

## PART VIII

## GENERAL

**49.** This Enactment shall bind the State Government.

Enactment  
binds the  
Government.

**50.** (1) A document may be served an owner or occupier of land —

Service of  
documents.

(a) personally;

(b) by leaving it at, or by sending it by post to, his residential address, postal box or premises, or in the case of a corporation its registered address; or

(c) if it is impracticable for the document to be served in the manner referred to in paragraph (a) or (b), by affixing the document in a conspicuous position to the land or premises.

(2) In the case of land that is owned or occupied by more than one person, or of a licence that is held by more than one person, service of an documnet on the owners or occupiers of the land or on the holders of the licence is taken to be effected if the document is served on any one of them or on any person duly appointed by them for the purpose of accepting service of documents.

**51.** (1) Where the Director acquires land for the purpose of this Enactment, the amount of compensation payable shall be determined in accordance with the provisions of the Land Acquisition Ordinance.

Compensa-  
tion  
Cap.69.

(2) Where a person is required to —

(a) relocate any lawfully installed structure in accordance with paragraph (c) of subsection (5) of section 38; or

(b) relocate or remove a lawfully installed structure or building in accordance with paragraph (b) of subsection (2) of section 41,

compensation shall be payable, and unless the amount of compensation is agreed upon between the parties, shall be determined in accordance with the provitions of the Land Acquisition Ordinance.

Cap. 69.

(3) Compensation payable under subsection (2) of this section shall be limited to the direct costs of complying with the directions of the Director.

Fees,  
charges and  
royalties.

**52.** (1) An applicant for a licence under Part IV shall pay to the Director a fee for the cost of administration and investigation of the application determined in accordance with the rules.

(2) The Director may levy, in accordance with the rules, water management fees, and charges representing the cost of management activity undertaken by the Director or a person authorised by the Director, on person —

- (a) holding a licence issued under Part IV;
- (b) who owns or occupies land within a declared floodplain area;
- (c) who is benefitted by a water protection area; and
- (d) where the Minister has authorised such charges, a person who owns or occupies land within a water conservation area.

(3) Fees and charges imposed by the Director in accordance with subsection (2) are recoverable as a debt owed to the Director by the person on whom the order was served and, where appropriate, shall be a charge on that person's land.

Water  
resources  
data.

**53.** (1) The Director shall establish and maintain a water resources data base for the State and shall report to the Council on the availability, quantity and condition of water resources.

(2) Any public authority, when requested by the Director, shall provide such data on water resources as is reasonably requested.

Protection  
against legal  
proceedings.

**54.** No action, suit, prosecution or other proceedings shall be brought or instituted against any member of the Council, the Director, or against any officer or servant under the Director's controls, in respect of any act done or statement made *bona fide* in pursuance or execution of this Enactment.

**55.** Every member and agent of the Council and every agent of the Director, every authorised person, and every assistant or workman accompanying or assisting an authorised person in the performance of his functions under this Enactment shall be deemed to be public servants for the purposes of the Penal Code.

Public servants.

Act 574.

**56.** In proceedings for an offence against this Enactment or the rules made thereunder —

Evidence in proceedings for offences.

- (a) evidence that a specified licensed activity or work was carried out at any time is evidence that the activity or work was carried out by the holder of the licence at the time;
- (b) evidence that water was taken and used at any time on specified land —
  - (i) by means of a work authorised by a licence; or
  - (ii) in the exercise of a private water right,is evidence that the water was taken and used by the occupier of the land at the time;
- (c) evidence that a specified work was constructed at any time on specified land is evidence that the work was constructed by the occupier of the land at the time; and
- (d) evidence that water was taken and used at any time on specified land is evidence that the water was taken and used by the occupier of the land at the time.

**57.** Any person who in, or in connection with, any application under this Enactment, makes a statement that the person knows to be false or misleading in a material particular shall be guilty of an offence.

False or misleading information.

**58.** Where a person charged with an offence under this Enactment is body corporate, every person who, at the time of the commission of such offence, is a managing director, manager or other similar officer of such body corporate, may be charged jointly in the same proceedings with the body corporate, and where the body corporate is convicted of the offence charged, every such managing director, manager or officer shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he took reasonable precautions to prevent its commission.

Offences committed by body corporate.

Penalty for interference with notice.

**59.** Any person who, without the authorisation of the Director, wilfully destroys, damages, defaces, moves, or otherwise interferes with any notice, record or mark placed or set up for the purposes of identification or indicating any level or direction necessary for the carrying out of any of the purposes of this Enactment commits an offence and on conviction —

- (a) shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (b) may, in addition to or in place of that penalty, be ordered to pay to the Director a sum, recoverable as a fine, not exceeding three times the cost of repairing or replacing the notice, record or mark and of making any survey rendered necessary by the act in respect of which the person is convicted.

Offences where no penalty specified.

**60.** Any person who contravenes or fails to comply with any provision of the Enactment where no penalty is provided in relation thereto, shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding ten thousand ringgit or to imprisonment not exceeding one year or to both and in the case of a continuing offence to a further fine of one hundred ringgit for every day during which the offence continues.

Compounding of offences.

**61.** (1) The Director or any authorised person may in his discretion compound any offence against this Enactment or against any rule made thereunder, by collecting from the person reasonably suspected of having committed the same a sum not exceeding the maximum fine, as the Director or authorised person may determine.

(2) The Director or authorised person making an offer of composition of any offence may require the payment of the sum so determined to be made forthwith or specify a period within which the payment is to be made as he may think reasonable and on such payment being made shall give a receipt to the person making such payment.

(3) The payment forthwith, or within such period as the Director or authorised person may specify, of the sum so determined shall operate as a bar to any or any further penal proceedings in respect of

such offence, in respect of which such composition was offered against the person making such payment.

(4) No offence against this Enactment or against any rule or regulation made thereunder in respect of which a prosecution is actually pending shall be compounded under this section otherwise than with the consent of the Court before which such prosecution is pending.

**62.** Notwithstanding the provisions of section 87 of the Subordinate Courts Act 1948, a Magistrate of the First Class shall have jurisdiction to try any offence under this Enactment or the rules made thereunder and to award the full punishment authorised thereby.

Jurisdiction  
of courts.  
Act 192.

**63.** (1) An authorised person may, with or without assistants or workers, enter upon or into any land, building or vessel for the purpose of —

Power of  
entry.

- (a) making any inquiry, investigation, inspection, gauge reading, measurement or survey;
- (b) installing, operating and maintaining river gauging equipment and monitoring bores;
- (c) digging or boring into the subsoil;
- (d) taking water samples;
- (e) ascertaining whether any activity has been commenced, undertaken or carried out in contravention of this Enactment or the rules made thereunder; and
- (f) doing any other acts necessary for the efficient administration of this Enactment.

(2) No entry shall be made under subsection (1) —

- (a) into a building used solely as a dwelling -house or upon any enclosed part or garden attached to the building, unless the prior consent of the occupier has been obtained or a notice in writing of the intention to enter has been given to the occupier at least twenty-four hours before the intended entry; or

(b) without due regard, such as is compatible with the exigency of the purpose for which the entry is made, to the social and religious practices of the occupants of the land or building.

(3) An authorised person making an entry under subsection (1) shall carry on his person an authority card in the prescribed form; and it shall not be unlawful for any person to refuse entry to an authorised person or to any of his assistants or workers if the authorised person fails, when demanded, to produce the authority card.

Conduct of prosecution.  
F.M.S. Cap. 6.

**64.** Any person authorised in writing by the Public Prosecutor pursuant to section 377 of the Criminal Procedure Code may conduct prosecutions for offences under this Enactment or the rules made thereunder.

Taking of water outside the State.

**65.** The Minister may authorise the taking of water from Sabah for use outside the territory of the State, on the advice of the Council, if he is satisfied that —

- (a) the proposed taking of the water will not prejudice the requirements of the State and its water users;
- (b) the terms for taking the water are included in an agreement with the proposed water user; and
- (c) an appropriate royalty applies.

Declared channels.

**66.** The Director, with the approval of the Council, may declare in writing that a channel, canal, drain or artificial watercourse is a declared channel.

Rules.

**67 (1)** The Minister may make rules to carry out the purpose of this Enactment.

(2) In particular, and without prejudice to the generality of subsection (1), rules made under subsection (1) may provide for —

- (a) the prescribed fees, charges and royalties payable under this Enactment;
- (b) the registration of applications and the form of, and particulars to be contained in the licensing register, including each licence type, change of owner or occupier;

- (c) the keeping of a register of declared areas;
- (d) the keeping of a register of notices issued to owners and occupiers in declared areas;
- (e) the procedures for deciding appeals from the Director to the Council;
- (f) the procedures for publication of proposals for protected water areas and the procedures required after such publication;
- (g) the control of water protection areas;
- (h) the enforcement of orders made under Part VI;
- (i) the types of meters for pumps where the Director requires such installation;
- (j) the scheme for registration of non-licensable works of public authorities;
- (k) the issue of directions regarding wastage of water;
- (l) the making of declarations that no further applications may be made for licences for water activities in specified areas; and
- (m) prescribing anything that may be, or is required to be, prescribed under this Enactment.

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Friday, the 21<sup>st</sup> day of August, 1998.

DATUK FRANCIS T.N. YAP,  
Deputy Speaker,  
State Legislative Assembly,