



New South Wales

Water Industry Competition Amendment (Review) Act 2014 No 57

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New South Wales

Water Industry Competition Amendment (Review) Act 2014 No 57

Act No 57, 2014

An Act to amend the *Water Industry Competition Act 2006* following the Urban Water Regulation Review and to make consequential amendments to other legislation. [Assented to 23 October 2014]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Water Industry Competition Amendment (Review) Act 2014*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Water Industry Competition Act 2006 No 104

[1] Long title

Omit the long title. Insert instead:

An Act to facilitate and regulate the water industry excluding certain public water utilities; to make provision for the continuity of essential services provided by that industry; to establish an access regime for significant water industry infrastructure; and for other purposes.

[2] Section 2A

Insert after section 2:

2A Objects of Act

The objects of this Act are:

- (a) to protect public health and safety and the environment in connection with the water industry, including in the longer term, and
- (b) to protect the interests of consumers (particularly small retail customers) in the quality, reliability and price of water and sewerage services, including in the longer term, and
- (c) to facilitate the efficient, reliable and sustainable provision of water and sewerage services, having regard to financial, environmental and social considerations, and
- (d) to promote the sustainable use of resources in connection with the water industry, and
- (e) to facilitate competition in the water industry with a view to encouraging innovation and improved efficiency in the industry.

[3] Part 2

Omit the Part. Insert instead:

Part 2 Approvals and licences for certain water industry infrastructure

Division 1 Application of Part

5 Water industry infrastructure to which Part applies

- (1) This Part applies to each of the following:
 - (a) water industry infrastructure comprising an integrated system for providing water or sewerage services to 30 or more small retail customer premises in an area or building, including any treatment works, pumping stations and reticulation networks that form part of the system (a *category A scheme*),
 - (b) water industry infrastructure comprising a facility for the production of drinking water (including a filtration, treatment or desalination facility) that has a design capacity of more than 500 kilolitres each day and does not form part of a category A scheme, together with any reticulation network connected to the facility and used to convey anything to or from the facility,

- (c) water industry infrastructure comprising a facility for the treatment of sewage that has a design capacity of more than 750 kilolitres each day and does not form part of a category A scheme, together with any reticulation network connected to the facility and used to convey anything to or from the facility,
 - (d) water industry infrastructure declared by the regulations to be water industry infrastructure to which this Part applies.
- (2) However, this Part does not apply to the following:
- (a) water industry infrastructure within the area of operations of a public water utility and operated by or on behalf of the public water utility (other than as a last resort provider),
 - (b) water industry infrastructure that, immediately before the commencement of this subsection, was subject to an approval under section 68 of the *Local Government Act 1993*, while it remains subject to:
 - (i) the approval (as extended or renewed from time to time), or
 - (ii) a new approval (as extended or renewed from time to time) obtained by a purchaser of land on which the infrastructure is located in accordance with that Act,
 - (c) water industry infrastructure excluded from the application of this Part by the regulations.
- (3) For the purposes of determining whether this Part applies to water industry infrastructure:
- (a) initial and planned future stages of development of the infrastructure are to be taken into account, and
 - (b) the design capacity of infrastructure is to be determined in accordance with guidelines issued by IPART and published in the Gazette and on IPART's website.

Division 2 Requirement for approvals and licences

6 Requirement for design approval

- (1) A person must not carry out works for the construction, installation or alteration of water industry infrastructure to which this Part applies except as authorised by a design approval.
- Maximum penalty:
- (a) in the case of a corporation—\$2 million, or
 - (b) in the case of an individual—\$400,000.
- (2) A reference in this section to works for the construction, installation or alteration of water industry infrastructure extends to anything necessary (including the operation of the infrastructure) for the commissioning and testing of the infrastructure prior to it being operated on a commercial basis.

7 Requirement for operational approval

The owner of water industry infrastructure to which this Part applies must ensure that the infrastructure is not operated on a commercial basis unless there is an operational approval in force for the infrastructure.

Maximum penalty:

- (a) in the case of a corporation—\$2 million, or
- (b) in the case of an individual—\$400,000.

8 Requirement for operator's licence

- (1) A person must not operate water industry infrastructure to which this Part applies unless:

- (a) the person is a licensed operator of water industry infrastructure of the appropriate class, and
- (b) a design approval or operational approval is in force for the infrastructure, and
- (c) the person holds the approval or operates the infrastructure under an agreement with the holder of the approval.

Maximum penalty:

- (a) in the case of a corporation—\$2 million, or
- (b) in the case of an individual—\$400,000.

Note. If different parts of water industry infrastructure to which this Part applies are operated by different persons, each person will require an operator's licence.

- (2) Nothing in this section prevents a person engaged by the holder of a design approval to carry out works for the construction, installation or alteration of water industry infrastructure from operating the infrastructure to the extent necessary for the commissioning and testing of the infrastructure in accordance with the design approval prior to it being operated on a commercial basis.

9 Requirement for retailer's licence

- (1) A person must not sell water or sewerage services provided by means of a category A scheme to which this Part applies unless:

- (a) the person is a licensed retailer, and
- (b) an operational approval is in force for the scheme, and
- (c) the person holds the operational approval or sells the services under an agreement with the holder of the operational approval.

Maximum penalty:

- (a) in the case of a corporation—\$2 million, or
- (b) in the case of an individual—\$400,000.

- (2) However, the holder of an operational approval for a category A scheme or a licensed operator of a category A scheme is not required to be a licensed retailer to sell water or sewerage services to a licensed retailer or public water utility.

- (3) A person must not sell water or sewerage services provided by means of prescribed water industry infrastructure to a small retail customer unless the person is a licensed retailer.

Maximum penalty:

- (a) in the case of a corporation—\$2 million, or

(b) in the case of an individual—\$400,000.

Note. A retailer's licence is subject to a condition that limits the circumstances in which a licensed retailer may sell water or sewerage services provided by means of prescribed water industry infrastructure to a small retail customer (see section 20F (1)).

(4) However, the owner or operator of prescribed water industry infrastructure is not required to be a licensed retailer to sell water or sewerage services provided by means of the infrastructure.

(5) In this section:

prescribed water industry infrastructure means:

- (a) water industry infrastructure operated by or on behalf of a public water utility under the utility's Act, or
- (b) water industry infrastructure operated under an approval under section 68 of the *Local Government Act 1993*, or
- (c) other water industry infrastructure to which this Part does not apply, or
- (d) water industry infrastructure to which this Part applies other than a category A scheme.

Division 3 Objects and interpretation

10 Additional objects of Part

The Minister and IPART must, in considering an application for an approval or licence and the conditions of an approval or licence under this Part, have regard to the objects of this Act and the following additional objects:

- (a) to promote policies concerning the use of water resources set out in a document prescribed by the regulations,
- (b) to mitigate the potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the approval or licence,
- (c) to promote the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security.

11 Meaning of "suitable corporation"

- (1) Each of the following is not a ***suitable corporation*** to be granted an approval or licence under this Part:
 - (a) a disqualified corporation,
 - (b) a corporation that is a related corporation of a disqualified corporation.
- (2) Without limiting the matters that may be taken into account in determining whether a corporation is a suitable corporation to be granted an approval or licence under this Act, the Minister or IPART may take into account each of the following:
 - (a) whether the corporation or a related corporation, or a director or person concerned in the management of the corporation or a related corporation has committed an offence against this Act or any other law of this State, the Commonwealth or another State or a Territory relating to the water industry, public health, environment protection, development control or consumer protection,
 - (b) whether the corporation or a related corporation, or a director or person concerned in the management of the corporation or a related corporation has held a relevant statutory authorisation (whether under the law of this

- State, the Commonwealth or another State or a Territory) that has been cancelled or suspended or has been disqualified from obtaining such an authorisation,
- (c) whether an insolvency official has been appointed in respect of the corporation or a related corporation, or any property of the corporation or a related corporation or an order has been made for the winding up of the corporation or a related corporation, or a resolution has been passed for the winding up of the corporation or a related corporation,
 - (d) whether a director or person concerned in the management of the corporation or a related corporation is of good repute and character with particular regard to honesty and integrity,
 - (e) whether a director or person concerned in the management of the corporation or a related corporation has become, within the previous 3 years, an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth,
 - (f) whether a director or person concerned in the management of the corporation or a related corporation has been, within the previous 3 years, the director of a body corporate when an insolvency official has been appointed in respect of the corporation or any property of the corporation or an order has been made for the winding up of the corporation or a resolution has been passed for the winding up of the corporation,
 - (g) whether the corporation has the capacity (including, as relevant, technical, financial and organisational capacity) to comply with obligations under this Act and, in the case of a licence, to carry out the class of activities to be authorised by the licence,
 - (h) any other matter prescribed by the regulations.
- (3) For the purposes of determining whether a body has the relevant capacity to be a suitable corporation to be granted an approval or licence:
- (a) the following must be taken into account:
 - (i) the extent to which the body relies on arrangements with contractors or subcontractors (including related corporations) for the necessary capacity,
 - (ii) the suitability of those arrangements,
 - (iii) proposed conditions of approval or licence relating to those arrangements, and
 - (b) in the case of a council—any necessary financial or organisational capacity is to be assumed.

12 Meaning of “essential infrastructure”

IPART may, by written notice to an applicant for, or the holder of, an approval for water industry infrastructure to which this Part applies, determine that the infrastructure comprises *essential infrastructure* under this Act if satisfied that:

- (a) a failure in the provision of a water or sewerage service provided by means of the water industry infrastructure would have an adverse effect on customers of the service of a nature or degree that warrants it being dealt with as an essential service, taking into account the extent to which customers may reasonably be expected to protect themselves against the effect, and

- (b) either:
 - (i) alternative arrangements for the provision of a replacement service would not be, and could not readily be made to be, reasonably available, or
 - (ii) it is reasonably necessary for customers of the service to be automatically transferred to the provider of a replacement service in the event of a failure in the provision of the service.

Division 4 Approvals

13 Process for determination of application for approval

- (1) IPART is to determine an application for a design approval or operational approval.
- (2) An application for a design approval for water industry infrastructure must be made by the person proposing to construct, install or alter the infrastructure and not by a contractor or subcontractor engaged or proposed to be engaged by that person to carry out the work.
- (3) An application for an operational approval for water industry infrastructure must be made by the owner of the infrastructure.
- (4) Without limiting when an application for an operational approval for water industry infrastructure may be made, an application may be made in anticipation of an exemption from the application of this Part ceasing to apply to the infrastructure.
- (5) On receiving an application for an approval, IPART must invite submissions on the application from:
 - (a) the government sector agency assigned responsibility for the administration of this Part, and
 - (b) the government sector agency assigned responsibility for the administration of the *Public Health Act 2010*, and
 - (c) if the infrastructure is or is proposed to be within the area of operations of a public water utility—the public water utility, and
 - (d) in the case of a design approval:
 - (i) the government sector agency assigned responsibility for the administration of the *Environmental Planning and Assessment Act 1979*, and
 - (ii) if a licence under the *Protection of the Environment Operations Act 1997* is also required—the appropriate regulatory authority under that Act, and
 - (iii) if an authorisation (however described) under the *Water Management Act 2000* is also required—the government sector agency assigned responsibility for the administration of Chapter 3 of that Act, and
 - (e) the public by notice published on IPART's website and otherwise as considered appropriate by IPART, and
 - (f) otherwise as required by the regulations.
- (6) An invitation to make submissions on an application must allow at least 28 days for submissions to be made and must be accompanied by a copy of the application or set out how a copy of the application may be obtained.

- (7) IPART must not accept a variation of an application after an invitation to make submissions has been given unless satisfied that:
- (a) the application as varied will be substantially the same as the original application, and
 - (b) no prejudice will be caused to any person who made a submission concerning the original application.
- Note.** If a variation is not accepted, the applicant may withdraw the application and make a new application.
- (8) If IPART proposes to refuse to grant an approval, IPART must:
- (a) give written notice of the proposed refusal to the applicant specifying the reasons for it, and
 - (b) allow the applicant at least 14 days within which to make submissions to IPART about the proposed refusal.
- (9) On making a decision on an approval, IPART must cause notice of the decision to be given to the applicant and published on IPART's website.

14 Grant of approval

- (1) A design approval authorises the carrying out of works for the construction, installation or alteration of water industry infrastructure as specified in the approval subject to the conditions of the approval.
- (2) An approval must not be granted to an individual.
- (3) A design approval must not be granted unless IPART is satisfied as to each of the following:
- (a) that the applicant is a suitable corporation to be granted the approval,
 - (b) that the proposal will, if the infrastructure is constructed, installed or altered as proposed, comply with appropriate standards and water quality objectives and has been audited as approved by IPART to assess compliance with that requirement,
 - (c) that the applicant has established:
 - (i) that it is reasonable to believe that the proposal is financially viable based on information that is reasonably available, and
 - (ii) in the case of a category A scheme—that it is not reasonably foreseeable that the scheme will have significant adverse financial implications for small retail customers,
 - (d) that the applicant is a licensed operator of infrastructure of the relevant class and proposes to operate the infrastructure under the licence or has entered into a suitable agreement with a licensed operator for the operation of the infrastructure,
 - (e) that the applicant or other licensed operator, as the case requires, has certified (in the manner and form required by IPART) that it will have the capacity (including technical, financial and organisational capacity) to operate the infrastructure in a manner that does not present a risk to public health or a significant risk of harm to the environment,
 - (f) other matters specified by the regulations,
 - (g) other matters IPART considers relevant having regard to the public interest.

- (4) An operational approval must not be granted unless IPART is satisfied as to each of the following:
- (a) that the applicant is a suitable corporation to be granted the approval,
 - (b) if there is a relevant design approval—that the infrastructure has been constructed, installed or altered substantially in compliance with the design approval,
 - (c) that the infrastructure complies with appropriate standards and water quality objectives and has been audited as approved by IPART to assess compliance with that requirement,
 - (d) if there is no relevant design approval (for example, because the infrastructure had been constructed before the commencement of this section):
 - (i) that the applicant is a licensed operator of infrastructure of the relevant class and proposes to operate the infrastructure under the licence or has entered into a suitable agreement with a licensed operator for the operation of the infrastructure, and
 - (ii) that the applicant or other licensed operator, as the case requires, has certified (in the manner and form required by IPART) that it will have the capacity (including technical, financial and organisational capacity) to operate the infrastructure in a manner that does not present a risk to public health or a significant risk of harm to the environment,
 - (e) in the case of a category A scheme—that the applicant is a licensed retailer and proposes to sell the water or sewerage services provided by means of the infrastructure or has entered into a suitable agreement with a licensed retailer for the sale of water or sewerage services provided by means of the scheme,
 - (f) in the case of essential infrastructure—that a last resort provider has been designated for each essential service provider other than a council,
 - (g) other matters specified by the regulations,
 - (h) other matters IPART considers relevant having regard to the public interest.
- (5) IPART may refuse to grant an approval if it is not satisfied that:
- (a) the proposed licensed operator of the infrastructure has the capacity to comply with conditions of its licence having regard to all the infrastructure it operates or is to operate under the licence, or
 - (b) in the case of a category A scheme—the proposed licensed retailer of water or sewerage services provided by means of the scheme has the capacity to comply with conditions of its licence having regard to all the water and sewerage services it sells or is to sell under its licence.
- (6) IPART must publish, in the Gazette and on IPART’s website, guidelines as to appropriate standards and water quality objectives for water industry infrastructure to which this Part applies.

15 Conditions of approval—imposition, variation and revocation

- (1) An approval is subject to conditions imposed:
- (a) by this Act or the regulations, or
 - (b) by IPART:
 - (i) on the grant of the approval, or

- (ii) subsequently under this Act, or
 - (iii) as disciplinary action.
 - (2) As far as is reasonably practicable, IPART must, when granting a design approval, give an indication of the conditions likely to be imposed on the operational approval for the infrastructure.
 - (3) However, IPART is not bound by an indication it gives as to conditions of an operational approval.
 - (4) IPART may, by written notice to the holder of an approval, subsequently impose further conditions or vary or revoke conditions (other than conditions imposed by this Act or the regulations) on the application of the holder or on its own initiative.
 - (5) If IPART proposes to impose further conditions, or vary or revoke conditions, of an approval on its own initiative, IPART must:
 - (a) give written notice of the proposal to the holder of the approval specifying the reasons for it, and
 - (b) allow the holder at least 14 days within which to make submissions to IPART about the proposal.
 - (6) If IPART considers that it is appropriate to invite submissions on a proposal or application to impose further conditions or vary or revoke conditions of an approval because of the importance or effect of the conditions, IPART may invite submissions on the proposal or application as if it were an application for an approval.
 - (7) Regulations that impose conditions of approval or vary or revoke conditions of approval imposed by the regulations apply, subject to the expression of a contrary intention, to approvals whether granted before or after the regulations are made.
 - (8) The holder of an approval must:
 - (a) comply with the conditions of the approval that apply to the holder, and
 - (b) take all reasonable steps to facilitate compliance with conditions of the approval by other persons to whom they apply.
- Maximum penalty:
- (a) in the case of a corporation—\$2 million, or
 - (b) in the case of an individual—\$400,000.

16 Conditions of design approval

- (1) A design approval is subject to the condition that the holder must maintain a suitable agreement with a licensed operator and must notify IPART of any material variations in, or substitution of, the agreement.
- (2) However, a suitable agreement need not be maintained if the holder decides not to proceed with, or to cease, works under the design approval.
- (3) Without limiting the conditions of a design approval, the conditions imposed by the regulations or by IPART may:
 - (a) require the holder of the approval to give and maintain security (in an amount and form determined by IPART) for compliance with the conditions of approval and the completion of the construction, installation or alteration of the water industry infrastructure, or

- (b) require the holder of the approval to maintain an appropriate level of insurance, or
- (c) require completion of the construction, installation or alteration of the infrastructure in accordance with specified plans and specifications, or
- (d) require the completed infrastructure to meet specified standards and water quality objectives, or
- (e) require individual meters to be installed for each household or business, or
- (f) require testing, certification or auditing of the infrastructure at specified intervals, following specified incidents or before operation on a commercial basis, or
- (g) require submission to IPART of incident reports, financial reports or other reports relating to the infrastructure.

17 Conditions of operational approval

- (1) An operational approval is subject to the following conditions:
 - (a) the holder of the approval must ensure that the infrastructure is not operated on a commercial basis except by a licensed operator,
 - (b) the holder of the approval must, in the case of a category A scheme:
 - (i) ensure that a water or sewerage service provided by means of the scheme is not sold except by a licensed retailer, and
 - (ii) ensure that there is not more than one licensed retailer for each type of water or sewerage service provided by means of the scheme (as identified in the approval),
 - (c) the holder of the approval must maintain:
 - (i) a suitable agreement with a licensed operator for the operation of the infrastructure, and
 - (ii) in the case of a category A scheme—a suitable agreement with a licensed retailer for the sale of water or sewerage services provided by means of the scheme,
 - (d) the holder of the approval must notify IPART of any material variations in, or substitution of, an agreement with a licensed operator or licensed retailer,
 - (e) the holder of the approval must, in the case of essential infrastructure, take all reasonable steps to prevent circumstances arising that permit a declaration of a failure of a provider of the essential service under Division 3 of Part 5.
- (2) Without limiting the conditions of an operational approval, the conditions imposed by the regulations or by IPART may:
 - (a) require the holder of the approval:
 - (i) to have a program for the maintenance and renewal of the water industry infrastructure, or
 - (ii) to give and maintain security (in an amount and form determined by IPART) for compliance with the conditions of the approval and the continued operation of the infrastructure, or
 - (iii) to maintain an appropriate level of insurance, or
 - (b) require the licensed operator of the infrastructure:
 - (i) to give and maintain security (in an amount and form determined by IPART) for compliance with the conditions of the approval, or

- (ii) to have the infrastructure tested, certified or audited at specified intervals or following specified incidents, or
- (iii) to have an audit and compliance program to ensure appropriate standards and water quality objectives are met, or
- (iv) to obtain an approval before specified changes in process are undertaken, or
- (v) to have a plan of action to be taken in the event of a failure that might arise out of the operation of the infrastructure, or
- (vi) to have a plan of action to be taken in the event of the cessation of operation of the infrastructure, or
- (vii) to submit to IPART incident reports, financial reports or other reports relating to the infrastructure.

18 Duration of approval

- (1) An approval remains in force until it is cancelled.
- (2) The holder of an approval may not surrender the approval but may apply for the cancellation of the approval under Division 7.

19 Variation of works authorised by design approval

- (1) The holder of a design approval may apply for a variation of the works authorised by the approval.
- (2) IPART may, by written notice to the applicant, vary the works authorised by the approval if it is satisfied that:
 - (a) the approval as varied will be substantially the same as the original approval, and
 - (b) no prejudice will be caused to any person who made a submission concerning the application for the original approval.
- (3) If IPART proposes to refuse to vary the works authorised by a design approval, IPART must:
 - (a) give written notice of the proposed refusal to the holder of the approval specifying the reasons for it, and
 - (b) allow the holder at least 14 days within which to make submissions to IPART about the proposed refusal.
- (4) If IPART varies the works authorised by a design approval, the varied approval replaces the original approval as from the date specified by IPART in the notice.

Note. If IPART refuses to vary the works authorised by a design approval, the holder of the approval may apply for cancellation of the approval and make a new application for a design approval.

20 Periodic fees and returns

- (1) The holder of an approval must, for each period specified by condition of the approval and before the date fixed for that purpose by condition of approval:
 - (a) pay to IPART the periodic approval fee determined by IPART, and
 - (b) lodge with IPART a return containing the information required by IPART by condition of approval or by written notice.
- (2) IPART may, by condition of approval or by written notice, require the holder of the approval to have information in a return verified in a specified manner.

- (3) If the holder of an approval fails to pay a fee or lodge a return as required, IPART may, by written notice, require the holder to make good the default and, in addition, pay to IPART the amount fixed by the regulations as a penalty for default.

20A Transfer of approval

- (1) Subject to this section and any condition of the approval excluding or limiting the right of transfer under this section, IPART must, on application of the holder of the approval, consent to the transfer of the approval.
- (2) IPART may refuse to consent to the transfer of an approval if the transferee would not be entitled to the grant of the approval or if a suitable agreement has not been entered into between the transferee and a licensed operator or, in the case of an operational approval for a category A scheme, licensed retailer.

Division 5 Licences

20B Process for determination of application for licence

- (1) The Minister is to determine an application for a licence.
- (2) On receiving an application for a licence, IPART must:
 - (a) give a copy of the application to the Minister, and
 - (b) invite submissions on the application from persons as required by the regulations, and
 - (c) invite submissions on the application from the public by notice published on IPART's website and otherwise as considered appropriate by IPART.
- (3) An invitation to make submissions on an application must allow at least 28 days for submissions to be made and must be accompanied by a copy of the application or set out how a copy of the application may be obtained.
- (4) After considering an application for a licence and any submissions, IPART must provide a report on the application to the Minister.
- (5) The report must include recommendations as to whether or not a licence should be granted and as to the licence conditions.
- (6) The Minister must consider, but is not bound to accept, IPART's report and recommendations and may seek further advice from IPART on an application.
- (7) If the Minister proposes to refuse an application, the Minister must:
 - (a) give written notice of the proposed refusal to the applicant specifying the reasons for it, and
 - (b) allow the applicant at least 14 days within which to make submissions to the Minister about the proposed refusal.
- (8) On making a decision on an application, the Minister must cause notice of the Minister's decision to be given to the applicant and published on IPART's website.

20C Grant of licence

- (1) An operator's licence must specify the class of water industry infrastructure that the licensee may operate under the licence.
- (2) A licence must not be granted to an individual.

- (3) A licence must not be granted unless the Minister is satisfied as to each of the following:
- (a) that the applicant is a suitable corporation to be granted the licence,
 - (b) other matters specified by the regulations,
 - (c) other matters the Minister considers relevant having regard to the public interest.

20D Licence conditions—imposition, variation and revocation

- (1) A licence is subject to conditions imposed:
- (a) by this Act or the regulations, or
 - (b) by the Minister:
 - (i) on the grant of the licence, or
 - (ii) subsequently under this Act, or
 - (iii) as disciplinary action.
- (2) The Minister may, by written notice to a licensee, impose further conditions, or vary or revoke conditions, of the licence (other than conditions imposed by this Act or the regulations) on the application of the licensee or on the Minister's own initiative.
- (3) Nothing in Part 3 (Access to infrastructure services) limits the power of the Minister to impose licence conditions.
- (4) If the Minister proposes to impose further conditions, or vary or revoke conditions, of a licence on the Minister's own initiative, the Minister must:
- (a) give written notice of the proposal to the licensee specifying the reasons for it, and
 - (b) allow the licensee at least 14 days within which to make submissions to the Minister about the proposal.
- (5) If the Minister considers that it is appropriate to invite submissions on a proposal or application to impose further licence conditions or vary or revoke licence conditions because of the importance or effect of the conditions, IPART must, at the request of the Minister, invite submissions on the proposal or application as if it were an application for a licence.
- (6) Regulations that impose licence conditions or vary or revoke licence conditions imposed by the regulations apply, subject to the expression of a contrary intention, to licences whether granted before or after the regulations are made.
- (7) If a licence condition is contravened, the licensee is guilty of an offence.
- Maximum penalty:
- (a) in the case of a corporation—\$2 million, or
 - (b) in the case of an individual—\$400,000.

20E Operator's licence conditions

- (1) It is a condition of an operator's licence that, if the licensed operator proposes to commence or commences to operate particular water industry infrastructure under the licence, the licensed operator must:
- (a) give to IPART, within the period required by the regulations, written notice of that fact, and

- (b) certify to IPART, within the period required by the regulations, that it has the capacity (including technical, financial and organisational capacity) to operate the infrastructure in a manner that does not present a risk to public health or a significant risk of harm to the environment.
- (2) Subsection (1) (b) does not apply if the licensed operator has already given such a certification to IPART for the design approval for the infrastructure and there has been no material change in the capacity of the licensed operator.
- (3) It is a condition of an operator's licence that the licensed operator comply with the conditions of the design approval or operational approval that applies to the infrastructure operated by the licensed operator (as the case requires).
- (4) It is a condition of an operator's licence that the licensee must take all reasonable care to operate infrastructure under the licence in a manner that does not present a risk to public health or a significant risk of harm to the environment.
- (5) It is a condition of an operator's licence that the licensed operator has and maintains the capacity (including technical, financial and organisational capacity) to operate all the infrastructure operated by the licensed operator under the licence in a manner that does not present a risk to public health or a significant risk of harm to the environment.
- (6) It is a condition of an operator's licence that, if the licensed operator proposes to cease or ceases to operate particular water industry infrastructure under the licence, the licensee must give written notice to IPART of that fact within the period required by the regulations.
- (7) Without limiting the conditions that may be imposed on an operator's licence, the regulations or the Minister may impose conditions:
 - (a) requiring the licensee to give and maintain security (in an amount and form determined by the Minister) for compliance with licence conditions, or
 - (b) requiring the licensee to maintain an appropriate level of insurance taking into account all the infrastructure operated by the licensed operator under the licence, or
 - (c) requiring the licensee to obtain the approval of the Minister or IPART before entering into an agreement with the holder of an operational approval for water industry infrastructure for the operation of further infrastructure under the licence.

20F Retailer's licence conditions

- (1) It is a condition of a retailer's licence that the licensed retailer must not sell a water or sewerage service provided by means of prescribed water industry infrastructure to a small retail customer unless:
 - (a) the water or sewerage service is provided to the same premises as a water or sewerage service provided by means of a category A scheme to which this Part applies, and
 - (b) the customer has a contract with the licensed retailer for both services.
- (2) It is a condition of a retailer's licence that, if the licensed retailer proposes to commence or cease, or commences or ceases, to provide retail services under the licence for a particular category A scheme or prescribed water industry infrastructure, the licensed retailer must give written notice to IPART of that fact within the period required by the regulations.

- (3) It is a condition of a retailer's licence that the licensed retailer has and maintains the capacity (including financial and organisational capacity) to provide all the retail services provided by the licensed retailer under the licence.
- (4) Without limiting the conditions that may be imposed on a retailer's licence, the regulations or the Minister may impose conditions:
- (a) requiring the licensee to give and maintain security (in an amount and form determined by the Minister) for compliance with licence conditions, or
 - (b) requiring the licensee to maintain an appropriate level of insurance taking into account all the retail services provided by the licensed retailer under the licence, or
 - (c) requiring the licensee to obtain the approval of the Minister or IPART before entering into an agreement with the holder of an operational approval for a category A scheme for the sale of further water or sewerage services under the licence, or
 - (d) limiting the fees and charges that may be applied to a water or sewerage service provided by means of prescribed water industry infrastructure to a small retail customer, or
 - (e) if the licence authorises the sale of drinking water—that the Minister is satisfied promote the equitable sharing among public water utilities and licensed retailers of drinking water of the costs of water industry infrastructure that significantly contributes to water security, including, for example, the following:
 - (i) a condition requiring the licensee to obtain a specified proportion of the water that it supplies under the authority of its licence by means of specified water industry infrastructure,
 - (ii) a condition requiring the licensee to contribute to the costs of specified water industry infrastructure (whether or not it is used to provide the licensee with the water that it is authorised to supply under the licence) calculated in a manner specified in the regulations or by condition and payable to a person or persons specified in the regulations or by condition.
- (5) In this section:
prescribed water industry infrastructure has the same meaning as in section 9.

20G Duration of licence

- (1) A licence remains in force until it is cancelled or the licensee surrenders the licence with the consent of the Minister.
- (2) A licence does not have effect for the purposes of Division 2 while it is suspended.

Note. The effect of subsection (2) is to prohibit the licensee from doing what the licence would otherwise authorise, but without affecting any obligations to which the licensee is subject under this Act, the regulations or licence conditions.

20H Variation of class of infrastructure that may be operated under licence

A licensed operator may apply for a variation of the class of infrastructure that the licensee may operate under the licence in the same manner as for an application for a licence, and this Act applies, subject to any modifications

prescribed by the regulations, to the application as if it were an application for a licence.

20I Annual fees and returns

- (1) A licensee must, in each year before the date fixed for that purpose by the Minister:
 - (a) pay to the Minister the annual licence fee determined by the Minister, and
 - (b) lodge with IPART an annual return containing the information required by the Minister by licence condition or by written notice.
- (2) The Minister may, by licence condition or by written notice, require the licensee to have information in an annual return verified in a specified manner.
- (3) If a licensee fails to pay a fee or lodge a return as required, the Minister may, by written notice, require the licensee to make good the default and, in addition, pay to the Minister the amount fixed by the regulations as a penalty for default.

20J Surrender of licence

- (1) Subject to this section, a licence may be surrendered with the consent of the Minister.
- (2) Subject to this section, the Minister may, on application for consent to the surrender of a licence:
 - (a) consent to the surrender of the licence, or
 - (b) if satisfied that it is necessary for the protection of public health or safety, the protection of the environment or the protection of small retail customers:
 - (i) impose further licence conditions, and
 - (ii) consent to the surrender of the licence on the licensee satisfying the Minister that the conditions have been fulfilled or that satisfactory arrangements have been made for their fulfilment.
- (3) If the licensee provides an essential service under the licence, the Minister must not consent to the surrender of the licence unless the Minister is satisfied that satisfactory arrangements are in place for the continued provision of the service.

20K Licence cannot be transferred

A licence is not transferable.

Division 6 Special provisions addressing risk to public health or safety

20L Public health and safety directions

- (1) The Minister may, if of the opinion that it is necessary to do so in order to deal with a risk to public health or safety arising from the construction, installation, alteration or operation of water industry infrastructure to which this Part applies, give directions (*public health and safety directions*) to:
 - (a) the holder of an approval, or
 - (b) a licensee, or

- (c) a person required to hold, or act as authorised by, an approval or licence under this Part,
requiring specified action to be taken to reduce or eliminate the risk.
- (2) Without limiting the public health and safety directions that may be given, if in the opinion of the Minister the risk is sufficiently serious to warrant it, the directions may require cessation of operation of the infrastructure.
- (3) Before giving a public health and safety direction, the Minister must, unless the urgency of the circumstances preclude it, consult with the Minister responsible for the administration of the *Public Health Act 2010* or that Minister's nominee.
- (4) If a person contravenes a public health and safety direction, the Minister may arrange for the required action to be taken by a person authorised by IPART to take the action.
- (5) A person who contravenes a public health and safety direction must pay to the Minister an amount equal to the reasonable cost of action taken under subsection (4).
- (6) It is a condition of an approval or licence that public health and safety directions must be complied with.

20M Increase in penalties if operation of infrastructure causes harm to public health or safety

- (1) If, in a prosecution for an offence against this Act, the prosecution proves:
 - (a) that water industry infrastructure to which this Part applies was operated without the required approval or licence or in contravention of the conditions of an approval or licence, and
 - (b) that act was intentional, and
 - (c) the operation of the infrastructure caused (directly or indirectly) actual or potential harm to the health or safety of human beings that is of a high impact or on a wide scale,the maximum penalty for the offence is increased, in the case of a corporation, to \$5 million or, in the case of an individual, to \$1 million.
- (2) This section does not apply unless the court attendance notice or application commencing the proceedings alleges that those factors apply to the commission of the offence.

Division 7 Enforcement and cancellation of approvals

20N Regulatory authority and statutory default

- (1) In this Division:
regulatory authority means:
 - (a) for an approval or a matter related to an approval—IPART, and
 - (b) for a licence or a matter related to a licence—the Minister.
- (2) A *statutory default* occurs if:
 - (a) the holder of an approval contravenes this Act or the regulations, or
 - (b) a licensee contravenes this Act or the regulations, or
 - (c) an approval or licence is improperly obtained, or

- (d) an event occurs or circumstances come to light that mean that the holder of an approval or licence would not be granted the approval or licence if an application for the approval or licence were now to be made.
- (3) Action may be taken against a person under this Division for statutory default even though the person has since ceased to hold an approval or licence.

20O Effect of criminal proceedings

- (1) The regulatory authority may exercise its powers under this Division in relation to statutory default whether or not criminal proceedings have been, or are to be, taken for the default and even though a penalty may have already been imposed for the default.
- (2) However, the regulatory authority must, in imposing a monetary penalty, take into account any fine that has already been imposed in criminal proceedings.

20P Compliance notice

- (1) If a statutory default occurs, the regulatory authority may give written notice (a *compliance notice*) to the alleged defaulter specifying the default and requiring the alleged defaulter to take specified action, within a period specified in the notice, to remedy or mitigate the consequences of the default or to prevent the continuance or recurrence of the default.
- (2) Without limiting the action that may be specified, a compliance notice may:
 - (a) require a notice to be given to customers or to be published, or
 - (b) require an audit and compliance program to be undertaken, or
 - (c) require a training program to be undertaken.
- (3) If the alleged defaulter fails to take the specified action within the time allowed in the notice, the alleged defaulter is guilty of an offence.
Maximum penalty:
 - (a) in the case of a corporation—\$2 million, or
 - (b) in the case of an individual—\$400,000.

20Q Injunctive remedies

- (1) If a statutory default occurs or there are reasonable grounds to suspect that a statutory default may occur or be attempted, the Supreme Court may, on application by the regulatory authority, grant an injunction to prevent the statutory default or to prevent recurrence of the statutory default.
- (2) The injunction may be granted on terms the Court considers appropriate.
- (3) An injunction may be granted under this section whether or not:
 - (a) there has been some previous statutory default of the same or a similar nature, or
 - (b) there is imminent danger of substantial damage to any person.
- (4) No undertaking as to damages can be required of the regulatory authority in proceedings under this section.

20R Disciplinary action

- (1) If a statutory default occurs, the regulatory authority may give written notice to the alleged defaulter specifying the default and requiring the alleged defaulter to show cause, within a period specified in the notice, why disciplinary action should not be taken against the alleged defaulter.

- (2) The regulatory authority must allow at least 14 days for written submissions to be made, or provide for a hearing at which oral submissions may be made, to the regulatory authority by:
- (a) the alleged defaulter, and
 - (b) if an allegation in relation to the statutory default is made against:
 - (i) a related corporation of the alleged defaulter, or
 - (ii) a person who is a director or person concerned in the management of the alleged defaulter or a related corporation of the alleged defaulter,the related corporation or person.
- (3) After considering any submissions made by the alleged defaulter, the regulatory authority may, by order, take disciplinary action as follows:
- (a) the authority may censure the alleged defaulter,
 - (b) the authority may impose a fine on the alleged defaulter of up to:
 - (i) in the case of a corporation—\$500,000, or
 - (ii) in the case of an individual—\$100,000,
 - (c) the authority may order the forfeiture to the Crown of the whole or part of any security given under this Act by the alleged defaulter,
 - (d) in the case of an approval:
 - (i) the authority may impose further conditions or vary conditions of the approval, or
 - (ii) the authority may suspend the approval for a specified period, or until the fulfilment of specified conditions or until further order of the authority, or
 - (iii) the authority may cancel the approval,
 - (e) in the case of a licence:
 - (i) the authority may impose further licence conditions or vary the licence conditions for a specified period, or until the fulfilment of specified conditions or until further order of the authority (including by imposing a condition that prohibits the licensee from providing a particular service under the licence despite the licensee being the holder of the operational approval for the infrastructure to which the service relates or having an agreement with the holder of the operational approval for the provision of the service), or
 - (ii) the authority may suspend the licence for a specified period, or until the fulfilment of specified conditions or until further order of the authority, or
 - (iii) the authority may cancel the licence,
 - (f) the authority may declare that the alleged defaulter, or a related corporation of the alleged defaulter, is a disqualified corporation for a specified period, or until the fulfilment of specified conditions or until further order of the authority,
 - (g) the authority may declare that a person who is a director or concerned in the management of the alleged defaulter or a related corporation of the alleged defaulter is a disqualified individual for a specified period, or until the fulfilment of specified conditions or until further order of the authority.

- (4) If the alleged defaulter owns essential infrastructure or provides an essential service, the regulatory authority must, in determining the appropriate disciplinary action to take and the date when it is to take effect, consider whether there are suitable arrangements in place for the continuity of the service.
- (5) If disciplinary action is taken against a licensee, the regulatory authority must give written notice of the action and the reasons for it to each holder of an approval with whom the licensee has an agreement for the provision of services under the licence.
- (6) Disciplinary action takes effect on the date of service of the order on the alleged defaulter or on a later date specified in the order.
- (7) If a statutory default comprises an offence for which a penalty notice may be issued and a penalty notice has been issued for the default and the penalty has been paid, no disciplinary action may be taken for the default.

20S Court orders in addition to penalty

- (1) If, in proceedings under this Act, the court finds that the defendant contravened this Part, the court may, in addition to any penalty it may impose, do one or more of the following:
 - (a) order the person to take specified action to remedy or mitigate the consequences of the contravention or to prevent the continuance or recurrence of the contravention,
 - (b) order the person to take specified action to publicise the contravention and its consequences and any compliance notice or other order made against the person,
 - (c) order the person to pay to a public authority reasonable costs and expenses incurred by the authority in taking action to remedy or mitigate the consequences of the contravention,
 - (d) order the person to pay to a person (other than a public authority) reasonable costs and expenses incurred by the person, or compensation of an amount determined by the court for injury, loss or damage suffered by the person, as a result of the contravention,
 - (e) order the person to pay reasonable costs and expenses incurred during the investigation of the contravention for taking samples or conducting inspections, tests, measurements or analysis, or transporting, storing or disposing of evidence,
 - (f) order the person to pay an amount not exceeding the court's estimation of the amount of the economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
- (2) An economic benefit obtained by delaying or avoiding costs is to be taken to be an economic benefit acquired by the person, or accrued or accruing to the person, as a result of a contravention if the contravention can be attributed (in whole or in part) to that delay or avoidance.
- (3) The court may, by an order under this section, fix a period for compliance and impose other requirements the court considers necessary or expedient for enforcement of the order.
- (4) The Local Court:
 - (a) may not make an order under subsection (1) (e), and

- (b) may not make an order under this section for the payment of an amount that exceeds in total the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.

20T Cancellation of approval and forfeiture of security

- (1) There are grounds for cancellation of an approval under this section if:
 - (a) in the case of a design approval:
 - (i) 5 years have elapsed and the construction, installation or alteration of the infrastructure has not substantially commenced, or
 - (ii) there is no longer an intention to construct, install, alter or bring into operation water industry infrastructure as proposed, or
 - (b) in the case of an operational approval—operation of the infrastructure under this Act has ceased on a permanent basis or it is intended that operation of the infrastructure under this Act cease on a permanent basis.
- (2) However, an approval for essential infrastructure cannot be cancelled:
 - (a) in circumstances that may result in a declared failure or in which a failure of a provider of the essential service may be declared, or
 - (b) during a declared failure of a provider of the essential service, or
 - (c) in circumstances in which directions may be given to an insolvency official under Division 3 of Part 5 in relation to a provider of the essential service.
- (3) The holder of an approval may apply to IPART for cancellation of the approval.
- (4) IPART may, by written notice to the holder of an approval, require the holder to show cause, within a period specified in the notice:
 - (a) if IPART is acting on its own initiative—why the approval should not be cancelled and any security given by the holder forfeited, or
 - (b) if the holder has applied for cancellation—why any security given by the holder should not be forfeited.
- (5) IPART must allow the holder of the approval at least 14 days to make submissions in writing to IPART or provide for a hearing at which the holder may make oral submissions to IPART.
- (6) After considering any submissions made by the holder of the approval, if IPART is satisfied that there are grounds for the cancellation of the approval:
 - (a) IPART may:
 - (i) cancel the approval, or
 - (ii) impose further conditions of the approval and cancel the approval on the holder of the approval satisfying IPART that the conditions have been fulfilled or that satisfactory arrangements have been made for their fulfilment, and
 - (b) IPART may order the forfeiture to the Crown of the whole or part of any security given by the holder under this Act.

20U Cancellation of approval in public interest

- (1) The Minister may, by written notice to the holder of an approval, cancel the approval if the Minister considers the cancellation to be in the public interest.

- (2) The notice must specify whether the cancellation is on the Minister's own initiative or on the written recommendation of another Minister.
- (3) Cancellation may be with respect to the whole or a specified part of the water industry infrastructure to which the approval relates.
- (4) Cancellation takes effect on the day specified in the notice of cancellation.
- (5) In determining when cancellation is to take effect, the Minister is to consider the public interest and, if cancellation arises from the recommendation of another Minister, that Minister's reasons for the recommendation.
- (6) The holder of an approval may bring proceedings for compensation in the Supreme Court:
 - (a) if cancellation was on the Minister's own initiative—against the Minister, or
 - (b) if cancellation was on the written recommendation of another Minister— against that Minister.
- (7) The Supreme Court is to hear the proceedings and determine whether it is just that compensation be paid to the plaintiff by reason of the cancellation.
- (8) If the Supreme Court determines that it is just that compensation be paid, the Supreme Court must determine the amount of compensation and give judgment accordingly.

Division 8 Administrative review and appeal

20V Administrative review by Civil and Administrative Tribunal

The following applications may be made to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of a decision under this Part:

- (a) an applicant for an approval may apply for review of a decision of IPART:
 - (i) refusing to grant an approval, or
 - (ii) refusing to accept a variation of an application after an invitation to make submissions has been given, or
 - (iii) fixing conditions of an approval,
- (b) the holder of an approval may apply for review of a decision of IPART:
 - (i) refusing to vary the works authorised by the approval, or
 - (ii) refusing to vary or revoke conditions of the approval, or
 - (iii) refusing to give a consent or grant an approval required by conditions of the approval, or
 - (iv) varying or imposing further conditions of the approval, or
 - (v) refusing to consent to the transfer of the approval, or
 - (vi) refusing to cancel the approval on application,
- (c) an applicant for a licence may apply for review of a decision of the Minister:
 - (i) refusing to grant a licence, or
 - (ii) fixing conditions of a licence,
- (d) a licensee may apply for review of a decision of the Minister:
 - (i) refusing to vary the class of infrastructure that may be operated under the licence, or

- (ii) refusing to vary or revoke licence conditions, or
- (iii) refusing to give a consent or grant an approval required by licence conditions, or
- (iv) varying or imposing further licence conditions, or
- (v) refusing to consent to surrender of the licence.

20W Appeal to Civil and Administrative Tribunal

- (1) The following appeals may be made to the Civil and Administrative Tribunal against a decision under this Part:
 - (a) a person to whom a compliance notice is issued by the Minister or IPART may appeal against the decision to issue the notice,
 - (b) a person against whom disciplinary action is taken by the Minister or IPART may appeal against the decision to take that action,
 - (c) the holder of an approval that is cancelled on the initiative of the Minister or IPART may appeal against the decision to cancel the approval,
 - (d) a person against whom an order for forfeiture of security is made may appeal against the decision to make the order or as to the amount to be forfeited.
- (2) An appeal is to be dealt with by way of a new hearing, and fresh evidence or fresh information may be given on the appeal.

Division 9 Miscellaneous

20X Applications

- (1) An application under this Part:
 - (a) must be made in the manner and form approved by the Minister, and
 - (b) must comply with any requirements set out in the regulations, and
 - (c) must be accompanied by the fee determined by the Minister, and
 - (d) must be lodged at the office of IPART.
- (2) The Minister or IPART may, by written notice to an applicant, require the applicant:
 - (a) to give the Minister or IPART additional information reasonably required to decide the application, or
 - (b) to have information in the application or additional information verified in a specified manner.

20Y Notices

A notice required to be given to the Minister or IPART under this Part must be given in the manner and form approved by the Minister and be accompanied by the material required by the Minister.

20Z Later agreement with licensed retailer for same service of no effect

If the holder of an operational approval for a category A scheme purports to enter into an agreement with more than one licensed retailer for the sale of the same water or sewerage service provided by means of the scheme (as identified in the operational approval), the agreement that is made later in time is of no effect while the agreement that is made earlier in time remains in effect.

[4] Section 42 Service providers to have approved cost allocation manuals

Omit the penalty provision from section 42 (10). Insert instead:

Maximum penalty:

- (a) in the case of a corporation—\$55,000, or
- (b) in the case of an individual—\$11,000.

[5] Section 43 Hindering access to certain services

Omit the penalty provision from section 43 (1). Insert instead:

Maximum penalty:

- (a) in the case of a corporation—\$55,000, or
- (b) in the case of an individual—\$11,000.

[6] Part 5, heading

Omit “**retail**”. Insert instead “**industry**”.

[7] Part 5, Division 1AA

Insert before Division 1:

Division 1AA Customer contracts for category A schemes

46AA Definitions

In this Division:

category A scheme licence means:

- (a) an operator’s licence under which the licensee operates infrastructure that connects a category A scheme to a customer’s land, or
- (b) a retailer’s licence.

contract charge means a fee or charge payable by a customer under a contract with a licensed operator or licensed retailer for water or sewerage services.

lease means a lease, licence, permit or other agreement under which a person (the *lessor*) parts with possession of land to another (the *lessee*).

standard contract charges of a licensed operator or licensed retailer means the contract charges of the licensee referred to in section 46AC.

46AB Implied customer contracts for category A schemes

- (1) An owner of land to which water or sewerage services are provided by means of a category A scheme to which Part 2 applies is taken to have entered into a contract for the services with:
 - (a) the licensed operator of the infrastructure that connects the scheme to the land, and
 - (b) the licensed retailer of the services,in each case, on the terms and conditions set out in the regulations and for the standard contract charges of the licensee.
- (2) However, a contract is not implied:
 - (a) if the connection of the land to the scheme:
 - (i) was not authorised by the owner of the infrastructure or the licensed operator or a predecessor of the owner or operator, and

- (ii) has not since been approved by the owner of the infrastructure or the licensed operator or a predecessor of the owner or operator, or
 - (b) to the extent that it would conflict with an order in force under section 83.
- (3) Subject to the regulations, the implied contract may be modified or excluded by express agreement between the licensee and the owner of the land.

46AC Standard contract charges for category A schemes

- (1) It is a condition of a category A scheme licence that the licensee must, for each category A scheme for which the licensee provides services under the licence:
- (a) publish on its website in a manner conspicuous to customers:
 - (i) the contract charges payable for the services, and
 - (ii) if the contract charges are to be varied—the date from which the charges as varied become payable, and
 - (b) cause written notice of the contract charges, and of any variation, to be given to IPART.
- (2) It is a condition of a category A scheme licence that the licensee must give each customer at least 6 months' written notice (or such shorter period of notice as is approved by the Minister on application) of an increase in a contract charge payable by the customer.
- (3) In the case of a licensed retailer, it is a condition of the licence that the notice must be sent with, or included in, an account or invoice for a service provided under the licence.
- (4) No amount of an increase in a contract charge may be recovered by the licensee from a customer if notice of the increase has not been given to the customer as required by this section.
- (5) Subsection (2) does not apply to a variation of contract charges to the extent that:
- (a) the variation does not exceed a consumer price index increase as contemplated by the regulations, or
 - (b) the variation is in accordance with a determination under Division 2.

46AD New owner liable for unpaid charges under customer contract on change of ownership of land

On a change of ownership of land to which water or sewerage services are provided by means of a category A scheme to which Part 2 applies, the new owner of the land is liable for the amount of any unpaid contract charges for the services owed to a licensed operator or licensed retailer as if the new owner had entered into the contract under which the charges are owed.

46AE Lessee may pay and recover charges under customer contract

If water or sewerage services are provided to land by means of a category A scheme to which Part 2 applies and a lease of the land provides, expressly or impliedly, that the lessor of the land is to pay contract charges to a licensed operator or licensed retailer, the lessee may pay to the licensed operator or licensed retailer any charges that are due but unpaid by the lessor and may:

- (a) recover the amount paid from the lessor as a debt due to the lessee, or
- (b) deduct the amount paid from any rent, licence fee or other occupation fee payable by the lessee to the lessor.

46AF Certificates as to amounts due under customer contract

- (1) It is a condition of a category A scheme licence that the licensee must, on application and payment of the fee fixed by the licensee and approved by IPART, issue to the applicant a certificate:
 - (a) containing particulars of any contract charges payable to the licensee for water or sewerage services provided to specified land as at a specified date, or
 - (b) to the effect that there are no such amounts.
- (2) An application for a certificate must:
 - (a) be in writing, and
 - (b) specify the name and address of the applicant, and
 - (c) identify the land to which the application relates.
- (3) A certificate of a licensee is conclusive proof, in favour of a purchaser in good faith and for value of the land to which the certificate relates, that, at the date specified in the certificate, no contract charges were payable to the licensee for water or sewerage services provided to the land other than the amounts specified in the certificate.

[8] Section 47 Internal review of certain decisions disputed by small retail customers

Omit section 47 (1). Insert instead:

- (1) A small retail customer may apply to a licensed operator or licensed retailer for a review of any of the following:
 - (a) a matter arising under a contract for water or sewerage services provided to the customer,
 - (b) the exercise or proposed exercise of powers under Division 2 of Part 6 by or on behalf of the licensed operator,
 - (c) any other matter prescribed by the regulations.

[9] Section 47 (2) (b)

Omit “retail suppliers”.

[10] Section 49 Approved ombudsman scheme

Omit section 49 (1) (a). Insert instead:

- (a) disputes and complaints under contracts for water or sewerage services provided to small retail customers, and

[11] Section 49 (2) (a) and (c) and (5)

Omit “authorised” wherever occurring.

[12] Section 50 Licence conditions relating to approved ombudsman scheme

Omit “supplies water or provides sewerage services (or both)” from section 50 (1).

Insert instead “provides water or sewerage services”.

[13] Section 50 (2)

Omit the subsection. Insert instead:

- (2) If an operator’s licence is a category A scheme licence within the meaning of Division 1AA or a licensed operator is an authorised WICA provider within

the meaning of Division 1AA of Part 6, it is a condition of the operator's licence that:

- (a) the operator must be a member of an approved ombudsman scheme, and
- (b) the operator is bound by, and must comply with, any decision of the ombudsman under the scheme relating to a dispute or complaint involving the operator and a small retail customer or entitled person.

[14] Section 50A

Insert after section 50:

50A Obligations of insolvency official

If an insolvency official has been appointed in respect of a licensed operator or licensed retailer, or any property of a licensed operator or licensed retailer, the following provisions apply:

- (a) a dispute or complaint about the licensee may, or may continue to, be dealt with under this Division,
- (b) the insolvency official must facilitate the resolution of the complaint or dispute,
- (c) the insolvency official is bound by this Division as if the insolvency official were the licensee.

[15] Section 50B

Insert before section 51:

50B Definitions

In this Division:

monopoly service means a water or sewerage service declared to be a monopoly service under section 51.

monopoly supplier means:

- (a) a licensed operator that operates infrastructure by means of which a monopoly service is provided, or
- (b) a licensed retailer that sells a monopoly service to a customer.

[16] Section 51 Declaration of monopoly service

Omit section 51 (1). Insert instead:

- (1) The Minister may, by order published in the Gazette, declare that a specified water or sewerage service provided by means of water industry infrastructure to which Part 2 applies in a specified area to a specified class of customers is a monopoly service.

[17] Section 51 (2) (b)

Omit "in the case of a water supply service for recycled water,".

Insert instead "in the case of a water service of a kind prescribed by the regulations—".

[18] Part 5, Division 3

Omit the Division. Insert instead:

Division 3 Continuity of essential services

54 Designation of last resort providers of essential service

- (1) The Minister may, by order published in the Gazette, designate a person as a last resort provider to take the place of a provider of an essential service in the event that the provider of the essential service is declared to have failed.
Note. The declaration of a failure is made under section 57.
- (2) The last resort provider must be a public water utility or a licensee.
- (3) IPART must investigate and make a recommendation to the Minister as to the person to be designated as the last resort provider, giving primary consideration to any public water utility in whose area of operations the essential infrastructure is located and secondary consideration to licensees who have consented to act as last resort providers.
- (4) If a recommendation is to be made following an application for a design approval, IPART need not commence the necessary investigation until works for the essential infrastructure have substantially commenced under the design approval.
- (5) The Minister must consider, but is not bound to accept, IPART's recommendations and may seek further advice from IPART on the designation of last resort providers.
- (6) Without limiting the terms of a designation of a last resort provider, a public water utility may be designated as the last resort provider of all essential services provided within its area of operations in the event that any provider of an essential service is declared to have failed.
- (7) Before designating a person as a last resort provider, the Minister must, unless the urgency of the circumstances preclude it:
 - (a) give written notice of the proposed designation to:
 - (i) the holder of the operational approval for the essential infrastructure, and
 - (ii) the provider of the essential service for which the last resort provider is to be designated, and
 - (iii) the person proposed to be designated as the last resort provider, and
 - (iv) any other provider or last resort provider of the essential service, and
 - (b) allow them at least 14 days within which to make submissions to the Minister about the proposed designation.
- (8) The regulations may provide for additional matters relating to the designation of last resort providers.

55 Contingency planning by last resort providers

- (1) A last resort provider of an essential service must:
 - (a) submit, within 4 months after becoming the last resort provider of the service (or such longer period as is approved by IPART), a plan (a **contingency plan**) to IPART for its approval for the continued provision of the essential service in the event of a declared failure of the

- essential service provider for which the last resort provider is designated, and
 - (b) review and resubmit, at intervals determined by written notice to the last resort provider by IPART, the contingency plan for the approval of IPART, and
 - (c) conduct exercises to test the operation of the approved contingency plan as contemplated by the plan or as required by IPART by written notice to the last resort provider.
- (2) A contingency plan must:
- (a) comply with the requirements of the regulations, and
 - (b) be prepared in accordance with guidelines published by IPART in the Gazette and on IPART's website, and
 - (c) be prepared in conjunction with the providers of the essential service, the holder of the operational approval for the essential infrastructure and any other last resort provider of the service.
- (3) If the last resort provider is a public water utility and customers of a failed licensee will be transferred to the last resort provider in the event of a declared failure, the contingency plan may:
- (a) identify the fees and charges for a specified service provided by the utility to its small retail customers by means of its water or sewer mains (being a service that is, as far as reasonably practicable, equivalent to the essential service) as the utility's standard contract charges, and
 - (b) identify the terms and conditions that apply to a contract for a specified service provided by the utility to its small retail customers by means of its water or sewer mains (being a service that is, as far as reasonably practicable, equivalent to the essential service) as the utility's standard contract conditions.
- (4) Without limiting the matters that may be provided for in a contingency plan, a contingency plan may:
- (a) set out how customers to be transferred to the last resort provider in the event of a declared failure are to be notified of the transfer, and
 - (b) contemplate an arrangement under which staff of the essential service provider assist the last resort provider to provide the essential service during a declared failure.
- (5) A contingency plan may be modified and resubmitted to IPART for its approval at any time.
- (6) IPART may, by written notice to a last resort provider, approve a contingency plan with or without specified modifications.

56 Obligations to facilitate and pay for contingency planning

- (1) An essential service provider for which a last resort provider has been designated must:
- (a) facilitate preparation and review of the contingency plan by the last resort provider, including by:
 - (i) providing information reasonably required in a timely fashion, and
 - (ii) allowing the last resort provider a reasonable opportunity to inspect infrastructure and computing systems and their operation as reasonably required, and

- (b) notify the last resort provider of any change in systems or processes that may require modification of the contingency plan or of which the last resort provider reasonably needs to be aware, and
 - (c) facilitate the conduct by the last resort provider of required exercises to test the operation of the approved contingency plan, and
 - (d) pay the last resort provider an amount determined in accordance with this section to be the reasonable cost of compliance with section 55, within 28 days after the determination or such other period as is agreed between the essential service provider and last resort provider.
- (2) The reasonable cost of compliance with section 55 by the last resort provider is to be determined:
- (a) by agreement between the essential service provider and last resort provider, or
 - (b) if the essential service provider and last resort provider are unable to come to an agreement within 28 days after the last resort provider submits a written request to the essential service provider for payment—by IPART on the application of the last resort provider.
- (3) IPART must publish, in the Gazette and on IPART’s website, guidelines as to how the reasonable cost of compliance with section 55 by the last resort provider is to be determined.
- (4) The holder of an operational approval for essential infrastructure and any other provider or last resort provider of the essential service must facilitate preparation and review of the contingency plan by the last resort provider and the conduct by the last resort provider of required exercises to test the operation of the approved contingency plan.

57 Declaration of failure of essential service provider

- (1) The Minister may, by order published in the Gazette, declare that an essential service provider has failed if the Minister is satisfied that:
- (a) the essential service provider has ceased or is about to cease providing an essential service, or
 - (b) an insolvency official has been appointed in respect of the essential service provider or any property of the essential service provider, or
 - (c) an order has been made for the winding up of the essential service provider or a resolution has been passed for the winding up of the essential service provider, or
 - (d) other criteria specified in the regulations have been met,
- and no other arrangement is in place for the continued provision of the service under this Act.
- (2) The order must specify:
- (a) the essential service affected by the failure, and
 - (b) the reason for the declaration, and
 - (c) the essential service provider who is declared to have failed (the *failed licensee*), and
 - (d) the last resort provider who is to replace the failed licensee for the provision of the essential service, and
 - (e) the date, or the manner of fixing the date, that is to be the transfer date of the failure (which must not be a date before the date of publication of the order).

- (3) A single order may relate to more than one essential service and, in that case, this Division applies separately to each essential service to which the order relates.
- (4) The Minister must ensure that a copy of the order is given to:
 - (a) the holder of the operational approval for the essential infrastructure, and
 - (b) the failed licensee, and
 - (c) the last resort provider, and
 - (d) any other provider or last resort provider of the essential service.
- (5) The Minister must cause the order to be made available on IPART's website.

57A Effect of declaration of failure

- (1) On the transfer date of a declared failure, despite any other provision of this Act:
 - (a) the licence of the failed licensee (if then in force) becomes subject to a condition prohibiting the licensee from providing the essential service under the licence, and
 - (b) if the last resort provider is a public water utility—the utility is taken to have been assigned the function of providing the essential service formerly provided by the failed licensee, and
 - (c) the last resort provider is taken to have notified IPART that the licensee is the operator or retailer of the essential service as required under Division 5 of Part 2.
- (2) If the last resort provider is a public water utility, the utility is, for the duration of a declared failure, to be regarded as the licensed operator or licensed retailer (as the case requires) of the essential service for the purposes of this Act and bound by licence conditions imposed by this Act or the regulations.
- (3) An agreement entered into between the holder of the operational approval for essential infrastructure and a person other than the last resort provider (whether before or after the declaration of a failure) is of no effect to the extent that it provides for a person other than the last resort provider to be, at any time during a declared failure:
 - (a) if the last resort provider operates the essential infrastructure—the licensed operator of the essential infrastructure, or
 - (b) if the last resort provider sells the essential service—the licensed retailer of the essential service.

57B Relationship between last resort provider and holder of operational approval and others during failure

- (1) On and from the transfer date of a declared failure, the last resort provider is to be taken to be a party (in substitution for the failed licensee) to any agreement necessary for the provision of the essential service between the failed licensee and the holder of the operational approval for the essential infrastructure, another licensee, a public water utility or any other person, as in force immediately before the transfer date, subject to the regulations and any modifications agreed between the parties.
- (2) If the last resort provider proposes a modification to such an agreement on the basis that the modification is reasonably necessary for the efficient provision of the essential service by the provider (including a modification relating to a

payment to be made by the provider), the other party to the agreement must not unreasonably withhold agreement to the modification.

- (3) A dispute between the last resort provider and another person as to the application of subsection (1) or subsection (2) is subject to arbitration under the *Commercial Arbitration Act 2010*.

57C Relationship between last resort provider and category A scheme customers during failure

- (1) This section applies to a last resort provider that, following the declaration of a failure:
- (a) operates essential infrastructure that connects a category A scheme to a customer's land, or
 - (b) is a retailer of the essential service.
- (2) On the transfer date of a declared failure, each person who was a customer of the failed licensee for the essential service immediately before the transfer date ceases to be a customer of the failed licensee and becomes a customer of the last resort provider of the essential service (a *transferred customer*).
- (3) Rights and obligations that have accrued under a contract between the failed licensee and a transferred customer before the transfer date are not affected and no early termination charge becomes payable.
- (4) Division 1AA applies to transferred and new customers of a last resort provider subject to the following modifications:
- (a) a reference to terms and conditions set out in the regulations is to be read as a reference to the last resort contract conditions,
 - (b) a reference to standard contract charges is to be read as a reference to the last resort contract charges,
 - (c) the last resort contract charges may not be increased as contemplated by that Division.

Note. The last resort contract charges may, in certain circumstances, be increased under a cost recovery scheme.

- (5) This section applies to a last resort provider that is a public water utility despite any provision of the utility's Act and despite the *Independent Pricing and Regulatory Tribunal Act 1992*.
- (6) In this section:

last resort contract charges means a transfer fee not exceeding an amount determined by the Minister on the recommendation of IPART, and:

- (a) the standard contract charges (within the meaning of Division 1AA) of the failed licensee, or
- (b) if, in the case of a last resort provider that is a public water utility, the standard contract charges of the utility as identified in the contingency plan are greater than the standard contract charges of the failed licensee—the standard contract charges of the utility as identified in the contingency plan.

Note. For certain public water utilities, the standard contract charges of the utility are subject to a maximum price determined by IPART, which may be varied from time to time.

last resort contract conditions means:

- (a) the terms and conditions that would have applied if the service were provided by the failed licensee, or

- (b) if, in the case of a last resort provider that is a public water utility, the contingency plan identifies terms and conditions as standard contract conditions of the utility—the standard contract conditions of the utility as identified in the contingency plan.

57D Provision of essential service by last resort provider

- (1) The last resort provider must, for the duration of a declared failure, provide the essential service as contemplated by the contingency plan and, for that purpose, may have access to infrastructure and customer data systems and other property as reasonably required.
- (2) During a declared failure, the failed licensee, the holder of the operational approval for the essential infrastructure and any other provider or last resort provider of the essential service must:
 - (a) facilitate the provision of the essential service by the last resort provider, and
 - (b) take action as required by the approved contingency plan or the regulations, and
 - (c) comply with reasonable directions given by the last resort provider in providing the essential service.
- (3) A person must not obstruct the last resort provider's access to property, or the provision of the essential service by the last resort provider, during a declared failure.

Maximum penalty:

- (a) in the case of a corporation—\$250,000, or
- (b) in the case of an individual—\$50,000.

57E Obligation of holder of operational approval to endeavour to resolve failure

It is a condition of an operational approval for essential infrastructure that, in the event of a declared failure, the holder of the approval must take all reasonable steps to resolve the failure as quickly as possible, including by:

- (a) entering into a suitable agreement with a person to take the place of the last resort provider, or
- (b) obtaining a licence with a view to taking the place of the last resort provider, or
- (c) seeking to sell the infrastructure and transfer the operational approval to the last resort provider or to a person who could take the place of the last resort provider or who has made a suitable agreement with a person who could take the place of the last resort provider.

57F Review of failure by IPART

- (1) IPART must, at least once in each 6 months, review a declared failure with a view to making recommendations to the Minister about how the failure may be resolved as quickly as possible.
- (2) In conducting a review, IPART must consider:
 - (a) whether there has been an adequate opportunity for the holder of the operational approval to resolve the failure, and
 - (b) whether there is a reasonable likelihood of a licensee replacing the last resort provider for the continued provision of the essential service under this Act, and

- (c) whether it is practicable to resolve the failure by connection of affected premises to alternative infrastructure, and
 - (d) whether the failure should be resolved by a public water utility providing a service under the utility's Act to replace the provision of the essential service under this Act.
- (3) In conducting a review, IPART must invite submissions from:
- (a) the holder of the operational approval for the essential infrastructure, and
 - (b) the last resort provider, and
 - (c) the failed licensee, and
 - (d) any other provider or last resort provider of the essential service.
- (4) IPART must provide a report on a review to the Minister including recommendations as to the resolution of the failure.
- (5) The Minister must consider, but is not bound to accept, IPART's report and recommendations and may seek further advice from IPART on the resolution of the failure.

57G Resolution of failure by acquisition by public water utility

- (1) If the Minister is satisfied that a declared failure should be resolved by a public water utility providing a water or sewerage service under the utility's Act to replace the provision of the essential service under this Act on a permanent basis, the Minister may, by order published in the Gazette, declare that this section applies to the declared failure.
- (2) If this section is declared to apply:
- (a) any statutory power of the utility to acquire land by negotiation or compulsorily is to be read as extending to a power to acquire essential infrastructure and land for the purposes of the declaration, and
 - (b) the statutory power to acquire land and the *Land Acquisition (Just Terms Compensation) Act 1991* are to be read subject to the modification that a reference to land includes a reference to essential infrastructure and subject to other modifications prescribed by the regulations.

57H Declaration of end of failure

- (1) The Minister may, by order published in the Gazette, declare the end of the failure if:
- (a) arrangements are in place for the essential service subject to a declared failure to be provided by another licensee in place of the last resort provider, or
 - (b) the essential service subject to a declared failure is no longer to be provided under this Act, or
 - (c) the Minister is satisfied that the failure has otherwise been resolved or is about to otherwise be resolved.
- (2) The order must specify:
- (a) the essential service for which the failure is at an end, and
 - (b) if the service is to continue to be provided under this Act:
 - (i) the last resort provider who is to be replaced, and

- (ii) the licensee who is to replace the last resort provider (the *new licensee*), and
 - (c) if the service is to be replaced by a service provided under a public water utility's Act—the replacement service and the public water utility that is to provide it, and
 - (d) the date, or the manner of fixing the date, that is to be the end date of the failure (which must not be a date before the date of publication of the order).
- (3) A single order may relate to more than one essential service and, in that case, this Division applies separately to each essential service to which the order relates.
- (4) The end date must not be earlier than 6 months after the transfer date unless the last resort provider consents to an earlier end date.
- (5) In fixing the end date, the Minister must consider the extent to which the last resort provider has been able, or is expected to be able, to recover its costs and expenses from the failed licensee, the holder of the operational approval for the essential infrastructure, customers of the essential service or otherwise.
- (6) The Minister must ensure that a copy of the declaration is given to:
 - (a) the holder of the operational approval for the essential infrastructure, and
 - (b) the last resort provider, and
 - (c) the new licensee, and
 - (d) the failed licensee, and
 - (e) any other provider or last resort provider of the essential service.
- (7) The Minister must cause the order to be made available on IPART's website.

571 Effect of end of failure

- (1) On the end date of a declared failure:
 - (a) if the last resort provider is a public water utility—the utility ceases to have the function of providing the essential service under this Act, and
 - (b) if the last resort provider is a licensee—the licensee is taken to have notified IPART that the licensee has ceased to provide the essential service as required under Division 5 of Part 2, and
 - (c) if the essential service is to continue to be provided under this Act:
 - (i) in circumstances in which section 57C applied to the last resort provider:
 - (A) each person who was a customer of the last resort provider for the essential service immediately before the end date ceases to be a customer of the last resort provider and becomes a customer of the new licensee for the essential service, and
 - (B) the contract for the essential service ceases to be implied with the last resort provider under Division 1AA as modified by this Division and is implied with the new licensee under Division 1AA, and
 - (C) any modifications of the implied contract expressly agreed between the last resort provider and a customer continue to apply as if they had been agreed under Division 1AA

- between the new licensee and the customer, subject to further modification by express agreement under that Division, and
- (ii) the new licensee is taken to be a party (in substitution for the last resort provider) to any agreement necessary for the provision of the essential service between the last resort provider and the holder of the operational approval for the essential infrastructure, another licensee, a public water utility or any other person, as in force immediately before the end date, subject to any modifications agreed between the parties, and
- (d) if the essential service is to be replaced by a service provided under a public water utility's Act and section 57C applied to the last resort provider:
- (i) each person who was a customer of the last resort provider for the essential service immediately before the end date ceases to be a customer of the last resort provider under this Act and becomes a customer of the public water utility for the replacement service under the utility's Act, and
 - (ii) the contract for the service ceases to be implied under Division 1AA as modified by this Division and is instead implied under the public water utility's Act, and
 - (iii) any modifications of the implied contract expressly agreed between the last resort provider and a customer continue to apply as if they had been agreed under the public water utility's Act, subject to further modification by express agreement under that Act.
- (2) Rights and obligations that have accrued under a contract between the last resort provider and a customer before the end date are not affected and no early termination charge becomes payable.
- (3) The last resort provider, the holder of the operational approval for the essential infrastructure and any other provider or last resort provider of the essential service must:
- (a) facilitate the provision of the essential service by the new licensee or the provision of the service to replace the essential service by a public water utility, and
 - (b) take action as required by the approved contingency plan or the regulations.

57J Immunity from liability for last resort provider

- (1) A last resort provider assumes no financial or other liability of a failed licensee that accrued before the transfer date.
- (2) A last resort provider is not liable for loss, damage or injury arising from:
 - (a) an act or omission of the failed licensee, or
 - (b) the condition of the essential infrastructure,except to the extent to which the loss, damage or injury arises as a consequence of the negligence of the last resort provider.

57K Confidentiality requirement

A last resort provider or new licensee must not use or disclose any confidential or commercially sensitive information obtained under this Division other than for the purpose for which it is given unless:

- (a) the use or disclosure is authorised by the person to whom the information belongs, or
- (b) the last resort provider or new licensee is required by law to disclose the information.

57L Cost recovery scheme

- (1) In the event of a declared failure, the Minister may, on the application of the last resort provider and subject to the regulations:
 - (a) cause IPART to assess the reasonable costs and expenses of the last resort provider arising from:
 - (i) dealing with or remedying an act or omission of the failed licensee or the condition of the essential infrastructure, or
 - (ii) providing the essential service as a last resort provider, as known or reasonably able to be estimated at the date of the application, and
 - (b) provide, by order published in the Gazette, for a cost recovery scheme as set out in this section or as otherwise prescribed by the regulations.
- (2) More than one application may be made under this section and a cost recovery scheme may be provided for progressively during and after the declared failure.
- (3) Subject to the regulations, a cost recovery scheme may provide as follows:
 - (a) for the recovery of the whole or a part of the amount assessed from the failed licensee,
 - (b) for the recovery of the whole or a part of the amount assessed from the holder of the operational approval for the essential infrastructure,
 - (c) in circumstances in which it is unlikely that the whole of the amount assessed can be recovered from the failed licensee or holder of the operational approval:
 - (i) for the recovery of a portion of the amount assessed from customers of the last resort provider for the essential service through an increase in last resort contract charges approved by IPART,
 - (ii) for the recovery of any outstanding amount through an industry contribution scheme.
- (4) If a cost recovery scheme provides for the recovery of an amount from the failed licensee or the holder of the operational approval for essential infrastructure, the amount may be recovered in a court of competent jurisdiction as a debt owed to the last resort provider by the failed licensee or the holder of the operational approval for the infrastructure or jointly and severally from the failed licensee and holder, according to the terms of the scheme.

- (5) If a cost recovery scheme provides for the recovery of an amount from customers:
- (a) IPART may, on application of the last resort provider and subject to the regulations, approve a specified increase in last resort contract charges from a specified date, and
 - (b) the last resort provider must ensure that the increased last resort contract charges are published on its website in a manner conspicuous to customers, and
 - (c) this section applies despite Division 1AA and, in the case of a last resort provider that is a public water utility, despite any provision of the utility's Act and the *Independent Pricing and Regulatory Tribunal Act 1992*.
- (6) If a cost recovery scheme provides for an industry contribution scheme, the following provisions apply, subject to the regulations:
- (a) the scheme may provide for the Minister to require, as the Minister considers just and reasonable in the circumstances, contributions to be made to IPART (for payment to the last resort provider) by a licensee, the holder of an operational approval or a public water utility,
 - (b) the Minister must:
 - (i) give written notice of the proposed scheme to each proposed contributor specifying how the contributors have been selected and the amount of the contributions calculated, and
 - (ii) allow the proposed contributors at least 28 days within which to make submissions to the Minister about the proposed scheme,
 - (c) contributions are to be imposed by written notice to the contributor,
 - (d) if IPART determines a maximum price for a water or sewerage service provided by a public water utility required to make a contribution—the requirement to make the contribution is to be treated for the purposes of section 16A of the *Independent Pricing and Regulatory Tribunal Act 1992* as a requirement with which the utility must comply in providing the service.
- (7) In this section:
last resort contract charges has the same meaning as in section 57C.

57M Enforcement

- (1) A public water utility is under a statutory duty to comply with requirements imposed on it under this Division.
- (2) It is a condition of a licence that the licensee must comply with requirements imposed on it under this Division.
- (3) It is a condition of an operational approval that the holder must comply with requirements imposed on it under this Division.

57N Revocation of determination of essential infrastructure

- (1) IPART may, on application by an essential service provider or last resort provider or on its own initiative, revoke the determination of water industry infrastructure as essential infrastructure if satisfied that the determination would not now be made.

- (2) On receiving an application for revocation of a determination, IPART must invite submissions on the application from each provider or last resort provider of the essential service other than the applicant.
- (3) An invitation to make submissions on an application must allow at least 28 days for submissions to be made and must be accompanied by a copy of the application or set out how a copy of the application may be obtained.
- (4) If IPART proposes to refuse an application or to revoke the determination on its own initiative, IPART must:
 - (a) give written notice of the proposed refusal to each provider or last resort provider of the essential service specifying the reasons for it, and
 - (b) allow them at least 14 days within which to make submissions to IPART about the proposed refusal.
- (5) On making a decision on an application or revoking a determination on its own initiative, IPART must cause notice of the decision to be given to the Minister and each provider or last resort provider of the essential service and publish the decision on IPART's website.
- (6) If IPART revokes the determination, the designation of a last resort provider for the former essential infrastructure is of no further effect.
- (7) In this section, a reference to an essential service provider is to be read as including a reference to the holder of the operational approval for the essential infrastructure.

57O Applications

- (1) An application under this Division:
 - (a) must be made in the manner and form approved by the Minister, and
 - (b) must comply with requirements set out in the regulations, and
 - (c) must be accompanied by the fee determined by the Minister, and
 - (d) must be lodged at the office of IPART.
- (2) The Minister or IPART may, by written notice to an applicant, require the applicant:
 - (a) to give the Minister or IPART additional information reasonably required to decide the application, or
 - (b) to have information in the application or additional information verified in a specified manner.

57P Obligations and rights of insolvency official

- (1) If an insolvency official has been appointed in respect of an essential service provider or holder of an operational approval for essential infrastructure, or any property of the essential service provider or holder, the following provisions apply:
 - (a) the insolvency official must take all reasonable steps to facilitate compliance with the conditions of the operational approval for the essential infrastructure and continuity of the provision of the essential service,
 - (b) a document required to be given to the provider or holder under this Division must also be given to the insolvency official,
 - (c) an invitation to make submissions extended to the provider or holder under this Division must also be extended to the insolvency official,

- (d) any requirements imposed under this Division on the provider or holder are, subject to necessary modifications, also imposed on the insolvency official, and, in particular, during a declared failure the insolvency official must:
 - (i) facilitate the provision of the essential service by the last resort provider, and
 - (ii) take action as required by the approved contingency plan or the regulations, and
 - (iii) comply with reasonable directions given by the last resort provider in providing the essential service,
 - (e) the insolvency official must comply with directions of the Minister designed to ensure compliance with the obligations of the insolvency official under paragraph (a) or (d).
- (2) An insolvency official to whom directions are given under this section incurs no liability for loss, damage or injury arising out of compliance with the directions except to the extent to which the loss, damage or injury arises as a consequence of the negligence of the insolvency official.

57Q Disclosure of customer information

Nothing in the *Privacy and Personal Information Protection Act 1998* prevents the disclosure of customer information under this Division.

[19] Part 6 Work relating to water industry infrastructure

Omit each term or expression set out in Column 1 below wherever occurring in Part 6 (except in section 65 but including in the heading to Division 2).

Insert instead the term or expression set out opposite in Column 2:

Column 1

licensed network operator
licensed network operators
licensed network operator's
The network operator
the network operator
the network operator's
the operator
that operator

Column 2

WICA provider
WICA providers
WICA provider's
The WICA provider
the WICA provider
the WICA provider's
the provider
that provider

[20] Part 6, Division 1AA

Insert before Division 1:

Division 1AA Preliminary

57R Interpretation

- (1) In this Part:
authorised agent of an authorised WICA provider means a person appointed by the provider under section 65F.

authorised WICA provider means:

- (a) a WICA provider that is a prescribed authority within the meaning of section 88A of the *Conveyancing Act 1919*, or
- (b) a WICA provider declared to be an authorised WICA provider under a scheme established under section 57S.

WICA provider means:

- (a) the holder of an operational approval, or
 - (b) a licensed operator, or
 - (c) a person declared to be a WICA provider under a scheme established under section 57S.
- (2) A reference in this Part to a WICA provider's water industry infrastructure or water mains or sewer mains is:
- (a) in the case of a WICA provider who is the holder of an operational approval—a reference to the water industry infrastructure or water mains or sewer mains to which the approval relates, or
 - (b) in the case of a WICA provider who is a licensed operator—a reference to the water industry infrastructure or water mains or sewer mains operated by the provider under this Act, or
 - (c) in the case of a person declared to be a WICA provider under a scheme established under section 57S—a reference to the water industry infrastructure or water mains or sewer mains in relation to which the declaration is made.

57S Regulations may extend application of Part

- (1) The regulations may:
- (a) establish a scheme under which an owner or operator of water industry infrastructure to which Part 2 does not apply may be declared to be a WICA provider, or an authorised WICA provider, in relation to that infrastructure, and
 - (b) require IPART to maintain a register of declarations made under the scheme.
- (2) Without limiting subsection (1), the regulations may:
- (a) establish criteria to be met for a declaration to be made, and
 - (b) apply, with or without modification, specified provisions of this Act to a person declared to be a WICA provider or authorised WICA provider as if the person were the holder of an operational approval or licence, and
 - (c) provide for the imposition, variation or revocation of conditions of the declaration, and
 - (d) provide for the suspension or cancellation of a declaration, and
 - (e) provide for reviews or appeals.

[21] Section 58 Erection and placement of water industry infrastructure

Omit “any” from section 58 (1). Insert instead “a WICA provider’s”.

[22] Section 64 Ownership of water industry infrastructure

Omit section 64 (2). Insert instead:

- (2) Water industry infrastructure to which an operational approval applies is not to be taken in execution of a judgment against a person (other than a WICA provider) under a process of a court.

[23] Section 65 Meter readers

Omit the penalty provision from section 65 (4). Insert instead:

Maximum penalty: \$2,000.

[24] Section 65A Interpretation

Omit the section.

[25] Part 7, heading

Omit the heading. Insert instead:

Part 7 Enforcement

[26] Part 7

Omit each term or expression set out in Column 1 below wherever occurring in Part 7.

Insert instead the term or expression set out opposite in Column 2:

Column 1

licensed network operator
licensed network operator's
the network operator

Column 2

WICA operator
WICA operator's
the WICA operator

[27] Part 7, Division 1AA

Insert before Division 1:

Division 1AA Preliminary

65J Interpretation

- (1) In this Part:

WICA operator means:

- (a) a licensed operator, or
(b) an operator of water industry infrastructure declared to be a WICA provider under a scheme established under section 57S.
- (2) A reference in this Part to a WICA operator's water industry infrastructure, water main, sewer main or stormwater drain is:
- (a) in the case of a WICA operator who is a licensed operator—a reference to the water industry infrastructure, water main, sewer main or stormwater drain operated by the licensee under this Act, or
(b) in the case of an operator of water industry infrastructure declared to be a WICA provider under a scheme established under section 57S—a reference to the water industry infrastructure, water main, sewer main or stormwater drain in relation to which the declaration is made.

[28] Section 66 Exposure of underground pipes

Omit the penalty provision. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—\$20,000, or
- (b) in the case of an individual—\$4,000.

[29] Sections 67–70

Omit the penalty provision wherever occurring. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—\$250,000, or
- (b) in the case of an individual—\$50,000.

[30] Section 71 Offence to discharge into drains and sewers

Omit “a licensed retail supplier”.

Insert instead “, if the stormwater drain or sewer main is part of a category A scheme to which Part 2 applies, the licensed retailer of the sewerage service”.

[31] Section 71

Omit the penalty provision and the note. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—\$250,000, or
- (b) in the case of an individual—\$50,000.

[32] Section 72 Unauthorised use of water

Omit “a licensed retail supplier”.

Insert instead “, if the water infrastructure is part of a category A scheme to which Part 2 applies, the licensed retailer of the water service”.

[33] Section 72

Omit the penalty provision. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—\$250,000, or
- (b) in the case of an individual—\$50,000.

[34] Section 73 Unlicensed plumbing and drainage works

Omit the penalty provision from section 73 (1). Insert instead:

Maximum penalty:

- (a) in the case of a corporation—\$250,000, or
- (b) in the case of an individual—\$50,000.

[35] Section 74 Inspectors

Omit “, or a contravention of the conditions of a licence, has been committed” from section 74 (3).

Insert instead “has been, is being or is about to be committed or whether there is a risk to public health or safety that may give rise to public health and safety directions”.

[36] Section 74 (4)

Omit the penalty provision. Insert instead:
Maximum penalty: \$2,000.

[37] Section 81 Obstruction of inspectors

Omit the penalty provision. Insert instead:
Maximum penalty:
(a) in the case of a corporation—\$250,000, or
(b) in the case of an individual—\$50,000.

[38] Part 8, Division 1AA

Insert before Division 1:

Division 1AA Register

84A Register of approvals, licences and retail market matters

- (1) IPART must maintain a register of approvals and licences and make the register available, free of charge, on IPART's website.
- (2) An entry for an approval must include:
 - (a) the date on which the approval was granted, and
 - (b) the type of approval, and
 - (c) a description of the nature of the water industry infrastructure or proposed water industry infrastructure, including, if relevant, water sources to be used and the purposes for which water produced is intended to be used, and
 - (d) a map showing the location or proposed location of the water industry infrastructure and the land on which it is or is to be located or to which services are or are to be provided by means of the infrastructure, and
 - (e) a statement of whether the infrastructure is essential infrastructure, and
 - (f) the name and contact details of the holder of the approval, and
 - (g) details of the conditions of the approval imposed by IPART, and
 - (h) details of any enforcement action taken against the holder of the approval, and
 - (i) details of the licensed operator of the water industry infrastructure, and
 - (j) in the case of a category A scheme—details of the licensed retailer of water or sewerage services provided by means of the scheme, and
 - (k) details of when the approval was last reviewed by IPART and the outcome of each review that has been conducted by IPART.
- (3) An entry for a licence must include:
 - (a) the date on which the licence was granted, and
 - (b) the type of licence, and
 - (c) details of the class of activities authorised by the licence, and
 - (d) contact details for the licensee, and
 - (e) the website address of the licensee, and
 - (f) details of the licence conditions imposed by the Minister, and

- (g) details of the water industry infrastructure operated, or the water or sewerage services sold, by the licensee, and
 - (h) if the licensee is required to be a member of an ombudsman scheme under Division 1 of Part 5—details of the scheme, and
 - (i) if the licensee has been declared a monopoly supplier under Division 2 of Part 5—details of:
 - (i) the declaration, and
 - (ii) any referral to IPART under that Division and the outcome of the referral, and
 - (j) if the licensee provides an essential service and, consequently, Division 3 of Part 5 applies—details of:
 - (i) the designation of a last resort provider to take the place of the licensee in providing the essential service, and
 - (ii) the terms and conditions that are to apply to an implied contract with a transferred customer (if applicable) as set out in an approved contingency plan, and
 - (iii) any declared failure of the licensee, and
 - (k) details of any enforcement action taken against the licensee, and
 - (l) details of when the licence was last reviewed by IPART and the outcome of each review that has been conducted by IPART.
- (4) IPART may include other information in the register that it considers appropriate to include.
- (5) Copies of entries in the register are to be made available to members of the public, for a fee determined by IPART, during normal office hours.

[39] Part 8, Division 1, heading

Omit “**Licence auditing**”. Insert instead “**Auditing**”.

[40] Section 85

Omit the section. Insert instead:

85 Auditing functions

- (1) IPART’s functions under this Division are to monitor, and to report to the Minister on the extent of, compliance with conditions of approvals and licences and on the continued relevance and appropriateness of the arrangements for last resort providers.
- (2) Without limiting the manner in which IPART carries out its functions, IPART is to conduct reviews of approvals and licences at intervals of not more than 5 years and at such other times as the Minister may direct.
- (3) A report with respect to such a review may include recommendations as to the variation or revocation of existing approval or licence conditions or the imposition of new approval or licence conditions or the variation or revocation of the arrangements for last resort providers.

[41] Section 86 Recovery of IPART’s costs

Insert before section 86 (1):

- (1AA) The holder of an approval is required to pay to the Treasurer the cost (as certified by IPART) involved in, and in connection with, carrying out IPART’s functions under this Division in relation to the approval.

[42] Section 86 (2)

Omit “a licence”. Insert instead “an approval or licence”.

[43] Section 87 Power to direct holders of approvals and licensees to keep records and furnish information

Omit “a licensee, require the licensee”.

Insert instead “the holder of an approval or a licensee, require the holder or licensee”.

[44] Section 87 (2) and (3)

Insert at the end of the section:

- (2) A person must not, without reasonable excuse, refuse or fail to comply with a notice under this section.
Maximum penalty:
 - (a) in the case of a corporation—\$250,000, or
 - (b) in the case of an individual—\$50,000.
- (3) Without limitation, it is a reasonable excuse that to comply with the notice might tend to incriminate an individual or make an individual liable to a forfeiture or penalty.

[45] Section 88 Failure to keep records or furnish information

Omit the section.

[46] Section 89 Annual reports

Omit section 89 (1). Insert instead:

- (1) IPART must, on or before 31 October in each year, provide the Minister with a report on the performance of its functions under this Division during the preceding financial year, including:
 - (a) details of the outcome of each review conducted during the preceding financial year, and
 - (b) the extent to which approval and licence conditions have been contravened during the preceding financial year.

[47] Section 93A

Insert after section 93:

93A Victimisation

A person must not take any action that detrimentally affects the employment of another person, or threaten to do so, because that other person has assisted IPART in the performance of its auditing or regulatory functions or in an investigation.

Maximum penalty:

- (a) in the case of a corporation—\$250,000, or
- (b) in the case of an individual—\$50,000.

[48] Section 93B

Insert before section 94:

93B Time limit for determination of applications

- (1) The Minister and IPART must use their best endeavours to determine applications under this Act as quickly as reasonably practicable.
- (2) If IPART has not advised an applicant under this Act of its decision on the application within the period fixed by the regulations for the application, the applicant may, after giving 14 days' written notice to IPART, apply to the Minister for a direction to IPART requiring the decision to be made within a time fixed by the Minister.
- (3) In determining whether the period fixed by the regulations has passed, any period between the date when, in accordance with this Act, the applicant is asked to provide further information or to take other action to enable the application to be determined and the date when the information is provided or the action taken is to be disregarded.

[49] Section 94 Delegation of functions

Omit "and the Director-General may delegate to any person any of their" from section 94 (1).

Insert instead "may delegate to a person any of his or her".

[50] Section 94 (2)

Omit the subsection (but not the note).

[51] Section 96 Exclusion of personal liability

Omit ", the Director-General or an inspector, or by any person acting under the direction of the Minister or the Director-General,".

Insert instead ", a person acting under the direction of the Minister or an inspector".

[52] Section 96A

Insert after section 96:

96A Continuing offences

- (1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission:
 - (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-tenth of the maximum penalty prescribed for that offence, and
 - (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one-tenth of the maximum penalty prescribed for that offence.
- (2) An obligation to do something is to be regarded as continuing until the act is done despite the fact that a period within which, or time before which, the act is required to be done has expired or passed.

- (3) An omission is to be regarded as continuing for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

[53] Section 97 Liability of directors and managers for offences by corporation—offences attracting executive liability

Omit section 97 (1) (a) and (b). Insert instead:

- (a) Division 2 of Part 2,
- (b) section 15 (8),
- (c) section 20D (7).

[54] Section 97C

Insert after section 97B:

97C Corporations Act displacement

Sections 50A and 57P are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapter 5 of that Act.

Note. Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State or Territory law declares a provision of a State or Territory law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State or Territory provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

[55] Section 98 Proceedings for offences

Omit section 98 (2). Insert instead:

- (2) If proceedings for an offence are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is, despite any other provision of this Act, \$110,000 or the maximum monetary penalty provided for the offence, whichever is the lesser.

[56] Section 99 Recovery of monetary penalties

Omit “on a licensee”.

[57] Section 99

Insert “under this Act” before “may”.

[58] Section 100

Omit the section. Insert instead:

100 Evidentiary certificates

In any proceedings, a certificate signed by the Minister or IPART certifying as to a matter relating to any of the following constitutes proof, in the absence of proof to the contrary, of the matter so certified:

- (a) an approval or licence,
- (b) the appointment of a person as an inspector,
- (c) a delegation under this Act,
- (d) a notice, order, requirement or direction of the Minister or IPART,
- (e) any other decision of the Minister or IPART,

- (f) the receipt or non-receipt by the Minister or IPART of a notification or information required to be given to the Minister or IPART under this Act or the regulations,
- (g) an entry in a register kept by IPART under this Act,
- (h) guidelines issued or published by IPART.

[59] Section 101 Regulations

Omit section 101 (2)–(4). Insert instead:

- (2) In particular, the regulations may:
 - (a) make provision for or with respect to the matters set out in Schedule 2, and
 - (b) create an offence punishable by a penalty not exceeding, in the case of a corporation, \$100,000 and, in the case of an individual, \$20,000, and
 - (c) apply, adopt or incorporate the provisions of any standard, code, specification or other document, either as in force on a particular day or as in force for the time being, and
 - (d) provide exemptions (conditional or unconditional) from specified provisions of this Act, and
 - (e) make provision for or with respect to the payment of fees by instalments.

[60] Section 104

Omit the section. Insert instead:

104 Review of 2014 amendment Act

- (1) The Minister is to review the amendments to this Act enacted by the *Water Industry Competition Amendment (Review) Act 2014* to determine whether the policy objectives of the amendments remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of the amendment Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

[61] Schedule 2 Regulation-making powers

Omit “by licensed network operators” from clause 2 (d), (e) and (f).

[62] Schedule 2, clause 3

Insert after clause 3 (c):

- (c1) the implementation of other programs (such as the granting of payment assistance, discounts or rebates) to ensure that water and sewerage services are available to people in need, including those suffering financial hardship and those living in remote areas,

[63] Schedule 2, clause 3A

Insert after clause 3:

3A Developments

Matters relating to the following:

- (a) certificates of compliance granted by the holder of an operational approval for water industry infrastructure certifying that the requirements of the holder for connection of a particular development to the water industry infrastructure have been complied with, including the following:
 - (i) the making of an application for a certificate of compliance,
 - (ii) the giving of a notice of requirements before the grant of a certificate of compliance, which may include requirements relating to:
 - (A) the payment of costs, and
 - (B) the construction, installation or alteration of infrastructure, and
 - (C) the transfer of infrastructure to the holder, and
 - (D) other matters,
 - (iii) the enforcement of requirements set out in a notice,
 - (iv) the grant of a certificate of compliance,
 - (v) the conditions of a certificate of compliance,
- (b) providing the holder of an operational approval for water industry infrastructure an opportunity to make submissions on an application for a statutory approval for a development that may affect the operation of the infrastructure, including requiring the relevant authority to notify the holder of relevant applications and to take into account submissions made by the holder,
- (c) providing for delegation of functions or powers of the holder of an operational approval for water industry infrastructure under regulations made under paragraph (a) or (b) to a licensed operator of the infrastructure.

[64] Schedule 4 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

[65] Schedule 4, Part 4

Insert after Part 3:

Part 4 Provisions consequent on enactment of Water Industry Competition Amendment (Review) Act 2014

8 Definitions

In this Part:

amending Act means the *Water Industry Competition Amendment (Review) Act 2014*.

Part 2 means Part 2 of this Act as inserted by the amending Act.

9 Operational approvals and licences replacing existing licences

- (1) If, immediately before the commencement of section 7 as substituted by the amending Act, licences were in force authorising the operation of water industry infrastructure to which Part 2 applies and the supply of water or sewerage services provided by means of the infrastructure, operational approvals and licences must be granted under this clause as appropriate for the operation of the infrastructure, and the sale of water or sewerage services provided by means of the infrastructure, under this Act as amended by the amending Act.
- (2) An operational approval is to be granted by IPART to the owner of the infrastructure, and licences are to be granted by the Minister to suitable corporations that operate the infrastructure or sell water or sewerage services provided by means of the infrastructure, under this clause without application or the payment of an application fee.
- (3) IPART may establish a process for the nomination of suitable corporations and the determination of matters relating to the grant of approvals and licences under this clause and, as reasonably necessary for that purpose, may require information to be provided, and verified in a specified manner, by:
 - (a) a person proposed to be granted an approval or licence, or
 - (b) a licensed network operator of the infrastructure or a person specified in the licence of the operator, or
 - (c) a licensed retail supplier of services provided by means of the infrastructure or a person specified in the licence of the retail supplier.
- (4) IPART must make a recommendation to the Minister as to the granting of licences under this clause.
- (5) The Minister must consider, but is not bound to accept, IPART's recommendations and may seek further advice from IPART on the granting of licences under this clause.
- (6) The conditions of an operational approval imposed by IPART on the grant of the approval under this clause must, as far as reasonably practicable, reflect the relevant conditions imposed by the Minister on the licensed network operator's licence as in force immediately before the commencement of section 7 as substituted by the amending Act.
- (7) The class of activities authorised by an operator's licence under this clause must accommodate relevant activities carried on under the network operator's licence immediately before the commencement of section 7 as substituted by the amending Act.
- (8) The licence conditions imposed by the Minister on the grant of a licence under this clause must, as far as reasonably practicable, reflect the relevant conditions imposed by the Minister on the corresponding licence as in force immediately before the commencement of section 7 as substituted by the amending Act.
- (9) However, additional conditions may be imposed on the grant of a licence relating to arrangements between the licensee and contractors or subcontractors (including related corporations) for the purposes of ensuring

- the licensee has the necessary capacity to be a suitable corporation to be granted the licence.
- (10) If an operational approval is granted under this clause for water industry infrastructure, IPART may determine whether the water industry infrastructure is essential infrastructure as if an application had been made for the approval (and, if it is, the operational approval may be granted whether or not last resort providers have been designated for the essential service provided by means of the infrastructure).
- (11) Before approvals and licences are granted for water industry infrastructure under this clause, IPART must:
- (a) give written notice of the proposed terms and conditions of the approvals and licences and the bodies to whom they are to be granted to each person who is, immediately before the commencement of section 7 as substituted by the amending Act:
 - (i) an owner of the infrastructure, or
 - (ii) a licensed network operator of the infrastructure or a person specified in such a network operator's licence under section 6 (1) (a) as then in force, or
 - (iii) a licensed retail supplier of water or sewerage services provided by means of the infrastructure or a person specified in such a retail supplier's licence under section 6 (1) (b) as then in force, and
 - (b) allow them at least 14 days within which to make submissions to the Minister or IPART about the proposal.
- (12) The Minister must cause details of approvals and licences granted under this clause to be included in the register kept by IPART under Division 1AA of Part 8.
- (13) A person who, immediately before the commencement of section 8 as substituted by the amending Act, was a licensed network operator or a person specified in a network operator's licence under section 6 (1) (a) as then in force but who is not granted an operator's licence under this clause is entitled to apply for an operator's licence without payment of an application fee if the application is made within 28 days after that commencement.
- (14) A person who, immediately before the commencement of section 9 as substituted by the amending Act, was a licensed retail supplier or a person specified in a retail supplier's licence under section 6 (1) (b) as then in force but who is not granted a retailer's licence under this clause is entitled to apply for a retailer's licence without payment of an application fee if the application is made within 28 days after that commencement.

10 Operational approvals for infrastructure not completed or not operated by licensee before amending Act

- (1) If works for the construction, installation or alteration of water industry infrastructure to which Part 2 applies had substantially commenced but not been completed before the commencement of section 6 as substituted by the amending Act, the works may be completed without a design approval but section 7 as substituted by the amending Act applies to require an operational approval to be obtained by the owner of the infrastructure before the infrastructure is operated on a commercial basis.
- (2) The regulations may exempt a person from the application of section 7 as substituted by the amending Act for a specified period if the water industry

infrastructure was being operated before the commencement of that section (whether or not the infrastructure was then required to be operated under a licence under this Act as then in force).

11 Customer contracts

- (1) Division 1AA of Part 5 applies to water or sewerage services that were provided to a customer immediately before the commencement of the Division (and to which the Division would have applied if it had then been in force) and that continue to be provided following that commencement to the exclusion of any contract for the services then in force with the customer.
- (2) However, any contract for water or sewerage services with a customer in force immediately before the commencement of Division 1AA of Part 5 is not to be regarded as having been terminated and, consequently, rights and obligations that have accrued under the contract before that commencement are not affected and no early termination charge becomes payable.

12 Monopoly suppliers

- (1) An order in force under section 51 immediately before the commencement of Schedule 1 [16] to the amending Act declaring that a specified licensed retail supplier or licensed network operator is a monopoly supplier in relation to a specified water or sewerage service, a specified area and a specified class of customers is to be taken to be a declaration in force under section 51 as amended by the amending Act that the specified water or sewerage service provided in the specified area to the specified class of customers is a monopoly service.
- (2) A determination of IPART in force immediately before the commencement of Schedule 1 [16] to the amending Act that specifies the price a monopoly supplier (as declared under section 51 as then in force) can charge its customers is to be read as specifying the price that may be charged for the water or sewerage service provided in the area to the class of customers specified in the declaration of the monopoly supplier under section 51 as then in force.

[66] Dictionary

Omit the following definitions:

area of operations

authorised licensed network operator

Department

Director-General

network operator's licence

public water utility

recycled water

related person

retail supplier's licence

retailer of last resort

water

water supply or sewerage service contract

[67] Dictionary

Insert the following definitions in alphabetical order:

approval means, in Parts 2 and 8, a design approval or operational approval.

area of operations of a public water utility—see **public water utility**.

category A scheme—see section 5 (1) (a).

compliance notice—see section 20P.

contingency plan—see section 55 (1) (a).

corporation includes any body corporate.

cost recovery scheme means a scheme for the recovery of the costs and expenses of a last resort provider under section 57L.

declared failure means a failure of an essential service provider declared under section 57 (beginning on the transfer date and ending on the end date).

design approval means a design approval required by section 6 and granted by IPART under this Act.

drinking water means water that is intended, or likely, to be used for human consumption, or for purposes connected with human consumption, such as:

- (a) the washing or cooling of food, or
- (b) the making of ice for consumption, or for the preservation of unpackaged food,

whether or not the water is used for other purposes.

end date of a declared failure means the end date fixed under section 57H (2) (d).

essential infrastructure means water industry infrastructure subject to a determination by IPART that it is essential infrastructure.

essential service means a water or sewerage service provided by means of essential infrastructure.

essential service provider or **provider of an essential service** means:

- (a) a licensed operator of essential infrastructure, or
- (b) a licensed retailer of an essential service.

failed licensee—see section 57 (2) (c).

insolvency official means a receiver, receiver and manager, administrator, provisional liquidator, liquidator, trustee in bankruptcy or person having a similar or analogous function.

last resort provider means a person designated as a last resort provider under section 54.

long term lease means a lease that confers a right, including a contingent or future right, to the use or possession of water industry infrastructure for a term extending to a time, or commencing, more than 25 years after the making of the lease.

new licensee—see section 57H (2) (b) (ii).

operate water industry infrastructure means operate any part of the infrastructure.

operational approval means an operational approval required by section 7 and granted by IPART under this Act.

operator's licence means a licence required by section 8 and granted by the Minister under this Act.

owner of water industry infrastructure means:

- (a) if the infrastructure is not subject to a long term lease—the person who owns the infrastructure as set out in section 64, or
- (b) if the infrastructure is subject to a long term lease—the lessee under the long term lease.

provider of an essential service—see *essential service provider*.

providing an essential service means:

- (a) if the service is provided by a licensed operator or a person designated as the last resort provider for the licensed operator—operating essential infrastructure, or
- (b) if the service is provided by a licensed retailer or a person designated as the last resort provider for the licensed retailer—selling water or sewerage services provided by means of essential infrastructure.

public health and safety directions—see section 20L (1).

public water utility—each of the bodies listed below is a public water utility and the *utility's Act* and *area of operations* are as set out in the entry for the body:

Public water utility	Utility's Act	Utility's area of operations
Hunter Water Corporation	<i>Hunter Water Act 1991</i>	its area of operations under section 16 of its Act
State Water Corporation	<i>State Water Corporation Act 2004</i>	its area of operations under section 15 of its Act
Sydney Catchment Authority	<i>Sydney Water Catchment Management Act 1998</i>	its area of operations under section 20 of its Act
Sydney Water Corporation	<i>Sydney Water Act 1994</i>	its area of operations under section 10 of its Act
a county council providing water or sewerage services	<i>Local Government Act 1993</i>	its area of operations established under section 393 of its Act
a council providing water or sewerage services in an area that is not within the area of operations of Sydney Water Corporation or Hunter Water Corporation	<i>Local Government Act 1993</i>	its local government area under its Act
water supply authority within the meaning of the <i>Water Management Act 2000</i> (other than an authority listed above)	the Act under which the authority was established	its area of operations under section 289 of the <i>Water Management Act 2000</i>

related corporation of a corporation that is an applicant for or holds an approval or licence means a related corporation of the corporation within the meaning of the *Corporations Act 2001* of the Commonwealth that would have or has a direct or indirect interest in, or influence on, the carrying out of activities under the approval or licence.

retailer's licence means a licence required by section 9 and granted by the Minister under this Act.

sewerage service includes a service of connecting land to infrastructure for the treatment, storage, conveyance or reticulation of sewage.

small retail customer premises means:

- (a) premises of a small retail customer that are separately metered for the purposes of a water service, or
- (b) premises of a class declared by the regulations to be small retail customer premises,

but does not include premises of a class declared by the regulations not to be small retail customer premises.

transfer date of a declared failure means the transfer date fixed under section 57 (2) (e).

utility's Act—see *public water utility*.

water includes drinking water or water obtained from the processing of sewage or stormwater.

water service means a service of supplying water, including a service of connecting land to infrastructure for supplying water.

[68] Dictionary, definition of “disqualified corporation”

Omit “, pursuant to a declaration under section 16 (1) (e), has been declared to be” from paragraph (a) of the definition.

Insert instead “, as a result of disciplinary action under this Act, is”.

[69] Dictionary, definition of “disqualified individual”

Omit “, pursuant to a declaration under section 16 (1) (f),” from paragraph (b) of the definition.

Insert instead “, as a result of disciplinary action under this Act,”.

[70] Dictionary, definitions of “sewer main”, “stormwater drain” and “water main”

Omit “a network operator’s” from the definitions wherever occurring.

[71] Whole Act (except Schedule 4)

Omit each term or expression set out in Column 1 below wherever occurring in the Act except where otherwise amended by this Schedule and in Schedule 4 to the Act.

Insert instead the term or expression set out opposite in Column 2:

Column 1	Column 2
network operator	operator
a network operator’s	an operator’s
the network operator’s	the operator’s
network operators	operators
retail supplier	retailer
retail supplier’s	retailer’s
retail suppliers	retailers
water supply or sewerage purposes	water or sewerage service purposes
water supply or sewerage service	water or sewerage service

Schedule 2 Consequential amendments of other legislation

2.1 Energy and Utilities Administration Act 1987 No 103

Section 3 Definitions

Omit paragraph (c) of the definition of *State water agency* in section 3 (1). Insert instead:

- (c) a licensed operator, or licensed retailer, within the meaning of the *Water Industry Competition Act 2006*, and

2.2 Environmental Planning and Assessment Act 1979 No 203

[1] Section 109J Restriction on issue of subdivision certificates

Insert after section 109J (1) (e):

- (e1) in the case of subdivision of land to which water or sewerage services are to be provided under the *Water Industry Competition Act 2006*, the applicant has obtained a certificate of compliance under that Act for the subdivision of the land, and

[2] Section 109J (4)

Insert “or licensed” after “constituted” in the definition of *certificate of compliance*.

2.3 Environmental Planning and Assessment Regulation 2000

Schedule 4 Planning certificates

Insert at the end of the Schedule with the appropriate clause number:

Water or sewerage services

If water or sewerage services are, or are to be, provided to the land under the *Water Industry Competition Act 2006*, a statement to that effect.

Note. A public water utility may not be the provider of some or all of the services to the land. If a water or sewerage service is provided to the land by a licensee under the *Water Industry Competition Act 2006*, a contract for the service will be implied between the licensee and the owner of the land. A register relating to approvals and licences necessary for the provision of water or sewerage services under the *Water Industry Competition Act 2006* is maintained by the Independent Pricing and Regulatory Tribunal and provides information about the areas serviced, or to be serviced, under that Act. Purchasers should check the register to understand who will service the property and on what terms. Outstanding charges for water or sewerage services provided under the *Water Industry Competition Act 2006* become the responsibility of the purchaser.

2.4 Fluoridation of Public Water Supplies Act 1957 No 58

Section 6A Directions

Omit “licensed retail supplier” from section 6A (2A). Insert instead “licensed retailer”.

2.5 Hunter Water Act 1991 No 53

[1] Section 36 Owner of land taken to have entered into customer contract

Omit “licensed retail supplier” from section 36 (3). Insert instead “licensed retailer”.

[2] Section 36 (4)

Omit the subsection.

2.6 Local Government Act 1993 No 30

[1] Section 124 Orders

Omit items 23 and 24 from the Table. Insert instead:

23	To connect premises to a water supply by a specified date	The premises are situated within 225 metres of a water pipe	Owner or occupier of land
24	To connect premises with a sewerage system by a specified date	The premises are situated within 75 metres of a sewer	Owner or occupier of premises

[2] Section 553A Special rates and charges not payable in relation to land provided with private water supply or sewerage

Omit “licensed retail supplier” from section 553A (1). Insert instead “licensed retailer”.

[3] Section 553A (2)

Omit the subsection.

2.7 Local Government (General) Regulation 2005

Clause 48 Activities for which approval is not required

Omit clause 48 (g). Insert instead:

(g) **Activities authorised by approval or licence under Water Industry Competition Act 2006**

An activity referred to in Part B or C of the Table to section 68 of the Act if it is carried out under the authority of an approval or licence in force under the *Water Industry Competition Act 2006*.

2.8 Plumbing and Drainage Act 2011 No 59

Section 3 Definitions

Omit “network” from paragraph (c) of the definition of *network utility operator* in section 3 (1).

2.9 Public Health Act 2010 No 127

Section 5 Definitions

Omit “licensed network operator or a licensed retail supplier” from paragraph (f) of the definition of *supplier of drinking water* in section 5 (1).

Insert instead “licensed operator or licensed retailer”.

2.10 State Environmental Planning Policy (Infrastructure) 2007

Clause 106 Development permitted with or without consent

Omit “any person licensed” wherever occurring.

Insert instead “the holder of a design approval”.

2.11 Sydney Water Act 1994 No 88

[1] Section 55 Owner of land taken to have entered into customer contract

Omit “licensed retail supplier” from section 55 (3A). Insert instead “licensed retailer”.

[2] Section 55 (3B)

Omit the subsection.

2.12 Sydney Water Catchment Management Act 1998 No 171

Section 16 Specific functions

Omit “licensed network operators or licensed retail suppliers” from section 16 (1) (b1).

Insert instead “licensed operators or licensed retailers”.

2.13 Water Management Act 2000 No 92

Dictionary

Omit “network” from paragraph (c) of the definition of *local water utility*.

[Second reading speech made in—

Legislative Assembly on 18 June 2014

Legislative Council on 14 October 2014]