



New South Wales

Water Management Amendment Act 2008 No 73

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New South Wales

Water Management Amendment Act 2008 No 73

Act No 73, 2008

An Act to amend the *Water Management Act 2000* in relation to compliance and enforcement, access licences, publication of notices and orders and other miscellaneous matters; and for other purposes. [Assented to 28 October 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Water Management Amendment Act 2008*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedules 1–4 and 7.2 and 7.3 commence on a day or days to be appointed by proclamation.

3 Amendment of Water Management Act 2000 No 92

The *Water Management Act 2000* is amended as set out in Schedules 1–6.

4 Amendment of other Acts

Each Act listed in Schedule 7 is amended as set out in that Schedule.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments relating to offences and penalties

(Section 3)

[1] Chapter 3, Part 2, Division 1A

Insert after Division 1:

Division 1A Offences

60A Taking water without, or otherwise than authorised by, an access licence

- (1) A person:
 - (a) who takes water from a water source to which this Part applies, and
 - (b) who does not hold an access licence for that water source, and
 - (c) who intentionally or negligently takes that water without obtaining an access licence for that water source,is guilty of an offence.
Tier 1 penalty.
- (2) A person:
 - (a) who takes water from a water source to which this Part applies, and
 - (b) who does not hold an access licence for that water source,is guilty of an offence.
Tier 2 penalty.
- (3) A holder of an access licence:
 - (a) who takes water from a water source to which this Part applies otherwise than as authorised by the licence, and
 - (b) who intentionally or negligently takes that water without obtaining an access licence that authorises the taking of that water,is guilty of an offence.
Tier 1 penalty.
- (4) A holder of an access licence who takes water from a water source to which this Part applies otherwise than as authorised by the licence is guilty of an offence.
Tier 2 penalty.

- (5) Without limiting subsections (3) and (4), a person takes water otherwise than as authorised by an access licence if the person takes water while the licence is suspended.
- (6) Without limiting subsections (3), (4) and (5), a person takes water otherwise than as authorised by a supplementary water access licence if the person takes water otherwise than in accordance with the terms of an order in force under section 70.
- (7) It is a defence to a prosecution under this section in relation to the taking of water from a water source to which this Part applies if the accused person establishes that the water was taken:
 - (a) by means of a nominated water supply work for that water source, or
 - (b) by means of a water supply work that, at all material times, was nominated in relation to the interstate equivalent of an access licence,
and was otherwise taken in accordance with the terms and conditions of the access licence in connection with which it is nominated.
- (8) The defence established by subsection (7) (b) is not available unless the Minister has been duly notified that the relevant water supply work has been nominated as referred to in that paragraph.

60B Contravention of terms and conditions of access licence

A person who takes water pursuant to an access licence is guilty of an offence if the person contravenes any term or condition of the licence.

Tier 2 penalty.

60C Taking water for which there is no, or insufficient, water allocation

- (1) A person:
 - (a) who takes water from a water source to which this Part applies when there is no water credited to the access licence by which the taking of water from that water source is authorised, and
 - (b) who intentionally or negligently fails to ascertain whether there is any water credited to that access licence,
is guilty of an offence.

Tier 1 penalty.

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- (2) A person who takes water from a water source to which this Part applies when there is no water credited to the access licence by which the taking of water from that water source is authorised is guilty of an offence.
Tier 2 penalty.
- (3) A person:
- (a) who takes more water from a water source to which this Part applies than is credited to the access licence by which the taking of water from that water source is authorised, and
 - (b) who intentionally or negligently fails to ascertain whether there is sufficient water credited to that access licence,
- is guilty of an offence.
Tier 1 penalty.
- (4) A person who takes more water from a water source to which this Part applies than is credited to the access licence by which the taking of water from that water source is authorised is guilty of an offence.
Tier 2 penalty.
- (5) If a person who has the control or management of a water supply work takes water by means of that work in contravention of subsection (2) or (4), and the water supply work is nominated in relation to an access licence held by some other person, both persons are taken to have contravened that subsection.
- (6) Either person referred to in subsection (5) may be proceeded against and convicted for an offence under subsection (2) or (4), as the case requires, whether or not the other person has been proceeded against or convicted for such an offence.

60D Taking water otherwise than from a nominated water supply work

A person who takes water from a water source to which this Part applies otherwise than by means of a nominated water supply work for that water source is guilty of an offence.

Tier 2 penalty.

60E Liability of occupier of premises for certain offences

- (1) The occupier of premises at or from which water is taken in contravention of a provision of this Division is taken to have contravened that provision unless it is established that:
- (a) the water was taken by another person, and

- (b) the other person was not associated with the occupier at the time the water was taken, and
- (c) the occupier took all reasonable steps to prevent the water being taken.

A person is associated with the occupier for the purposes of paragraph (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the occupier.

- (2) Subsection (1) does not prevent proceedings being taken under this Act against the person who actually committed the offence.

60F General defence

- (1) It is a defence to a prosecution under this Division in relation to a Tier 1 offence if the accused person establishes:
 - (a) that the commission of the offence was due to causes over which the person had no control, and
 - (b) that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.
- (2) It is a defence to a prosecution under this Division in relation to the taking of water from a water source to which this Part applies if the accused person establishes:
 - (a) that the water was taken pursuant to a basic landholder right, a consent given under section 71V or an order under section 85A, or
 - (b) that the person was exempt, pursuant to this Act or the regulations, from any requirement for an access licence in relation to the taking of water from that water source.
- (3) This Division does not prevent a person from taking water pursuant to an entitlement in force under the *Water Act 1912*, where **entitlement** has the same meaning as it has in Schedule 10.

60G Minister may charge for water illegally taken

- (1) If satisfied on the balance of probabilities that a person has taken water from a water source to which this Part applies in contravention of this Division, the Minister:
 - (a) may impose on the person a charge for water taken (which may include a penalty component) not exceeding 5 times the value of the water so taken, as determined in accordance with the regulations, and

- (b) if the person holds an access licence, may order that any water allocations credited or to be credited to the account for the licence be debited up to 5 times the quantity of the water so taken.
- (2) Action under this section may not be taken against a person unless the Minister:
 - (a) has given written notice to the person that the Minister proposes to take such action, and
 - (b) has given the person a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and
 - (c) has taken any such submissions into consideration.

60H Application of Division in relation to interstate licences

In this Division, a reference to an access licence includes a reference to any licence of a similar nature (however described):

- (a) that is granted under the law of another State or Territory, and
- (b) that is declared by the regulations to have the same effect as an access licence for the purposes of this Division.

[2] Section 85B

Omit the section.

[3] Section 87C

Insert after section 87B:

87C Offences with respect to the Access Register

- (1) A person must not:
 - (a) fraudulently obtain, or assist in fraudulently obtaining:
 - (i) the issue or delivery of an access licence certificate, or
 - (ii) a recording in the Access Register, or
 - (iii) any alteration in any instrument or approved form issued by the Minister, or
 - (b) fraudulently use, or assist in fraudulently using, any approved form issued by the Minister, or
 - (c) by any false statement or misrepresentation obtain, or attempt to obtain, an access licence certificate or

instrument evidencing any matter that may be recorded in the Access Register.

Tier 2 penalty.

- (2) Any recording in the Access Register obtained in contravention of this section is void as between all parties to the fraud.

[4] Chapter 3, Part 3, Division 1A

Insert after Division 1:

Division 1A Offences

91A Using water without, or otherwise than as authorised by, a water use approval

- (1) A person:
- (a) who uses water from a water source to which this Part applies, and
 - (b) who does not hold a water use approval for that use, is guilty of an offence.
- Tier 2 penalty.
- (2) A holder of a water use approval who uses water from a water source to which this Part applies:
- (a) otherwise than as authorised by the approval, or
 - (b) if an access licence specifies or restricts the purposes for which the water may be used, otherwise than as authorised by the licence,
- is guilty of an offence.
- Tier 2 penalty.
- (3) Without limiting subsection (2), a person uses water otherwise than as authorised by a water use approval if the person uses water while the approval is suspended.
- (4) This section does not apply to water that is supplied by a major utility, local water utility or irrigation corporation or by a private irrigation board or private water trust holding a water use approval for the use concerned.

91B Constructing or using water supply work without, or otherwise than as authorised by, a water supply work approval

- (1) A person:
- (a) who constructs or uses a water supply work, and

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- (b) who does not hold a water supply work approval for that work,
is guilty of an offence.
Tier 2 penalty.
- (2) A holder of a water supply work approval who constructs or uses a water supply work otherwise than as authorised by the approval is guilty of an offence.
Tier 2 penalty.
- (3) Without limiting subsection (2), a person constructs or uses a water supply work otherwise than as authorised by a water supply work approval if the person constructs or uses such a work while the approval is suspended.
- (4) This section does not prevent a person from constructing or using a drainage work or flood work in accordance with a drainage work approval or flood work approval.

91C Constructing or using drainage work without, or otherwise than as authorised by, a drainage work approval

- (1) A person:
- (a) who constructs or uses a drainage work, and
- (b) who does not hold a drainage work approval for that work,
is guilty of an offence.
Tier 2 penalty.
- (2) The holder of a drainage work approval who constructs or uses a drainage work otherwise than as authorised by the approval is guilty of an offence.
Tier 2 penalty.
- (3) Without limiting subsection (2), a person constructs or uses a drainage work otherwise than as authorised by a drainage work approval if the person constructs or uses such a work while the approval is suspended.
- (4) This section does not prevent a person from constructing or using a water supply work or flood work in accordance with a water supply work approval or flood work approval.

91D Constructing or using flood work without, or otherwise than as authorised by, a flood work approval

- (1) A person:
- (a) who constructs or uses a flood work, and

- (b) who does not hold a flood work approval for that work, is guilty of an offence.
Tier 2 penalty.
- (2) The holder of a flood work approval who constructs or uses a flood work in or in the vicinity of a river or lake, or within a floodplain, otherwise than as authorised by the approval is guilty of an offence.
Tier 2 penalty.
- (3) Without limiting subsection (2), a person constructs or uses a flood work otherwise than as authorised by a flood work approval if the person constructs or uses such a work while the approval is suspended.
- (4) This section does not prevent a person from constructing or using a water supply work or drainage work in accordance with a water supply work approval or drainage work approval.

91E Carrying out controlled activity without, or otherwise than as authorised by, a controlled activity approval

- (1) A person:
 - (a) who carries out a controlled activity in, on or under waterfront land, and
 - (b) who does not hold a controlled activity approval for that activity,is guilty of an offence.
Tier 2 penalty.
- (2) The holder of a controlled activity approval who carries out a controlled activity in, on or under waterfront land otherwise than as authorised by the approval is guilty of an offence.
Tier 2 penalty.
- (3) Without limiting subsection (2), a person carries out a controlled activity otherwise than as authorised by a controlled activity approval if the person carries out such an activity while the approval is suspended.
- (4) This section does not prevent a person:
 - (a) from constructing and using a water management work in accordance with a water management work approval, or
 - (b) from carrying out an aquifer interference activity in accordance with an aquifer interference approval.

91F Carrying out aquifer interference activity without, or otherwise than as authorised by, an aquifer interference approval

- (1) A person:
 - (a) who carries out an aquifer interference activity, and
 - (b) who does not hold an aquifer interference approval for that activity,is guilty of an offence.
Tier 2 penalty.
- (2) The holder of an aquifer interference approval who carries out an aquifer interference activity otherwise than as authorised by the approval is guilty of an offence.
Tier 2 penalty.
- (3) Without limiting subsection (2), a person carries out an aquifer interference activity otherwise than as authorised by an aquifer interference approval if the person carries out such an activity while the approval is suspended.
- (4) This section does not prevent a person:
 - (a) from constructing and using a water management work in accordance with a water management work approval, or
 - (b) from carrying out a controlled activity in accordance with a controlled activity approval, or
 - (c) from using a building or work that has been erected or carried out in accordance with a controlled activity approval.

91G Contravention of terms and conditions of approval

A person who constructs or uses a water management work, or carries out a controlled activity or aquifer interference activity, pursuant to an approval is guilty of an offence if the person contravenes any term or condition of the approval.

Tier 2 penalty.

91H Failure to install or maintain metering equipment

- (1) A person is guilty of an offence if the person fails to install any metering equipment that, pursuant to:
 - (a) the conditions of an access licence or approval, or

(b) a direction under section 326,
the person is required to install in connection with a water supply
work or drainage work.

Tier 2 penalty.

(2) A person is guilty of an offence if the person fails to ensure the
proper operation of any metering equipment that, pursuant to:

(a) the conditions of an access licence or approval, or

(b) a direction under section 326,

the person is required to install in connection with a water supply
work or drainage work.

Tier 2 penalty.

91I Taking water when metering equipment not working

(1) A person:

(a) who takes water from a water source to which this Part
applies by means of a metered work while its metering
equipment is not operating properly, and

(b) who intentionally or negligently fails to ascertain whether
the metering equipment is operating properly,

is guilty of an offence.

Tier 1 penalty.

(2) A person who takes water from a water source to which this Part
applies by means of a metered work while its metering equipment
is not operating properly is guilty of an offence.

Tier 2 penalty.

(3) Subsection (2) does not apply if:

(a) the person is authorised by the Minister in writing to take
water by means of a metered work while its metering
equipment is not operating properly, and

(b) the water is taken in accordance with any conditions
specified in the authorisation and any requirements
prescribed by the regulations for the purposes of this
subsection.

(4) In this section, *metered work* means a water supply work in
connection with which metering equipment has been installed
pursuant to:

(a) the conditions of an access licence or approval, or

(b) a direction under section 326.

91J Failure to keep metering records

A person is guilty of an offence if the person fails to keep metering records that, pursuant to:

- (a) the conditions of an access licence or approval, or
- (b) a direction under section 326,

the person is required to keep in connection with a water supply work or drainage work.

Tier 2 penalty.

91K Meter tampering

- (1) A person is guilty of an offence if the person interferes with, damages, destroys or disconnects any metering equipment that has been installed in connection with a water supply work or drainage work, and does so intentionally or recklessly.

Tier 1 penalty.

- (2) A person is guilty of an offence if the person interferes with, damages, destroys or disconnects any metering equipment that has been installed in connection with a water supply work or drainage work.

Tier 2 penalty.

- (3) Without limiting subsections (1) and (2), a person interferes with metering equipment if the person unseals any sealed component of the equipment, blocks any part of the equipment, attaches to the equipment any device that is likely to affect the operation of the equipment or disconnects the equipment from its source of power.

- (4) This section does not apply to anything that a duly qualified person does to metering equipment for the sole purpose of maintaining, repairing or replacing the equipment.

- (5) In this section, *duly qualified person* means a person who has such qualifications as are prescribed by the regulations.

91L Liability of occupier of premises for certain offences

- (1) The occupier of premises at which:
 - (a) a water management work has been constructed or used in contravention of a provision of this Division, or
 - (b) a controlled activity or aquifer interference activity has been carried out in contravention of a provision of this Division,

is taken to have contravened that provision.

- (2) However, subsection (1) does not apply if it is established that:
- (a) the work was constructed or used, or the activity was carried out, by a person other than the occupier, and
 - (b) the other person was not associated with the occupier at the time the work was constructed or used or the activity was carried out, and
 - (c) the occupier took all reasonable steps to prevent the work being constructed or used or the activity being carried out.

A person is associated with the occupier for the purposes of paragraph (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the occupier.

- (3) Subsection (1) does not prevent proceedings being taken under this Act against the person who actually committed the offence.

91M General defence

- (1) It is a defence to a prosecution under this Division in relation to a Tier 1 offence if the accused person establishes:
- (a) that the commission of the offence was due to causes over which the person had no control, and
 - (b) that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.
- (2) It is a defence to a prosecution under this Division in relation to the doing of anything without an approval if the accused person establishes:
- (a) that the water was taken pursuant to a basic landholder right, or
 - (b) that the person was exempt, pursuant to this Act or the regulations, from any requirement for an approval in relation to the doing of that thing.
- (3) This Division does not prevent a person from doing anything pursuant to an entitlement in force under the *Water Act 1912*, where **entitlement** has the same meaning as it has in Schedule 10.

[5] Section 120 Entry on to land

Insert after section 120 (3):

- (4) A person must not threaten, hinder, obstruct or delay any person in the exercise of an irrigation corporation's functions under this section.
Tier 2 penalty.

[6] Section 256 Construction of fences, structures and flood works

Omit the penalty at the end of section 256 (1). Insert instead:
Tier 2 penalty.

[7] Sections 318A and 318B

Insert after section 318:

318A Exposure of underground pipes

A person must not, except in an emergency or with lawful excuse, open any ground so as to expose a water supply authority's pipe or other work unless the person has given the water supply authority at least 2 days' written notice of his or her intention to do so.

Tier 2 penalty.

318B Unlicensed plumbing work

A person must not do any kind of plumbing work unless the person:

- (a) holds an endorsed contractor licence or a supervisor certificate under the *Home Building Act 1989* that authorises the holder to do that kind of work, or
- (b) does the work under the immediate supervision of the holder of such a licence or certificate, or
- (c) holds a tradesperson certificate under the *Home Building Act 1989* that authorises the holder to do that kind of work under supervision, and does the work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).

Tier 3 penalty.

[8] Chapter 7, Part 3

Omit the Part. Insert instead:

Part 3 Offences

342 Destruction, damage and interference with certain works

- (1) A person must not destroy, damage or interfere with:
 - (a) any work that is owned by, or is under the control and management of, the Minister, the Ministerial Corporation, a water supply authority, an irrigation corporation, a

private irrigation board, a private drainage board or a private water trust, or

- (b) any mark, peg, stake or level fixed for the purposes of this Act.

Tier 2 penalty.

- (2) A person must not deposit anything in any work that is owned by, or is under the control and management of, the Minister, the Ministerial Corporation, a water supply authority, an irrigation corporation, a private irrigation board, a private drainage board or a private water trust.

Tier 2 penalty.

- (3) A person is not guilty of an offence against this section if the person establishes that the act giving rise to the alleged offence was done with lawful authority.

343 Taking water from public or private works

- (1) A person must not take water from any water supply work that is owned by, or is under the control and management of, the Minister, the Ministerial Corporation, a water supply authority, an irrigation corporation, a private irrigation board, a private drainage board or a private water trust, except with the authority of the Minister, that corporation, board, authority or trust.

Tier 2 penalty.

- (2) A person is not guilty of an offence against this section if the person establishes that the act giving rise to the alleged offence was done with lawful authority.

- (3) In subsection (1), a reference to a water supply work, in relation to a water supply authority, is a reference to a water supply work within the meaning of Part 2 of Chapter 6.

344 False or misleading information

A person must not, in or in connection with any application under this Act or the regulations, make a statement that the person knows to be false or misleading in a material particular.

Tier 2 penalty.

345 Harm to aquifers and waterfront land

- (1) A person who harms an aquifer or waterfront land, and does so intentionally or negligently, is guilty of an offence.

Tier 1 offence.

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- (2) A person who harms an aquifer or waterfront land is guilty of an offence.
Tier 2 offence.
- (3) It is a defence to a prosecution under this section if the accused person establishes that the conduct that harmed the aquifer or waterfront land:
- (a) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (iii) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (iv) a project approved under Part 3A of that Act, or
 - (b) was authorised to be done by or under the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or
 - (c) was authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.
- (4) In this section, **harm**, in relation to an aquifer or waterfront land, means any act or omission that adversely affects, the capacity of the aquifer or waterfront land to hold or carry water.

346 Unlicensed bore drilling

A person must not construct a water bore of any kind otherwise than in accordance with a bore driller's licence that is held by that person and that authorises the person to construct water bores of that kind.

Tier 2 penalty.

347 Ancillary offences

A person who:

- (a) causes or permits the commission of an offence against this Act or the regulations, or

- (b) aids, abets, counsels or procures another person to commit an offence against this Act or the regulations, or
 - (c) attempts to commit an offence against this Act or the regulations, or
 - (d) conspires to commit an offence against this Act or the regulations,
- is guilty of that offence and liable to the penalty prescribed by this Act or the regulations in relation to that offence.

[9] Sections 363A and 363B

Insert after section 363:

363A Offences by joint holders of access licence or approval

- (1) If an offence against this Act or the regulations arises in relation to an access licence or approval, each co-holder of the licence or approval is taken to have committed the offence.
- (2) A co-holder of a licence or approval is not guilty of such an offence if the co-holder establishes that:
 - (a) the offence was committed by some other person (whether or not another co-holder of the licence or approval), and
 - (b) the other person was not associated with the co-holder at the time the offence was committed, and
 - (c) the co-holder took all reasonable steps to prevent the offence from being committed.
- (3) A person is associated with a co-holder of a licence or approval for the purposes of subsection (2) (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the co-holder.
- (4) A person may, under this section, be proceeded against and convicted for an offence whether or not any other person has been proceeded against or convicted for the offence.

363B Penalties

For the purposes of this Act:

- (a) a Tier 1 penalty corresponds to a maximum penalty of:
 - (i) in the case of a corporation, 20,000 penalty units and, in the case of a continuing offence, a further penalty of 2,400 penalty units for each day the offence continues, or

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- (ii) in any other case, imprisonment for 2 years or 10,000 penalty units, or both, and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, and
 - (b) a Tier 2 penalty corresponds to a maximum penalty of:
 - (i) in the case of a corporation, 10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, or
 - (ii) in any other case, 2,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues, and
 - (c) a Tier 3 penalty corresponds to a maximum penalty of 100 penalty units.

[10] Sections 364 and 364A

Omit section 364. Insert instead:

364 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily:
 - (a) by a Local Court, or
 - (b) by the Land and Environment Court in its summary jurisdiction.
- (2) Proceedings for an offence against this Act or the regulations may be commenced at any time within, but not later than, 3 years after the date on which the offence is alleged to have been committed.
- (3) Proceedings for an offence against this Act or the regulations may also be commenced at any time within, but not later than, 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer.
- (4) If subsection (3) is relied on for the purpose of commencing proceedings for an offence, the process by which the proceedings are commenced must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer and need not contain particulars of the date on which the offence was committed.

- (5) The date on which evidence first came to the attention of any relevant authorised officer is the date specified in the process by which the proceedings are commenced, unless the contrary is established.
- (6) The maximum monetary penalty that may be imposed by a Local Court in proceedings for an offence against this Act or the regulations is:
 - (a) the lesser of the following:
 - (i) 100 penalty units (for an offence committed by a corporation) or 50 penalty units (in any other case),
 - (ii) the maximum monetary penalty specified in respect of the offence, and
 - (b) in the case of a continuing offence, 10 per cent of the further monetary penalty specified in respect of the offence for each day the offence continues.
- (7) The maximum penalty that may be imposed by the Land and Environment Court in proceedings for an offence against this Act or the regulations is the maximum penalty specified in respect of the offence.
- (8) In this section, *evidence* of an offence means evidence of any act or omission constituting the offence.

364A Matters to be considered in imposing penalty

- (1) In imposing a penalty on a person for an offence against this Act or the regulations, the court is to take into consideration the following (so far as they are relevant):
 - (a) the impact of the offence on other persons' rights under this Act,
 - (b) the market value of any water that has been lost, misused or unlawfully taken as a consequence of the commission of the offence,
 - (c) the extent of the harm caused or likely to be caused to the environment (including, in particular, any water source or waterfront land) by the commission of the offence,
 - (d) the practical measures that may be taken to prevent, control, abate or mitigate that harm,
 - (e) the extent to which the person could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence,

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- (f) the extent to which the person had control over the causes that gave rise to the offence,
 - (g) whether the offence was committed during a severe water shortage (that is, in contravention of an order in force under section 49A or 324),
 - (h) the person's intentions in committing the offence,
 - (i) whether, in committing the offence, the person was complying with orders from an employer or supervising employee,
 - (j) in the case of an offence of taking water in contravention of this Act, whether the water so taken had been released for environmental purposes and, if so, whether the person was aware of that fact,
 - (k) any civil penalty that has been imposed on the person under section 60G in relation to the conduct from which the offence arises.
- (2) The court may take into consideration other matters that it considers relevant.

[11] Section 365A

Insert after section 365:

365A Continuing offences

- (1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or stop doing something (whether or not within a specified period or before a particular time):
 - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
 - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to the extent that a requirement of a notice is revoked.

[12] Section 368 Appeals to Land and Environment Court

Omit "85B" from section 368 (1) (ma). Insert instead "60G".

[13] Dictionary

Insert in alphabetical order:

Tier 1, 2 or 3 offence means an offence that is punishable by a Tier 1, 2 or 3 penalty, as the case may be.

Tier 1, 2 or 3 penalty—see section 363B.

Schedule 2 Amendments relating to directions and other enforcement measures

(Section 3)

[1] Section 301A

Insert after section 301:

301A Power to give directions

- (1) Without limiting Part 1 of Chapter 7, the Minister's power to give directions under that Part may be exercised in relation to a water supply authority's sewage work as if it were a water management work within the meaning of that Part.
- (2) An appeal lies to the Land and Environment Court against the Minister's decision to give such a direction in the same way as it lies against the Minister's decision to give a direction under Part 1 of Chapter 7.

[2] Chapter 7, Parts 1 and 2

Omit the Parts. Insert instead:

Part 1 Directions to landholder and other persons

Division 1 Preliminary

323 Definitions

- (1) In this Part:
landholder, in relation to land, includes any person having the care, control or management of the land.
specified measures include measures that involve doing, or refraining from doing, any act.
- (2) In this Part:
 - (a) a power to direct a person to take specified measures includes a power to direct in what circumstances, in what order and in what manner those measures are to be taken, and
 - (b) a reference to a water management work of any kind includes a reference to a corresponding kind of work to which Part 2, 5 or 8 of the *Water Act 1912* extends, and
 - (c) a reference to this Act or the regulations extends to the *Water Act 1912* and the regulations under that Act.

- (3) For the purpose of applying this Part to the *Water Act 1912* and the regulations under that Act, references to this Act in section 390 of this Act, and in the definition of **authorised officer** in the Dictionary to this Act, extend to the *Water Act 1912* and the regulations under that Act.

Division 2 Conservation of water

324 Temporary water restrictions

- (1) If satisfied that it is necessary to do so in the public interest (such as to cope with a water shortage or threat to public health or safety), the Minister may, by order in writing, direct that, for a specified period, the taking of water from a specified water source is prohibited, or is subject to specified restrictions, as the case requires.
- (2) If satisfied that it is necessary to do so:
- (a) to maintain or protect water levels in an aquifer, or
 - (b) to maintain, protect or improve the quality of water in an aquifer, or
 - (c) to prevent land subsidence or compaction in an aquifer, or
 - (d) to protect groundwater-dependent ecosystems, or
 - (e) to maintain pressure, or to ensure pressure recovery, in an aquifer,
- the Minister may, by order in writing, direct that, within a specified area and for a specified period, the taking of water from that aquifer, or from any other aquifer that is above, below or adjacent to that aquifer, is prohibited, or is subject to specified restrictions, as the case requires.
- (3) The Minister must cause a copy of an order under this section to be published in the Gazette and notice of the order to be published in an appropriate newspaper.
- (4) If satisfied that circumstances require publication of an order under subsection (1) or (2) sooner than can be achieved under subsection (3), the Minister may, prior to its publication under that subsection, cause notice of the order to be broadcast by a television or radio station transmitting to the part or parts of the State within which the water source is situated.
- (5) An order under this section takes effect when it is first published or broadcast in accordance with subsection (3) or (4), as the case may be, or at such later date or time as may be specified in the order.

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- (6) Unless sooner repealed, an order under this section ceases to have effect on the expiry of the period specified in the order.
 - (7) In the event of any inconsistency between an order under this section and any other provision of this Act relating to the distribution, sharing or taking of water (including any order made, or any condition imposed on an access licence or approval, under this Act), the order under this section prevails to the extent of the inconsistency.
 - (8) Nothing in this section gives rise to a claim for compensation under Division 9 of Part 2 of Chapter 3.

325 Directions concerning waste of water

The Minister may, by order in writing served on a landholder, direct the landholder to take specified measures to ensure that:

- (a) water taken and used under the authority of:
 - (i) a domestic and stock right, or
 - (ii) a domestic and stock access licence,is taken and used in accordance with the mandatory guidelines established under section 336B, and
- (b) water taken and used under the authority of:
 - (i) a domestic and stock right, or
 - (ii) a domestic and stock access licence,is beneficially used, and is not wasted or improperly used, and
- (c) water taken by means of a water supply work situated on the land, or used under the authority of a water use approval applying to the land, is beneficially used, and is not wasted or improperly used.

326 Directions to install and maintain metering equipment

- (1) The Minister may, by order in writing served on:
 - (a) a landholder on whose land is situated a water supply work, or
 - (b) any person having the control and management of such a work,direct the landholder or person to install metering equipment for use in connection with that work.
- (2) A direction to install metering equipment is taken to include:
 - (a) a direction that the equipment be properly maintained, and

- (b) a direction that the equipment not be used unless it is properly sealed.
- (3) Metering equipment is properly maintained and properly sealed only if it is maintained and sealed by a duly qualified person.
- (4) In this section, *duly qualified person* means a person who has such qualifications as are prescribed by the regulations.

Division 3 Unlawful works and activities

327 Stop work order regarding unlawful construction or use of water management work

- (1) This section applies to a water management work that, in the Minister's opinion, is being constructed or used, or is about to be constructed or used, in contravention of this Act.
- (2) The Minister may, by order in writing served on any person having control or management of the water management work, direct the person:
 - (a) to prohibit or discontinue its construction or use, or
 - (b) to construct or use the work only as specified.
- (3) Without limiting subsection (2), the landholder on whose land the water management work is situated is taken to have control and management of the work.

328 Stop work order regarding unlawful controlled activity or aquifer interference activity

- (1) This section applies to a controlled activity or aquifer interference activity that, in the Minister's opinion, is being carried out, or is about to be carried out, in contravention of this Act.
- (2) The Minister may, by order in writing served on any person carrying out the controlled activity or aquifer interference activity, direct the person:
 - (a) to prohibit or discontinue that activity, or
 - (b) to carry out that activity only as specified.
- (3) Without limiting subsection (2), the landholder on whose land a controlled activity or aquifer interference activity is being carried out is taken to be carrying out that activity.

329 Removal of unlawful water management works

- (1) This section applies to a water management work for which no water management approval is in force.
- (2) The Minister may, by order in writing served on any person having control or management of the work, direct the person to demolish, remove or dismantle the work or otherwise render it ineffective.
- (3) Such a direction may be given even if the work is not being used or is not capable of being used.
- (4) Such a direction may not be given in relation to a water supply work that is being used solely:
 - (a) to take water from a water source to which this Part applies pursuant to a landholder's domestic and stock rights, or
 - (b) to capture and store rainwater run-off pursuant to a landholder's harvestable rights.
- (5) Without limiting subsection (2), the landholder on whose land the work is situated is taken to have control and management of the work.

Division 4 Temporary stop work orders

330 Temporary stop work order to protect public interest

- (1) If satisfied that the public interest so requires, the Minister may, by order in writing served on:
 - (a) a landholder on whose land is situated a water management work, or
 - (b) any person having the control or management of such a work, or
 - (c) any person by whom a controlled activity or aquifer interference activity is being carried out,direct that, for a specified period, the use of that work, or the carrying out of that activity, is prohibited, or is subject to specified restrictions, as the case requires.
- (2) Such a direction may be given in relation to a flood work only so as to regulate the use of those parts of the work (including, without limitation, sluices and flood gates) as are capable of being operated to influence the flow of water.

Division 5 Protection of public health, public safety and the environment

331 Directions to holders of basic landholder rights

The Minister may, by order in writing served on:

- (a) a landholder on whose land is situated a water supply work that is being used:
 - (i) to take water from a water source to which this Part applies pursuant to the landholder's domestic and stock rights, or
 - (ii) to capture and store rainwater run-off pursuant to the landholder's harvestable rights, or
- (b) any person having the control or management of such a work,

direct the landholder or person to take specified measures to protect the environment, to preserve basic landholder rights or to overcome a threat to public health.

332 Directions concerning damage caused by straying stock

The Minister may, by order in writing served on any landholder, direct the landholder to take specified measures:

- (a) to prevent stock from straying from the landholder's land into or onto a water management work that is owned by, or is under the control or management of, the Ministerial Corporation, or
- (b) to repair any damage caused to any such water management work as a consequence of stock having strayed from the landholder's land.

333 Directions to protect water sources

(1) This section applies if the Minister is of the opinion that:

- (a) the construction or use of a water management work, or
- (b) the carrying out of a controlled activity or aquifer interference activity,

is having, has had, or is likely to have, an adverse effect on a water source or waterfront land.

(2) The Minister may, by order in writing served on:

- (a) the person having control or management of the water management work, or

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- (b) the person carrying out the controlled activity or aquifer interference activity,
direct the person to take specified measures to prevent, minimise or mitigate any adverse effect on the water source or waterfront land as a consequence of the construction or use of the work or the carrying out of the activity.
- (3) Without limiting subsection (2), the measures that may be specified in a direction under this section include:
- (a) a direction to repair any damage caused by the construction or use of the water management work or the carrying out of the controlled activity or aquifer interference activity, and
 - (b) a direction to rehabilitate any water source or waterfront land that has been adversely affected by the construction or use of the water management work or the carrying out of the controlled activity or aquifer interference activity, and
 - (c) a direction to ensure that the construction or use of the water management work, or the carrying out of the controlled activity or aquifer interference activity, will not in future adversely affect any water source or waterfront land.
- (4) Without limiting subsection (2):
- (a) the landholder on whose land a water management work is situated is taken to have control and management of the work, and
 - (b) the landholder on whose land a controlled activity or aquifer interference activity is carried out is taken to be carrying out the activity.

334 Directions to prepare reports

- (1) A direction served on a person under this Division may require the person to prepare, and submit to the Minister, reports as to any of the following:
- (a) the measures the person proposes to take for the purpose of complying with the direction,
 - (b) the progress made by the person in implementing any such measures.
- (2) The direction may also prohibit the person from implementing any such measures until they have been approved by the Minister.

Division 6 Enforcement by Land and Environment Court

335 Land and Environment Court may grant injunctions

On the application of the Minister, the Land and Environment Court may grant an injunction directing any person to whom a direction has been given under this Part to comply with the direction.

336 Restraint of breaches of this Act

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations.
- (2) Any such proceedings may be brought whether or not proceedings have been instituted for an offence against this Act or the regulations.
- (3) Any such proceedings may be brought whether or not any right of the person has been or may be infringed by or as a consequence of the breach.
- (4) Any such proceedings may be brought by a person on the person's own behalf or on behalf of another person (with their consent), or of a body corporate or unincorporate (with the consent of its committee or other controlling body), having like or common interests in those proceedings.
- (5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (6) If the Land and Environment Court is satisfied that a breach has been committed or that a breach will, unless restrained by the order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.
- (7) In this section, *breach* includes a threatened or apprehended breach.

Division 7 General

336A Remedial measures may be taken by Minister

- (1) If a person fails to take the measures specified in a direction under this Part, the Minister may authorise any other person to take those measures.
- (2) The amount of any costs and expenses incurred by the authorised person as a result of the taking of those measures is recoverable

in a court of competent jurisdiction as a debt due to the Ministerial Corporation from the person on whom the direction was served.

336B Mandatory guidelines

- (1) The Minister may, by order published in the Gazette, establish mandatory guidelines with respect to the taking and use of water for domestic consumption and stock watering by landholders authorised to take and use water for either or both of those purposes under:
 - (a) a domestic and stock right, or
 - (b) a domestic and stock access licence.
- (2) Before establishing any guidelines under this section, the Minister must prepare draft guidelines.
- (3) The Minister:
 - (a) must give public notice of the draft guidelines, and
 - (b) must exhibit the draft guidelines (together with such other information as is appropriate or necessary to enable the draft guidelines and their implications to be understood) at the places, on the dates and during the times set out in the notice.
- (4) The public notice referred to in subsection (3) (a):
 - (a) must specify the places at which, the dates on which, and the times during which, the draft guidelines may be inspected by the public, and
 - (b) must specify a period of at least 40 days during which submissions may be made to the Minister in relation to the guidelines (the *submission period*), and
 - (c) must be published in an appropriate newspaper.
- (5) During the submission period, any person may make written submissions to the Minister on the draft guidelines.
- (6) After complying with the requirements of this section, the Minister:
 - (a) may establish guidelines under this section in accordance with the draft guidelines, or
 - (b) may establish guidelines under this section in accordance with the draft guidelines, but with such alterations as the Minister thinks fit, or
 - (c) may decide not to proceed with the draft guidelines.

- (7) The Minister is to cause:
 - (a) a copy of any guidelines established under this section as in force from time to time to be published on the Department's internet site, and
 - (b) copies of the guidelines as in force from time to time to be made available for inspection by members of the public during ordinary business hours at such places as the Minister directs.
- (8) A failure to comply with subsection (7) does not affect the validity of any guidelines established under this section.
- (9) In this section:
 - domestic consumption*, in relation to land, includes (but is not limited to) domestic consumption within the meaning of section 52.
 - stock watering*, in relation to land, includes (but is not limited to) stock watering within the meaning of section 52.

336C Contravention of certain directions

- (1) A person who fails to comply with a direction under this Part is guilty of an offence.
Tier 2 penalty.
- (2) For the avoidance of doubt, a person fails to comply with a direction under this Part if the direction requires compliance within a specified period and the direction is not fully complied with within that period.

336D Prior notice of direction not required

The Minister is not required to notify any person who may be affected by a direction under this Part before giving the direction.

Part 2 Other enforcement powers

Division 1 Preliminary

337 Purposes for which powers under Part may be exercised

- (1) Powers may be exercised under this Part for any of the following purposes:
 - (a) for determining whether there has been compliance with or a contravention of this Act or the regulations or any access licence, approval, notice or requirement issued or made under this Act,

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- (b) for obtaining information or records for purposes connected with the administration of this Act,
 - (c) generally for administering this Act and protecting the environment.
- (2) In this Part, a reference to this Act or the regulations extends to the *Water Act 1912* and the regulations under that Act.
 - (3) For the purpose of applying this Part to the *Water Act 1912* and the regulations under that Act, references to this Act in section 390 of this Act, and in the definition of **authorised officer** in the Dictionary to this Act, extend to the *Water Act 1912* and the regulations under that Act.

337A Effect on other functions

Nothing in this Part affects any function under any other provision of this Act or under any other Act.

337B Extended meaning of “occupier”

In this Part, *occupier*, in relation to land, includes any person having the care, control or management of the land.

Division 2 Powers to require information or records

338 Application of Division

This Division applies whether or not a power of entry under Division 3 is being or has been exercised.

338A Powers of authorised officers to require information and records

- (1) The Minister may, by notice in writing given to a person, require the person to furnish to the Minister such information or records (or both) as he or she may require for the purposes of this Act.
- (2) An authorised officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as he or she may require for the purposes of this Act.
- (3) A notice under this Division must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (4) A notice under this Division may only require a person to furnish existing records that are in the person’s possession or that are within the person’s power to obtain lawfully.

- (5) The person to whom any record is furnished under this Division may take copies of it.
- (6) If any record required to be furnished under this Division is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

338B Power of authorised officers to require answers

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Act to answer questions in relation to those matters.
- (2) The Minister may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.
- (4) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (5) The place and time at which a person may be required to attend under subsection (4) is to be:
 - (a) a place or time nominated by the person, or
 - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the authorised officer that is reasonable in the circumstances.

338C Recording of evidence

- (1) An authorised officer may cause any questions and answers to questions given under this Division to be recorded if the officer has informed the person who is to be questioned that the record is to be made.
- (2) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the authorised officer.

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- (3) A copy of any such record must be provided by the authorised officer to the person who is questioned as soon as practicable after it is made.
 - (4) A record may be made under this section despite the provisions of any other law.

338D Power of authorised officers to demand name and address

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have committed, or to be committing, an offence against this Act or the regulations to state his or her full name and residential address.
- (2) An authorised officer may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence to fail to comply with any such request.
- (3) A person who, being required to do so under this section:
 - (a) refuses to state his or her name or residential address, or
 - (b) states a name or residential address that in the opinion of the authorised officer is false,may without any other warrant than this Act be apprehended by the authorised officer and taken before a Magistrate or authorised officer within the meaning of the *Criminal Procedure Act 1986* to be dealt with according to law.
- (4) A Magistrate or authorised officer before whom a person is taken under subsection (3) may grant the person bail in accordance with the *Bail Act 1978* as if the person were accused of an offence.

Division 3 Powers of entry and search of premises

339 Powers of authorised officers to enter premises

- (1) An authorised officer may enter any premises at any reasonable time.
- (2) A power to enter premises conferred by this Act authorises entry by foot, by vehicle, vessel or aircraft or by any other means.
- (3) Entry may be effected under this Act by an authorised officer with the aid of such police officers as the authorised officer considers necessary and with the use of reasonable force.
- (4) Entry may be effected to any premises with the authority of a search warrant under section 339C.

339A Entry into residential premises only with permission or warrant

This Division does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under section 339C.

339B Powers of authorised officers to do things at premises

- (1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Division, including (but not limited to) the things specified in subsection (2).
- (2) An authorised officer may do any or all of the following:
 - (a) examine and inspect any works,
 - (b) take and remove samples,
 - (c) make such examinations, inquiries and tests as the authorised officer considers necessary,
 - (d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
 - (e) require records to be produced for inspection,
 - (f) examine and inspect any records,
 - (g) copy any records,
 - (h) seize anything that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations,
 - (i) for the purposes of paragraph (h), direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier,
 - (j) do any other thing the authorised officer is empowered to do under this Division.
- (3) The power to seize anything connected with an offence includes a power to seize:
 - (a) a thing with respect to which the offence has been committed, and
 - (b) a thing that will afford evidence of the commission of the offence, and
 - (c) a thing that was used for the purpose of committing the offence.

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- (4) In this section, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

339C Search warrants

- (1) An authorised officer under this Act may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant if the authorised officer under this Act believes on reasonable grounds that:
- (a) a provision of this Act or the regulations is being or has been contravened at any premises, or
 - (b) there is in or on any premises matter or a thing that is connected with an offence under this Act or the regulations.
- (2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer under this Act named in the warrant:
- (a) to enter the premises, and
 - (b) to exercise any function of an authorised officer under this Division.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:
- matter or a thing*** connected with an offence means:
- (a) a matter or a thing with respect to which the offence has been committed, or
 - (b) a matter or a thing that will afford evidence of the commission of an offence, or
 - (c) a matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.
- offence*** includes an offence that there are reasonable grounds for believing has been, or is to be, committed.

339D Authorised officers may request assistance

A person may accompany an authorised officer and take all reasonable steps to assist an authorised officer in the exercise of the authorised officer's functions under this Division if the authorised officer is of the opinion that the person is capable of providing assistance to the authorised officer in the exercise of those functions.

339E Assistance to be given to authorised officers

- (1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Division in connection with any premises.
- (2) The Minister may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.
- (3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

339F Care to be taken

In the exercise of a power of entering or searching premises under this Division, the authorised officer must do as little damage as possible.

339G Compensation

The Minister must compensate all interested parties for any damage caused by the authorised officer in exercising a power of entering premises (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the authorised officer in the exercise of the power of entry.

Division 4 General

340 Identification

- (1) Every authorised officer is to be provided with evidence of his or her authority as an authorised officer.
- (2) In the course of exercising the functions of an authorised officer, the officer must, if requested to do so by any person affected by the exercise of any such function, produce to the person the officer's evidence of authority.

340A Offences

- (1) A person must not, without lawful excuse, neglect or fail to comply with a requirement made of the person under this Part.
Tier 2 penalty.
- (2) A person must not furnish any information or do any other thing in purported compliance with a requirement made under this Part, knowing that it is false or misleading in a material respect.
Tier 2 penalty.
- (3) A person must not threaten, hinder, obstruct or delay an authorised officer in the exercise of the authorised officer's powers under this Part.
Tier 2 penalty.
- (4) A person must not impersonate an authorised officer.
Tier 2 penalty.

340B Provisions relating to requirements to furnish records, information or answer questions

- (1) A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:
 - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
 - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

- (5) Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:
 - (a) that the record or information had to be furnished or the answer had to be given, or
 - (b) that the record or information furnished or answer given might incriminate the person.
- (6) This section extends to a requirement under this Part to state a person's name and address.

340C Revocation or variation

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (4) A notice may only be revoked or varied by the Minister or by the person who gave it.

Schedule 3 Amendments relating to court orders and court proceedings

(Section 3)

[1] Chapter 7, Part 3A

Insert before Part 4 of Chapter 7:

Part 3A Court orders in connection with offences

353 Operation of Part

- (1) This Part applies where a court finds a person guilty of an offence against this Act.
- (2) In this Part:
harm to the environment includes harm to any water source or to any waterfront land.
the court means the court that finds the offence proved.
the offender means the person who is found to have committed the offence.

353A Orders generally

- (1) One or more orders may be made under this Part against the offender.
- (2) Orders may be made under this Part in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

353B Orders for restoration and prevention

The court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow):

- (a) to prevent, control, abate or mitigate any harm to the environment caused by the commission of the offence, or
- (b) to make good any resulting environmental damage, or
- (c) to prevent the continuance or recurrence of the offence.

353C Orders for costs, expenses and compensation at time offence proved

- (1) The court may, if it appears to the court that:

- (a) a public authority has incurred costs and expenses in connection with:
 - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
 - (ii) making good any resulting environmental damage, or
 - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,
order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.
- (2) A Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the jurisdictional limit of a Local Court under the *Civil Procedure Act 2005*.

353D Recovery of costs, expenses and compensation after offence proved

- (1) If, after the court finds the offence proved:
- (a) a public authority has incurred costs and expenses in connection with:
 - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
 - (ii) making good any resulting environmental damage, or
 - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,
the public authority or person may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.
- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

353E Orders regarding costs and expenses of investigation

- (1) The court may, if it appears to the court that the Minister has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Minister the costs and expenses so incurred in such amount as is fixed by the order.
- (2) In this section:
costs and expenses, in relation to the investigation of an offence, means the costs and expenses:
 - (a) in taking any sample or conducting any inspection, test, measurement or analysis, or
 - (b) of transporting, storing or disposing of evidence, during the investigation of the offence.

353F Orders regarding monetary benefits

- (1) The Land and Environment Court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.
- (3) In this section:
monetary benefits means monetary, financial or economic benefits.
the court does not include a Local Court.

353G Additional orders

- (1) The court may do any one or more of the following:
 - (a) it may order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its environmental and other consequences and any other orders made against the offender,
 - (b) it may order the offender to carry out, or contribute a specified amount to the cost of carrying out, a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,

- (c) it may order the offender to attend, or cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court.
- (2) A Local Court is not authorised to make an order referred to in subsection (1) (b) or (c).
- (3) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (4) If the offender fails to comply with an order under subsection (1) (a), the prosecutor or a person authorised by the prosecutor may take action to carry out the order.
- (5) The reasonable cost of taking action referred to in subsection (4) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.

353H Offence

A person who fails to comply with an order under this Part (except an order under section 353C, 353D or 353E) is guilty of an offence.

Tier 2 penalty.

[2] Sections 367, 367A and 367B

Omit section 367. Insert instead:

367 Evidentiary certificates

- (1) A certificate that is issued by the Minister and that states:
 - (a) that an instrument, a copy of which is set out in or annexed to the certificate, being an instrument purporting:
 - (i) to be issued, made or given for the purposes of this Act, and
 - (ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person, was issued, made or given on a specified day, or
 - (b) that a document, a copy of which is set out in or annexed to the certificate, is a copy of part of, or an extract from, a register or water allocation account kept under this Act, or

-
- (c) that an image, a copy of which is set out in or annexed to the certificate:
- (i) is a photograph or other remotely-sensed image of a specified kind, and
 - (ii) portrays specified land as at a specified date, or
- (d) that an amount payable under this Act by a specified person has, or has not, been paid,
- is admissible in any legal proceedings and is evidence of the fact or facts so stated.
- (2) A certificate that is issued by the Minister and that states that, on a date or during a period specified in the certificate:
- (a) a specified person was, or was not, the holder of a specified access licence or approval, or
 - (b) a specified access licence or approval was, at a specified time, revoked or suspended for a specified period or was revoked or suspended subject to specified conditions, or
 - (c) a specified condition of an access licence or approval was, at a specified time, imposed or revoked, or
 - (d) specified land was, or was not, the subject of a specified approval, or
 - (e) specified land was, or was not, within a specified water management area, or
 - (f) a specified part of a water source was, or was not, within a specified water management area, or
 - (g) a specified water management work was, or was not, at a specified location within a specified parcel of land, or
 - (h) a specified water management work was, or was not, the subject of a specified water management work approval, or
 - (i) the conditions of a specified access licence or approval were, or were not, as so specified, or
 - (j) the terms of a specified available water determination were, or were not, as so specified, or
 - (k) a specified person was, or was not, an authorised officer in relation to a specified provision of this Act, or
 - (l) a specified person was, or was not, an authorised analyst, or
 - (m) a specified person was, or was not, a member of staff of the Department, or

- (n) a specified delegation under this Act was, or was not, in force, or
- (o) a specified access licence or approval was, or was not, in force, or
- (p) specified matters were, or were not, recorded in the Access Register or were, or were not, recorded in specified terms, or
- (q) the water allocations credited to a specified access licence were, or were not, as so specified, or
- (r) a specified number of water allocations were, or were not, credited to, or debited or otherwise withdrawn from, a specified access licence, or
- (s) a specified quantity of water was, or was not, ordered in relation to a specified access licence, or
- (t) information required to be furnished to the Minister or an authorised officer pursuant to this Act was, or was not, received, or
- (u) an approved river gauge had, or had not, been maintained in accordance with the requirements (if any) prescribed by the regulations, or
- (v) the readings on an approved river gauge were, or were not, as so specified,

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

- (3) In any legal proceedings, evidence is not required:
 - (a) as to the accuracy or reliability of an approved river gauge, or
 - (b) as to the manner in which an approved river gauge was operated,unless evidence is adduced that the gauge was not accurate, was not reliable or was not properly operated.
- (4) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, to be taken to be such a certificate.
- (5) In this section, ***approved river gauge*** means a gauge of a type or design approved by the Minister, by order published in the Gazette, for the purpose of measuring the level or flow of water in a river or lake.

367A Evidence of analysts

- (1) A certificate of an authorised analyst stating the result of an analysis or examination is admissible in evidence in any legal proceedings as evidence of the facts stated in the certificate and the correctness of the result of the analysis or examination.
- (2) A certificate of an authorised analyst that, on receipt of a container containing a sample submitted to the analyst by an authorised officer or any other person, the container was sealed and the seal securing the container was unbroken is admissible in evidence in any legal proceedings as evidence:
 - (a) of the facts stated in the certificate, and
 - (b) that the sample was the same sample as the one obtained by the authorised officer or other person, and
 - (c) that the sample had not been tampered with before it was received by the analyst.
- (3) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, to be taken to be such a certificate.

367B Rebuttable presumptions

- (1) In any proceedings for an offence against this Act or the regulations being taken against a landholder:
 - (a) the fact that a water management work is or has been located:
 - (i) on the landholder's land, or
 - (ii) in a river or lake within the landholder's land,gives rise to a rebuttable presumption that the work was constructed by the landholder, and
 - (b) the fact that a water management work is being or has been used:
 - (i) on the landholder's land, or
 - (ii) in a river or lake within the landholder's land,gives rise to a rebuttable presumption that the work is being or has been used by the landholder, and
 - (c) the fact that water is being or has been taken from a water source by means of a water supply work situated:
 - (i) on the landholder's land, or

- (ii) in a river or lake within the landholder's land, gives rise to a rebuttable presumption that the water is being or has been taken by the landholder, and
 - (d) the fact that water is being or has been discharged into a water source by means of a drainage work situated on the landholder's land gives rise to a rebuttable presumption that the water is being or has been discharged by the landholder, and
 - (e) the fact that water is being or has been used on the landholder's land gives rise to a rebuttable presumption that the water is being or has been used by the landholder, and
 - (f) the fact that a controlled activity is being or has been carried out on waterfront land within the landholder's land gives rise to a rebuttable presumption that the activity is being or has been carried out by the landholder, and
 - (g) the fact that an aquifer interference activity is being or has been carried out on the landholder's land gives rise to a rebuttable presumption that the activity is being or has been carried out by the landholder.
- (2) In any proceedings for an offence against this Act or the regulations being taken against the holder of an approval for a water supply work, the fact that water is being or has been taken from a water source:
- (a) by means of the work, or
 - (b) through metering equipment installed in connection with the work,
- gives rise to a rebuttable presumption that the holder of the approval is or has been using the work to take water from that water source.
- (3) In any proceedings for an offence against this Act or the regulations, the fact that a work of the kind referred to in:
- (a) the definition of *drainage work* in the Dictionary, or
 - (b) paragraph (a), (b) or (c) of the definition of *water supply work* in the Dictionary,
- is capable of being used for the purpose referred to in that provision gives rise to a rebuttable presumption that the work has been constructed or used for that purpose.
- (4) This section does not limit the operation of section 60E or 91L.

[3] Section 390 Authorised officers and analysts

Insert at the end of the section:

- (2) The Minister may appoint authorised analysts for the purposes of this Act.

[4] Dictionary

Insert in alphabetical order:

authorised analyst means a person appointed by the Minister under section 390 to exercise the functions conferred on an authorised analyst by this Act.

Schedule 4 Amendments relating to access licences

(Section 3)

[1] Section 52 Domestic and stock rights

Omit section 52 (2). Insert instead:

- (2) Subsection (1) does not allow a landholder:
 - (a) to take or use water in contravention of any mandatory guidelines established under section 336B, or
 - (b) to construct a dam or water bore without a water supply work approval, or
 - (c) in the case of the owner or occupier of a landholding arising from a subdivision effected on or after 1 July 2004, to take or use water in contravention of any prohibition or restriction imposed by or under the regulations (including any prohibition or restriction that the Minister is authorised by the regulations to impose).

[2] Section 59 Available water determinations

Omit section 59 (4). Insert instead:

- (4) If the Minister consents to the amendment of an access licence to enable water to be taken by a nominated water supply work located in some other water management area or water source than that to which the licence relates, the available water determinations applicable to water taken by means of the work are those made in relation to the relevant category or subcategory of access licence in relation to that other water management area or water source.

[3] Section 66 Conditions of access licence generally

Omit section 66 (1). Insert instead:

- (1) An access licence is subject to such conditions as the Minister may from time to time impose:
 - (a) which must include such conditions as are required to be imposed on the licence by this Act or by any relevant management plan (*mandatory conditions*), and
 - (b) which may include such other conditions, such as:
 - (i) conditions to give effect to any agreement between an applicant and objector under section 62 (5), and

-
- (ii) conditions relating to the protection of the environment,
as the Minister thinks fit (*discretionary conditions*).

(1A) Mandatory conditions do not have effect in relation to an access licence unless they are included in the terms of the licence.

[4] Section 70

Insert after section 69:

70 Special provisions with respect to supplementary water

- (1) The Minister may, by order published in accordance with the regulations, authorise the taking of water pursuant to supplementary water access licences within the whole or any part of a specified water management area or specified water source.
- (2) Such an order:
 - (a) must specify the period for which the order authorises water to be taken, and
 - (b) may impose such restrictions as the Minister considers appropriate on the taking of water.
- (3) Such an order must be consistent with the provisions of any management plan in force in relation to the water management area or water source concerned.

[5] Section 71W

Omit the section. Insert instead:

71W Access licence may nominate water supply works

- (1) On the application of the holder of an access licence for a water management area or water source, the Minister may consent to the amendment of the licence so as:
 - (a) to nominate a specified water supply work in that water management area or water source as a work by means of which water credited to the licence may be taken, or
 - (b) to nominate a specified water supply work in a NSW water tagging zone as a work by means of which water credited to the licence may be taken, or
 - (c) to nominate a specified extraction point in an interstate water tagging zone as an extraction point from which water credited to the licence may be taken,or so as to withdraw such a nomination.

- (2) For the avoidance of doubt, a water supply work may be nominated under subsection (1) even though no approval is required to be held in relation to the work.
- (3) The holder of an approval for a water supply work may notify the Minister, in accordance with the regulations:
 - (a) that the work has been nominated (whether by reference to the work itself or by reference to an extraction point at which it is located) as a work from which water credited to the interstate equivalent of an access licence may be taken, or
 - (b) that such a nomination has been withdrawn.
- (4) For the purposes of this section, an extraction point in an interstate water tagging zone is to be specified in accordance with the regulations.
- (5) In this section, a reference to a *water supply work* includes a reference to a group of such works.

[6] Section 71Z Access licence dealing principles

Omit section 71Z (2). Insert instead:

- (2) The access licence dealing principles may include provisions relating to any or all of the following:
 - (a) the establishment of interstate water tagging zones,
 - (b) the establishment of NSW water tagging zones,
 - (c) the criteria to be considered for the granting of an application with respect to a nomination referred to in section 71W (1) (b) or (c).

[7] Section 72A

Omit the section. Insert instead:

72A Special provisions relating to co-holdings in access licences

- (1) Subject to sections 71M, 71N and 74, any dealing in relation to an access licence held by co-holders, and any application for the Minister's consent to such a dealing, requires the consent of all of the co-holders (a *co-holder's consent*).
- (2) A co-holder of an access licence may, in accordance with the regulations:
 - (a) appoint another co-holder (the first co-holder's *nominee*), to give, on his or her behalf, any co-holder's consent

required by subsection (1) in relation to an application for the Minister's consent to a dealing, and

- (b) revoke any appointment that the co-holder has made under paragraph (a).
- (3) The same person may be nominee for more than one co-holder.
- (4) Any co-holder's consent given by the co-holder's nominee in relation to an application for the Minister's consent to a dealing in an access licence is taken to have been given by the co-holder.
- (5) The revocation of a nominee's appointment under subsection (2) (b) does not affect any co-holder's consent given by the nominee before the revocation took effect.

[8] Section 100 Conditions of approval generally

Omit section 100 (1). Insert instead:

- (1) An approval is subject to such conditions as the Minister may from time to time impose:
 - (a) which must include such conditions as are required to be imposed on the approval by this Act or by any relevant management plan (*mandatory conditions*), and
 - (b) which may include such other conditions, such as:
 - (i) conditions to give effect to any agreement between an applicant and objector under section 93 (5), and
 - (ii) conditions relating to the protection of the environment,as the Minister thinks fit (*discretionary conditions*).
- (1A) Mandatory conditions do not have effect in relation to an approval unless they are included in the terms of the approval.

[9] Section 123 Terms and conditions of operating licence

Insert after section 123 (3):

- (4) Despite subsection (3), the Minister may amend an irrigation corporation's operating licence so as to give effect to matters agreed to by or on behalf of the State pursuant to, or in connection with, the National Water Initiative.
- (5) In determining the terms of the amendment, the Minister must have regard to any submissions made by the irrigation corporation.

- (6) In this section, *National Water Initiative* means the Intergovernmental Agreement on a National Water Initiative between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory (as amended from time to time).

[10] Section 391A Interstate arrangements in relation to access licences and approvals

Omit “in cases referred to in section 71W (2) or 89 (2)” from section 391A (1).
Insert instead “pursuant to section 71W or 89”.

[11] Dictionary

Insert in alphabetical order:

interstate water tagging zone means an interstate water tagging zone established by the access licence dealing principles.

NSW water tagging zone means a NSW water tagging zone established by the access licence dealing principles.

Schedule 5 Amendments relating to publication of proclamations, orders and notices

(Section 3)

[1] Section 38 Public exhibition of draft management plan

Omit section 38 (2) (c). Insert instead:

(c) must be published in an appropriate newspaper.

[2] Section 51 Implementation programs

Omit “a local” from section 51 (4) (a). Insert instead “an appropriate”.

[3] Section 85A Authorisation to take water from uncontrolled flows

Omit section 85A (4). Insert instead:

(4) As soon as practicable after making such an order in respect of a water source, the Minister must cause notice of the order to be published in the Gazette and in an appropriate newspaper.

[4] Section 85A (5)

Omit “or a newspaper in accordance with subsection (4)”.

[5] Section 110 Temporary embargo

Omit section 110 (3). Insert instead:

(3) As soon as practicable after an order under this section is published in the Gazette, notice of the order must be published in an appropriate newspaper.

[6] Section 110 (4)

Omit “on the date”. Insert instead “at the beginning of the date”.

[7] Section 111 Permanent embargo

Omit section 111 (3). Insert instead:

(3) As soon as practicable after a proclamation under this section is published in the Gazette, notice of the proclamation must be published in an appropriate newspaper.

[8] Section 111 (4)

Omit “on the date”. Insert instead “at the beginning of the date”.

[9] Section 142 Petition

Omit “a local” from section 142 (3). Insert instead “an appropriate”.

[10] Section 144 Addition of lands to private irrigation districts

Omit “a local” from section 144 (3). Insert instead “an appropriate”.

[11] Section 156 Private irrigation board may apply to take over water supply works

Omit “a local” from section 156 (3). Insert instead “an appropriate”.

[12] Section 205 Amendment of boundaries

Omit “a local” from section 205 (3). Insert instead “an appropriate”.

[13] Section 216 Dissolution

Omit “a local” from section 216 (2). Insert instead “an appropriate”.

[14] Section 218 Accounts

Omit “a local” from section 218 (2). Insert instead “an appropriate”.

[15] Section 282 Review of activities of major utilities

Omit section 282 (2) (b). Insert instead:

(b) in an appropriate newspaper,

[16] Sections 395 and 395A

Insert after section 394:

395 Newspaper publication of orders and notices etc

A requirement of this Act that a proclamation, order or notice be published in an appropriate newspaper is taken to be a requirement that it be published:

- (a) in a newspaper circulating throughout the area it affects, or
- (b) in as many newspapers circulating within the various parts of that area as are necessary to ensure that it reaches all parts of the area.

395A Continuing effect of directions and conditions

- (1) A direction given, or a condition of a licence or approval imposed, under this Act or the regulations that specifies a time by which, or period within which, the direction or condition must be

complied with continues to have effect until the direction or condition is complied with even though the time has passed or the period has expired.

- (2) A direction that does not specify a time by which, or period within which, the direction must be complied with continues to have effect until the direction is complied with.
- (3) This section does not apply to the extent that any requirement under a direction or a condition of a licence or approval is revoked.
- (4) Nothing in this section affects the powers of the Minister with respect to the enforcement of a direction or a condition of a licence or approval.

[17] Schedule 10 Conversion of former entitlements to access licences and approvals

Omit “a newspaper circulating generally in New South Wales” from clause 19 (5).

Insert instead “an appropriate newspaper”.

[18] Dictionary

Insert in alphabetical order:

appropriate newspaper—see section 395.

[19] Dictionary, definition of “local newspaper”

Omit the definition.

Schedule 6 Amendments relating to other matters

(Section 3)

[1] Sections 7 (2), 13 (1) (g), 41 (2), 43 (3), 45 (3), 50 (3) and 75 (2)

Insert “Climate Change and” before “the Environment” wherever occurring.

[2] Sections 8A (1), 77A (1) and 87AA (1) (g)

Insert “water” after “supplementary” wherever occurring.

[3] Section 49A

Insert after section 49:

49A Suspension of management plans during severe water shortages

- (1) If satisfied that there is a severe water shortage in relation to a particular water management area or water source, the Minister may, by order published in the Gazette, suspend the operation of any management plan, either in whole or in part, in relation to that or any other water management area or water source.
- (2) Before suspending the operation of a management plan in relation to a water management area or water source, the Minister must obtain the concurrence of the Minister for Climate Change and the Environment.
- (3) As soon as practicable after an order under this section is published in the Gazette, a copy of the order must be published in an appropriate newspaper.
- (4) An order under this section expires at the end of 30 June following the date on which it is made or, if made on or after 1 April in any year, at the end of 30 June of the following year.
- (5) An order may not be made under this section in relation to a management plan that has, at any time during the previous 12 months, been subject to a prior order under this section unless the Minister is satisfied, for reasons specified in the order, that there is no need for the plan to be amended under Division 9.

[4] Section 59 Available water determinations

Omit “the various” from section 59 (1) (a). Insert instead “one or more”.

[5] Section 59 (1A)

Insert after section 59 (1):

- (1A) An available water determination that is made in relation to a particular category of access licence applies to all subcategories of that category except to the extent to which it otherwise provides.

[6] Section 60 Rules of distribution applicable to making of available water determinations

Omit “subsection (2)” from section 60 (1). Insert instead “section 49A”.

[7] Section 60 (2)

Omit the subsection.

[8] Section 60 (3)

Omit “subsection (2)”. Insert instead “section 49A”.

[9] Section 60 (4)

Omit “section 87”. Insert instead “Division 9”.

[10] Section 63 Determination of applications

Insert “no more than” before “minimal harm” in section 63 (2) (b).

[11] Section 68A (1B), the heading to Subdivision 1 of Division 3A of Part 2 of Chapter 3, sections 71B (3) and 77 (2) and clause 7 (1) of Schedule 1B

Omit “the register” and “the Register” wherever occurring.

Insert instead “the Access Register”.

[12] Section 71Y General

Insert after section 71Y (1):

- (2) Subsection (1) does not require a dealing to be dealt with in accordance with the access licence dealing rules established by a relevant management plan to the extent to which the rules are suspended by an order in force under section 49A.

[13] Section 78 Suspension and cancellation of access licences

Omit “the conditions” from section 78 (1) (a).

Insert instead “any term or condition”.

[14] Section 78 (1) (d) and (e)

Insert after section 78 (1) (c):

- (d) that the holder of the licence has failed to comply with any direction given to the holder under this Act in connection with the licence,
- (e) that the licence was granted as a result of false, misleading or materially inaccurate information supplied by or on behalf of the applicant.

[15] Section 97 Grounds of refusal of certain applications

Insert “no more than” before “minimal harm” wherever occurring.

[16] Section 109 Suspension and cancellation of approvals

Omit “the conditions” from section 109 (1) (a).

Insert instead “any term or condition”.

[17] Section 109 (1) (c1) (ii)

Insert “of the access licence” after “the holder”.

[18] Section 112

Omit the section. Insert instead:

112 Operation of embargo

- (1) An embargo applies to any application for an approval made on or after the date on which the embargo took effect, other than:
 - (a) an application to amend an application made before that date, or
 - (b) an application for the extension of the period for which an approval has effect, or
 - (c) any other application of a kind prescribed by the regulations.
- (2) An application to which an embargo applies is a nullity and is not revived merely because the embargo is subsequently revoked.

[19] Section 118

Omit the section. Insert instead:

118 Requirements for access licences and approvals

Nothing in this Part authorises an irrigation corporation or landholder to do anything for which this Act requires an access

licence or approval unless the irrigation corporation or landholder holds an appropriate access licence or approval.

[20] Section 120 Entry on to land

Omit “by authorised persons” from section 120 (1).

Insert instead “by its employees and agents”.

[21] Section 141

Omit the section. Insert instead:

141 Requirements for access licences and approvals

Nothing in this Part authorises a private irrigation board or landholder to do anything for which this Act requires an access licence or approval unless the private irrigation board or landholder holds an appropriate access licence or approval.

[22] Section 199

Omit the section. Insert instead:

199 Requirements for access licences and approvals

Nothing in this Part authorises a private drainage board or landholder to do anything for which this Act requires an access licence or approval unless the private drainage board or landholder holds an appropriate access licence or approval.

[23] Section 216 Dissolution

Omit section 216 (3). Insert after section 216 (4):

- (5) If the Governor is satisfied that the winding up of a private drainage board has been completed under this section, the Governor may, by proclamation published in the Gazette, abolish the board.

[24] Section 222

Omit the section. Insert instead:

222 Requirements for access licences and approvals

Nothing in this Part authorises a private water trust or landholder to do anything for which this Act requires an access licence or approval unless the private water trust or landholder holds an appropriate access licence or approval.

- [25] Section 238 Minister may remove members and Governor may abolish trust**
Omit section 238 (3). Insert after section 238 (4):
- (5) If the Governor is satisfied that the winding up of a private water trust has been completed under this section, the Governor may, by proclamation published in the Gazette, abolish the trust.
- [26] Section 283 Definitions**
Omit the definition of *authorised person*.
- [27] Section 284**
Omit the section. Insert instead:
- 284 Requirements for access licences and approvals**
Nothing in this Part authorises a water supply authority to do anything for which this Act requires an access licence or approval unless the water supply authority holds an appropriate access licence or approval.
- [28] Section 297 Entry on land for inspections**
Omit “or authorised persons” from section 297 (6).
Insert instead “and agents”.
- [29] Section 389 Delegation**
Omit section 389 (1). Insert instead:
- (1) The Minister may delegate to any person any functions conferred or imposed on the Minister by or under this Act, other than this power of delegation.
- [30] Schedule 9 Savings, transitional and other provisions**
Insert at the end of clause 1 (1):
Water Management Amendment Act 2008
- [31] Schedule 9, clause 66 (b)**
Insert “water” after “supplementary”.

[32] Schedule 9, Part 6

Insert after Part 5:

**Part 6 Provisions consequent on enactment of
Water Management Amendment Act 2008**

72 Definition

In this Part, *the 2008 amending Act* means the *Water Management Amendment Act 2008*.

73 Orders under section 60 (2) of the unamended Act

- (1) Any order that, immediately before the commencement of this clause, was in force under section 60 (2) is taken to have been made under section 49A, as inserted by the 2008 amending Act.
- (2) Section 49A (4), as inserted by the 2008 amending Act, does not apply to an order referred to in subclause (1).

74 Bore drillers' licences under the 1912 Act

- (1) A bore driller's licence under the *Water Act 1912* is taken to be a bore driller's licence under this Act, and may be varied or revoked accordingly.
- (2) Unless sooner revoked, a bore driller's licence referred to in subclause (1) expires at the end of 3 years from the date on which it was issued under the *Water Act 1912*.
- (3) Until they are repealed, the *Water Act 1912* and the *Water (Part 5—Drillers' Licences) Regulation 1995* continue to apply to a bore driller's licence referred to in subclause (1).

[33] Dictionary, definition of "authorised officer"

Insert "under section 390" after "by the Minister".

[34] Dictionary, definition of "Department"

Omit the definition. Insert instead:

Department means the Department of Water and Energy.

[35] Dictionary, definitions of “metering equipment” and “nominated water supply work”

Insert in alphabetical order:

metering equipment includes any water or other meter and any ancillary wiring, pipework, or apparatus and any supporting structure.

nominated water supply work, in relation to a water source, means a water supply work, or group of water supply works, that is for the time being nominated under section 71W as a work, or group of works, by means of which water credited to an access licence may be taken from that water source.

[36] Dictionary, definition of “water management work”

Insert “, and includes any part of such a work” after “flood work”.

[37] Dictionary, definition of “water supply work”

Omit paragraph (d) of the definition. Insert instead:

- (d) any work (such as a bank or levee) that has, or could have, the effect of diverting water flowing to or from a water source, or

[38] Dictionary, definition of “water supply work”

Insert “, or could have,” after “that has” in paragraph (e) of the definition.

Schedule 7 Amendment of other Acts

(Section 4)

7.1 Dividing Fences Act 1991 No 72

Section 25 Application of Act to Crown and local authorities etc

Omit “under the *Irrigation Corporations Act 1994*” from section 25 (1) (d).

Insert instead “within the meaning of the *Water Management Act 2000*”.

7.2 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Omit “*Water Management Act 2000*, section 338”.

Insert instead “*Water Management Act 2000*, section 339C”.

7.3 Water Act 1912 No 44

[1] Section 4G Proceedings for offences

Omit section 4G (5).

[2] Section 4G (7)–(11)

Insert after section 4G (6):

- (7) Proceedings for an offence against this Act, or the regulations under this Act, may be commenced at any time within, but not later than, 3 years after the date on which the offence is alleged to have been committed.
- (8) Proceedings for an offence against this Act, or the regulations under this Act, may also be commenced at any time within, but not later than, 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer.
- (9) If subsection (8) is relied on for the purpose of commencing proceedings for an offence, the process by which the proceedings are commenced must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer and need not contain particulars of the date on which the offence was committed.

- (10) The date on which evidence first came to the attention of any relevant authorised officer is the date specified in the process by which the proceedings are commenced, unless the contrary is established.
- (11) In this section:
authorised officer has the same meaning as it has in the *Water Management Act 2000*.
evidence of an offence means evidence of any act or omission constituting the offence.

[3] Section 180I

Omit the section.

[4] Section 184A

Omit the section.

[Agreement in principle speech made in Legislative Assembly on 23 September 2008
Second reading speech made in Legislative Council on 22 October 2008]

BY AUTHORITY