is proved that at the time of the alleged offence the watercourse, lake or well was connected by pipes or channels to land occupied by the defendant, it must be presumed (in the absence of proof to the contrary) that the defendant took water from the watercourse, lake or well.

DIVISION 3—LICENCES

Licences for taking water

35. (1) The Minister may grant a licence to a person to take water from a proclaimed watercourse, lake or well.

(2) An application for a licence must be in a form approved by the Minister and must be accompanied by the prescribed fee.

(3) A licence—

(a) must specify the watercourse, lake or well from which water may be taken;

(b) must limit the amount of water that may be taken;

* * * * *

(d) is subject to such conditions as are prescribed from time to time by regulation and to such further conditions as are specified in the licence by the Minister;

(e) remains in force for such term (not exceeding four years) as is stated in the licence.

Renewal of licence

36. (1) A licence may be renewed from time to time.

(2) An application for renewal of a licence must be in a form approved by the Minister and must be accompanied by the prescribed fee.

Variation and surrender of licences

37. (1) If in the Minister's opinion—

(a) there is insufficient water available to satisfy the demands of other persons who are entitled to take the water or to use or enjoy it in any other way or there exists the danger of such an insufficiency in the future; or

(b) further reduction of the quantity of water would be detrimental to its quality or to the ecosystems that depend upon it,

the Minister may vary a licence—

(c) by reducing the water allocation of the licence; or

(d) by attaching conditions to the licence; or

(e) by reducing the water allocation and attaching conditions to the licence.

(2) The Minister may vary a licence with the consent of the licensee.

(3) A licence may be varied under this section by notice served on the licensee or, in the case of an increase in the water allocation, by notice published in the *Gazette*.

(4) A licensee may surrender the licence at any time.

Contravention, etc., of licence

38. (1) A person who contravenes or fails to comply with a condition of a licence is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(2) The Minister may, by notice served on a licensee, vary, suspend or cancel the licence if the Minister is satisfied that the licensee, or a person acting on behalf of the licensee—

(a) has taken water in excess of the water allocation of the licence, or of a previous water recovery licence held by that person, or has contravened or failed to comply with a condition of the licence, or of a previous water recovery licence held by that person; or

(b) has committed an offence against any provision of this Act.

(3) The Minister may, by notice served on a licensee, cancel the licence if the Minister is satisfied that the licensee has failed to pay the levy or an instalment of the levy under Division 3A within 28 days after the levy or instalment became due.

DIVISION 3A—LEVIES FOR TAKING WATER

Interpretation

38A. In this Division, unless the contrary intention appears—

"**accounting period**" means a financial year, or part of a financial year, in respect of which a levy is payable in accordance with a notice served under section 38E;

"**consumption period**" in relation to an accounting period means a period of approximately the same length as the accounting period that commences or terminates during the accounting period and in respect of which the volume of water taken is measured by meter readings;

"**to irrigate**" land includes to water land by any means for the purpose of growing any kind of plant or plants.

Report as to degradation of water in watercourse, etc.

38B. (1) The Minister or a catchment water management board may prepare a report—

(a) on the degradation of water in a proclaimed watercourse, lake or well and the factors causing the degradation; and

(b) suggesting measures to improve the quality of the water; and

(c) setting out an estimate of the cost of implementing those measures.

(2) The Minister or the board may cause the report to be published in a newspaper circulating generally throughout the State.

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Declaration of levies by the Minister

38C. (1) Where a report has been prepared and published under section 38B in relation to a proclaimed watercourse, lake or well, the Minister may, by notice in the *Gazette*, declare levies in relation to the taking of water from the watercourse, lake or well for a financial year that does not commence more than five years after the report was published.

(2) Levies declared under subsection (1) may raise the amount estimated in the report as the cost of implementing measures to improve the quality of the water or an amount that is more or less than that amount.

(3) Levies may be declared under subsection (1) for the right to take water or for the water taken or both.

(4) Levies for the right to take water can only be declared in respect of water to be taken pursuant to a licence and must be based on—

- (a) the water allocation of the licence; or
- (b) a combination of that factor and one or more of the factors referred to in subsection (6).

(5) Levies for water taken may be declared in respect of water taken pursuant to a licence or pursuant to an authorisation under section 39 and must be based on—

- (a) the volume of water taken (the levy may remain constant or increase as the volume of water taken increases or impose a penalty for water taken in excess of the water allocation); or
- (b) a combination of that factor and one or more of the factors referred to in subsection (6).

(6) The other factors on which levies may be based are as follows:

- (a) whether the water is to be taken or is taken from a watercourse or a lake or a well;
- (b) the particular watercourse, lake or well from which the water is to be taken or is taken;
- (c) the part of the State in which the watercourse, lake or well is situated or, in the case of a watercourse, the point on the watercourse at which the water is to be taken or is taken;
- (d) the purpose for which the water will be used.

(7) The Minister may declare a levy under subsection (1) for water taken in excess of the water allocation without declaring any levy for water taken within the water allocation.

(8) A notice under subsection (1)—

- (a) has effect in relation to the financial year specified in the notice; and
- (b) subject to subsections (9) and (10), must be published in the *Gazette* on or before the first day of that year.

(9) A notice under subsection (1) in relation to water to be taken, or that is taken, from a watercourse, lake or well may be published in the *Gazette* within one month after the watercourse, lake or well became a proclaimed watercourse, lake or well.

(10) A notice under subsection (1) in relation to the 1995/1996 financial year may be published in the *Gazette* within one month after the commencement of the *Water Resources (Imposition of Levies) Amendment Act 1995*.

Liability for levy

38D. (1) Subject to subsection (8), a person who holds a licence at any time during a financial year in respect of which a levy for the right to take water has been declared is liable to pay to the Minister the full amount of that levy whether he or she holds the licence throughout the year or not.

(2) A person who holds a licence at any time during a financial year in respect of which a levy for the taking of water has been declared is liable to pay to the Minister the amount of the levy for the water taken pursuant to the licence.

(3) A person who takes water pursuant to an authorisation under section 39 at any time during a financial year in respect of which a levy for the taking of water has been declared is liable to pay to the Minister the amount of the levy for the water taken.

(4) Where a levy for the right to take water or for the taking of water applies in relation to water that is intended to be used, or is used, by the person taking it for irrigating land or in the course of carrying on a business on land, the following persons are jointly and severally liable to the Minister for payment of the levy in addition to the person primarily liable under subsection (1), (2) or (3):

- (a) in the case of a levy for the right to take water—the owner of the land (if the owner is not the person primarily liable under subsection (1))—
 - (i) where the levy was declared during a financial year—at the time the levy was declared; or
 - (ii) where the licence was granted after the commencement of the financial year—at the time when the licence was granted; or
 - (iii) where the levy is for an increase in the water allocation—at the time of the increase; or
 - (iv) in any other case—at the commencement of the financial year to which the levy relates; and
- (b) in the case of a levy for water taken—the owner of the land (if the owner is not the person primarily liable under subsection (2) or (3)) when the water was taken; and
- (c) all persons who own or occupy the land at any time—
 - (i) after the person primarily liable under subsection (1), (2) or (3) or the person referred to in paragraph (a) or (b); and
 - (ii) before the levy is paid.

(5) A person who makes a payment to the Minister in respect of his or her liability under subsection (4) may recover the amount of the payment from the person primarily liable under subsection (1), (2) or (3).

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(6) Where two or more persons are liable under subsection (2) or (3) for water taken during different parts of an accounting period and the water used by those persons is used to irrigate the same land or is used in the course of carrying on a business on the same land, the following provisions apply:

- (a) the last of those persons to take water during the accounting period will be taken to be liable under subsection (2) or (3) to the Minister for the amount of the levy for water taken during the whole of that period; and
- (b) that person is entitled to contribution from the other person or persons who have taken water during another part or parts of the accounting period on the basis of the volume of water taken by each of them.

(7) A person is liable under this section for a levy for the right to take water, or for water taken, pursuant to a licence whether the licence was granted before or after the commencement of the *Water Resources (Imposition of Levies) Amendment Act 1995*.

(8) Where—

- (a) a licence is granted after the commencement of a financial year or the water allocation of a licence is increased after the commencement of a financial year; and
- (b) the water allocation, or part of the water allocation, of the licence or the increase, or part of the increase, in the water allocation of the licence is attributable to the surrender of another licence or a reduction in the water allocation of another licence,

a levy for the right to take water is not payable for that year in respect of that part of the water allocation of the licence that is attributable to the surrender of the other licence or the reduction in the water allocation of the other licence.

(9) A levy for the right to take water is payable even though taking water has been prohibited or restricted under this Act or under the licence concerned.

(10) A levy (whether payable in instalments or not) becomes payable on the date for payment stated in the notice under section 38E.

(11) A levy or instalments of a levy are payable pursuant to a notice served under section 38E notwithstanding that the person liable disputes the amount of the levy but any overpayment must be refunded by the Minister when the correct amount is finally determined.

Notice to person liable for levy

38E. (1) The Minister may serve the notice referred to in subsection (2) on a person who is liable to pay a levy under section 38D(1), (2) or (3).

(2) The notice must—

- (a) state whether the levy is for the right to take water, or for water taken or both; and
- (b) state the amount of the levy payable for the accounting period or periods to which the notice relates; and
- (c) state the factor, or combination of factors, on which the levy is based; and

- (d) state the date on or before which the levy must be paid or, where the Minister is prepared to accept payment in instalments, state the amount of each instalment and the date on or before which it must be paid.

(3) The accounting period or periods to which a notice relates must be confined to one financial year or to part of a financial year.

Determination of volume of water taken

38F. (1) Where a levy is based on the volume of water taken the following provisions apply:

- (a) meter readings will be used to determine the volume of water taken pursuant to a licence except where—
 - (i) a meter has not been installed; or
 - (ii) the readings given by the meter are unreliable in the opinion of the Minister;
- (b) where meter readings are used, the volume of water taken during an accounting period will be taken to be the volume of water taken during the consumption period for that accounting period;
- (c) where water is taken pursuant to an authorisation under section 39 or where water is taken pursuant to a licence and meter readings are not used, the volume of water taken during an accounting period will, subject to subsection (3), be assessed by the Minister on—
 - (i) the basis of the pumping capacity of the pump (if any) used to take the water; or
 - (ii) the basis of the area of land irrigated and the crop grown on that land; or
 - (iii) such other basis as the Minister thinks fit;
- (d) water taken by the occupier of land for domestic purposes on the land or for providing stock (other than stock subject to intensive farming) kept on the land with drinking water must be disregarded;
- (e) where water taken for domestic or stock purposes is not measured by meter, the Minister must make an assessment of the volume of water taken for those purposes under paragraph (c).

(2) Where the Minister uses meter readings or uses any other measuring instrument to determine the volume of water taken under this Act, he or she will be taken not to be using a measuring instrument for trade for the purposes of the *Trade Measurement Act 1993*.

(3) The Minister cannot make an assessment under subsection (1)(c) of the volume of water taken unless, before the commencement of the accounting period in relation to which the assessment is to be made, he or she had published in the *Gazette*—

- (a) where the basis of assessment is to be pumping capacity—the method to be used in assessing the volume of water on that basis;
- (b) where the basis of assessment is to be crop area—water use rates for the crop and the part of the State concerned;

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- (c) where some other basis of assessment is to be used—the basis to be used and the method by which it will be used.

(4) If a person liable to pay a levy for water taken from a proclaimed watercourse, lake or well appeals to the Court on the ground that the meter is inaccurate or unreliable the following provisions apply:

- (a) if the Court finds that the volume of water measured by the meter was not more than five per cent more or less than the volume of water actually taken, the volume of water measured by the meter will be the volume in respect of which the levy is payable;
- (b) if the Court finds that the volume of water as measured by the meter was inaccurate by more than five per cent and makes a finding as to the degree of inaccuracy, the Minister may serve a further notice under section 38E based on the volume of water taken appropriately adjusted;
- (c) if the Court finds that the volume of water as measured by the meter was inaccurate by more than five per cent but does not make a finding as to the degree of inaccuracy, the Minister may serve a further notice under section 38E based on the Minister's assessment under subsection (1)(c).

(5) Where the Minister assesses the volume of water—

- (a) taken under subsection (1)(c); or
- (b) used for domestic or stock purposes under subsection (1)(e); or
- (c) taken illegally under section 34(3),

the assessment and the basis on which it was made cannot be called into question by, or before, any court, tribunal or other authority except on the ground that the assessment was not made in good faith.

Interest

38G. (1) Interest accrues on—

- (a) an unpaid levy; and
- (b) on unpaid instalments of a levy; and
- (c) on unpaid interest,

in accordance with the regulations.

(2) Where a levy is payable in instalments, interest is payable in accordance with the regulations on instalments that are due but unpaid and on instalments that have not yet fallen due.

(3) A person who is liable to pay a levy is also liable to pay interest that accrues, or has accrued, on or in relation to the levy under subsection (1).

Levy first charge on land

38H. A levy for the right to take water, or for taking water, that is intended to be used, or is used, by the person taking it for irrigating land, or in the course of carrying on a business on land, and interest in relation to the levy are a first charge on the land.

Sale of land for non-payment of a levy

38I. (1) Where a levy, or interest in relation to a levy, is a first charge on land and has been unpaid for one year or more, the Minister may sell the land.

(2) Before the Minister sells land in pursuance of this section, he or she must serve notice on the owner and occupier of the land—

- (a) stating the period for which the levy and interest have been in arrears; and
- (b) stating the amount of the total liability for the levy and interest presently outstanding and charged on the land; and
- (c) stating that if that amount is not paid in full within one month of service of the notice (or such longer time as the Minister may allow), the Minister intends to sell the land for non-payment of the levy or interest.

(3) A copy of a notice must be served on the registered mortgagee or encumbrancee of the land (if any).

(4) If the outstanding amount is not paid in full within the time allowed under subsection (2), the Minister may proceed to sell the land.

(5) The sale will, except in the case of land held from the Crown under a lease, licence or agreement to purchase, be by public auction (and the Minister may set a reserve price for the purposes of the auction).

(6) An auction under this section must be advertised on at least two separate occasions in a newspaper circulating generally throughout the State.

(7) If, before the date of the auction, the outstanding amount and the costs incurred by the Minister in proceeding under this section are paid to the Minister, the Minister must withdraw the land from auction.

(8) If—

- (a) an auction fails; or
- (b) the land is held from the Crown under a lease, licence or agreement to purchase,

the Minister may sell the land by private contract for the best price that he or she can reasonably obtain.

(9) Any money received by the Minister in respect of the sale of land under this section will be applied as follows:

- (a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;
- (b) secondly—in discharging the liability for the levy and interest and any other liabilities to the Minister in respect of the land;
- (c) thirdly—in discharging any other liability to the Crown for rates, charges or taxes (including rates, charges or taxes that are a first charge on the land), or any other liability prescribed by regulation in respect of the land;

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- (d) fourthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;
- (e) fifthly—in discharging any other mortgages, encumbrances and charges of which the Minister has notice;
- (f) sixthly—in payment to the owner of the land.

(10) If the owner cannot be found after making reasonable inquiries as to his or her whereabouts, an amount payable to the owner must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.

(11) Where land is sold by the Minister in pursuance of this section, an instrument of transfer under the Minister's hand will operate to vest title to the land in the purchaser.

(12) The title vested in a purchaser under subsection (11) will be free of—

- (a) all mortgages and charges; and
- (b) except in the case of land held from the Crown under lease or licence—all leases and licences.

(13) An instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a statutory declaration made by the Chief Executive of the Department of Environment and Natural Resources stating that the requirements of this section in relation to the sale of the land have been observed.

(14) Where it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section, the Registrar-General may register the transfer notwithstanding the non-production of the duplicate, but in that event he or she will cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.

(15) A reference in this section to land, or title to land, is, in relation to land held from the Crown under lease, licence or agreement for purchase, a reference to the interest of the lessee, licensee or purchaser in the land.

Discounting levies

38J. The Minister may discount a levy in accordance with the regulations to encourage early payment of the levy.

Appropriation of money received by way of levies and interest

38K. (1) Money paid to the Minister in satisfaction of a liability for levies or interest under this Division must be paid into a fund to be called the *Water Resources Levy Fund*

(2) The Fund must be applied for the following purposes in such shares as the Minister thinks fit:

- (a) providing funds to boards established under the *Catchment Water Management Act 1995*;
- (b) any other purpose relating to the management, or improving the quality, of the State's water resources.

(3) The Minister must, as far as practicable, allocate money comprising the Fund so as to benefit proportionately the water resources in relation to which the money was paid.

(4) Before allocating money under subsection (1) the Minister must consult the Treasurer and have regard to his or her views.

(5) The Minister may invest money standing to the credit of the Fund that is not immediately required for the purposes referred to in subsection (2) in such manner as is approved by the Treasurer.

(6) Income derived from investment of the Fund must be credited to the Fund.

Accounts and audit

38L. (1) The Minister must cause proper accounts to be kept of money paid to and from the Fund.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

DIVISION 4—GENERAL

Certain uses of water authorised

39. (1) The Minister may, by notice published in the *Gazette*, authorise the taking of water from a proclaimed watercourse, lake or well for a particular purpose specified in the notice.

(2) A notice may apply generally throughout the State or in relation to a particular watercourse or lake or to the wells of a particular part of the State.

(3) An authorisation will be subject to such conditions as the Minister thinks fit and specifies in the notice.

(4) The Minister may vary or revoke a notice under this section by a subsequent notice published in the *Gazette* and in a newspaper circulating generally throughout the State.

(5) A notice published under subsection (4) does not have effect, insofar as it revokes or restricts the right to take water or imposes further conditions on that right, until the expiration of seven days from its publication.

Restrictions in case of inadequate supply or overuse of water

40. (1) Where, in the Minister's opinion—

- (a) the rate at which water is taken from a watercourse, lake or well (whether proclaimed or not) is such that the quantity of water available can no longer meet the demand or there is a risk that the available water will not be sufficient to meet future demand; or
- (b) there is insufficient water available to satisfy the demands of persons who are entitled to use or enjoy the water or there exists the danger of such an insufficiency in the future; or
- (c) further reduction in the quantity of the water would be detrimental to its quality or to the ecosystems that depend upon it,

the Minister may, by notice published in the *Gazette* and in a newspaper circulating generally throughout the State, prohibit or restrict the taking of water from the watercourse, lake or well to allow time—

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(d) for its replenishment or for an assessment of the quantity or quality of the available water; or

(e) for the assessment and remedying of any other problem relating to the water.

(2) A notice has effect—

(a) in relation to a person on whom a copy of the notice has been served personally or by post—at the time of service;

(b) in relation to all other persons—at the expiration of seven days from publication of the notice in the *Gazette* and in a newspaper circulating generally throughout the State.

(3) A notice remains in force for such term (not exceeding two years) as is stated in the notice.

(4) Where, in the opinion of the Minister, the rate at which, or the manner in which, water is taken from an unproclaimed watercourse, lake or well is unfairly detrimental to other persons who have, or should have, access to the water, the Minister may, by notice served on the person taking the water—

(a) restrict the rate and the times at which he or she may take the water; and

(b) direct him or her to take such action as is specified in the notice to rectify any problem relating to the manner in which the water is taken.

(5) A notice under subsection (1) or (4)—

(a) may require the removal of the means by which water can be taken from the watercourse, lake or well;

(b) may specify conditions subject to which water may be taken from the watercourse, lake or well.

(6) A person who contravenes or fails to comply with a notice under this section is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(7) The Minister may vary or revoke a notice under subsection (1) by notice published in the *Gazette* and in a newspaper circulating generally throughout the State.

(8) The Minister may vary or revoke a notice served on a person under subsection (4) by subsequent notice served on that person.

**PART 5
PROTECTION OF WATER RESOURCES**

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Interpretation

41. (1) In this Part, unless the contrary intention appears—

"**material**" means solid, liquid or gaseous material;

"**owner**" in relation to a vessel or aircraft includes a person who has, or is entitled to, possession or control of the vessel or aircraft;

"**surface water**" includes—

- (a) water in a dam, reservoir or artificial lake that is situated in a water protection area; and
- (b) floodwaters that have overflowed the banks of a watercourse or lake;

"**water protection area**" means a part of the State declared by proclamation to be a water protection area.

(2) Material floating on the surface of water will be taken to have entered the water.

* * * * *

(4) A reference in this Part to the disposal or escape of material from land includes a reference to the disposal or escape of material from a vehicle on the land.

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Application of Part

41A. This Part applies only in relation to a water protection area.

Degradation of water

42. * * * * *

(2) Material that enters surface or underground water in a water protection area of the State will be taken to have degraded the water if the quality of the water is detrimentally affected as the material disperses through or over it notwithstanding that, as dispersion continues, the detrimental effect may be reduced to a negligible level.

(3) The Governor may, by proclamation, declare any part of the State to be a water protection area and may by subsequent proclamation, vary or revoke such a proclamation.

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Prohibition of certain acts, etc.

46. (1) The Governor may, by regulation, prohibit, restrict or regulate an act or activity in a water protection area or a part of a water protection area if of the opinion that it is necessary or desirable to do so to protect any surface or underground water.

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(3) A person who undertakes an act or activity in contravention of a regulation under subsection (1) is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

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Action by Minister in case of unauthorised release of material

55. (1) Where the Minister knows of, or has reason to suspect, the unauthorised entry of material into surface or underground water and is of the opinion that the material has degraded or is likely to degrade the water, the Minister may, by notice served on the owner of the land, vessel or aircraft from which the material emanated, direct the owner to take such action as the Minister specifies in the notice—

(a) to prevent further disposal or escape of material;

(b) to remove material that has entered the water from the water or from land on which the material has been deposited.

(2) A person on whom a notice is served is entitled to enter any land in order to comply with the notice.

(3) If the owner fails to comply with a notice the Minister may enter the land, vessel or aircraft and take the action specified in the notice and such other action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the owner to the Minister.

(4) In an emergency the Minister is not obliged to serve notice under subsection (1) but may enter the land, vessel or aircraft and take such action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the owner to the Minister.

Risk of escape of material from land etc.

56. (1) Where the Minister is of the opinion that precautions should be taken to ensure that material on or under any land or on any vessel or aircraft does not enter any surface or underground water, the Minister may by notice served on the owner of the land, vessel or aircraft direct him or her to take such action (to be specified in the notice) as the Minister considers necessary.

(2) A person who fails to comply with a notice under subsection (1) is guilty of an offence.

Penalty: where the offender is a natural person—Division 3 fine

where the offender is a body corporate—Division 1 fine.

(3) Where the owner fails to comply with a notice the Minister may enter the land, vessel or aircraft and take the action specified in the notice and such other action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the owner to the Minister.

PART 6
OBSTRUCTION AND MAINTENANCE OF WATERCOURSES AND LAKES

Interpretation

57. (1) In this Part, unless the contrary intention appears—

"**lake**" includes a reservoir that is vested in or is under the management and control of a public authority;

"**public authority**" means—

- (a) the Crown;
- (b) a statutory authority declared by regulation to be a public authority;

"**the relevant authority**" means—

- (a) in the case of a watercourse or lake situated in a catchment area constituted under the *Catchment Water Management Act 1995*—the catchment water management board for that area if the board has the function of controlling the flow of water in that lake or watercourse;
- (b) in the case of a watercourse or lake vested in or under the management and control of a public authority (except where a management board is the relevant authority in relation to that watercourse or lake)—the public authority;
- (c) in any other case—the Minister;

"**unauthorised object**" or "**unauthorised obstruction**" means an object or obstruction that has not been authorised under this Part, the *Planning Act 1982* or the *Harbors Act 1936*.

(2) For the purposes of this Part floodwaters overflowing the banks of a watercourse or lake will not be taken to be part of the watercourse or lake.

Application of Part

58. This Part applies—

- (a) to all proclaimed watercourses and lakes; and
- (b) to a watercourse or lake situated in a catchment area constituted under the *Catchment Water Management Act 1995* in relation to which the catchment water management board established for that area is the relevant authority under this Part; and
- (c) to a watercourse or lake that is vested in or is under the management and control of a public authority.

Obstructions, etc., in watercourses and lakes

59. (1) A person must not—

- (a) erect, construct or place any building or structure in a watercourse or lake or on the bank of a watercourse or lake; or
- (b) place objects on or near the bank of a watercourse or lake to control flooding from the watercourse or lake; or

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- (c) deposit any object or solid material in a watercourse or lake; or
- (d) obstruct a watercourse or lake in any other manner; or
- (e) alter the course of a natural watercourse; or
- (f) destroy vegetation growing in the bed or on the banks of a watercourse or lake; or
- (g) excavate the bed or bank of a natural watercourse or lake or excavate near to the bank of a natural watercourse or lake so as to create a risk that water may break through the bank; or
- (h) remove rock, sand or soil—
 - (i) from the bed or bank of a natural watercourse or lake; or
 - (ii) from an area near to the bank of a natural watercourse or lake so as to create a risk that the water may break through the bank,

unless authorised to do so—

- (i) by permit issued by the relevant authority under this Part; or
- (j) under the *Planning Act 1982* or the *Harbors Act 1936*.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(2) It is not an offence under subsection (1) to destroy vegetation in pursuance of an obligation under the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986*.

Permits

60. (1) An application for a permit must be in a form approved by the relevant authority and must be accompanied by the prescribed fee.

(2) A permit is subject to such conditions as the relevant authority thinks fit and are specified in the permit.

(3) The relevant authority may vary a permit with the consent of the holder of the permit.

Contravention, etc., of permit

61. (1) A person who contravenes or fails to comply with a condition of a permit is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(2) If the relevant authority is satisfied that the holder of a permit or a person acting on behalf of the holder of a permit issued by the authority has committed an offence against subsection (1), the authority may vary or revoke the permit.

Obligation of owner to remove obstruction

62. (1) The relevant authority may, by notice served on the owner of land on which a watercourse or lake is situated or that adjoins a watercourse or lake, direct the owner—

- (a) to remove unauthorised obstructions from the watercourse or lake or from its banks and to remove any unauthorised object placed on or near the banks to control flooding; or
- (b) to maintain the watercourse or lake in good condition; or
- (c) where a contravention of section 59(1)(e), (f), (g) or (h) has occurred—
 - (i) to return a natural watercourse to its original course; or
 - (ii) to replant vegetation in the bed or on the banks of the watercourse; or
 - (iii) to replace rock, sand or soil excavated or removed from the bed or banks of a watercourse or lake or from an area near to such banks,

as the case requires.

(2) Where the relevant authority is of the opinion that some person other than the owner of the land should take responsibility for the removal of an obstruction or object or the maintenance of a watercourse or lake, the authority may serve a notice under subsection (1) on that person.

(3) A person who fails to comply with a notice is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(4) Where the owner or other person on whom a notice has been served fails to comply with the notice the relevant authority may enter the land and take the action specified in the notice and such other action as the authority considers appropriate in the circumstances and the authority's costs will be a debt due by the owner or other person to the authority.

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**PART 7
WELLS**

Application of this Part

63. (1) This Part does not apply to, or in relation to, a well of a class specified in schedule 2.

(2) A provision of this Part does not apply to, or in relation to, a well of a class declared by proclamation to be excluded from the operation of that provision.

Drilling and maintenance of wells

64. (1) Subject to subsection (2), a person must not—

- (a) drill a well; or
- (b) repair, replace or make any alterations to the casing, lining or screen of a well; or
- (c) plug, backfill or seal a well,

unless—

- (d) he or she is a licensed well driller or is supervised in carrying out the work by a licensed well driller; and
- (e) the work is carried out pursuant to a permit issued by the Minister.

(2) Subsection (1) does not apply to a person in relation to a well if—

- (a) that person is the owner of the land on which the well is situated or is the employee or sharefarmer of the owner of that land; and
- (b) the well gives access to underground water the surface of which is at atmospheric pressure and the salinity of which exceeds 1 800 milligrams per litre; and
- (c) the work is carried out solely for the purposes of maintenance and does not involve—
 - (i) substantial alteration to the casing, lining or screen of the well or the replacement of the casing, lining or screen with a casing, lining or screen of substantially different design or specifications; or
 - (ii) a substantial repositioning of the casing, lining or screen; or
 - (iii) deepening the well by more than 1.5 metres.

(3) The owner of land on which a well is situated must ensure that the well (including the casing, lining and screen of the well) is properly maintained.

(4) A person who contravenes or fails to comply with a provision of this section is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(5) It is a defence to prosecution for an offence involving a contravention of subsection (1) to prove that—

- (a) the work comprising the alleged offence was carried out to prevent or reduce pollution of water in the well and that in the circumstances it was unreasonable to expect the defendant—
 - (i) to have obtained the services of a licensed well driller; or
 - (ii) to have obtained a permit,before the work was carried out; and
- (b) the work was carried out in accordance with the regulations (if any); and
- (c) the Minister was given written notice of the work as soon as practicable after it was completed.

(6) It is a defence to prosecution for an offence involving a contravention of subsection (1) to prove that—

- (a) the work comprising the alleged offence was carried out pursuant to a permit issued by the Minister; and
- (b) the work comprising the alleged offence was carried out by or under the supervision of the owner of the land on which the well is situated; and
- (c) at the time of the alleged offence the well was not more than 15 metres in depth (or such other depth as may be prescribed); and
- (d) the work was carried out in accordance with the regulations (if any).

Well driller's licences

65. (1) The Minister may grant a well driller's licence to a natural person who—

- (a) is of or over the age of 18 years; and
- (b) holds prescribed qualifications; and
- (c) is, in the Minister's opinion, a fit and proper person to hold such a licence.

(2) An application for a licence must be in a form approved by the Minister and must be accompanied by the prescribed fee.

(3) A licence is subject to such conditions as are prescribed from time to time by regulation and to such further conditions as are specified in the licence by the Minister.

(4) The Minister may cancel a well driller's licence by notice served on the holder of the licence if the Minister is satisfied that that person is no longer a fit and proper person to hold such a licence.

Renewal of licence

66. (1) A licence may be renewed from time to time.

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(2) An application for renewal of a licence must be in a form approved by the Minister and must be accompanied by the prescribed fee.

Permits

67. (1) An application for a permit to drill a well or carry out other work in relation to a well must be in a form approved by the Minister and must, if a fee has been prescribed, be accompanied by the prescribed fee.

(2) A permit is subject to such conditions as the Minister thinks fit and are specified in the permit.

(3) The Minister may vary a permit with the consent of the holder of the permit.

Contravention of conditions

68. (1) A person who contravenes or fails to comply with a condition of a well driller's licence or a permit is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(2) If the Minister is satisfied that the holder of a well driller's licence or a permit, or a person acting on behalf of such a person, has contravened or failed to comply with a condition of the licence or permit or has committed an offence against any provision of this Act, the Minister may vary, suspend or cancel the licence or vary or revoke the permit.

Requirement for remedial work

69. (1) Where the Minister is satisfied that the water of a well is likely to be degraded or wasted because of a defect in the well or in the casing, lining or screen of the well or because the well or the casing, lining or screen is in need of maintenance, the Minister may, by notice served on the owner of the land on which the well is situated, direct that the work or other action specified in the notice be carried out or taken to remedy the problem.

(2) If, in the Minister's opinion, the defect resulted from work carried out by a licensed well driller, the Minister may serve notice under subsection (1) on the well driller (but notice must not be served under this subsection later than six months after the work was carried out.)

(3) A well driller on whom a notice is served is entitled to enter the land on which the well is situated in order to comply with the notice.

(4) A person who fails to comply with a notice is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

(5) If a person on whom a notice has been served fails to comply with the notice the Minister may enter the land on which the well is situated and carry out the necessary work or take the necessary action and any other work or action that the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the person to the Minister.

**PART 8
APPEALS**

Right of appeal

70. (1) The following rights of appeal lie to the Court—

- (a) an applicant for the grant or renewal of a licence or the issue of a permit may appeal to the Court against a refusal to grant or renew the licence or to issue the permit or the imposition of conditions in relation to the licence or permit;
- (b) the holder of a licence or permit may appeal to the Court against the variation, suspension or cancellation of the licence or the variation or revocation of the permit;
- (c) a person liable to pay a levy for water taken from a proclaimed watercourse, lake or well may appeal to the Court—
 - (i) on the ground that the meter used to establish the volume of water taken was inaccurate or unreliable; or
 - (ii) against the Minister's assessment of the volume of water taken or the volume of water taken for domestic or stock purposes but only on the ground that the assessment was not made in good faith;
- (d) a person who is subject to a prohibition or restriction under section 40(1) in carrying on a business may appeal to the Court against the prohibition or restriction;
- (e) a person who is subject to a direction of the Minister under section 40(4), 55(1), 56(1) or 69(1) or a direction of the Minister or a public authority under section 62(1) may appeal to the Court against the direction;
- (f) a person who is subject to a restriction under section 40(4) may appeal to the Court against the restriction.

(2) The Crown in right of the State of Victoria has a right of appeal to the Court against a decision to grant or renew a licence or to issue a permit on the ground that the decision is contrary to the Border Groundwaters Agreement approved by the *Groundwater (Border Agreement) Act 1985*.

(3) An appeal under subsection (1) must be instituted in the prescribed manner and form within six weeks of the decision, assessment, direction, prohibition or restriction appealed against or within such further time as the Court considers to be reasonable in the circumstances.

(4) An appeal under subsection (2) must be instituted in the prescribed manner and form within two months after the Victorian Government receives notice of the decision.

(5) On an appeal the Court may—

- (a) affirm or vary the decision, direction, prohibition or restriction appealed against, or substitute any decision, direction or restriction that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Minister or public authority for further consideration.

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Decision or direction may be suspended pending appeal

71. (1) Where a decision, direction, prohibition or restriction has been made, given or imposed by the Minister or a public authority and the Minister, the public authority or the Court is satisfied that an appeal against the decision, direction, prohibition or restriction has been instituted, or is intended, the Minister, the public authority or the Court may suspend the operation of the decision, direction, prohibition or restriction until the determination of the appeal.

(2) A suspension granted under subsection (1) by the Minister, a public authority or the Court may be terminated by the Minister, the public authority or the Court (as the case requires) at any time.

Constitution of Environment, Resources and Development Court

71A. The following provisions apply in respect of the constitution of the Environment, Resources and Development Court when exercising jurisdiction under this Part:

- (a) the Court may be constituted in a manner provided by the *Environment, Resources and Development Court Act 1993* or may, if the Presiding Member of the Court so determines, be constituted of a Judge and one commissioner;
- (b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and one commissioner in the same way as in relation to a full bench of the Court;
- (c) the Court may not be constituted of or include a commissioner unless—
 - (i) the commissioner's appointment was on the basis that he or she has, in the opinion of the Governor, wide practical knowledge of, and experience in, the use, conservation or management of water resources; and
 - (ii) the commissioner has been designated by the Governor, by instrument in writing, as a commissioner for the purposes of the Court's jurisdiction under this Part.

**PART 9
MISCELLANEOUS**

False or misleading information

72. A person who furnishes information to the Minister or an authorised officer under this Act that is false or misleading in a material particular is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

Protection of Crown property

73. A person who interferes with any property of the Crown used in, or in connection with, the administration of this Act is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

Vicarious liability

74. For the purposes of this Act, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

Offences by bodies corporate

75. Where a body corporate is guilty of an offence against this Act, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence where the offender is a natural person.

Evidentiary

76. (1) An allegation by the prosecution in proceedings for an offence against this Act that on a particular date or during a particular period—

- (a) the defendant (or any other person) was, or was not, the holder of a licence or permit under this Act; or
- (b) a particular person was, or was not, the owner of any specified land, vessel or aircraft; or
- (c) a specified watercourse, lake or well was, or was not, a proclaimed watercourse, lake or well; or
- (d) a particular person was an authorised officer,

must, in the absence of proof to the contrary, be accepted as proved.

(2) A document that purports to have been certified by the Minister or an authorised officer to be an accurate copy of a licence or permit granted or issued under this Act must, in the absence of proof to the contrary, be accepted in proceedings for an offence against this Act as an accurate copy of that licence or permit.

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General defence

77. (1) It is a defence to a charge of an offence against this Act if the defendant proves—

- (a) that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence; and
- (b) in the case of an alleged offence involving the disposal or escape of material—that, as soon as practicable after the disposal or escape, the defendant notified the Minister in writing of the time and place at which the disposal or escape occurred and the nature and quantity of the material involved.

* * * * *

Proceedings for offences

78.

* * * * *

(3) Proceedings for an offence against this Act—

- (a) may be commenced by an authorised officer or any other person with the authorisation in writing of the Minister; and
- (b) must be commenced within five years after the date on which the offence is alleged to have been committed.

(4) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

Money due to Minister, etc., first charge on land

79. (1) Money that is due to the Minister under this Act in respect of—

- (a) water taken for use on any land whether pursuant to a licence or not; or

* * * * *

- (d) the Minister's costs in carrying out emergency measures on land,

is a first charge on the land.

(2) Money that is due to the Minister or a public authority in respect of the Minister's or the authority's costs in carrying out the requirements of a notice served on the owner of land is a first charge on the land.

Protection from personal liability

80. (1) A person engaged in the administration of this Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, by the person or by a body of which he or she is a member, of a power, function or duty under this Act.

(2) A liability that would but for subsection (1), lie against the person, lies instead against the Crown.

Exemption from Act

81. (1) The Governor may, by regulation—

- (a) exempt, or empower the Minister to exempt, a person, or a person of a class, from the operation of any provision of this Act;
- (b) declare that this Act, or any provision of this Act, does not apply to, or in relation to, a watercourse, lake or well, or a watercourse, lake or well of a class, specified in the regulation.

(2) An exemption under subsection (1)(a) is subject to such limitations and conditions as are specified in the regulation.

Service of notices

82. A notice required or authorised by this Act to be served on a person may be served as follows—

- (a) by personal service on the person or an agent of the person;
- (b) by leaving it for the person at his or her place of residence or business with someone apparently over the age of 16 years;
- (c) by serving it by post on the person or an agent of the person at his or her last known address.

Regulations

83. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) In particular the regulations may—

- (a) make provisions for, or relating to, the composition, powers, functions and procedures of water resources committees;
- (b) divide licences into classes and attach different conditions to different classes of licence;
- (c) make provisions for, or relating to, the transfer of licences;
- (d) make provisions for, or relating to, the assessment of the quantity of water taken by a licensee;
- (e) make provisions for, or in relation to—
 - (i) the adjustment of future water allocation where the licensee has used excess water or has not fully used previous allocations;
 - (ii) the taking of water in excess of the water allocation (including charges at penalty rates for taking excess water);
 - (iii) the taking of water from a watercourse, lake or well that is surplus to the quantity that the Minister anticipated would be available from the watercourse, lake or well;
- (f) make provisions for, or in relation to, the keeping of records and the provision of information by licensees to the Minister;

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- (g) provide for the payment and recovery of fees—
 - (i) for the installation, maintenance and testing of water meters or for any other service provided by the Minister; or
 - (ii) in relation to any other matter connected with the administration of this Act;
- (h) provide for the payment and recovery of rental for water meters;
- (i) make provisions for, or in relation to, flood management including the registration of flood maps in the General Registry Office;
- (j) make provisions for, or in relation to, the safety of reservoirs and dams;
- (k) prescribe fines—
 - (i) not exceeding a division 5 fine, for contravention of or failure to comply with a regulation under paragraph (j);
 - (ii) not exceeding a division 8 fine for contravention of or failure to comply with any other regulation.

(3) A regulation under this Act may confer on the Minister such powers, authorities or discretions as the Governor thinks fit.

(4) A regulation may exclude a particular channel, or a channel of a particular class, from the definition of the term "**watercourse**" as used throughout this Act or as used in some, but not other, provisions of this Act.

SCHEDULE 1

1. The agreement (as amended from time to time) approved by the *Murray-Darling Basin Act 1983*.
2. The Border Groundwaters Agreement (as amended from time to time) approved by the *Groundwaters (Border Agreement) Act 1985*.
3. The *Pulp and Paper Mill Agreement Act 1958*.
4. The *Pulp and Paper Mill (Hundred of Gambier) Indenture Act 1961*.
5. The *Pulp and Paper Mill (Hundreds of Mayurra and Hindmarsh) Act 1964*.

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SCHEDULE 2

1. A well that is 2.5 metres or less in depth (or such other depth as may be prescribed).
2. A well—
 - (a) that is not used to provide a supply of water; and
 - (b) in relation to which requirements imposed by or under the *Mining Act 1971* or the *Petroleum Act 1940* are in force;
3. A well of one or more of the following classes if the well is not used to provide a supply of water—
 - (a) a trench for the laying of pipes, cables or other equipment in relation to the supply of water, gas or electricity or the provision of sewerage or drainage;
 - (b) a drain that is under the control of the Commonwealth or State Government or a municipal or district council;
 - (c) an excavation for or in relation to a building or for a swimming pool;
 - (d) a private mine within the meaning of the *Mining Act 1971*;
 - (e) an excavation drilled for engineering or survey purposes if the excavation is not in a part of the State excluded from the operation of this paragraph by proclamation and the excavation is not more than 15 metres in depth;
 - (f) an excavation for the purposes of a temporary toilet;
 - (g) an excavation (not exceeding 15 metres in depth) for the installation of cathodic protection anodes or the measurement of pressure by means of a piezometer.
4. (1) A well drilled to a depth not exceeding the depth of the water table nearest to the surface for the purpose of obtaining samples of water for scientific research.

(2) An excavation (not exceeding three metres in depth) for the purposes of conducting an underground test or extracting material for testing.
5. A well of a class declared by proclamation to be excluded from the operation of Part 7.

SCHEDULE 3

Transitional Provisions

1. A proclamation under section 25 of the repealed Act (declaring a watercourse or lake to be a Proclaimed Watercourse) that was in force immediately before the commencement of this Act continues in force as if it had been made under section 33(1) of this Act.

2. A proclamation under section 41 of the repealed Act (declaring an area in the State to be a Proclaimed Region) that was in force immediately before the commencement of this Act continues in force as if it had been made under section 33(2) of this Act.

3. A licence granted under section 29 or 43 of the repealed Act and in force immediately before the commencement of this Act continues in force as if it had been granted under section 35 of this Act.

4. An order in force under section 62 of the repealed Act immediately before the commencement of this Act continues in force as if it were a licence granted under section 49 of this Act until the expiration of the period specified in the order or until the expiration of six months after the commencement of this Act whichever occurs later.

5. An authorisation in force under section 40C(1) of the repealed Act immediately before the commencement of this Act continues in force as if it were a permit issued under section 60 of this Act.

6. A permit in force under section 49(1) of the repealed Act immediately before the commencement of this Act continues in force as if it had been issued under section 67 of this Act.

7. A Well Driller's Licence in force under section 58(1) of the repealed Act immediately before the commencement of this Act continues in force as if it had been granted under section 65 of this Act.

8. An order in force under section 53 of the repealed Act immediately before that Act was repealed remains in force until it expires or is revoked by the Minister and a person who contravenes or fails to comply with such an order is guilty of an offence.

Penalty: where the offender is a natural person—Division 6 fine

where the offender is a body corporate—Division 5 fine.

9. A Water Resources Advisory Committee in existence immediately before the commencement of this Act will continue in existence as if it had been established under this Act until its members vacate office or it is dissolved by the Minister by notice in the *Gazette*.

10. A notice served on the owner of land under section 62(1)(a) cannot apply to an obstruction comprising a wall or embankment constructed before the commencement of this Act for the purpose of damming the flow of water in a watercourse.

11. A reference in any other Act to the Water Resources Appeal Tribunal is, on and after the commencement of clause 2 of Schedule 2 of the *Environment Protection Act 1993*, to be read as a reference to the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*.

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APPENDIX 1

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 4(1):	definition of "the Court" inserted by 76, 1993, Sched. 2 cl. 2(a) definition of "domestic purpose" inserted by 107, 1995, s. 3(a) definition of "intensive farming" inserted by 107, 1995, s. 3(b) definition of "the Tribunal" repealed by 76, 1993, Sched. 2 cl. 2(b) definition of "water allocation" substituted by 107, 1995, s. 3(c)
Section 4(2):	repealed by 76, 1993, Sched. 2 cl. 2(c)
Section 8:	amended by 76, 1993, Sched. 2 cl. 2(d)
	Division 4 of Part 3 comprising ss. 21 - 27 and heading repealed by 76, 1993, Sched. 2 cl. 2(e)
Section 29(1):	amended by 107, 1995, s. 4
Section 30(3):	amended by 76, 1993, Sched. 2 cl. 2(f)
Section 30(4):	repealed by 76, 1993, Sched. 2 cl. 2(g)
Section 31(2):	amended by 107, 1995, s. 5
Section 32:	amended by 107, 1995, s. 6
Section 35(3)(c):	repealed by 107, 1995, s. 8
Section 38(3):	inserted by 107, 1995, s. 9
	Division 3A of Part 4 comprising ss. 38A - 38L and heading inserted by 107, 1995, s. 10
Part 5 Division 1 heading:	repealed by 76, 1993, Sched. 2 cl. 2(h)
Section 41(3):	repealed by 76, 1993, Sched. 2 cl. 2(i)
Section 41(5):	repealed by 76, 1993, Sched. 2 cl. 2(i)
Section 41A:	inserted by 76, 1993, Sched. 2 cl. 2(j)
Section 42(1):	repealed by 76, 1993, Sched. 2 cl. 2(k)
Part 5 Division 2 heading:	repealed by 76, 1993, Sched. 2 cl. 2(l)
Sections 43 - 45:	repealed by 76, 1993, Sched. 2 cl. 2(m)
Section 46(1):	substituted by 76, 1993, Sched. 2 cl. 2(n)
Section 46(2):	repealed by 76, 1993, Sched. 2 cl. 2(n)
Sections 47 and 48:	repealed by 76, 1993, Sched. 2 cl. 2(o)
Part 5 Division 3 heading:	repealed by 76, 1993, Sched. 2 cl. 2(o)
Sections 49 - 53:	repealed by 76, 1993, Sched. 2 cl. 2(o)
Part 5 Division 4 heading:	repealed by 76, 1993, Sched. 2 cl. 2(o)
Section 54:	repealed by 76, 1993, Sched. 2 cl. 2(o)
Section 57(1):	definition of "the relevant authority" substituted by 37, 1995, Sched. 2
Section 58:	substituted by 37, 1995, Sched. 2
Section 70(1):	amended by 76, 1993, Sched. 2 cl. 2(p), (q); 107, 1995, s. 11(a)
Section 70(2):	amended by 76, 1993, Sched. 2 cl. 2(p)
Section 70(3):	amended by 76, 1993, Sched. 2 cl. 2(p); 107, 1995, s. 11(b)
Section 70(5):	amended by 76, 1993, Sched. 2 cl. 2(p)
Section 71(1) and (2):	amended by 76, 1993, Sched. 2 cl. 2(r)
Section 71A:	inserted by 76, 1993, Sched. 2 cl. 2(s)
Section 77(2):	repealed by 76, 1993, Sched. 2 cl. 2(t)
Section 78(1) and (2):	repealed by 76, 1993, Sched. 2 cl. 2(u)
Section 79(1)(b) and (c):	repealed by 76, 1993, Sched. 2 cl. 2(v)
Schedule 3	
Clause 11:	inserted by 76, 1993, Sched. 2 cl. 2(w)

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.