

WATER (AMENDMENT) ACT, 1977

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 103, 1977.

An Act to amend the Water Act, 1912, for the purpose of providing for the preparation and implementation of volumetric water allocations schemes in respect of certain rivers, lakes and sections of rivers, and for certain other purposes. [Assented to, 16th November, 1977.]

BE

Water (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Water (Amendment) Short title. Act, 1977".

2. (1) Except as provided in this section, this Act shall Commence-
commence on the date of assent to this Act. ment.

(2) Section 4 shall, in its application to a provision of Schedules 1-4, commence on the day on which that provision commences.

(3) The several provisions of Schedules 1-4 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENTS TO PART I OF THE WATER ACT, 1912.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE WATER ACT, 1912.

SCHEDULE 3.—INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT, 1912.

SCHEDULE 4.—FURTHER AMENDMENTS TO PART II OF THE WATER ACT, 1912.

SCHEDULE 5.—SAVINGS.

Water (Amendment).

Amendment of Act No. 44, 1912. **4.** The Water Act, 1912, is amended in the manner set forth in Schedules 1–4.

Savings. **5.** Schedule 5 has effect.

Sec. 4.
SCHEDULE 1.
AMENDMENTS TO PART I OF THE WATER ACT, 1912.
(1) Section 1—

Omit the matter relating to Division 3A of Part II.

(2) Section 1—

From the matter relating to Division 3B of Part II, omit “18Q”, insert instead “18R”.

(3) Section 1—

From the matter relating to Division 4 of Part II, omit “20H”, insert instead “20HB”.

(4) Section 1—

After the matter relating to Division 4A of Part II, insert :—

DIVISION 4B.—*Volumetric Water Allocations Schemes—ss. 20V–20AE.*

SCHEDULE

Water (Amendment).

SCHEDULE 2.

Sec 4.

AMENDMENTS TO PART II OF THE WATER ACT, 1912.

(1) (a) Section 5, definition of "Authority"—

Before the definition of "Drainage", insert :—

"Authority" means an authority issued under Division 4 to construct and use a joint water supply scheme.

(b) Section 5, definition of "Joint water supply scheme"—

Omit the definition, insert instead :—

"Joint water supply scheme" means any work to which this Part extends which—

- (a) is used or proposed to be used for the purpose of supplying water to the lands of two or more occupiers who are jointly utilising the work or who propose to utilise the work jointly (whether any of those occupiers has occupation of the site of the work or not);
- (b) is used or proposed to be used for the purpose of supplying water for irrigating the land or lands of any occupier or occupiers other than the land or lands of the occupier or occupiers of the site of the work; or

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(c) is used or proposed to be used (otherwise than pursuant to a license granted before the commencement of the Water, Crown Lands and Other Acts (Amendment) Act, 1970) for the purpose of supplying water for irrigating a holding (not being a riparian holding) or part thereof, where that water is, or is to be, conveyed wholly or partly by a work that is used or proposed to be used by any occupier or occupiers (not being the occupier or occupiers of the site of the work) for the purpose of conveying that water in accordance with a right conferred by this Part or pursuant to a license, authority or permit.

(c) Section 5, definition of "License"—

Omit "does not include a group license", insert instead "means a license issued under Division 3".

(d) Section 5, definition of "Permit"—

After the definition of "Occupier", insert :—

"Permit" means a permit issued under Division 3B.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

- (e) Section 5, definition of “Work to which this Part extends”—

Omit the definition, insert instead :—

“Work to which this Part extends”—

(a) means a work—

- (i) connected with or affecting the quantity or use of water in any river flowing through or past, or in any lake situated within or adjoining, the land of two or more occupiers; or
- (ii) connected with or affecting the quantity of any water flowing in, to, or from, or being in, any such river or lake,

whether the work is—

- (iii) for water conservation, irrigation, water supply or drainage;
- (iv) for preventing land from being flooded by water; or
- (v) for changing the course of a river or preventing the course of a river from changing,

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

and whether the work was constructed before or after the commencement of Schedule 2 (1) (e) to the Water (Amendment) Act, 1977; and

- (b) in relation to a work, being a flume, race, channel, cutting, tunnel or pipe, which diverts water by gravitation from a river or lake referred to in paragraph (a) (i), means such part of the work as is situated between the source of supply and the device fitted or installed to control the flow of water in the work or, as the case may be, between the source of supply and the site at which it is proposed to fit or install that device,

but does not include a work declared under subsection (3) to be a work for urban drainage.

(f) Section 5 (2), (3)—

At the end of section 5, insert :—

(2) A reference in this Part to the holders of an authority shall be construed as a reference to the occupiers of the whole of the lands supplied with water obtained by means of a joint water supply scheme in respect of which an authority is in force and, where the supply work or conveying work that is the subject of the scheme is

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

installed or constructed on other land, shall be construed as including a reference to the occupier of that other land, and a reference to a holder of an authority shall be construed as a reference to any one of those holders.

(3) The Commission may, by notice published in the Gazette, declare any work, being a dam, an excavation, a channel (whether an artificial channel or a natural channel artificially improved), a cutting, a tunnel or a pipe, which is constructed in, or forms part of, a river referred to in paragraph (a) or (b) of the definition in subsection (1) of "Work to which this Part extends" to be a work for urban drainage and may, by a similar notice, revoke or amend that notice.

(2) (a) Section 7 (1)—

Omit the subsection, insert instead :—

(1) Subject to subsection (2), the occupier of land which forms the bank of a river or a lake has the right, without the need to obtain a license—

(a) to take and use the water then being in the river or lake—

(i) for domestic purposes;

(ii) for the purpose of watering stock;

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

- (iii) for the purpose of irrigating gardens, not exceeding 2 hectares in area in the aggregate, which are cultivated in connection with the use of a dwelling-house and of which the produce is not sold or exposed or offered for sale; and
 - (iv) for the purpose of irrigating land, not exceeding 2 hectares in area, which is used for the growing of crops or pastures to produce fodder for animals kept solely in connection with the use of a dwelling-house;
- (b) to construct and use for the purpose of taking or using water for any of the purposes specified in paragraph (a) a work to which this Part extends, but only if the capacity of the work does not exceed 50 litres per second; and
- (c) to construct and use a dam or an excavation in the river or lake or a work which obstructs the flow of water in the river, but only if—
- (i) the storage capacity of the dam, excavation or work does not exceed 7 megalitres;
 - (ii) the dam, excavation or work will not, in the opinion of the Commission, detrimentally

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Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

affect the interests of the occupiers of land which adjoins or derives benefit from the river or lake; and

- (iii) where, by notice given to the occupier by one of the methods specified in subsection (2), the Commission has directed that a means of passing a flow of water through or past the dam, excavation or work be provided—that means of passing a flow has been provided.

(b) Section 7 (6)—

Omit the subsection, insert instead :—

(6) Subsection (1) does not, with respect to a lake, confer on any occupier referred to in that subsection any right of access over or to the user of land not lawfully occupied by him.

(3) Section 11—

Omit “police” wherever occurring, insert instead “stipendiary”.

(4) Section 12—

Omit “police” wherever occurring, insert instead “stipendiary”.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(5) (a) Section 13A—

Omit “police” wherever occurring, insert instead “stipendiary”.

(b) Section 13A (9)—

Omit “sections 17B and 17C”, insert instead “sections 21B and 22”.

(6) Section 13AA—

After section 13A, insert :—

**Amended
licenses.**

13AA. (1) The holder of a license who wishes to reduce the area authorised to be irrigated under the license, the capacity of the work or the quantity of water which may be taken and used under the license may apply to the Commission for an amended license.

(2) An application made under subsection (1) shall specify the proposed reduced area to be irrigated, the proposed reduced capacity of the work or the proposed reduced quantity of water to be taken and used.

(3) On receipt of an application made under subsection (1), the Commission shall, without requiring payment of any fee, issue to the applicant, in substitution for his existing license, an amended license for the unexpired portion of the period for which, and subject to the same terms, limitations and conditions as those subject to which, that existing license was

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

issued, except that the amended license shall be in respect of the reduced area, the reduced capacity of the work or, as the case may be, the reduced quantity of water specified in the application.

(7) (a) Section 13B—

Omit “or authority for a joint water supply scheme” wherever occurring.

(b) Section 13B (1)—

Omit “any such license or authority” wherever occurring, insert instead “a license”.

(c) Section 13B (3)—

Omit “or authority” wherever occurring.

(8) Section 13C—

(a) Omit “or authority for a joint water supply scheme” wherever occurring.

(b) Omit “or authority” wherever occurring.

(9) Section 13D—

(a) Omit “or authority for a joint water supply scheme”.

(b) Omit “or authority” wherever occurring.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(10) Section 13F—

- (a) Omit “or authority for a joint water supply scheme”.
- (b) Omit “or authority” wherever occurring.
- (c) Omit “it is the intention of the Commission to cancel the license”, insert instead “the license will be cancelled”.
- (d) After the word “shall” where firstly occurring, insert “be deemed to”.

(11) Section 14B—

Omit the section.

(12) Section 16—

Omit the section, insert instead :—

**Benefit of
license.**

16. (1) A license (other than a license issued under section 13A) shall, except where the license otherwise specifically provides—

- (a) be deemed to be held by; and
- (b) operate and enure for the benefit of,
the lawful occupier for the time being of the land on which the licensed work is constructed or used or is proposed to be constructed or used.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(2) A license issued under section 13A shall, except where the license otherwise specifically provides—

(a) be deemed to be held by; and

(b) operate and enure for the benefit of,

the lawful occupier for the time being of the land which is or is to be supplied with water by means of the licensed work.

(13) Sections 17A, 17B—

Omit the sections, insert instead :—

17A. (1) If at any time during the currency of a license the Commission is satisfied that—

Revocation
or suspen-
sion, etc.,
of license.

- (a) the holder of the license has conserved, diverted, taken or used any quantity of water in excess of the quantity authorised by the license;
- (b) any land has been irrigated as to an area in excess of that authorised by the license;
- (c) the holder of the license has used the licensed work for a purpose other than that authorised by the license;
- (d) the holder of the license has contravened or failed to comply with any of the terms, limitations or conditions to which the license is subject;

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

- (e) any water diverted, taken or used by the holder of the license is not being beneficially used or is being wasted; or
- (f) beneficial use is not being made of the licensed work,

the Commission may serve on the holder of the license a notice that, after the expiration of a period specified in the notice, the license will be revoked, suspended or modified as indicated in the notice, and where any such notice is served, unless the Commission annuls or withdraws the notice before the expiration of the period so specified, the license shall, on the expiration of that period, be deemed to be revoked, suspended or modified, as the case may be.

(2) If in the opinion of the Commission there are circumstances which render it necessary or expedient—

- (a) that any license should be suspended or modified;
- (b) that the quantity of water authorised to be taken under any license should be reduced; or
- (c) that a right held under any license for the taking of water for any purpose from a river, lake or section of a river should be restricted or suspended,

the Commission may serve on the holder of the license a notice to that effect, and where any such notice is served, the license shall be deemed to be suspended or modified, or the quantity of water reduced or, as the case may be, the right restricted or suspended, according to the tenor of the notice.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(3) If the Commission is satisfied that the holder of a license has failed to comply with the terms of a notice served by the Commission whereby—

- (a) the license has been modified;
- (b) the quantity of water authorised to be taken under the license has been reduced; or
- (c) a right held under the license for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended,

the Commission may serve on the holder of the license a notice that, after the expiration of a period specified in the notice, the license will be suspended, and where any such notice is served, unless the Commission annuls or withdraws the notice before the expiration of the period so specified, the license shall, on the expiration of that period, be deemed to be suspended.

(4) Service of a notice under this section may be effected on the holder of a license—

- (a) by delivering the notice to the holder personally;
- (b) by leaving the notice with any person apparently of or above the age of 14 years who apparently resides or is employed on the land of the holder; or
- (c) by letter sent by post and addressed to the holder at his address last known to the Commission.

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

Offences
with respect
to licenses.

17B. (1) Any person who—

- (a) being the holder of a license in respect of a work to which this Part extends, uses the work when the license is suspended;
- (b) being the former holder of such a license, uses the work when the license is revoked or cancelled or has expired;
- (c) being the holder of a license, contravenes or fails to comply with any term, limitation or condition to which the license is subject;
- (d) being the holder of a license, fails to comply with the terms of any notice served on him by the Commission whereby—
 - (i) the license has been modified;
 - (ii) the quantity of water authorised to be taken under the license has been reduced; or
 - (iii) a right held under the license for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended; or
- (e) being the holder of a license, contravenes section 13D,

is guilty of an offence and is liable, on conviction, to a penalty not exceeding \$500.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(2) In any prosecution under this section against the holder or former holder of a license, proof—

- (a) that a work in respect of which the license is or was held has been used when the license is suspended, revoked or cancelled or has expired;
- (b) that any term, limitation or condition to which the license is subject has been contravened or has not been complied with;
- (c) of failure to comply with the terms of any notice served by the Commission on that holder whereby—
 - (i) the license has been modified;
 - (ii) the quantity of water authorised to be taken under the license has been reduced; or
 - (iii) a right held under the license for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended; or
- (d) that water has been taken from a river or lake by means of a work covered by a license before the whole of the works covered by the license have been constructed or provided,

shall, in the absence of proof to the contrary, be evidence that the use, contravention, non-compliance or failure has been caused by that holder or former holder of the license.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(14) Section 17C—

Omit the section, insert instead :—

Revocation
and cancel-
lation of
licenses.

17C. Where a license is deemed to be revoked or cancelled under this Division, the Commission may notify the revocation or cancellation in the Gazette, and any such notification shall be conclusive evidence of the revocation or cancellation.

(15) Section 17D—

Omit the section.

(16) Part II, Division 3A—

Omit the Division.

(17) Section 18R—

After section 18Q, insert :—

Offences
with
respect to
permits.

18R. (1) Any person who—

- (a) being the holder of a permit in respect of a work to which this Part extends, uses the work when the permit is suspended;
- (b) being the former holder of such a permit, uses the work when the permit is withdrawn or has expired; or
- (c) being the holder of a permit, contravenes or fails to comply with any limitation or condition to which the permit is subject,

is guilty of an offence and is liable, on conviction, to a penalty not exceeding \$500.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(2) In any prosecution under this section against the holder or former holder of a permit, proof—

- (a) that a work in respect of which the permit is or was held has been used when the permit is suspended or withdrawn or has expired; or
- (b) that any limitation or condition to which the permit is subject has been contravened or has not been complied with,

shall, in the absence of proof to the contrary, be evidence that the use, contravention or non-compliance has been caused by that holder or former holder of the permit.

(18) (a) Section 20 (1)—

Omit the subsection, insert instead :—

(1) The occupiers of the whole of the lands supplied or proposed to be supplied with water obtained by means of a joint water supply scheme, and, where the land or lands on which the scheme is or is to be constructed is not in the occupation of one or more of those occupiers, the occupier of that land or, as the case may be, the occupiers of those lands, may apply to the Commission for an authority to construct and use the scheme and to take and use, for the purposes specified in the application, the water which may be conserved or obtained by the scheme.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(b) Section 20 (2)—

After “application shall be”, insert “in or to the effect of the prescribed form and shall be”.

(c) Section 20 (2) (a)—

Omit “occupier”, insert instead “applicant to whom it is proposed to supply water obtained by means of the joint water supply scheme”.

(d) Section 20 (2) (b)—

- (i) Omit “occupier” where firstly occurring, insert instead “applicant”.
- (ii) Omit “occupier” where secondly occurring, insert instead “applicant to whom it is proposed to supply water obtained by means of the scheme”.

(e) Section 20 (2) (d)—

Omit “occupier”, insert instead “applicant to whom it is proposed to supply water obtained by means of the scheme”.

(f) Section 20 (2) (g)—

- (i) Omit “occupier”, insert instead “applicant to whom it is proposed to supply water obtained by means of the scheme”.
- (ii) Omit “occupiers”, insert instead “applicants to whom it is proposed to supply water so obtained”.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(g) Section 20 (2) (h)—

Omit the paragraph, insert instead :—

(h) where the applicants or any two or more of the applicants have entered into an agreement, either between themselves or between themselves and any other person, in respect of the scheme, a copy of that agreement;

(h) Section 20 (2) (i)—

Omit “joint water supply”.

(i) Section 20 (2) (j)—

(i) Omit “occupiers” where firstly occurring, insert instead “applicants”.

(ii) Omit “of moneys for same and the payments to be made by any of the occupiers in respect thereof”, insert instead “and payment of money for those matters”.

(19) (a) Section 20A (1)—

Omit “under this Division”.

(b) Section 20A (2)—

(i) Omit “police” wherever occurring, insert instead “stipendiary”.

(ii) Omit “occupiers”, insert instead “applicants”.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(20) (a) Section 20B (2)—

- (i) Omit “and on receipt by it of the certified copy of the agreement executed by the occupiers as hereinafter provided”.
- (ii) Omit “occupiers” where secondly occurring, insert instead “applicants”.
- (iii) Omit “between the occupiers” where secondly occurring.
- (iv) Omit “such works”, insert instead “the works between the applicants to whom it is proposed to supply that water”.

(b) Section 20B (4)—

Omit the subsection.

(21) Sections 20BA, 20BB, 20BC—

After section 20B, insert :—

Commission
may refuse
to grant
certain
applications
for author-
ities.

20BA. (1) The Commission may refuse to grant any application for an authority for the purpose of irrigating grasses or pastures other than sown grasses or improved pastures.

(2) The Commission may refuse to grant any application for an authority if it is not satisfied with the proposals for the construction of the works in regard to nature, class or form, or with the work proposed to be undertaken by any applicant in the preparation of the land for irrigation.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(3) A decision of the Commission under subsection (1) or (2) to refuse to grant an application for an authority shall be final and shall not be subject to appeal.

(4) The Commission may, when renewing an authority under which water has been used for the purpose of irrigating grasses or pastures other than sown grasses or improved pastures, renew the authority subject to a condition that the irrigation of those grasses or pastures shall be discontinued either forthwith or progressively within a specified period not exceeding 5 years.

(5) The Commission may, when renewing an authority in respect of a work used for the purpose of irrigation and—

- (a) that work is, in the opinion of the Commission, of such nature, class or form as to cause undue wastage of water by the filling of depressions, lakes or swamps; or
- (b) the design of the work, or the failure of the holders or any of the holders of the authority to maintain the work or any part of it in good order and condition, warrants the Commission so doing,

renew the authority subject to a condition that the work shall be altered in design or form or repaired to the satisfaction of the Commission, or that additional works shall be provided, within a specified period not exceeding 2 years.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(6) In any case where the alterations, repairs or additional works referred to in subsection (5) are, in the opinion of the Commission, so extensive as to warrant its so doing, the Commission may grant an extension of time, not exceeding 3 years, for completion of those alterations, repairs or additional works.

Water
not to be
taken until
works
completed.

20BB. The holders of an authority granted for the purpose of irrigation or water supply shall not, except with the permission in writing of the Commission, take water from a river or lake by means of a work in respect of which the authority is held until the whole of the works in respect of which the authority is held have been constructed or provided.

Commission
may
cancel
authority
if work
not used
for 3
years.

20BC. In any case where the work in respect of which an authority is held has not been used for a period of 3 years or more, the Commission may give to the holders of the authority notice by letter sent to each of them by post addressed to them at their addresses last known to the Commission that, after the expiration of a period specified in the notice, the authority will be cancelled and, where any such notice is given, unless the Commission annuls or withdraws the notice before the expiration of the period so specified, the authority shall, on the expiration of that period, be deemed to be cancelled.

(22) (a) Section 20c (1)—

- (i) Omit “occupiers of the lands supplied with water obtained by means of a joint water supply scheme”, insert instead “holders of the authority”.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

- (ii) Omit “or the certified copy of the agreement be not lodged with the Commission as hereinafter provided”.
- (b) Section 20c (2)—
 - (i) Omit “occupiers” where firstly occurring, insert instead “holders of the authority”.
 - (ii) Omit “between the occupiers” where secondly occurring.
 - (iii) Omit “such works”, insert instead “the works between such of those holders as are supplied with that water”.
- (c) Section 20c (3)—

Omit the subsection.
- (23) (a) Section 20CA (1)—

Omit “in the form prescribed”.
- (b) Section 20CA (4) (f) (i)—

Omit “occupiers”, insert instead “applicants”.
- (c) Section 20CA (6) (a)—

Omit “and on receipt by it of the certified copy of the agreement executed by the applicants as hereinafter provided, issue to the applicants an authority for a joint water supply scheme”, insert instead “, issue to the applicants an authority”.
- (d) Section 20CA (7)—

Omit the subsection.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

- (e) Section 20CA (8) (a)—
Omit “for a joint water supply scheme”.
- (f) Section 20CA (11)—
Omit “sections 17B and 17C”, insert instead
“sections 21B and 22”.
- (24) (a) Section 20CB (1) (a)—
Omit “occupiers of the lands supplied with water
obtained by means of a joint water supply
scheme”, insert instead “holders of the authority”.
- (b) Section 20CB (1) (d)—
Omit “or the certified copy of the agreement be
not lodged with the Commission as hereinafter
provided”.
- (c) Section 20CB (3) (a)—
(i) Omit “and on receipt by it of the certified
copy of the agreement executed by the
applicants as hereinafter provided”.
(ii) Omit “for a joint water supply scheme”.
- (d) Section 20CB (3) (b)—
Omit the paragraph, insert instead :—
(b) An authority shall not be issued under
paragraph (a) while any appeal is pending with
respect to the application for the renewal of that
authority.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(e) Section 20CB (3) (c)—

(i) Omit “section”, insert instead “subsection”.

(ii) Omit “scale prescribed by regulations under this Act”, insert instead “prescribed scale”.

(f) Section 20CB (4)—

Omit the subsection.

(25) Section 20D—

Omit “under this Division”.

(26) (a) Section 20E (1)—

Omit “occupiers of the whole of the lands supplied with water obtained by means of a joint water supply scheme”, insert instead “holders of an authority”.

(b) Section 20E (2) (a)—

Omit “occupiers of the whole of the lands supplied with water obtained by means of that work”, insert instead “holders of the authority”.

(c) Section 20E (2) (c)—

Omit “police” wherever occurring, insert instead “stipendiary”.

(d) Section 20E (3)—

Omit the subsection.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(e) Section 20E (4)—

Omit “and subsection (3)”.

(27) Section 20F—

After “in the authority”, insert “and of the lands”.

(28) Section 20G (2)—

Omit “for a joint water supply scheme”.

(29) Sections 20H, 20HA, 20HB—

Omit section 20H, insert instead :—

Revocation
or
suspension,
etc., of
authority.

20H. (1) If at any time during the currency of an authority the Commission is satisfied that—

- (a) the holders or any of the holders of the authority have or has conserved, diverted, taken or used any quantity of water in excess of the quantity authorised by the authority;
- (b) any land has been irrigated as to an area in excess of that authorised by the authority;
- (c) the holders or any of the holders of the authority have or has used the work in respect of which the authority is held for a purpose other than that authorised by the authority;

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

- (d) the holders or any of the holders of the authority have or has contravened or failed to comply with any of the terms, limitations or conditions to which the authority is subject;
- (e) any water diverted, taken or used by any of the holders of the authority is not being beneficially used or is being wasted; or
- (f) beneficial use is not being made of the work in respect of which the authority is held,

the Commission may serve on the holders of the authority a notice that, after the expiration of a period specified in the notice, the authority will be revoked, suspended or modified as indicated in the notice, and where any such notice is served, unless the Commission annuls or withdraws the notice before the expiration of the period so specified, the authority shall, on the expiration of that period, be deemed to be revoked, suspended or modified, as the case may be.

(2) If in the opinion of the Commission there are circumstances which render it necessary or expedient—

- (a) that any authority should be suspended or modified;
- (b) that the quantity of water authorised to be taken under any authority should be reduced; or
- (c) that a right held under any authority for the taking of water for any purpose from a river, lake or section of a river should be restricted or suspended,

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

the Commission may serve on the holders of the authority a notice to that effect, and where any such notice is served, the authority shall be deemed to be suspended or modified, or the quantity of water reduced or, as the case may be, the right restricted or suspended, according to the tenor of the notice.

(3) If the Commission is satisfied that the holders or any of the holders of an authority have or has failed to comply with the terms of a notice served by the Commission whereby—

- (a) the authority has been modified;
- (b) the quantity of water authorised to be taken under the authority has been reduced; or
- (c) a right held under the authority for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended,

the Commission may serve on the holders of the authority a notice that, after the expiration of a period specified in the notice, the authority will be suspended and where any such notice is served, unless the Commission annuls or withdraws the notice before the expiration of the period so specified, the authority shall, on the expiration of that period, be deemed to be suspended.

(4) Service of a notice under this section may be effected on a holder of an authority—

- (a) by delivering the notice to the holder personally;

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

- (b) by leaving the notice with any person apparently of or above the age of 14 years who apparently resides or is employed on the land of the holder; or
- (c) by letter sent by post and addressed to the holder at his address last known to the Commission.

20HA. (1) Any person who—

- (a) being a holder of an authority in respect of a work to which this Part extends, uses the work when the authority is suspended;
- (b) being a former holder of such an authority, uses the work when the authority is revoked or cancelled or has expired;
- (c) being a holder of an authority, contravenes or fails to comply with any term, limitation or condition to which the authority is subject;
- (d) being a holder of an authority, fails to comply with the terms of any notice served on him by the Commission whereby—
 - (i) the authority has been modified;
 - (ii) the quantity of water authorised to be taken under the authority has been reduced; or
 - (iii) a right held under the authority for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended; or

Offences
with
respect to
authorities.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

- (e) being a holder of an authority, contravenes section 20BB,

is guilty of an offence and is liable, on conviction, to a penalty not exceeding \$500.

(2) In any prosecution under this section against a holder or former holder of an authority on whose land a work in respect of which the authority is or was held is situated, proof—

- (a) that the work has been used when the authority is suspended, revoked or cancelled or has expired;
- (b) that any term, limitation or condition to which the authority is subject has been contravened or has not been complied with;
- (c) of failure to comply with the terms of any notice served by the Commission on that holder whereby—
- (i) the authority has been modified;
 - (ii) the quantity of water authorised to be taken under the authority has been reduced; or
 - (iii) a right held under the authority for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended; or

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

- (d) that water has been taken from a river or lake by means of a work covered by an authority before the whole of the works covered by the authority have been constructed or provided,

shall, in the absence of proof to the contrary, be evidence that the use, contravention, non-compliance or failure was caused by that holder or former holder of the authority.

20HB. Where an authority is deemed to be revoked or cancelled under this Division, the Commission may notify the revocation or cancellation in the Gazette, and any such notification shall be conclusive evidence of the revocation or cancellation.

Revocation
and cancel-
lation of
authorities.

(30) Section 20R—

Omit “and upon breach of any such terms, limitations and conditions the group license may be cancelled by the Commission”.

(31) Sections 20s, 20SA—

Omit section 20s, insert instead :—

20s. (1) If at any time during the currency of a group license the Commission is satisfied that—

Revocation
or suspen-
sion, etc.,
of group
license.

- (a) the Board holding the group license or any of the group license occupiers has conserved, diverted, taken or used any quantity of water in excess of the quantity authorised by the group license;

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

- (b) any land has been irrigated as to an area in excess of that authorised by the group license;
- (c) the Board holding the group license or any of the group license occupiers has used the work in respect of which the license is held for a purpose other than that authorised by the license;
- (d) the Board holding the group license or any of the group license occupiers has contravened or failed to comply with any of the terms, limitations or conditions to which the license is subject;
- (e) any water diverted, taken or used by the Board holding the group license or by any of the group license occupiers is not being beneficially used or is being wasted; or
- (f) beneficial use is not being made of the work in respect of which the group license is held,

the Commission may serve on the Board a notice that, after the expiration of a period specified in the notice, the group license will be revoked, suspended or modified as indicated in the notice, and where any such notice is served, unless the Commission annuls or withdraws the notice before the expiration of the period so specified, the group license shall, on the expiration of that period, be deemed to be revoked, suspended or modified, as the case may be.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(2) If in the opinion of the Commission there are circumstances which render it necessary or expedient—

- (a) that any group license should be suspended or modified;
- (b) that the quantity of water authorised to be taken under any group license should be reduced; or
- (c) that a right held under any group license for the taking of water for any purpose from a river, lake or section of a river should be restricted or suspended,

the Commission may serve on the Board which holds the group license a notice to that effect, and where any such notice is served, the group license shall be deemed to be suspended or modified, or the quantity of water reduced or, as the case may be, the right restricted or suspended, according to the tenor of the notice.

(3) If the Commission is satisfied that the Board which holds a group license has failed to comply with, or to cause to be complied with, the terms of a notice served by the Commission whereby—

- (a) the group license has been modified;
- (b) the quantity of water authorised to be taken under the group license has been reduced;
or
- (c) a right held under the group license for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended,

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

the Commission may serve on the Board a notice that, after the expiration of a period specified in the notice, the group license will be suspended, and where any such notice is served, unless the Commission annuls or withdraws the notice before the expiration of the period so specified, the group license shall, on the expiration of that period, be deemed to be suspended.

(4) Service of a notice under this section may be effected on a Board—

- (a) by delivering the notice to the principal place of business of the Board;
- (b) by leaving the notice with any person apparently of or above the age of 14 years who is apparently employed by the Board; or
- (c) by letter sent by post and addressed to the Board at its address last known to the Commission.

Offences
with
respect
to group
licenses.

20SA. (1) Any person who—

- (a) being a Board holding a group license or a group license occupier, uses a work in respect of which the group license is held when the group license is suspended;
- (b) being a Board which formerly held a group license or an occupier of land to which water was formerly supplied under such a group license, uses a work in respect of

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

which the group license was held when the group license is revoked or cancelled or has expired;

- (c) being a Board holding a group license or a group license occupier, contravenes or fails to comply with any term, limitation or condition to which the group license is subject; or
- (d) being a Board holding a group license, fails to comply with the terms of any notice served on the Board by the Commission whereby—
 - (i) the group license has been modified;
 - (ii) the quantity of water authorised to be taken under the group license has been reduced; or
 - (iii) a right held under the group license for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended,

is guilty of an offence and is liable, on conviction, to a penalty not exceeding \$500.

(2) In any prosecution under this section against a Board holding a group license or a group license occupier, or a Board which formerly held a group license or an occupier of land to which water was formerly supplied under a group license, being a

Water (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

Board or an occupier on whose land a work in respect of which a group license is or was held is situated, proof—

- (a) that the work has been used when the group license is suspended, revoked or cancelled or has expired; or
- (b) that any term, limitation or condition to which the group license is subject has been contravened or not complied with,

shall, in the absence of proof to the contrary, be evidence that the use, contravention or non-compliance was caused by that Board, group license occupier or occupier, as the case may be.

(3) In any prosecution under this section against a Board holding a group license, proof of failure to comply with the terms of any notice served on that Board by the Commission whereby—

- (a) the group license has been modified;
- (b) the quantity of water authorised to be taken under the group license has been reduced; or
- (c) a right held under the group license for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended,

shall, in the absence of proof to the contrary, be evidence that the failure was caused by that Board.

SCHEDULE

Water (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(32) Section 20U—

Omit the section, insert instead :—

20U. Where a group license is deemed to be revoked or cancelled under this Division, the Commission may notify the revocation or cancellation in the Gazette, and any such notification shall be conclusive evidence of the revocation or cancellation. Revocation and cancellation of group licenses.

SCHEDULE 3.

Sec. 4.

INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912.

Part II, Division 4B—

After Part II, Division 4A, insert :—

DIVISION 4B.—*Volumetric Water Allocations Schemes.*

20v. In this Division, unless the context or subject-matter otherwise indicates or requires—

“scheme”, in relation to any water source, means a volumetric water allocations scheme (as may be modified from time to time under this Division) prepared in respect of that water source under section 20x;

Interpretation for the purposes of Division 4B.

SCHEDULE

Water (Amendment).

SCHEDULE 3—*continued.*INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

“water allocation”, in relation to any license, group license or authority, which authorises the taking of water from a water source which is subject to a scheme, means the quantity of water specified in the condition (as may be modified from time to time under this Division) attached to, or included in, the license, group license or authority pursuant to section 20X (5) or section 20AB (1) (b) as being the maximum quantity which may, subject to this Division, be taken from that water source in any year under the license, group license or authority for the purpose or purposes specified in the license, group license or authority;

“water source” means any river, lake or section of a river;

“year” means the period of 12 months commencing on 1st July in each calendar year.

Power of Governor to declare water source to be subject to volumetric water allocations scheme.

20w. The Governor may, by order published in the Gazette, declare that any water source and all of the licenses, group licenses and authorities, which authorise the taking of water from that water source, shall, on and from such date as may be specified in the order (being the date of its publication or a later date), be subject to a volumetric water allocations scheme prepared under section 20x.

Determination of water allocations in respect of licenses, group licenses and authorities.

20x. (1) Before an order under section 20w may be made, the Commission shall prepare a volumetric water allocations scheme in respect of the water source to which it is proposed that the order will, when made, apply.

SCHEDULE

Water (Amendment).

SCHEDULE 3—*continued.*

INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

(2) In preparing a scheme in respect of a water source, the Commission—

- (a) shall assess the total quantity of water that is likely to be available in each year for apportionment among and allocation to holders of licenses, group licenses and authorities, which authorise the taking of water from that water source; and
- (b) shall then determine in respect of each such license, group license and authority the maximum quantity of water which may, subject to this Division, be taken from that water source in any year under the license, group license or authority for the purpose or purposes specified in the license, group license or authority.

(3) The Commission may—

- (a) fix differing quantities of water per hectare according to whether water authorised to be taken from the water source under a license, group license or authority may be used for the purpose of irrigating orchards, vineyards, trees (other than trees in orchards), lucerne, pasture, fodder crops, cereal crops or vegetables or crops or plantings of any other description;
- (b) fix differing quantities of water according to whether water authorised to be taken from the water source under a license, group license or authority may be used for a purpose other than a purpose specified in paragraph (a); and

SCHEDULE

Water (Amendment).

SCHEDULE 3—*continued.*INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

(c) determine that in no case shall the maximum quantity of water which may be taken from the water source in any year under any license, group license or authority exceed a quantity specified by the Commission.

(4) Subject to any determination made under subsection (3) (c)—

(a) a determination under subsection (2) (b) in respect of a license, group license or authority may be made—

(i) in the case of a license, group license or authority issued for the purpose of irrigating a crop or planting of a class specified in subsection (3) (a), by reference to the area of land which is authorised to be irrigated under the license, group license or authority and to such quantity as may be fixed under subsection (3) (a) in respect of that class of crop or planting; and

(ii) in the case of a license, group license or authority issued for any purpose other than the irrigation of a crop or planting of a class specified in subsection (3) (a), by reference to such quantity as may be fixed under subsection (3) (b) in respect of that purpose; and

(b) where water authorised to be taken from the water source under a license, group license or authority may be used for the purpose of

SCHEDULE

Water (Amendment).

SCHEDULE 3—*continued.*

INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

irrigating two or more classes of crops or plantings specified in subsection (3) (a) or for two or more purposes, a maximum quantity of water may be determined under subsection (2) (b) in respect of each of those classes or, as the case may be, each of those purposes.

(5) As soon as practicable after the publication of an order declaring a water source to be subject to a scheme and before the date on which the scheme is to commence, the Commission shall, by notice in writing served on the holder of each license or group license, and on the holders of each authority, which authorises the taking of water from the water source, attach to the license, group license or authority a condition that, except where the operation of the condition is suspended under section 20AA, on and from the date on which the scheme commences and in respect of each year during which the scheme is in force, not more than the maximum quantity of water determined in respect of the license, group license or authority under subsection (2) (b) and specified in the condition (as may be modified from time to time under this Division) shall be taken from the water source during any year under the license, group license or authority for the purpose or purposes specified in the license, group license or authority.

(6) Service of a notice under subsection (5) may be effected on a holder referred to in subsection (5)—

- (a) by delivering the notice to the holder personally;

SCHEDULE

Water (Amendment).

SCHEDULE 3—*continued.*INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

- (b) by leaving the notice with any person apparently of or above the age of 14 years who apparently resides or is employed on the land of the holder; or
- (c) by letter sent by post and addressed to the holder at his address last known to the Commission.

(7) On the service of a notice under subsection (5), the license, group license or authority to which the notice relates shall be modified according to the tenor of the notice.

(8) Where any order under section 20w declaring a water source to be subject to a scheme has effect on and from a date falling after the beginning of a year, the quantity of water determined under subsection (2) (b) in respect of a license, group license or authority, which authorises the taking of water from that water source, shall, for that year, be deemed to be reduced by the proportion that the part of that year which has elapsed at that date bears to the whole of that year and the condition which is attached to the license, group license or authority in accordance with subsection (5) shall be construed accordingly.

(9) Notwithstanding anything in this Part, a determination made under subsection (2) (b) in respect of a license, group license or authority and a condition attached to the license, group license or authority in accordance with subsection (5) shall not be the subject of an objection or appeal under this Part.

SCHEDULE

*Water (Amendment).*SCHEDULE 3—*continued.*INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

20Y. (1) Where the Commission is satisfied that a water source which is subject to a scheme is unlikely to have more water available than is sufficient to meet the water allocations of holders of existing licenses, group licenses and authorities, which authorise the taking of water from the water source, and the requirements of all other users lawfully authorised to take water from the water source, it may, by a notice published in the Gazette and in a newspaper circulating in the district in which the water source is located, declare that, on and from a date specified in the notice (being the date of publication in the Gazette or a later date)—

Power to suspend issue of licenses, group licenses and authorities.

- (a) except as provided in subsection (2), no further applications for licenses, group licenses and authorities; and
- (b) no further applications—
 - (i) for additional licenses made under the proviso to section 18 (2);
 - (ii) for amended authorities made under section 20E (2) (a); or
 - (iii) for amended group licenses referred to in section 20Q (2) (a),

will be granted until the notice is revoked by a subsequent notice so published.

(2) Subsection (1) does not apply to an application for a license or authority, or to applications for licenses or authorities, in replacement of a license or authority if the water allocation in respect of the

SCHEDULE

Water (Amendment).

SCHEDULE 3—*continued.*INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

replacement license or authority or, as the case may be, the total water allocations in respect of the replacement licenses or authorities will not exceed the water allocation in respect of the license or authority that is being replaced or, as the case may be, the total water allocations in respect of the licenses or authorities that are being replaced.

(3) On and from the date specified in the notice published under subsection (1) and until the notice is revoked, an application to which that subsection applies may not be made under this Part and if made shall not be considered by the Commission.

(4) Where a notice published under subsection (1) has effect in relation to any water source and any land in respect of which a license or authority authorises the taking of water from that water source is subdivided into parts, an application for a license or authority to take water from that water source for use in connection with any such part shall, for the purpose of this section, be deemed to be an application for a license or authority in replacement of that license or authority.

Power of
Commission
to reduce
water
allocations
in times of
water
shortage.

20z. (1) If, with respect to any year, it appears to the Commission that a water source which is subject to a scheme is unlikely to have sufficient water available to meet the water allocations of holders of licenses, group licenses and authorities, the Commission may, by a notice published in the Gazette and in

SCHEDULE

Water (Amendment).

SCHEDULE 3—*continued.*

INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

a newspaper circulating in the district in which that water source is located, either before or after the beginning of that year, reduce those allocations for that year by such proportion as may be specified in the notice.

(2) Where a notice has been published in accordance with subsection (1), the condition which pursuant to section 20X (5) is attached to, or which pursuant to section 20AB (1) (b) is included in, any license, group license or authority to which the notice relates shall, for the year specified in the notice, be modified according to the tenor of the notice and the water allocation in respect of the license, group license or authority shall be deemed to be reduced accordingly.

(3) Where, after the beginning of a year, the condition attached to, or included in, a license, group license or authority as referred to in subsection (2) has been modified as provided in that subsection and the quantity of water taken under the license, group license or authority during that year before the modification had effect did not exceed the water allocation in respect of the license, group license or authority but exceeded the water allocation as reduced in consequence of the modification of the condition, the holder of the license or group license or, as the case may be, the holders of the authority shall not be regarded as having contravened the condition, as so modified, with respect to the taking of that excess quantity.

*Water (Amendment).*SCHEDULE 3—*continued.*INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

Power of Commission to suspend operation of conditions relating to water allocations in years of surplus and to increase water allocations.

20AA. (1) If, with respect to any year, it appears to the Commission that a water source which is subject to a scheme is likely to have more water available than is required to meet the water allocations of holders of licenses, group licenses and authorities, the Commission may declare that during such part of the year as is specified in the declaration water may be taken from that source under the authority of any such license, group license or authority without restriction as to quantity.

(2) Where a declaration has been made under subsection (1), the condition which pursuant to section 20X (5) is attached to, or which pursuant to section 20AB (1) (b) is included in, any license, group license or authority to which the declaration relates shall, for the part of the year referred to in subsection (1), be deemed to be suspended and any quantity of water taken from the water source during that part of the year under the license, group license or authority shall not be taken into account for the purpose of determining whether or not the water allocation applicable in respect of the license, group license or authority for the year has been exceeded.

(3) Without limiting subsection (1), if, with respect to any year, it appears to the Commission that a water source which is subject to a scheme is likely to have more water available than is required to meet existing water allocations of holders of licenses, group licenses and authorities, the Commission may, either before or after the beginning of the year, declare that those allocations are increased by such proportion as is specified in the declaration.

SCHEDULE

Water (Amendment).

SCHEDULE 3—*continued.*

INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

(4) Where a declaration has been made under subsection (3), the condition which pursuant to section 20X (5) is attached to, or which pursuant to section 20AB (1) (b) is included in, any license, group license or authority to which the declaration relates shall, for the year specified in the declaration, be modified according to the tenor of the declaration and the water allocation in respect of the license, group license or authority shall be deemed to be increased accordingly.

(5) The Commission shall cause notice of a declaration under this section to be published, as soon as practicable after the making of the declaration, in the Gazette and in a newspaper circulating in the district in which the water source to which the declaration relates is located.

20AB. (1) Where the Commission decides to grant an application made under this Part for the issue of a license, group license or authority which will authorise the taking of water from a water source which is subject to a scheme, it shall—

Issue of
new
licenses,
group
licenses
and
authorities.

- (a) determine in respect of the license, group license or authority the maximum quantity of water which may, subject to this Division, be taken from the water source in any year for the purpose or purposes for which the license, group license or authority is to be issued; and

SCHEDULE

Water (Amendment).

SCHEDULE 3—*continued.*INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

(b) include in the license, group license or authority a condition that, except where the operation of the condition is deemed to be suspended under section 20AA (2), on and from the date on which the license, group license or authority is to have effect and in respect of each year during which the scheme is in force, not more than the maximum quantity of water determined in respect of the license, group license or authority under paragraph (a) and specified in the condition (as may be modified from time to time under this Division) shall be taken from that water source during any year under the license, group license or authority for the purpose or purposes specified in the license, group license or authority.

(2) Section 20x (3) and section 20x (4) shall apply in relation to the determination of a water allocation under subsection (1) (a) in the same way as they apply in relation to the determination of a water allocation under section 20x (2) (b).

(3) Where any license, group license or authority becomes effective on a date falling after the beginning of a year, the quantity of water determined under subsection (1) (a) in respect of the license, group license or authority shall, for that year, be deemed to be reduced by the proportion that the part of that year which has elapsed at that date bears to the whole of that year and the condition included in the license, group license or authority in accordance with subsection (1) (b) shall be construed accordingly.

SCHEDULE

Water (Amendment).

SCHEDULE 3—*continued.*

INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

(4) Notwithstanding anything in this Part, a determination made under subsection (1) (a) in respect of a license, group license or authority and a condition included in that license, group license or authority in accordance with subsection (1) (b) shall not be the subject of an objection or appeal under this Part.

20AC. (1) A person shall not take any water from a water source which is subject to a scheme by means of a work authorised by a license, group license or authority unless there is connected to the work a water meter, or other measuring device, which has been approved by the Commission.

Water
meters.

Penalty : \$500.

(2) A person who—

(a) intentionally, fraudulently or by culpable negligence—

(i) damages a water meter or other measuring device connected to a work referred to in subsection (1);

(ii) prevents any such meter or measuring device from recording the quantity of water taken through or by means of the work, or uses any means whereby water so taken is not recorded by the meter or measuring device; or

SCHEDULE

Water (Amendment).

SCHEDULE 3—*continued.*INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

(iii) without the consent of the Commission given in writing, interferes with any such meter or measuring device;
or

(b) being the holder of the license or group license or, as the case may be, the holders of the authority in respect of the work, permits or directs any other person to do any of the acts specified in paragraph (a),

is guilty of an offence and is liable, on conviction, to a penalty not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or both.

(3) In any prosecution for an offence under subsection (2), proof of the existence of—

(a) any means for preventing a meter from recording the quantity of water taken through or by means of the work to which the meter or measuring device is connected;
or

(b) any means whereby water is taken through or by means of the work without being recorded by the meter or measuring device,

shall be admissible as evidence that the prevention or, as the case may be, the use of the means was caused by the holder of the license or group license or, as the case may be, the holders of the authority, authorising the use of the work.

SCHEDULE

Water (Amendment).

SCHEDULE 3—*continued.*

INSERTION OF DIVISION 4B INTO PART II OF THE WATER ACT,
1912—*continued.*

20AD. Where land (being land which is supplied with water obtained from a water source which is subject to a scheme by means of a work in respect of which a license or authority is held) is subdivided into parts, the Commission is not, when issuing licenses or authorities relating to those parts, or any of those parts, obliged to make water allocations in respect of those licenses or authorities which in aggregate exceed the water allocation in respect of the first-mentioned license or authority.

Provisions applicable in cases of sub-division of land.

20AE. The Commission may, by any of its officers, employees or agents—

Power of entry.

- (a) enter on any land on which there is constructed any work which is used for taking water from a water source which is subject to a scheme; and
- (b) inspect any work so constructed and used, for the purpose of ascertaining whether or not the provisions of this Division have been or are being complied with or contravened.

Water (Amendment).

Sec. 4.

SCHEDULE 4.

FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912.

(1) Section 21B—

After section 21A, insert :—

Offences
with
respect to
construction,
erection
and use
of work
without
license,
etc.

21B. (1) Any person who—

- (a) constructs, erects or uses a work to which this Part extends otherwise than pursuant to a right conferred on him by this Part or by a license, group license, authority or permit;
- (b) fails to comply with any direction given to him by the Commission to remove the whole or any part of a work to which this Part extends (being a work in respect of which no right conferred by this Part exists and in respect of which no license, group license, authority or permit is in force) which is situated on land owned or occupied by him;
or
- (c) fails to comply with any direction given to him by the Commission to carry out any work which the Commission considers necessary—
 - (i) to permit the flow of water through or past any work to which this Part extends (being a work in respect of which no right conferred by this Part exists and in respect of which no license, group license, authority or permit is in force) which is situated on land owned or occupied by him;
or

SCHEDULE

Water (Amendment).

SCHEDULE 4—*continued.*

FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

- (ii) to prevent the use of any work to which this Part extends (being a work in respect of which no right conferred by this Part exists and in respect of which no license, group license, authority or permit is in force) which is situated on land owned or occupied by him and which is a work for the diversion or abstraction of water,

is guilty of an offence and is liable, on conviction, to a penalty not exceeding \$500.

(2) In any prosecution under this section, proof that a work to which this Part extends has been constructed, erected or used otherwise than pursuant to a right conferred by this Part or a license, group license, authority or permit shall, in the absence of proof to the contrary, be evidence that the construction, erection, use or failure has been caused by the occupier of the land on which the work is situated.

(3) Where a direction referred to in subsection (1) (b) or (c) has been given to an occupier of land and that occupier is not the owner of the land, that occupier may apply to the local land board to apportion between himself and the owner of the land the expenses incurred in complying with the direction, and, on any such application being made to it, the local land board may make such apportionment of those expenses as it considers fair and just.

SCHEDULE

Water (Amendment).

SCHEDULE 4—*continued.*FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(2) Section 22 (3), (4), (5)—

After section 22 (2), insert :—

(3) The Commission may, by any of its officers, employees or agents, enter on any land and—

(a) remove any dam or weir or any other work forming an unlawful obstruction to the flow of water in a river or any unlawful levee for the prevention of the overflow of water from a river or lake; and

(b) prevent or stop any unlawful diversion of water from a river or lake, whether by dismantling a pump or blocking the offtake of a race or by such other means as the Commission considers necessary.

(4) The Commission may recover in any court of competent jurisdiction as a debt due to it from the occupier of the land from which any work has been removed under subsection (3), or of the land on which the diversion of water was prevented or stopped under that subsection, the expenses incurred by it in carrying out the removal or, as the case may be, in preventing or stopping the diversion.

(5) Where judgment has been obtained against an occupier of land under subsection (4) and that occupier is not the owner of the land, that occupier may apply to the local land board to apportion between himself and the owner of the land the amount adjudged to be paid to the Commission under that subsection and any costs awarded against him in

SCHEDULE

*Water (Amendment).*SCHEDULE 4—*continued.*FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

connection with that judgment, and, on any such application being made to it, the local land board may make such apportionment of that amount and those costs as it considers fair and just.

(3) Sections 22B, 22C—

After section 22A, insert :—

22B. (1) If at any time the Commission is satisfied that the quantity of water available, or likely to be available, in a river, lake or section of a river is insufficient to meet all requirements with respect to the taking of water from the river, lake or section, it may, in the manner provided in this section, restrict or suspend the rights held under licenses, group licenses, authorities or permits issued under this Part, or held under section 7, for the taking of water for any purpose from the river, lake or section or any part of the river, lake or section.

Restriction
or suspen-
sion of
rights held
under
licenses,
etc., during
periods of
water
shortage.

(2) Particulars of any restrictions or suspensions imposed by the Commission under subsection (1) shall be notified in the Gazette and in a newspaper published and circulating in the district in which the river, lake or section is located.

(3) A notification made under subsection (2) may be amended, altered, modified or cancelled by the Commission and particulars of any such amendment, alteration, modification or cancellation shall be notified in the Gazette and in a newspaper published and circulating in the district in which the river, lake or section is located.

SCHEDULE

Water (Amendment).

SCHEDULE 4—*continued.*FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(4) In imposing restrictions or suspensions under this section, the Commission may restrict or suspend rights for the taking of water in accordance with the following order of priority :—

- (a) firstly, rights under permits for any purpose other than domestic and stock supply;
- (b) secondly, rights under licenses, group licenses and authorities for the purpose of irrigation;
- (c) thirdly, rights under licenses, group licenses and authorities for purposes other than irrigation and domestic and town and village water supply, rights under permits for stock supply and rights held under section 7 for the taking of water for stock supply; and
- (d) fourthly, rights under licenses, group licenses, authorities and permits for domestic purposes and town and village water supply and rights held under section 7 for the taking of water for domestic purposes.

(5) In exercising the power conferred on it by subsection (4), the Commission—

- (a) shall impose restrictions or suspensions in respect of all rights specified in a paragraph of that subsection before imposing any restrictions or suspensions in respect of any rights specified in any subsequent paragraph of that subsection; and

SCHEDULE

Water (Amendment).

SCHEDULE 4—*continued.*

FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(b) may, when imposing restrictions or suspensions under subsection (4) (b), restrict or suspend rights with respect to the irrigation of any class of crops or plantings without restricting or suspending rights with respect to the irrigation of any other class of crops or plantings.

(6) When the Commission has, in accordance with this section, imposed a restriction on a right held under section 7 or held under a license, group license, authority or permit to take water, a person shall not take water except in accordance with the right as so restricted.

(7) When the Commission has, in accordance with this section, suspended a right held under section 7 or held under any license, group license, authority or permit to take water, a person shall not take water in purported exercise of that right.

(8) Any person who contravenes subsection (6) or (7) is guilty of an offence and is liable, on conviction, to a penalty not exceeding \$500.

(9) If, in any proceedings against an occupier of land for an offence under subsection (8), it is proved that a work on that land was used in contravention of subsection (6) or, as the case may be, subsection (7), the water concerned in that alleged offence shall, unless the contrary is proved, be presumed to have been taken by him.

SCHEDULE

Water (Amendment).

SCHEDULE 4—*continued.*FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

Flow of
water
assured
by a
work
of the
Crown.

22c. (1) In this section, a reference to a work of the Crown includes a reference to a work vested in or controlled by the Dumaresq-Barwon Border Rivers Commission.

(2) The Governor may, by proclamation published in the Gazette, declare that the flow or supply of water in any river, lake or section of a river has been augmented, stabilised or assured by a work of the Crown.

(3) Where a work in respect of which any license, group license, permit or authority is held—

- (a) is used for the purpose of irrigation or water supply for stock or for the carrying on of any industrial operation; and
- (b) is connected with a river, lake or section of a river in respect of which a proclamation under subsection (2) is in force,

the holder of the license, group license or permit or, as the case may be, the holders of the authority shall, subject to and in accordance with this section, pay a charge for the right to take and use water from the river, lake or section in addition to the fee payable for the license, group license, permit or authority.

SCHEDULE

Water (Amendment).

SCHEDULE 4—*continued.*

FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(4) The charge payable under subsection
(3) shall—

(a) be fixed by the Commission—

- (i) in respect of a license, group license, permit or authority in existence on 1st July following the date of the proclamation, as soon as practicable and notified to the holder of the license, group license or permit or, as the case may be, the holders of the authority, and paid in respect of the period of 12 months commencing on that 1st July and in respect of each subsequent period of 12 months commencing on 1st July; and
- (ii) in respect of a license, group license, permit or authority issued or renewed after 1st July first mentioned in subparagraph (i), when issuing or renewing the license, group license, permit or authority, and paid at a proportionate rate for the portion of the period of 12 months from the date of issue or renewal of the license, group license, permit or authority to 30th June following and in respect of each subsequent period of 12 months commencing on 1st July;

SCHEDULE

Water (Amendment).

SCHEDULE 4—*continued.*FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

- (b) be not greater than maximum amounts which shall be prescribed according to—
 - (i) the purpose or purposes for which the water is to be taken and used;
 - (ii) the nature of the work; and
 - (iii) the method of obtaining the water;
- (c) be paid at the prescribed times and in the prescribed manner;
- (d) to the extent of a minimum annual amount to be fixed by the Commission in each case, be payable irrespective of whether the work in respect of which the license, group license, permit or authority is held is used or not; and
- (e) be on the basis of either—
 - (i) the quantity of water taken and used by means of the work during the relevant period of 12 months; or
 - (ii) the area of land irrigated with water so taken and used.

(5) The Commission shall, in every license, group license, permit and authority referred to in subsection (3), specify which of the alternative charges shall be paid.

SCHEDULE

Water (Amendment).

SCHEDULE 4—*continued.*

FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(6) The Commission shall, when fixing the amount of a charge payable under this section, have regard to—

- (a) the benefits received by the holder of the license, the group license occupiers, the holder of the permit or, as the case may be, the holders of the authority as a result of the work of the Crown; and
- (b) the augmentation, stabilisation or assurance of the water supply provided by that work.

(7) If, in the opinion of the Commission, a benefit is not received as a result of the work of the Crown by the holder of the license, the group license occupiers, the holder of the permit or, as the case may be, the holders of the authority, a charge shall not be fixed under this section in respect of the license, group license, permit or authority.

(8) Any proclamation under subsection (2) may be amended, altered, modified, revoked or corrected by the Governor by proclamation published in the Gazette.

(9) If the holder of a license, group license or permit fails or, as the case may be, the holders of an authority fail to pay the charge required under this section within the prescribed period, the Commission may suspend the license, group license, permit or authority until the charge is paid.

(10) The Minister may, on the recommendation of the Commission, remit or waive the payment in any year of any charge paid or payable under this section.

SCHEDULE

Water (Amendment).

SCHEDULE 4—*continued.*FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(11) Where any charge remitted or waived under subsection (10) was paid or payable by the holder of a license or permit or the holders of an authority, the amount of that charge shall not exceed the amount of the charge paid or payable by the holder of the license or permit in respect of water used by him or, as the case may be, by the holders of the authority in respect of the quantity of water used by them, as assessed by the Commission, for the irrigation of any crop which—

- (a) has been conserved and held by him or by them as fodder for a period of not less than 18 months;
- (b) is in good condition; and
- (c) is protected to the satisfaction of the Minister.

(12) Where any charge remitted or waived under subsection (10) was paid or payable by the holder of a group license, the amount of that charge shall not exceed the amount of the charge paid or payable by the holder of the group license in respect of the quantity of water, as assessed by the Commission, used for the irrigation of any crop which—

- (a) has been conserved and held as fodder for a period of not less than 18 months;
- (b) is in good condition; and
- (c) is protected to the satisfaction of the Minister.

SCHEDULE

Water (Amendment).

SCHEDULE 4—*continued.*

FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(4) Section 24—

Omit “police or”.

(5) Section 26A—

Omit “, as amended by subsequent Acts”.

(6) Section 26B—

(a) Omit “for a joint water supply scheme”.

(b) Omit “in the order of precedence which was given to that person”.

(7) (a) Section 27 (1) (a)—

Omit the paragraph, insert instead :—

(a) forms of, and of application for—

(i) licenses, group licenses, authorities and permits; and

(ii) renewal of licenses, group licenses, authorities and permits,

and forms of notices required or authorised under this Part;

SCHEDULE

Water (Amendment).

SCHEDULE 4—*continued.*FURTHER AMENDMENTS TO PART II OF THE WATER ACT,
1912—*continued.*

(b) Section 27 (1) (b)—

Omit “in connection with joint water supply schemes, renewals of such authorities”, insert instead “, renewals of authorities”.

(c) Section 27 (1) (d)—

Omit “in respect of joint water supply schemes, group license occupiers, or persons occupying land comprised within such schemes”, insert instead “or group license occupiers”.

(d) Section 27 (2)—

Omit the subsection, insert instead :—

(2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under subsection (1) as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

Water (Amendment).

SCHEDULE 5.

Sec. 5.

SAVINGS.

1. Any direction given for the purposes of section 17B (1) of the Water Act, 1912, and in force immediately before the commencement of Schedule 4 (1) shall be deemed to be a direction given for the purposes of section 21B of that Act, as in force after that commencement.

2. Any proclamation made, or charge fixed, under section 14B of the Water Act, 1912, and in force immediately before the commencement of Schedule 4 (3), and any other act, matter or thing done or omitted under that section before that commencement, shall be deemed to have been made, fixed, done or omitted under section 22C of that Act, as in force after that commencement.
