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Chief Parliamentary Counsel
Dated 12 December 2023



TASMANIA

IRRIGATION CLAUSES ACT 1973

No. 39 of 1973

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IRRIGATION CLAUSES ACT 1973

No. 39 of 1973

An Act to consolidate in one Act provisions generally applicable to irrigation schemes

[Royal Assent 26 July 1973]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART I – PRELIMINARY

1. Short title

This Act may be cited as the *Irrigation Clauses Act 1973*.

2. Interpretation

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

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authorised officer means a person appointed as an authorised officer under section 70;

channel includes pipe and conduit;

clerk means a general manager within the meaning of the *Local Government Act 1993*;

corporation means a council;

industrial use – see section 2A;

industrial user means a person who requires a supply of water for industrial use;

irrigation includes any means of watering fields, gardens, and orchards;

irrigation infringement notice means an irrigation infringement notice in force under Part XI;

irrigation right means the right to be supplied with water for irrigation referred to in section 23 or an irrigation right conferred by the Minister under section 75(1);

irrigation season means the annual period during which under the undertaker's by-laws water will be available for irrigation;

lake includes swamp, pond, dam, and well;

minor civil claim means a minor civil claim within the meaning of the *Magistrates Court (Civil Division) Act 1992*;

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municipality means a council;

prescribed means prescribed by by-law;

relevant water retailer means an entity that, as part of the business of the entity, sells, or proposes to sell, water to an industrial user;

source of supply means any place or point from which the undertakers are by the special Act authorized to take water for the purposes of the special Act;

stream includes spring, brook, river, and other running water;

take, used in relation to water, includes divert and hold back;

the limits of the special Act, if not specified in the special Act, means –

- (a) the water district;
- (b) the vicinity of the source of the supply;
- (c) any lands supplied with water under section 26; and
- (d) any lands required for –
 - (i) bringing water from the source of supply into the water district;

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- (ii) bringing water from one part of the water district to another;
- (iii) bringing water to lands referred to in paragraph (c); or
- (iv) discharging surplus or drainage water from the water district;

the special Act means any Act authorizing the construction of waterworks with which this Act or any part thereof is incorporated;

the undertakers means the persons authorized by the special Act to construct the waterworks;

the undertaking means the waterworks, and all works, engines, buildings, channels, and other accessories connected therewith authorized by the special Act to be constructed, laid, installed, or maintained by the undertakers for the purposes of the special Act;

water district means the irrigation water district defined by or under the special Act.

- (2) For the purposes of this Act –
 - (a) a power to supply water includes a power –

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- (i) to discharge surplus or drainage water; and
 - (ii) to drain land of irrigation water; and
- (b) a power given to undertakers to enter land or to do works on land includes a power to do so with or by officers, servants, workmen, and agents and with vehicles, wheeled and tracked.

2A. Meaning of *industrial use*

- (1) In this Act, the following uses of water are industrial use:
- (a) using water for industrial purposes related to the production of hydrogen;
 - (b) using water for –
 - (i) fabricating, processing, washing, diluting, cooling, or transporting, a product; or
 - (ii) wastewater treatment associated with the processes specified in subparagraph (i); or
 - (iii) generating electricity for use in the processes specified in subparagraph (i) –

where the supply of that water is incidental or auxiliary to the supply of

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water provided for industrial purposes related to the production of hydrogen.

- (2) In addition to the uses specified in subsection (1), if water is supplied to a water district for industrial purposes related to the production of hydrogen, the Minister may declare, by order, that another use of the water within that water district is an industrial use.
- (3) If an order is made under subsection (2), the Minister must cause a copy of the order to be laid before each House of Parliament within 14 sitting-days of that House after the date on which the order is made, and the order is subject to disallowance under section 47 of the *Acts Interpretation Act 1931* as if it were a regulation.
- (4) For the purposes of this Act, the following uses are not industrial use:
 - (a) the supply or use of water that is principally for irrigation purposes;
 - (b) the supply or use of water that is principally for the generation of hydro-electricity;
 - (c) the supply or use of water by a regulated entity within the meaning of the *Water and Sewerage Industry Act 2008* for the purposes of that Act.

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3. Incorporation with special Act

This Act shall extend to all undertakings authorized by any Act which declares that this Act is incorporated therewith, or which is declared by some Act to have this Act incorporated therewith; and all the sections of this Act, save so far as they are expressly varied or excepted by any such Act, shall apply to the undertaking thereby authorized, so far as they are applicable to that undertaking, and shall, with the sections of every other Act which is incorporated therewith, form part of any such Act, and shall be construed therewith as forming one Act.

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PART II – CONSTRUCTION OF WATERWORKS

4. Acquisition and disposal of property

The undertakers may, upon such terms and conditions as they consider desirable, purchase, take on lease, hire, or otherwise acquire any land, goods, interest, or right required by them for the purposes of the special Act and may dispose of them, if no longer required, to any person and in any manner.

5. Compulsory acquisition of land

- (1) The undertakers may purchase or take any lands or any estate or interest therein which they may require for the purposes of the special Act.
- (2) The *Land Acquisition Act 1993* applies in relation to the acquisition of any land or any estate or interest in land, and any land, estate or interest acquired, by the undertakers under subsection (1).

6. Reconveyance of certain land taken

Where –

- (a) any land, estate or interest in land has been taken under section 5; and
- (b) compensation has been determined in the manner of a disputed claim for

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compensation under the *Land Acquisition Act 1993*; and

- (c) the undertakers consider it inappropriate to pay the amount of compensation so determined –

the undertakers may reconvey the land, estate or interest in accordance with, and subject to, section 23 of that Act notwithstanding that the period specified in subsection (1) of that section has expired.

7. Power to enter on land and construct works, &c.

The undertakers may –

- (a) sink such wells or shafts, construct, maintain, lay down, alter, and discontinue such reservoirs, embankments, cisterns, tanks, aqueducts, drains, cuts, sluices, channels, mains, culverts, engines, and other works, appliances, and buildings upon the lands, streams, and lakes authorized to be taken by them, as may be necessary to provide a supply of water for any of the purposes of the special Act;
- (b) for the purpose of constructing, inspecting, maintaining, altering, relaying, or discontinuing any such works, appliances, or buildings, enter upon any lake, or stream, or the beds and banks thereof, and upon any lands, and

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there take levels and set out works as the undertakers think necessary;

- (c) dig, cut, trench, and break up the soil of any such land, and remove all earth, stones, trees, and other things dug or obtained out of the same, and use such materials in the construction or maintenance of any of the works authorized by the special Act; and
- (d) for the purpose of exercising any of the powers conferred by this section, enter into such contracts as the undertakers may deem advisable.

8.

9. Purchase of water

For the purposes of the special Act the, or in relation to a contract entered into under section 24B in relation to industrial use, undertakers may buy water in bulk from any water authority or other person.

10. Power to break up highways, open drains, and lay pipes

The undertakers, under such superintendence as is specified in section 12, may open and break up the soil and pavement of any highway or bridge within the limits of the special Act, and may open and break up any sewers, drains, or tunnels

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within or under such highways and bridges, and make, lay down and place within those limits channels, service pipes, and other works and engines, and repair, alter, or remove them, and for those purposes remove and use all earth and materials in and under such highways and bridges, and do all other acts that the undertakers deem necessary for the purposes of the special Act.

11. Notice to be given before breaking up highways or opening drains

Before the undertakers open or break up any highway, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management those things are, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break them up, not less than 7 clear days before beginning the work, except in cases of emergency arising from defects in any of the channels or other works, and then so soon as is possible after the beginning of the work or the necessity for it has arisen.

12. Highways, &c., not to be broken up except under superintendence of persons controlling them

- (1) No highway, bridge, sewer, drain, or tunnel may, except in the cases of emergency mentioned in section 11, be opened or broken up except under the superintendence of the persons having the control or management thereof, or of their officer, and according to a plan approved by

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those persons or their officer, or in case of any difference respecting the plan, then according to a plan determined by any 2 justices.

- (2) The justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as he or they may think necessary for guarding against any interruption of the drainage during the execution of works that interfere with any such sewer or drain.
- (3) If the persons having such control or management, and their officer, fail to attend at the time fixed for the opening of any such highway, bridge, sewer, drain, or tunnel, after having had notice in accordance with section 11 or do not propose any plan for the breaking up or opening, or refuse or neglect to superintend the operation, the undertakers may perform the work specified in their notice without the superintendence of any such persons or their officer.

13. Highways, &c., broken up to be reinstated without delay

Whenever the undertakers open or break up the road or pavement of any highway or bridge, or any sewer, drain, or tunnel, under the authority of this Act, they shall –

- (a) with all convenient speed, complete the work for which it was broken up, and fill in the ground, and reinstate and make

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good the roadway or pavement, or the sewer, drain, or tunnel so opened or broken up, and carry away the rubbish occasioned thereby;

- (b) at all times while any such roadway or pavement is so opened or broken up, cause the excavation or broken pavement to be fenced and guarded, and a light sufficient for the warning of passengers to be set up and kept against it every night; and
- (c) after replacing or making good the roadway or pavement which has been so broken up, keep it in good repair for 3 months thereafter, and such further time, if any, not being more than 12 months in the whole, as the soil so broken up may continue to subside.

14. Penalty for delay in reinstating highways, &c.

- (1) If the undertakers—
 - (a) open or break up any highway or bridge, or any sewer, drain, or tunnel, without giving notice under section 11, or in a manner different from that which has been approved of or determined under section 12, or without making temporary or other works under section 12 when so required, except in the cases in which the undertakers are authorized to perform such works without superintendence or notice;

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- (b) make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good the roadway or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby; or
- (c) neglect to cause the place where the roadway or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the roadway or pavement in repair for the space of 3 months next after it is made good, or such further time as is mentioned in section 13–

they shall forfeit to the person having the control or management of the highway, bridge, sewer, drain, or tunnel in respect of which such default is made a fine not exceeding 0.15 penalty unit for each offence and an additional fine not exceeding 0.15 penalty unit for each day during which any such delay continues after they have received notice thereof.

- (2) Nothing in this section takes away any other right of action, except from persons who have taken action for the penalty provided in subsection (1), and no persons who have brought action otherwise for any such default may recover a penalty under this section for the same default.

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15. Power of persons having control of highways, &c., to reinstate them in case of delay

If delay or omission mentioned in section 14 takes place, the persons having the control or management of the highway, bridge, sewer, drain, or tunnel in respect of which the delay or omission takes place may cause the works so delayed or omitted to be executed, and the expense of executing them shall be repaid to those persons by the undertakers.

16. Use of natural watercourses

- (1) The undertakers may use any natural watercourse as a channel for the supply of water that they are required or authorized to supply for the purposes of the special Act, subject to the provisions of this section.
- (2) Where the undertakers use a natural watercourse under subsection (1), they shall modify or replace all bridges, crossings, fences, offtakes, and other works affected by such use so that they are as convenient to the owners, occupiers, and users as they were before such use, or as nearly so as is reasonable in the circumstances.
- (3) Nothing in subsection (2) affects the maintenance of such works, but where the cost of their maintenance is increased by such use, the undertakers shall pay the increase in cost to the person who would otherwise bear or be liable therefor.

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- (4) Where the undertakers so use a natural watercourse or in consequence any such works become necessary to give owners or occupiers of riparian land or persons wishing to cross the watercourse such facilities as they had before such use, the undertakers shall construct and maintain the necessary works.
- (5) Where such facilities as are mentioned in subsection (4) are provided to the reasonable satisfaction of the owner, occupier, or authority concerned, the undertakers shall make compensation for the difference in value between the facilities lost and the facilities constructed.

17. Works on private land

- (1) For the purposes of the special Act the undertakers may enter on any private land within the limits of the special Act and there –
 - (a) make surveys, take levels, examine and test the soil, and set out works;
 - (b) open and break up the soil; and
 - (c) make, lay down, or place channels and other works and engines.
- (2) Before making their first entry on any land under subsection (1) for the purposes of paragraph (a) thereof, the undertakers shall give 3 days' notice in writing of their intended entry.

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- (3) Before making their first entry on any land under subsection (1) for the purposes of paragraphs (b) and (c) thereof or any of them, the undertakers shall give the owner and the occupier of the land 7 days' notice in writing of their intended entry, including a brief statement of what they intend to do thereon under those paragraphs and an estimate of how long they will take to do it.
- (4) Where under this section the undertakers have made, laid down, or placed channels and other works and engines or done any of such things on private land –
- (a) they may –
 - (i) enter and go along the course of their works;
 - (ii) inspect, clean out, or repair their works or engines;
 - (iii) alter, remove, or replace their engines; and
 - (iv) after notice in accordance with subsection (3), with such modifications as the case requires, alter the course of, or remove or fill in, their works; and
 - (b) neither the owner nor the occupier of the land may obstruct their passage for the purposes of paragraph (a) of this subsection, except that they may erect and maintain fences that would otherwise obstruct such passage if they, at their

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own cost, make and maintain therein to the satisfaction of the undertakers gates sufficient to allow such passage.

- (5) If there is a breach of the duty to make or maintain gates referred to in subsection (4)(b) the undertakers may do what ought to have been done and recover the cost of so doing from the owner or occupier concerned.
- (6) Where the entry or passage of the undertakers for the purposes of subsection (4)(a) is obstructed by fences at the time of the entry referred to in subsection (3) or before the completion of the intended work referred to therein, the undertakers may make, or procure the making of, sufficient gates therein.
- (7) The gates referred to in subsection (6) shall be made and maintained at the cost of the undertakers.
- (8) In this section *gate* includes cattle grid and movable section of fence.

18. Open conduits

- (1) The powers conferred by sections 10 and 17 may be used by the undertakers to make open conduits but not so as sensibly to obstruct passengers and traffic in a highway.
- (2) Where such conduits are in a highway they shall be, and be kept, securely fenced, if the highway authority so requires, and bridged wherever a

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frontager reasonably requires a bridge for access from the highway to his land.

- (3) Where such conduits are on private land they shall be, and be kept, securely fenced, if the owner so requires, and bridged as provided in subsection (5).
- (4) Fences erected by the undertakers pursuant to subsection (3) shall be deemed to be works, and under the control, of the undertakers and their materials, if removed, become chattels of the undertakers.
- (5) Bridges required by subsection (3) shall be –
 - (a) bridges agreed upon by the owner and the undertakers to be made by the undertakers when the conduit is made either as part of, or in lieu of, compensation under section 20; or
 - (b) bridges subsequently required by the owner and built at his expense.
- (6) Where there are open conduits on private land, the occupier of the land is liable in damages to the undertakers for any harm done to the banks or bed of such a conduit by livestock.
- (7) In this section *fence* includes any gate, cattle grid, or movable section associated with a fence.

19. Undertakers to do as little damage as possible

In the exercise of the powers conferred upon them by this Act, the undertakers shall do as

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little damage as may be, and, so far as is practicable, shall cause all land used in or in connection with the erection or construction of any works to be restored to its original character, and shall provide other watering-places, drains, and channels for the use of adjoining lands in place of any such watering-places, drains, or channels as are taken away or interrupted by the undertakers.

20. Compensation for injurious affection of land

- (1) Except as provided in section 21 the undertakers shall make compensation to all persons having a lawful interest in any land, other than land purchased by the undertakers, in or upon which any works connected with the undertaking may be constructed or done, or which may be injuriously affected by the construction and maintenance of the undertaking or otherwise by the exercise by the undertakers of any powers conferred upon them by this Act, for all damage sustained by reason of the exercise, as to such land, of the powers so vested in the undertakers.
- (2) Any person claiming compensation under this section shall prefer his claim by notice in writing, specifying –
 - (a) the place of abode of the claimant;
 - (b) the particular act occasioning the damage for which compensation is claimed;
 - (c) the nature and amount of such damage; and

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- (d) the nature of the title or interest of such claimant in or to the land in respect of which the claim is referred.
- (3) If the undertakers, by notice served upon any person, require him to make a claim for compensation for any damage occasioned by the exercise, prior to such service, of any of the powers conferred on the undertakers by this Act, that person is not entitled to compensation for any damage sustained by reason of the exercise of any such powers prior to the service of the notice unless he prefers his claim, in accordance with this section, within 6 months after the service on him of the notice.
- (4) If the claimant and the undertakers do not agree as to the amount of the compensation, the claim for compensation is to be determined –
 - (a) if it is a minor civil claim, by the Magistrates Court; or
 - (b) in any other case, as if it were a disputed claim for compensation under the *Land Acquisition Act 1993*.

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Part III – Supply of Water

PART III – SUPPLY OF WATER

23. Right to a supply for irrigation

- (1) The right to a supply of water for irrigation may be –
 - (a) under the system of irrigation rights; or
 - (b) under the system of general availability.
- (2) Under the system of irrigation rights, the undertakers may –
 - (a) grant to the occupiers of any land in the water district, and their successors, a right to be supplied in each irrigation season with a certain quantity of water for irrigation of the land; and
 - (b) grant to persons (other than occupiers of land in the water district), and their successors, a right to be supplied in each irrigation season with a certain quantity of water for distribution to land, within the water district, that is nominated under subsection (2C) from time to time by the persons or their successors.
- (2A) An irrigation right may only be granted under subsection (2)(b) by the undertakers for a water district if –
 - (a) the Minister has made a declaration under subsection (2B) in relation to the water district; and

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- (b) the irrigation right may, in accordance with the conditions, if any, specified in the declaration, be granted.
- (2B) The Minister may, by notice to the undertakers for a water district, declare that the undertakers have, on the conditions, if any, specified in the notice, the right to grant irrigation rights to persons who are not occupiers of land in the water district.
- (2C) A person to whom an irrigation right in respect of a water district is granted in accordance with subsection (2)(b), and the person's successors, may from time to time, by notice to the undertakers, nominate the land, within the water district, to which the water is to be supplied by the undertakers in accordance with the right.
- (3) Irrigation rights may be granted –
- (a) for financial consideration or free of charge; and
 - (b) with different sureties to the intent that the right to a supply of water may be restricted or abrogated in case of inability of the undertakers to supply sufficient water on such grounds as may be specified in the grant.
- (3A) The grant of an irrigation right is subject to –
- (a) any by-laws made by the undertakers under section 47; and

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- (b) provisions for how, when, and in what circumstances water may be taken as may be specified in the grant.
- (3B) The undertakers must keep a register of all irrigation rights in the undertakers' irrigation district.
- (3C) The register of irrigation rights is to be in such form and contain such information as the Minister, by notice, from time to time directs.
- (3D) The Minister, by notice, may –
 - (a) require that the undertakers provide the Minister or another person with a copy of the register (or the register as it existed on a specified date); and
 - (b) require that that copy be provided in a particular format.
- (3E) The undertakers must comply with the Minister's notice.

Penalty: Fine not exceeding 5 penalty units.

- (4) Under the system of general availability occupiers of land in the water district may, subject to the undertakers' by-laws, take such water for irrigation as the undertakers have or make available to them.
- (5) Subject to section 31, the undertakers –
 - (a) may make channels capable of carrying water to the boundary of, or through,

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-
- every piece of land in the water district;
and
- (b) shall make such channels at least to the boundary of every piece of land in the water district –
- (i) in respect of which an irrigation right is in force; or
 - (ii) which is subject to payment for water supplied for irrigation.
- (6) Where land in respect of which an irrigation right is in force is divided into pieces that are separately occupied, the undertakers are not in any way affected by the division until they have knowledge of it.
- (7) When the undertakers have knowledge of such a division, they may–
- (a) revoke the irrigation right granted in respect of all the land; and
 - (b) grant irrigation rights to the occupiers of the pieces into which the land is divided.
- (8) A person proposing so to divide land may apply to the undertakers for their agreement, and the undertakers may agree, to a scheme of division.
- (9) A scheme of division for the purposes of subsection (8) shall –
- (a) be worked out between the applicants and the undertakers; and

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- (b) include –
- (i) a plan or description of the proposed division in such form and of such accuracy as the undertakers require;
 - (ii) a statement of what irrigation rights the undertakers will grant in respect of the pieces into which the land is to be divided;
 - (iii) a specification of any new works to be done by the undertakers to supply water to each piece; and
 - (iv) an estimate of the cost of such works.
- (10) When the undertakers are notified that a division in accordance with a scheme agreed to under subsection (8) has taken effect, they may–
- (a) revoke the irrigation right granted in respect of all the land; and
 - (b) grant irrigation rights to the occupiers of the pieces of land into which the land is divided in accordance with the statement in respect thereof in the scheme of division.
- (11) Where land is so divided without a scheme agreed to under subsection (8) any occupier of a piece of land to whom an irrigation right has been granted and who required a change in the undertakers' works fully to enjoy that right may

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request the undertakers to carry out works appropriate in the undertakers' opinion to give him such enjoyment, and the undertakers shall comply with his request.

(12) Where the undertakers have agreed in a scheme of division, or been requested under subsection (11), to carry out works, they –

- (a) may carry out the works without delay;
- (b) are entitled to recover the cost of the works from the person who agreed to the works or requested them; and
- (c) have a charge on –
 - (i) all the land divided; and
 - (ii) each piece of it in respect of which an irrigation right is to be or has been granted –

for the cost of the works.

23A. Transfer of irrigation rights

- (1) The holder of an irrigation right may transfer it with the approval of the undertakers and on compliance with such conditions as may be approved by the Minister.
- (2) The conditions may –
 - (a) require payment of a fee; and

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- (b) relate to the availability of water, the infrastructure required for the supply of water, the impact of the proposed transfer on the environment or the maximum amount of water which may be taken.
- (3) For the purposes of subsection (2)(b), the maximum amount of water may be determined by reference to the area of the relevant land.
- (4) The undertakers must not approve the transfer unless satisfied, from written evidence, that each person with a financial interest in the relevant irrigation right consents to the transfer.
- (5) However, subsection (4) does not apply if –
 - (a) the undertakers are satisfied that the transfer will be only for a period not exceeding 12 months and the relevant irrigation right will revert to the transferor immediately after that period expires; or
 - (b) the transferor and transferee are the same person.
- (6 - 9)

24. Domestic rights

- (1) The undertakers may undertake to supply water for domestic purposes to any land within the water district.
- (2) Notwithstanding anything in this Act or the *Water Management Act 1999*, the undertakers

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may grant, to any water entity that administers a water district under that Act or a regulated entity, within the meaning of the *Water and Sewerage Industry Act 2008*, a right to take water for domestic purposes from a declared water supply channel.

- (3) However, nothing in this section is to be taken as requiring any water supply channel to be declared.
- (4) In this section –

declared means declared under section 192(1) of the *Water Management Act 1999*.

24A. Declaration in relation to supply for industrial use

- (1) The Minister may, by notice to the undertakers for a water district, declare that the undertakers may supply water for industrial use from the water district, and may vary or revoke, by further notice to the undertakers, such a declaration.
- (2) If an application for a water district has been approved under section 176 of the *Water Management Act 1999*, but no rights have been granted in respect of that district, before a declaration can be made under subsection (1) the Minister must consult with the Tasmanian Farmers and Graziers Association and may take the advice of that association into consideration in relation to making, or refusing to make, a declaration in relation to that district.

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- (3) If a water district is in operation and rights have been granted in relation to that district, before a declaration can be made under subsection (1) the Minister must consult with each person who owns or holds rights in respect of the water district and may take the advice of one or more such persons into consideration in relation to making, or refusing to make, a declaration in relation to that district.
- (4) Before a declaration can be made under subsection (1) in relation to a water district, the Minister must consult with the corporation known as TasWater and may take the advice of TasWater into consideration in relation to making, or refusing to make, a declaration in relation to that district.
- (5) A declaration made under subsection (1) –
 - (a) must only be made if the Minister is of the opinion that the supply of water from the water district for industrial use will not cause detriment to any other right granted, or agreement made, under this Act or the special Act; and
 - (b) must only be made, varied or revoked with the agreement of the Treasurer; and
 - (c) must include a statement specifying –
 - (i) the total volume of water that may be supplied from the water district for industrial use; and

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- (ii) the surety of the water that may be supplied for industrial use; and
- (d) may be made subject to any conditions, specified in the notice, that the Minister thinks fit, including but not limited to –
 - (i) conditions regarding the minimum matters to be covered in a contract for the supply of water for industrial use entered into by the undertakers, including the volume of water to be supplied under the contract and the surety of that supply; and
 - (ii) a condition specifying an area to which a contract for the supply of water for industrial use may relate; and
 - (iii) a condition requiring the undertakers to keep a register, in a form approved by the Minister, of all contracts for the supply of water for industrial use entered into by the undertakers and to make that register publicly available.
- (6) The Minister is to ensure that a declaration made under subsection (1) is published in the *Gazette*.

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24B. Contract in relation to supply for industrial use

- (1) The undertakers of a water district may enter into a contract with –
 - (a) an industrial user; or
 - (b) a relevant water retailer –

in respect of the supply of water for industrial use from the water district.
- (2) A contract entered into under subsection (1) may only be entered into if a declaration has been made in relation to the water district under section 24A(1).
- (3) A contract entered into under subsection (1) may allow for the supply of water to land outside the water district.
- (4) For the purposes of providing a supply of water in accordance with a contract entered into under subsection (1), the undertakers may enter onto land and construct works in accordance with Part II.
- (5) Parts VI and XI do not apply to a person, or land, in relation to which a contract is entered into under subsection (1).
- (6) Undertakers who have entered into a contract under subsection (1) must not make by-laws, levy rates or charge for water under Part VII in relation to the supply of water under that contract.

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25. Distribution of water

Subject to any contracts for domestic supplies, the undertakers shall at all times as seem to them reasonable meet all demands for water for irrigation or industrial use so far as their own supplies of water allow; and where their own supplies of water are insufficient they shall give diminished supplies all round in such proportions as seem to them just, taking into account –

- (a) the differing losses that the landowners or the industrial users are likely to suffer from an insufficient supply; and
- (ab) the capacity of individual landholders and individual industrial users to withstand or mitigate such losses; and
- (b) the surety attaching to the irrigation right or specified in the contract entered into in relation to the supply under section 24B(1).

26. Supply of water for other purposes

- (1) The undertakers may, if they have water available after all demands for domestic supplies and for irrigation or industrial use have been met, undertake to supply water–
 - (a) to ships in a port within the water district;
 - (b) to the corporation–

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- (i) for cleansing sewers and drains therein;
 - (ii) for cleansing and watering streets therein; or
 - (iii) for supplying public pumps, baths, or wash-houses established or maintained therein by the corporation for the use of the inhabitants thereof;
- (c) to any land belonging to, or occupied by or on behalf of, the Crown or the Commonwealth; or
- (d) to land outside the water district; or
- (e) for carting away.
- (2) Rates, quantities, terms, and conditions of supplies for the purposes of subsection (1)(b) shall be as agreed on between the corporation and the undertakers or, in case of disagreement, as may be settled by the Minister.
- (3) Any water supplied for the purposes of subsection (1)(c) or (d) is to be supplied upon such terms as may be mutually agreed and, in the case of the supply of water to land situated outside the water district, the undertakers have the same powers of opening and breaking up highways, and of making, laying down and placing channels and other works for supplying that land with water, and the same duties in respect of their works as if that land were within the water district.

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- (4) Agreements for the purposes of subsection (1)(c) or (d) shall not operate for more than one year, but may be renewed unaltered from year to year.
- (5) Charges for water supplied for the purposes of subsection (1)(e) shall be as prescribed.
- (6) Where the undertakers take upon themselves to supply water under subsection (1)(a) or (e), they shall be deemed to carry on a public trade of the same nature as that of a common carrier, a common innkeeper, or a common smith.

27. Use of water in an emergency

Notwithstanding any other provisions of this Act the undertakers may supply water –

- (a) necessary for the health of the inhabitants of the water district or elsewhere;
- (b) for mariners sailing from a port in the water district;
- (c) for stock in or travelling through the water district or in danger of dying of thirst in places near the water district; or
- (d) for putting out fires.

28. Methods of supply

For the purposes of this Part water may be –

- (a) supplied under pressure so as to be available by turning on a valve or tap; or

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- (b) made available by gravity so that it can be drawn from the channel by opening a gate or by pumping –

and in the former case it shall be deemed to be supplied where the consumer's pipe joins the undertakers' pipe and in the latter case at the gate or inlet when the gate is open or the pump is working.

29. How supply cut off

- (1) Where water is made available–

- (a) as mentioned in paragraph (a) of section 28, the supply of water to land may be cut off–

(i) by turning off a valve or tap; or

(ii) by cutting or plugging the pipe, through which the undertakers supply that water; or

- (b) as mentioned in paragraph (b) of that section, the supply of water to land may be cut off by stopping the flow of water into the land or into the channel by which water is supplied to the land –

and in either case the supply may also be cut off by an order under the undertakers' seal served on the person to whom the water is made available or by leaving it with a person apparently over the age of 16 years at the place of residence or business of the first-mentioned person

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forbidding that person to draw water from the undertakers' channels.

- (2) Where an order has been served under this section any right, granted under this Part or that is the subject of a contract made under this Part, to the supply of water to the land concerned ceases during the currency of the order.

30. Surplus water

- (1) Where water is made available as mentioned in section 28(b), the undertakers may discharge water –
- (a) that has reached the lowest part of any of its channels; or
 - (b) that must be discharged to relieve or save from harm any of its channels –

into a stream, lake, or dry watercourse or over land, making full compensation for damage thereby done.

- (2) Where damage is done partly by a discharge of water authorized by this section and partly by water flowing naturally or caused to flow by another person, the undertakers are liable to make compensation only in proportion to their share in doing the damage.
- (3) The undertakers may acquire as an easement appurtenant to their waterworks a right to discharge water as mentioned in subsection (1).

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- (4) For the purposes of subsection (3) the undertakers' waterworks shall be deemed to be the dominant tenement and sufficiently described as such waterworks.

PART IV – COMMUNICATION CHANNELS

31. Connection to persons entitled to supply

(1) Upon the request of –

- (a) any occupier of land entitled under section 23 to a supply of water to the land; or
- (b) a person entitled under section 23 to a supply of water to land, not occupied by the person, that is land nominated by the person in accordance with section 23(2C) –

the undertakers must make a communication channel, and do other works, necessary for such a supply.

(2) The communication channel and other works between the main or other channel of the undertakers and the boundary of the land supplied shall be provided, laid down, and maintained by and at the expense of the undertakers.

32. Connection with private channels

(1) Wherever the undertakers lay a communication channel to the boundary of any land to be supplied with water they may either connect it to the communication channel laid on that land for the purpose or may terminate it at the boundary.

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Part IV – Communication Channels

- (2) Where the undertakers terminate the communication channel at the boundary of any land, the person wishing to connect a channel on the land with the undertakers' channel shall give 2 days' notice of the day and hour when he intends to make the connection, and shall make it under the superintendence, and according to the directions, of the officer appointed for that purpose by the undertakers, unless no such officer attends at the time mentioned in the notice.
- (3) Such a notice is not required where the person making the connection is authorized by the undertakers to do such work without supervision.

PART V – METERS

33. Power of undertakers to attach meters

- (1) The undertakers may at any time affix a meter in the channel supplying water to any person (including the inlet pipe of a pump as mentioned in section 28(b)), and may, without becoming in any way liable to that person, affix it on his land.
- (2) A person on whose supply a meter has been so fixed shall draw his supply only through that meter.
- (3) The undertakers may charge any such person for the use of the meter, in addition to any water rate or charge for water supplied to that person, such sums as may be prescribed.
- (4) No charge for the use of a meter shall, in any year, exceed one-fifth part of the cost of the meter plus reasonable provision for maintenance and administrative expenses.
- (5) Such charges shall be recoverable in the same manner as rates due to the undertakers for water.

34. Power of undertakers to let meters

- (1) The undertakers may let or hire to any person to whom water is supplied by measure any meter or instrument for measuring the quantity of water supplied to that person, for such remuneration in money as may be agreed upon between the undertakers and that person, which remuneration

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Part V – Meters

is recoverable in the same manner as rates due to the undertakers for water.

- (2) A meter let or hired in accordance with this section shall be attached and affixed to or in the works by which the water is supplied by or under the superintendence of such officer or servant of the undertakers as they appoint for that purpose or by some person authorized by the undertakers to do such work without supervision, and not otherwise.

35. Inspection and removal of meters, &c.

- (1) A person acting under the authority of the undertakers may enter –
- (a) at all reasonable times, any house, room, or building; or
 - (b) at any time, any land other than a house, room, or building –

to, through, or into which water is supplied by the undertakers by measure for the purpose of inspecting any meter or of removing any meter or associated apparatus belonging to the undertakers.

- (2) A person who hinders any such person from entering or making such an inspection, or affecting such a removal, as the case may be, or who, not being an officer or employee of the undertakers, in any manner injures or interferes with a meter, is liable to a fine not exceeding

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0.15 penalty unit, in addition to the amount of damage or injury done.

36. Undertakers' meters, &c., not distrainable, &c.

- (1) No instruments, meters, or other apparatus belonging to the undertakers are subject to distress for rent of the premises where they are used, or liable to be attached or taken in execution under any process of any court.
- (2) No person may acquire any interest or property in any such instruments, meters, or apparatus under or in pursuance of any adjudication or order in bankruptcy or other legal proceedings against or affecting the consumer of water or the occupier of the premises or other person in whose possession the instruments, meters, or other apparatus may be.

37. Notice of removal, &c., of meter

- (1) Every person desiring to remove or alter the position of any meter shall give 2 days' notice in writing to that effect to the undertakers.
- (2) The undertakers shall cause a registration of the quantity of water used to be taken, and the required removal or alteration to be made, and the consequent expense shall be paid by the person requiring the work, and no alteration may be made, except by or under the direction of an officer of the undertakers, or until the permission of the undertakers has been obtained.

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Part V – Meters

38. Evidence of meter reading

- (1) The undertakers shall maintain all meters in a sensitive and accurate working condition.
- (2) The reading of a meter is conclusive evidence of the quantity of water supplied to the user unless upon being tested as prescribed the meter is found to have more than the prescribed maximum error.
- (3) Subject to subsection (4), if the meter is so found to have more than the prescribed maximum error, the quantity of water supplied shall be assessed in accordance with section 52 on the assumption that the meter was removed when it was read the last time but one before it was tested.
- (4) Nothing in subsection (3) affects any period before the commencement of the irrigation season last ended before the test was made.
- (5) This section has effect only while there are in force by-laws made under section 47(1)(e).

39. Protection of meters

The occupier of land on which a meter belonging to the undertakers is installed shall at all times take all reasonable measures to protect it from damage or interference and shall be responsible for its safekeeping in the same manner as a bailee for reward.

PART VI – PROTECTION OF WATER

40. Undertakers may require cisterns in certain cases

- (1) Every person supplied with water for purposes other than irrigation shall, when required by the undertakers, provide a proper storage tank to hold the water with which he is so supplied, with a ball and stop cock in the pipe bringing the water from the works of the undertakers to the tank and shall keep the tank, ball, and stop cock in good repair, so as effectually to prevent the water from running to waste.
- (2) If any such person, when required by the undertakers, neglects to provide such a tank, ball, or stop cock, or to keep the same in good repair, the undertakers may cut off the pipe or turn off the water from the land of that person until the tank, ball, or stop cock is provided or repaired, as the case may require.

41. Specification for channels, &c.

- (1) The description of channels and other apparatus by means of which water is laid on, distributed, or supplied within the boundary of any land shall be such as the undertakers determine, either generally or in classes of cases or in any particular case.
- (2) The undertakers are not bound to supply water in any case in which the required description of channels or other apparatus is not provided, and may cut off the supply of water from any land

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supplied with water until the required description of channels or other apparatus is provided.

42. Channels, &c., to be kept in repair

- (1) If a person, when required by the undertakers so to do, fails to keep in good repair the channels and other apparatus by means of which his land is supplied with water, the undertakers may cut off the supply of water from that land, until those channels and apparatus are sufficiently repaired.
- (2) The undertakers may repair any such channels or apparatus so as to prevent any waste of water, and the expenses of that repair shall be paid to the undertakers by the person allowing them to become out of repair.

43. Cisterns, &c., to be constructed so as to prevent waste

- (1) Every cistern or other receptacle for water which the undertakers may require or permit to be used, and every closet, urinal, and private bath supplied with water by the undertakers, shall be constructed and used in such manner as may be prescribed so as effectually to prevent the waste, misuse, or undue consumption of water and the flow or return of foul air or other noisome or impure matter into the channels of the undertakers, or into any channels connected or communicating therewith.
- (2) The undertakers may cut off the supply of water to any cistern or other receptacle for water so

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required or permitted to be used, or any closet, urinal, or private bath which is not constructed or used as prescribed, until that cistern or other receptacle for water, or that closet, urinal, or private bath is constructed and used as prescribed.

44. Inspection of premises for waste

Any person acting under the authority of the undertakers may, at any reasonable time, by night or day, enter into any land or place supplied with water under the authority of this Act or the special Act to see if there is any waste or misuse of water, and the condition or state of repair of the channels or works by which the water is supplied to that land or place, and may, for the latter purpose break the surface of the ground under which pipes are laid; and if that person is at any such time refused admission into the land or place, or is prevented from making his examination, the undertakers may cut off the supply of water from that land or place.

45. Power to cut off water in certain cases

If any person supplied with water by the undertakers wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption, or contamination of the water of the undertakers, they may (without prejudice to any remedy

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against him in respect thereof) cut off his supply of water so long as the cause or injury remains or is not remedied.

PART VII – BY-LAWS, RATES, AND CHARGES

46. Power to make by-laws

- (1) Where the undertakers have no power under the *Local Government Act 1993* to make by-laws, they may with the approval of the Minister and the consent of the Governor make by-laws for the purposes of this Act or of the special Act.
- (2) By-laws made under this section shall be kept posted by the undertakers in some public place within the water district.
- (3) By-laws made under this section have, upon publication in the *Gazette*, the force of law within the limits of the special Act, and are enforceable in the same manner as by-laws made under the *Local Government Act 1993*.
- (4) If the undertakers have made a delegation under section 226E of the *Water Management Act 1999* in relation to an irrigation district, the undertakers are not to refuse a reasonable request by the irrigation delegate, within the meaning of that Act, to whom the delegation relates, to amend a by-law made under the *Local Government Act 1993*, this section or any other Act empowering the undertakers to make by-laws that applies to the irrigation district.

47. Subjects of by-laws

- (1) The undertakers may, under the *Local Government Act 1993*, section 46 of this Act, or

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any other Act empowering them to make by-laws make by-laws for the purposes of this Act and the special Act and may, without limitation of the powers conferred by this subsection –

- (a) provide for the assessment of irrigable lands, including how their extent is to be determined;
- (b) provide for the determination, granting, and variation of irrigation rights;
- (c) regulate the charges, terms, and conditions upon which water will be supplied to any person under the authority of this Act or of the special Act;
- (d) regulate the form, material, dimensions, description, construction, and arrangement of channels and other apparatus, for the purposes of section 40 and prohibit the use of any channels and other apparatus which do not conform to the requirements of the by-laws;
- (e) provide for the reading of meters, their testing, the determination of errors in their operation, applications for such testing, and payment of the expenses thereof;
- (f) prevent waste, pollution, or misuse of water; and
- (g) prevent injury to any part of the undertaking.

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- (2) Any such by-law may –
- (a) bind the undertakers; and
 - (b) subject to any arrangements made by the undertakers –
prohibit the use of water for any purpose other than irrigation purposes –
 - (c) within such area; or
 - (d) otherwise than on such days, if any, and during such hours, if any –as the undertakers, or some committee or officer named in the by-law, may determine.
- (3) A copy of every determination under subsection (2) shall be posted alongside the copy of the by-law posted in accordance with section 46.
- (4) A person shall not use any water in contravention of any determination under subsection (2) while it remains in force.

Penalty: In the case of –

- (a) a first offence, a fine not exceeding 1 penalty unit;
- (b) a subsequent offence, a fine not exceeding 3 penalty units or imprisonment for a term not exceeding 6 months.

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- (5) Any such by-law may provide that it may be enforced by cutting off the water, or by some fine not exceeding in any case 0.4 penalty unit.

48. Payment under system of irrigation rights

- (1) Where the system of irrigation rights applies, all water supplied for irrigation in the water district shall be paid for as provided in this section.
- (2) The undertakers shall before each irrigation season determine a rate per megalitre or other quantity of water which rate –
- (a) is to have effect throughout an irrigation district or in such part of the district as may be provided by the by-laws; and
 - (b) may vary by reference to the time when the water is taken or to the surety attaching to the irrigation right concerned.
- (3) Every person having an irrigation right is liable –
- (a) on the first day of the irrigation season to pay to the undertakers a sum in respect of the amount of water to which his irrigation right will entitle him that season; and
 - (b) to pay the undertakers for all water –
 - (i) to which his irrigation right so entitles him; and

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- (ii) which is supplied, that season, to the person's land or to land nominated by the person under section 23(2C) –

at the rate determined for that season.

- (4) Amounts due under subsection (3) –
 - (a) shall be deemed to be charges;
 - (b) shall be demanded and paid as provided in the undertakers' by-laws; and
 - (c) are, in relation to land occupied by the person to whom the irrigation right is granted, enforceable in the same manner as expenses charged on land under Division 9 of Part 9 of the *Local Government Act 1993*.
- (5) If a person having an irrigation right draws more water for irrigation than his right allows he may be charged for the excess by measure as provided in section 51.

49. Water rates

- (1) Subject to section 48, the undertakers may levy a water rate upon the annual value of all tenements supplied with water or as provided in section 50.
- (2) Water rates levied under this Act shall, subject to subsections (3), (4), and (5), be made, levied, and recovered in the same manner as rates made and levied under the *Local Government Act 1993*.

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- (3) Water rates shall be paid in advance or otherwise and quarterly, half-yearly, or yearly, as determined by the undertakers; and the first payment shall be made at the time when the undertakers' channel by which the water is to be supplied is made to the boundary of the rateable tenement and charged with water.
- (4) Where the rateable tenement is a dwelling-house or part of a dwelling of an annual value less than \$150 and occupied by a tenant for years or at will the water rate is payable by the person entitled to receive the rent thereof.
- (5) Where a tenancy affected by subsection (4) was created before the application of this Act to the water district or it is a term thereof that the tenant shall pay water rates, the person entitled to receive the rent may recover from the tenant as rent any rate paid by him under this section.
- (6) Where the supply of water is commenced or discontinued during any period as provided in subsection (3) a proportionate part only of the water rate shall be payable, but where the supply is discontinued otherwise than by default of the undertakers, the rate shall be payable in respect of the whole period unless notice of the discontinuance was given during the preceding period.

50. Special bases for rating

- (1) Instead of rating on the annual value of tenements, the undertakers may –

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- (a) make by-laws for –
 - (i) delimiting the land in the water district benefited by their undertaking; and
 - (ii) if they think fit, classifying those lands according to the degree of such benefit;
 - (b) rate only on the annual value of the lands delimited under the by-law; and
 - (c) make different rates for the several classes of such lands.
- (2) Where the undertakers supply water for domestic purposes they may by by-law –
- (a) except the buildings so supplied and their grounds from the operation of subsection (1) and provide for their separate rating; and
 - (b) provide for –
 - (i) a minimum amount for each such building or group of buildings;
 - (ii) a minimum value below which no rate is payable; or
 - (iii) a fixed amount for each such building or group of buildings.

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Part VII – By-laws, Rates, and Charges

51. Charges

- (1) Subject to section 48, the undertakers may charge for water supplied by measure in accordance with a prescribed scale of charges, which charges shall be the same for similar conditions of supply.
- (2) Such charges shall be enforceable in the same manner as expenses charged on land under Division 9 of Part 9 of the *Local Government Act 1993*.

52. Assessment of unmetered supply

- (1) Where for the purposes of this Act the quantity of water supplied by the undertakers is to be ascertained and that quantity has not been measured by a meter, the undertakers may assess that quantity, and the certificate of their clerk, secretary, or similar officer of their assessment is, subject to section 56, conclusive of that quantity.
- (2) In making an assessment for the purposes of this section, the undertakers shall have regard to –
 - (a) in the case of water supplied for irrigation –
 - (i) the area irrigated;
 - (ii) the method of irrigation;
 - (iii) the layout of the irrigation system and the lie of the land irrigated;

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- (iv) the type of soil irrigated; and
- (v) the type of crop irrigated; and
- (b) in other cases –
 - (i) the use made of the water;
 - (ii) the occupier's requirement of water; and
 - (iii) the quantity used in similar previous circumstances.

53. Excess water

The undertakers may charge for water up to a specified quantity by a water-rate, and for any additional water supplied by measure in accordance with section 51.

54. Construction charges

- (1) The undertakers may make and levy construction charges on lands in the water district in accordance with this section, but if they are not a public or local authority only with the consent of the Treasurer.
- (2) Construction charges –
 - (a) may be made and levied annually at any time between the commencement of the construction of the waterworks and the supply of water to the land rated or charged;

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- (b) shall be calculated by fixing an amount per unit quantity of water and multiplying it by a quarter of the number of such units expected to be drawn yearly for the land concerned when it is supplied with water.
- (3) If the undertakers –
 - (a) abandon their undertaking before supplying;
 - (b) go into liquidation, are made bankrupt, or become unable to pay their debts before supplying; or
 - (c) fail for 5 years after first levying the charge to supply –

water for irrigation to land charged under this section, any person who has paid the charge in respect of that land may recover it from the undertakers and has a charge therefor on all their assets.

55. Charges on land

- (1) The undertakers have a charge on every tenement within the water district for all money due in respect of the tenement under sections 48 to 54.
- (2) Charges on land under section 23(12) or under this section are enforceable as if the undertakers were the municipality concerned and the charges

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were charges on land under the *Local Government Act 1993*.

56. Moderation of rates and charges

- (1) A person liable for rates or charges under this Act or the special Act may apply to the Minister to review the rates levied or the scale of charges used by the undertakers or an assessment made by them under this Part.
- (2) The Minister may inquire into the matter and may, if he or she finds any impropriety or unreasonable excess, determine that such rates or charges or assessment be reduced or varied and provide for payment of the costs of the inquiry by the applicant or the undertakers.
- (3) A determination made under this section may be registered in the Supreme Court and enforced as a judgment of the Court.
- (4) So much of such a determination as relates to rates and charges or assessment is to, until it is discharged by the Minister, disentitle the undertakers to recover any greater amounts than those determined.

57. Stoppage of supply of water where payment of rates or charges in arrear

If a person liable to pay any amount of water rate or charge for water supplied neglects to pay that amount within due time after it has been lawfully demanded, the undertakers may, after 24 hours'

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notice, cut off the supply of water to the tenement in respect of which the rate or charge is payable and the expense of cutting off the supply may be recovered in the same manner as that in which the water rate or charge is recovered.

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**PART VIII – MAP OF CHANNELS AND
UNDERGROUND WORKS**

**58. Map and plan of channels and underground works
to be made, and corrected from time to time**

- (1) The undertakers shall, within 6 months from the time at which any channels or underground works have been made or done by them, cause a survey and map to be made of the water district within which any such channels or underground works are made or done, and shall cause to be marked the map the course and situation of all existing channels for the collection, passage, or distribution of water and underground works belonging to them in order to show all such channels and underground works within the water district, and shall, within 6 months from the making of any alteration or additions, cause that map to be corrected, and such additions thereto as may show the line and situation of all such channels and underground works as may be laid down or formed by them after the passing of the special Act.
- (2) That map and plan, or a copy thereof, with the date expressed thereon of the last time when it was so corrected, shall be kept in the office of the undertakers, and shall be open to the inspection of all persons interested in it within the water district.

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Part VIII – Map of Channels and Underground Works

59. Copies of map or plan to be deposited with council clerk, &c.: Inspection

- (1) The undertakers shall, within 3 months of the time at which any such map or plan, or any such correction thereof or addition thereto, has been made, deposit with the clerk or engineer of the municipality, according as the council may decide, in which the works are situated, copies of the map or plan, with all such particulars and all corrections and additions made thereto pursuant to section 58, so far as relates to that municipality.
- (2) The clerk or engineer shall receive and keep all such documents and allow all persons interested to inspect them, and take copies or extracts of and from them, upon payment of 30 cents for every inspection, and the further sum of 30 cents for every hour during which the inspection continues after the first hour.
- (3) The Governor may, by notice in the *Gazette*, exempt any undertakers from compliance with subsection (1) in respect of any area not part of a city or town or built upon and not containing any mines.

60. Power of Governor to forbid disclosure

Where he thinks national security so requires, the Governor may, by writing to the undertakers and to the corporation under the hand of the Minister, prohibit the disclosure of all or any documents required to be kept under sections 58 and 59 to all or any persons.

PART IX – MINES

61. Undertakers not entitled to mines unless expressly purchased

- (1) The undertakers are not entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the waterworks, unless those mines have been expressly purchased.
- (2) All such mines, excepting as provided in subsection (1), shall be deemed to be excepted out of the conveyance of such lands, unless they have been expressly named therein and conveyed thereby.

62. Rights of undertakers where mines and minerals in Crown

- (1) Notwithstanding anything contained in the *Mineral Resources Development Act 1995*, the undertakers may, for the purposes of constructing their works, dig, remove, use elsewhere, and dispose of, anything in the soil of any land belonging to them, gold and silver only excepted.
- (2) Where—
 - (a) any mines or minerals, within the meaning of the common law or the *Mineral Resources Development Act*

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Part IX – Mines

1995, in any land of the undertakers, are vested in the Crown; and

- (b) the undertakers require for their undertaking to remove them and occupy the space thereby left—

the undertakers, upon covenanting to pay the value, of those mines and minerals, as they lie in the required space, to be determined after their removal, shall be entitled to a grant of those mines and minerals, notwithstanding anything contained in the *Mineral Resources Development Act 1995* or in the *Crown Lands Act 1976*.

- (3) The powers conferred on the undertakers by section 10 may be exercised notwithstanding any right of the Crown in the soil of the street, that to gold, silver, and precious stones only excepted, or anything contained in subsection (2) or in the *Mineral Resources Development Act 1995*.
- (4) No lease under the *Mineral Resources Development Act 1995* is required for the exercise by the undertakers of the powers conferred by section 7(c), by section 10, or by section 17.

63. Working of mines lying near the works

- (1) Except where otherwise provided for by agreement between the undertakers and other parties, if the owner, lessee, or occupier of any mines or minerals lying under the reservoirs or buildings belonging to the undertakers, or under

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any of their channels or works which are underground and are described in the map or plan required by Part VIII to be kept and deposited by the undertakers, or within the distance prescribed by the special Act, if any, or if no distance is prescribed, within 40 metres therefrom is desirous of working those mines or minerals, that owner, lessee, or occupier shall give the undertakers notice in writing of his intention so to do, 30 days before the commencement of working.

- (2) Upon the receipt of a notice under subsection (1), the undertakers may cause the mines to be inspected by any person appointed by them for the purpose, and if it appears to the undertakers that the working of the mines or minerals is likely to damage the works referred to in that subsection, and if they are willing to make compensation for the mines to the owner, lessee, or occupier thereof, the owner, lessee, or occupier shall not work those mines or minerals.
- (3) If the undertakers and the owner, lessee, or occupier do not agree as to the amount of the compensation, it is to be determined as if there was a disputed claim for compensation under the *Land Acquisition Act 1993*.

64. Right of owner to work a mine if undertakers do not state their willingness to treat for payment of compensation

- (1) If before the expiration of the period of 30 days referred to in section 63(1), the undertakers do

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not state their willingness to treat with the owner, lessee, or occupier for the payment of compensation, as provided in that section, the owner, lessee, or occupier may work the mines, and may drain them, by means of engines or otherwise, as if this Act and the special Act had not been passed, but so that no wilful damage is done to the works, and so that the mines are not worked in an unusual manner.

- (2) If any damage or obstruction is occasioned to the works of the undertakers by the working of the mines in an unusual manner, that damage or obstruction shall be forthwith repaired or removed (as the case may require), and the damage made good by the owner, lessee, or occupier of the mines or minerals, and at his own expense.
- (3) If such repair or removal is not forthwith done, or if the undertakers think fit, without waiting for it to be done by the owner, lessee, or occupier, the undertakers may do the work and recover from the owner, lessee, or occupier the expense occasioned thereby by action in the Supreme Court.

65. Mining communications

If the working of any such mines under the works of the undertakers or within the distance therefrom mentioned in section 63 is prevented by reason of apprehended injury to those works, the respective owners, lessees, and occupiers of mines may cut and make such and so many

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airways, headways, gateways, or water levels through the mines, measures, or strata the working whereof is so prevented, as may be requisite to enable them to ventilate, drain, and work any mines or minerals on each or either side thereof, but no such airway, headway, gateway, or water level shall be of greater dimensions or sections than the dimensions or sections prescribed by the special Act, or if no dimensions are so prescribed shall not exceed 2·5 metres wide and 2·5 metres high, and shall not be cut or made upon any part of the works so as to injure them.

66. Undertakers to make compensation to owner, lessee, or occupier of mines for expenses incurred by severance of mines, or by interruptions of or restrictions on works, and for minerals not obtained

- (1) Except where otherwise provided for by agreement the undertakers shall pay to the owner, lessee, or occupier of any mines of coal, ironstone, and other minerals extending so as to lie on both sides of any reservoirs, buildings, channels, or other works, all such additional expenses and losses as shall be incurred by that owner, lessee, or occupier by reason of the severance of the lands over those mines or minerals by the reservoirs or other works, or of the interruption of the continuous working of the mines or minerals under section 63, or by reason of their being worked under the restrictions contained in this Act or the special Act, and for any mines or minerals not purchased by the undertakers which cannot be obtained by reason

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of making and maintaining the said works or by reason of such apprehended injury from the working thereof.

- (2) If any dispute or question arises between the undertakers and the owner, lessee, or occupier touching the price of such minerals, the price is to be settled as if it were compensation, and as if there was a disputed claim for compensation, under the *Land Acquisition Act 1993*.

67. Power of undertakers to enter and inspect the working of mines, after giving notice

For the better ascertaining whether any such mines are being worked or have been worked so as to damage the undertakers' works, the undertakers may, after giving 24 hours' notice in writing, enter upon any lands through or near which the works are situated, and wherein any such mines are being worked or are supposed so to be, and may enter into and return from any such mines or the works connected therewith, and they may, for that purpose, make use of any apparatus or machinery belonging to the owner, lessee, or occupier of the mines, and use all necessary means for discovering the distance from the works to the parts of the mines which are being worked or about to be worked.

68. Undertakers liable to actions for injuries done to mines

Nothing in this Act or the special Act prevents the undertakers from being liable to any action

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or other legal proceedings to which they would have been liable for any damage or injury done or occasioned to any mines by means or in consequence of the waterworks, if their waterworks had not been constructed or maintained by virtue of this Act or the special Act.

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Part X – Offences

PART X – OFFENCES

69. Offences

(1) No person shall –

- (a) destroy or injure any part of the undertaking;
- (b) remove, injure, or destroy any survey peg or landmark inserted or made in connection with any work constructed under the authority of this Act or the special Act;
- (c) in any manner prevent or obstruct the flow of water in or through any part of the undertaking; or
- (d) otherwise injure or obstruct the passage of the water through any part of the undertaking.

Penalty: Fine not exceeding 5 penalty units.

(2) No person shall draw water contrary to an order served on him under section 29.

Penalty: Fine not exceeding one penalty unit and, in addition, one cent for every litre so drawn.

(3) No person shall –

- (a) bathe in any stream or channel above and within the prescribed distance of the undertakers' source of supply or in any

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lake which is a source of supply within the prescribed distance of the intake of the waterworks or in any reservoir or other part of the undertakers' waterworks, or wash, throw, or cause or permit to enter therein any animal, whether alive or dead;

- (b) throw any rubbish, dirt, filth, or other noisome thing into any lake, stream, or channel from which the undertakers are lawfully diverting water, so as to affect the undertakers' source of supply, or into any reservoir or other part of their undertaking, or wash or cleanse therein any cloth, wool, or leather, or the skin of any animal, or any clothes or other thing;
- (c) cause or permit the water of any sink, sewer, drain, steam engine, or boiler, or other filthy water belonging to him or under his control to run or to be brought into any such lake, stream, or channel so as to affect the undertakers' source of supply, or into any reservoir or other part of the undertaking, or do or permit to be done any other act whereby the water in the undertaking or any water supplying the same is fouled; or
- (d) waste water supplied by the undertakers.

Penalty: Fine not exceeding 5 penalty unit.

- (4) Notwithstanding anything in subsection (3), where the water affected by any of the acts

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Part X – Offences

mentioned in that subsection will not be used for some purpose for which that act makes it unsuitable, no offence against that subsection shall be deemed to have been committed.

- (5) No person shall –
- (a) being the owner or occupier of any land supplied with water under this Act or the special Act, supply any other person or wilfully permit any other person to take any of such water from any cistern, channel, or service, or on such premises, except for the purpose of extinguishing a fire, or unless such other person is a person supplied with water by the undertakers from their waterworks, and the channels leading or belonging to him are out of repair otherwise than through his own fault;
 - (b)
 - (c) make any channel to communicate with any waterworks or channels of the undertakers without the authority of the undertakers in that behalf;
 - (d) wilfully or carelessly break, injure, operate, or interfere with, any lock, cock, valve, pipe, work, or engine belonging to the undertaking, or flush or draw off the water from the reservoirs or other waterworks of the undertakers, or do any other wilful act whereby such water is wasted; or

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-
- (e) foul the water supplied by the undertakers by making or supplying gas.

Penalty: Fine not exceeding 5 penalty unit and a daily fine not exceeding one penalty unit after the expiration of 24 hours after notice of the alleged offence is served upon that person.

- (6) Nothing contained in subsection (5)(a) affects the supply of water in a domestic or social way to persons on the land supplied.
- (6A) A person must not, without the permission of the undertakers, take any water from any reservoir, watercourse or channel belonging to the undertaking, or any channel leading to any such reservoir, watercourse or channel or from any cistern or other like place containing water belonging to the undertaking other than water which is provided for the gratuitous use of the public.
- (6B) A person who takes water in contravention of subsection (6A) is guilty of an offence and is liable on summary conviction –
- (a) in the case of a first offence, to a penalty of one penalty unit; or
 - (b) in the case of a second offence in the same irrigation season, to a penalty not exceeding 3 penalty units; or
 - (c) in the case of a third or subsequent offence in the same irrigation season, to a penalty not exceeding 5 penalty units.

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(6C) On a conviction for an offence under subsection (6A), the court may order that the supply of water by the undertakers to the person convicted be discontinued for a period of 3 days in the case of a first offence, a period of one week in the case of a second offence or for a period of 2 weeks in the case of a third or subsequent offence.

(7) Where the undertakers supply water in a separate channel for a special purpose, a person who draws, or by making a channel to communicate with that channel attempts or prepares to draw, water from that pipe for some other purpose is liable to a fine –

(a) not exceeding 5 penalty units; or

(b) if water is supplied free for the special purpose, not exceeding 10 penalty units–

but judgment for a penalty under this subsection is a bar to an indictment for stealing or attempting to steal water by means of the same opening in that channel.

(8) A person supplied with water by the undertakers shall not suffer any channel or other apparatus by means of which his land is supplied with water to be out of order so that the water supplied to that land by the undertakers is wasted.

Penalty: Fine not exceeding 2 penalty units.

(9) A person shall not permit or suffer the drainage from any yard, pigsty, stable, cow-house,

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sawmill, or other place to so run, drain, or percolate as to render the water in the waterworks or supplying them unwholesome.

Penalty: Fine not exceeding 2 penalty units and a daily fine not exceeding one penalty unit after the expiration of 24 hours after notice of the alleged offence is served on that person.

- (10) Every person convicted of any offence against this Act may be ordered to pay, in addition to the penalty imposed in respect of the offence, a sum equal to the value of the property damaged or destroyed by him by reason of the commission of the offence.

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Part XI – Irrigation infringement notices

PART XI – IRRIGATION INFRINGEMENT NOTICES

70. Appointment of authorised officers

The undertakers may appoint a person to be an authorised officer for the purposes of this Part.

71. Service and acceptance of irrigation infringement notices

- (1) Where an authorised officer is satisfied that a person has committed an offence against section 69(6A), he or she may serve on that person an infringement notice in respect of that offence by delivering it to that person or by sending it to that person by post.
- (2) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.
- (3) For the purposes of subsection (1), the prescribed penalty is –
 - (a) in the case of a first offence, 0.5 penalty unit; or
 - (b) in the case of a second offence in the same irrigation season, 1.5 penalty units; or
 - (c) in the case of a third or subsequent offence in the same irrigation season, 2.5 penalty units.

(4 - 10)

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72. Payment into Public Account

Any payments in respect of an infringement notice are payable into the Public Account.

73. Discontinuance of water supply

Where an irrigation infringement notice has been served on a person, the undertakers may, whether or not the notice is accepted, discontinue the supply of water to that person as provided by section 29 –

- (a) in the case of a first notice, for a period of 3 days; or
- (b) in the case of a second such notice in an irrigation season, for a period of one week; or
- (c) in the case of a third or subsequent such notice in an irrigation season, for a period of 2 weeks.

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Part XII – River Clyde Irrigation District

PART XII – RIVER CLYDE IRRIGATION DISTRICT

75. Orders for irrigation rights

- (1) The Minister may, by order, confer irrigation rights on owners and occupiers of land within the district referred to in section 308(1) of the *Water Management Act 1999* as the River Clyde Irrigation District.
- (2) An order under subsection (1) –
 - (a) is to be consistent with any by-laws made under this Act; and
 - (b) is to be published in the *Gazette* and in such daily newspapers circulating generally in Tasmania as the Minister thinks fit.
- (3) The Minister must cause a copy of the order to be laid before each House of Parliament within 14 sitting-days of that House after the date on which the order is made and the order is subject to disallowance under section 47 of the *Acts Interpretation Act 1931* as if it were a regulation.

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NOTES

The foregoing text of the *Irrigation Clauses Act 1973* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 11 December 2023 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Irrigation Clauses Act 1973</i>	No. 39 of 1973	26.7.1973
<i>Metric Conversion Act 1973</i>	No. 75 of 1973	1.1.1974
<i>Statute Law Revision Act 1982</i>	No. 99 of 1982	1.2.1983
<i>Statute Law Revision Act 1991</i>	No. 46 of 1991	18.12.1991
<i>Land Acquisition (Consequential Amendments) Act 1993</i>	No. 24 of 1993	1.1.1994
<i>Statute Law Revision (Penalties) Act 1994</i>	No. 67 of 1994	25.11.1994
<i>Local Government (Consequential Amendments) Act 1995</i>	No. 30 of 1995	1.9.1995
<i>Hydro-Electric Corporation (Consequential and Miscellaneous Provisions) Act 1996</i>	No. 61 of 1996	17.12.1996
<i>Irrigation Clauses Amendment Act 1997</i>	No. 46 of 1997	11.11.1998
<i>Water Management Act 1999</i>	No. 45 of 1999	1.1.2000
<i>Irrigation Clauses Amendment Act 2001</i>	No. 30 of 2001	30.5.2001
<i>Statute Law Revision Act 2003</i>	No. 9 of 2003	16.4.2003
<i>Magistrates Court (Minor Civil Claims) Act 2003</i>	No. 53 of 2003	25.9.2003
<i>Water Legislation Amendment Act 2004</i>	No. 12 of 2004	9.6.2004
<i>Water Legislation Amendment Act 2005</i>	No. 30 of 2005	11.7.2005
<i>Monetary Penalties Enforcement (Transitional Arrangements and Consequential Amendments) Act 2007</i>	No. 72 of 2007	28.4.2008
<i>Monetary Penalties Enforcement (Consequential Amendments) Act 2008</i>	No. 6 of 2008	28.4.2008
<i>Water Legislation Amendment Act 2008</i>	No. 56 of 2008	11.2.2009
<i>Water and Sewerage Industry (Consequential and Transitional)</i>	No. 52 of 2008	1.7.2009

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Part XII – River Clyde Irrigation District

Act	Number and year	Date of commencement
<i>Act 2008</i>		
<i>Irrigation Clauses Amendment Act 2010</i>	No. 21 of 2010	14.10.2010
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Water Miscellaneous Amendments (Delegation and Industrial Water Supply) Act 2023</i>	No. 36 of 2023	11.12.2023

TABLE OF AMENDMENTS

Provision affected	How affected
Long Title	Amended by No. 99 of 1982, s. 3 and Sched. 2
Section 2	Amended by No. 99 of 1982, s. 3 and Sched. 2, No. 30 of 1995, s. 3 and Sched. 1, No. 46 of 1997, s. 4, No. 45 of 1999, Sched. 6, No. 53 of 2003, Sched. 1, No. 30 of 2005, s. 14, No. 6 of 2008, Sched. 1, No. 52 of 2008, Sched. 1 and No. 36 of 2023, s. 4
Section 2A	Inserted by No. 36 of 2023, s. 5
Section 5	Amended by No. 24 of 1993, s. 3 and Sched. 1
Section 6	Substituted by No. 24 of 1993, s. 3 and Sched. 1
Section 8	Amended by No. 24 of 1993, s. 3 and Sched. 1 Repealed by No. 45 of 1999, Sched. 6
Section 9	Amended by No. 36 of 2023, s. 6
Section 14	Amended by No. 9 of 2003, Sched. 1
Section 20	Amended by No. 24 of 1993, s. 3 and Sched. 1, No. 46 of 1997, s. 5 and No. 53 of 2003, Sched. 1
Section 21	Amended by No. 24 of 1993, s. 3 and Sched. 1 Subsection (5) substituted by No. 24 of 1993, s. 3 and Sched. 1 Subsection (5A) inserted by No. 24 of 1993, s. 3 and Sched. 1
	Amended by No. 61 of 1996, s. 15, No. 46 of 1997, s. 6 Subsection (5A) substituted by No. 46 of 1997, s. 6 Repealed by No. 45 of 1999, Sched. 6
Section 22	Repealed by No. 45 of 1999, Sched. 6
Section 23	Amended by No. 46 of 1997, s. 7, No. 30 of 2001, s. 4, No. 12 of 2004, s. 64, No. 56 of 2008, s. 137 and No. 21 of 2010, s. 4
Section 23A	Inserted by No. 46 of 1997, s. 8 Amended by No. 30 of 2001, s. 5, No. 12 of 2004, s. 65 and No. 56 of 2008, s. 138
Section 24	Substituted by No. 30 of 2005, s. 15 Amended by No. 52 of 2008, Sched. 1 and No. 56 of 2008,

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Provision affected	How affected
	s. 139
Section 24A	Inserted by No. 36 of 2023, s. 7
Section 24B	Inserted by No. 36 of 2023, s. 7
Section 25	Amended by No. 46 of 1997, s. 9 and No. 36 of 2023, s. 8
Section 26	Amended by No. 45 of 1999, Sched. 6 and No. 36 of 2023, s. 9
Section 29	Amended by No. 46 of 1997, s. 10 and No. 36 of 2023, s. 10
Section 31	Amended by No. 21 of 2010, s. 5
Section 35	Amended by No. 67 of 1994, s. 3 and Sched. 1
Section 46	Amended by No. 30 of 1995, s. 3 and Sched. 1, No. 45 of 1999, Sched. 6 and No. 36 of 2023, s. 11
Section 47	Amended by No. 67 of 1994, s. 3 and Sched. 1, No. 30 of 1995, s. 3 and Sched. 1 and No. 46 of 1997, s. 11
Section 48	Amended by No. 75 of 1973, s. 2 and Sched. 1, No. 30 of 1995, s. 3 and Sched. 1, No. 46 of 1997, s. 12 and No. 21 of 2010, s. 6
Section 49	Amended by No. 30 of 1995, s. 3 and Sched. 1
Section 51	Amended by No. 30 of 1995, s. 3 and Sched. 1
Section 52	Amended by No. 46 of 1991, s. 4 and Sched. 2
Section 55	Amended by No. 30 of 1995, s. 3 and Sched. 1
Section 56	Substituted by No. 45 of 1999, Sched. 6
Section 62	Amended by No. 9 of 2003, Sched. 1
Section 63	Amended by No. 75 of 1973, s. 2 and Sched. 1 and No. 24 of 1993, s. 3 and Sched. 1
Section 65	Amended by No. 75 of 1973, s. 2 and Sched. 1
Section 66	Amended by No. 24 of 1993, s. 3 and Sched. 1
Section 69	Amended by No. 75 of 1973, s. 2 and Sched. 1, No. 99 of 1982, s. 3 and Sched. 2, No. 67 of 1994, s. 3 and Sched. 1 and No. 46 of 1997, s. 13
Part XI	Inserted by No. 46 of 1997, s. 14
Section 70	Amended by No. 67 of 1994, s. 3 and Sched. 1 Substituted by No. 46 of 1997, s. 14
Section 71	Inserted by No. 46 of 1997, s. 14 Amended by No. 72 of 2007, Sched. 1
Section 72	Inserted by No. 46 of 1997, s. 14 Substituted by No. 72 of 2007, Sched. 1 Amended by No. 4 of 2017, Sched. 1
Section 73	Inserted by No. 46 of 1997, s. 14
Section 74	Inserted by No. 46 of 1997, s. 14 Repealed by No. 72 of 2007, Sched. 1
Section 75	Inserted by No. 30 of 2005, s. 16