

Passed by both Houses



New South Wales

Water Management Legislation Amendment (Stronger Enforcement and Penalties) Bill 2025

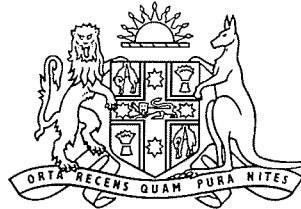
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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2025

Clerk of the Parliaments



New South Wales

Water Management Legislation Amendment (Stronger Enforcement and Penalties) Bill 2025

Act No , 2025

An Act to amend the *Water Management Act 2000*; and for related purposes.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Water Management Legislation Amendment (Stronger Enforcement and Penalties) Act 2025*.

2 Commencement

This Act commences as follows—

- (a) for Schedule 3[37]—on a day to be appointed by proclamation,
- (b) for Schedule 3[62], [85], to the extent it inserts section 336J, [92], to the extent it inserts section 339I(2), [104], [112], to the extent it inserts section 344(2), [118]–[121], [137] and [138]—on 1 January 2026,
- (c) otherwise—
 - (i) on 1 September 2025, or
 - (ii) if the date of assent to this Act is after 1 September 2025—on the date of assent to this Act.

Schedule 1 Amendment of Natural Resources Access Regulator Act 2017 No 64

[1] Section 7 General directions by Minister

Omit section 7(3)(b). Insert instead—

- (b) a decision by the Regulator to commence proceedings under the natural resources management legislation,
- (c) a determination by the Regulator about whether proceedings under the natural resources management legislation should be instituted by the Crown.

[2] Section 11 Functions of Regulator

Insert after section 11(1)(c)—

- (c1) to commence and conduct proceedings for offences under, and contraventions of, the natural resources management legislation,

[3] Section 12, heading

Omit “for offences”.

[4] Section 12(1)

Omit the subsection. Insert instead—

- (1) The Regulator determines whether the Crown should institute proceedings for offences under, or contraventions of, the natural resources management legislation.

[5] Section 12(2)

Omit the subsection.

[6] Section 12(4)

Omit “Criminal proceedings”. Insert instead “Proceedings”.

[7] Section 12AA

Insert after section 12—

12AA Certain functions and determinations require legal advice

- (1) The Regulator must not exercise a function under section 11(1)(c1) or make a determination under section 12 without legal advice.
- (2) Proceedings may not be challenged on the ground the proceedings were instituted in contravention of this section.

[8] Section 12A Register of information about water enforcement action

Insert “administrative” before “penalties” wherever occurring in section 12A(2)(a).

[9] Section 12A(2)(a)

Omit “sections 60G, 78 and 109 of”.

[10] Schedule 2 Additional functions of Regulator

Omit clause 1(d). Insert instead—

- (d) section 91O (Minister may charge for water taken without approval),

[11] Schedule 2, clause 1(p)

Omit “Remedial measures may be taken by Minister”.

Insert instead “Compliance cost notices”.

[12] Schedule 2, clause 1(p1c)

Insert after clause 1(p1b)—

(p1c) section 336H (Remedial measures may be taken by Minister),

[13] Schedule 2, clause 1(t1a)

Omit “civil”. Insert instead “administrative”.

[14] Schedule 2, clause 1(u1)

Insert after clause 1(u)—

(u1) section 367D (Evidence from photographs and other images),

Schedule 2 Amendment of Natural Resources Access Regulator Regulation 2023

[1] Section 5 Register—additional information—the Act, s 12A

Omit section 5(a) and (b). Insert instead—

- (a) the identity of a person who has been convicted of an offence under the *Water Management Act 2000* and particulars of—
 - (i) the penalty imposed by the court, and
 - (ii) consequential orders made by the court under that Act, Chapter 7, Part 3A,
- (b) the identity of a person who has contravened a civil penalty provision under the *Water Management Act 2000* and particulars of consequential orders made under the *Water Management Act 2000*, section 370R,

[2] Section 5(i)

Omit “civil”. Insert instead “administrative”.

Schedule 3 Amendment of Water Management Act 2000 No 92

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

Insert “and contraventions” after “Offences”.

[2] Sections 60A(1), (3) and (7)(a), 60C(1) and (7)(a) and 60I(2) and (3)

Omit “that water” wherever occurring. Insert instead “the water”.

[3] Section 60A Taking water without, or otherwise than authorised by, an access licence

Omit section 60A(2). Insert instead—

- (2) A person must not take water from a water source to which this part applies unless the person holds an access licence for the water source.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier A civil penalty.

[4] Section 60A(4)

Omit the subsection. Insert instead—

- (4) The holder of an access licence must not take water from a water source to which this part applies other than as authorised by the licence.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier A civil penalty.

[5] Section 60A(6)

Omit “that are”.

[6] Section 60A(7)

Insert “, or proceedings for a contravention of a civil penalty provision,” after “prosecution”.

[7] Section 60B Contravention of terms and conditions of access licence

Omit section 60B(1) and (2). Insert instead—

- (1) A person who takes water under an access licence that is not held by the person must not contravene a term or condition of the licence.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

- (2) If a term or condition of an access licence is contravened, each holder of the access licence commits a contravention.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[8] Section 60B(3)

Insert “, or proceedings for a contravention of a civil penalty provision,” after “prosecution”.

[9] Section 60C Taking water for which there is no, or insufficient, water allocation

Omit section 60C(2). Insert instead—

- (2) A person must not take water from a water source to which this part applies other than in accordance with the water allocation for the access licence that authorises the taking of water.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier A civil penalty.

[10] Section 60C(6)

Omit the subsection. Insert instead—

- (6) A holder of 2 or more access licences that nominate the same water supply work to take water from one or more water sources under this part must not take water by means of that work from the water source or sources in excess of the combined water allocations for the access licences.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier A civil penalty.

[11] Section 60C(7)(b)

Omit “that source”. Insert instead “the water source”.

[12] Section 60C(8)

Omit the subsection. Insert instead—

- (8) A holder of 2 or more access licences that authorise the holder to take water from the same water source under this part must not take water from the water source in excess of the combined water allocations for the access licences.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier A civil penalty.

[13] Section 60D

Omit the section. Insert instead—

60D Taking water other than by or from water supply work or extraction point nominated in access licence

A person must not take water from a water source to which this part applies other than by a water supply work, or from an extraction point, nominated in an access licence.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[14] Section 60E, heading

Omit “offences”. Insert instead “contraventions”.

[15] Section 60E(2)

Insert “or contravened the civil penalty provision” after “offence”.

[16] Section 60E(3)

Insert after section 60E(2)—

- (3) In this section—

occupier, of premises, includes a person who has control or management of the premises.

[17] Section 60F General defence

Insert “, or proceedings for a contravention of a civil penalty provision,” after “prosecution” in section 60F(2).

[18] Section 60F(2)(b)

Omit “that water source”. Insert instead “the water source”.

[19] Section 60G Minister may charge for water illegally taken

Omit section 60G(1)(a) and (b). Insert instead—

- (a) impose on the person a charge, including a penalty component, for the water taken,
- (b) if the person holds an access licence—order that the water allocations credited, or to be credited, to the water allocation account for the licence be debited, including a penalty debit, for the water taken.

[20] Section 60G(2)(b)

Omit the paragraph. Insert instead—

- (b) has given the person 28 days, or the longer period determined by the Minister, to make submissions, and

[21] Section 60G(3)–(8)

Omit section 60G(3). Insert instead—

- (3) A charge imposed by the Minister under subsection (1)(a) must be—
 - (a) no less than the value of the water taken, and
 - (b) no more than 5 times the value of the water taken.
- (4) A debit ordered by the Minister under subsection (1)(b) must be for—
 - (a) no less than the volume of the water taken, and
 - (b) no more than 5 times the volume of the water taken.
- (5) In taking action under this section for a contravention of this division, the Minister—
 - (a) may determine the volume of water taken in accordance with a prescribed methodology, and
 - (b) must determine the value of the water taken in accordance with a prescribed methodology, and
 - (c) must take the following matters into account—
 - (i) the harm or potential harm to other water users, or the environment, reasonably attributable to the contravention,
 - (ii) an estimate of the monetary benefit obtained by the person,
 - (iii) matters that aggravate or mitigate the contravention,
 - (iv) whether or not the person has admitted the contravention,
 - (v) whether the person has previously been found by a court to have engaged in similar conduct,
 - (vi) whether the person has previously received a penalty under this section,
 - (vii) the maximum amount that could be imposed by a court as a Tier 2 penalty for the contravention, not including an amount that could be imposed for a continuing offence,

- (viii) matters prescribed by the regulations.
 - (6) When estimating a monetary benefit for subsection (5)(c)(ii), the Minister may take into account the matters the Land and Environment Court may take into account under section 353F(2).
 - (7) The Minister—
 - (a) may impose a charge or order a debit under this section whether or not a charge has been imposed on the person under section 91O for substantially the same conduct, and
 - (b) must not impose a charge or order a debit under this section if the person—
 - (i) has been found guilty of an offence for the same conduct, or
 - (ii) has been made the subject of a civil penalty order for the same conduct.
 - (8) A charge or debit under this section must be imposed within 3 years after the later of—
 - (a) the day the contravention occurred, or
 - (b) the day evidence of the contravention first came to the attention of an authorised officer.
- [22] Section 71X Dealings on default**
Omit “civil” from section 71X(2)(a). Insert instead “administrative”.
- [23] Section 71X(4)**
Omit “civil”. Insert instead “administrative”.
- [24] Section 74 Exit from co-held access licence**
Omit “any civil” from section 74(6)(a). Insert instead “administrative”.
- [25] Section 78 Suspension and cancellation of access licences**
Insert before section 78(1)—
(1A) The Minister may suspend or cancel an access licence by written notice to the licence holder.
- [26] Section 78(1)(a)**
Omit “that”. Insert instead “the Minister reasonably believes”.
- [27] Section 78(1)(b1)**
Insert after section 78(1)(b)—
(b1) the Minister reasonably believes the holder of the licence has contravened a provision of this Act or the regulations,
- [28] Section 78(1)(c)**
Omit “civil” wherever occurring. Insert instead “administrative”.
- [29] Section 78(2)**
Omit “a civil”. Insert instead “an administrative”.

[30] Section 78(2)

Omit “further civil”. Insert instead “further administrative”.

[31] Section 78(2)

Omit “initial civil”. Insert instead “initial administrative”.

[32] Section 78(2A)

Insert after section 78(2)—

(2A) An access licence may be suspended—

- (a) for the period of time specified in the notice under subsection (1A), or
- (b) until the holder of the licence takes the action specified in the notice under subsection (1A).

[33] Section 78(4)

Insert after section 78(3)—

(4) When an access licence is cancelled, the following are forfeited to the Crown—

- (a) the water allocation for the licence,
- (b) water credited to the water allocation account for the licence.

[34] Section 78A Notification of intention to suspend, cancel or require payment of penalty

Omit “civil” from section 78A(3). Insert instead “administrative”.

[35] Section 87C, heading

Omit “Offences”. Insert instead “Contraventions”.

[36] Section 87C(1), penalty

Omit the penalty. Insert instead—

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[37] Section 88AB

Insert after section 88AA—

88AB Self-incrimination not an excuse

- (1) If an access licence is subject to a condition requiring the holder of the licence (the **licence holder**) to periodically attest the volume of water taken under the licence, the licence holder must not fail to give the attestation on the ground the attestation may—
 - (a) incriminate the licence holder, or
 - (b) make the licence holder liable to a penalty.
- (2) An attestation given by an individual is not admissible in evidence against the individual, other than in proceedings under section 344, if the individual—
 - (a) objected to giving the attestation on the ground the attestation may incriminate the individual, or
 - (b) was not warned that objection may be taken to giving the attestation on the ground the attestation may incriminate the individual.

- (3) Further information obtained as a result of an attestation given by a licence holder is not inadmissible on the ground—
 - (a) the attestation had to be given, or
 - (b) giving the attestation may incriminate the licence holder.

[38] Chapter 3, Part 3, Division 1A, heading

Insert “**and contraventions**” after “**Offences**”.

[39] Section 91AB

Insert before section 91A—

91AB Metering equipment that has been installed

- (1) In this division, metering equipment has been installed in connection with a work if metering equipment has at any time been installed in connection with the work.
- (2) To avoid doubt, a work from which metering equipment has been removed or otherwise rendered inoperative remains a work in connection with which metering equipment has been installed.

[40] Section 91A Using water without, or otherwise than as authorised by, a water use approval

Omit section 91A(1) and (2). Insert instead—

- (1) A person must not use water from a water source to which this part applies unless the person holds a water use approval for the use.
Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.
- (2) A holder of a water use approval must not use water from a water source to which this part applies—
 - (a) other than as authorised by the approval, or
 - (b) if an access licence specifies or restricts the purposes for which the water may be used—other than as authorised by the licence.Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.

[41] Section 91A(4) and (5)

Insert “, or proceedings for a contravention of a civil penalty provision,” after “prosecution” wherever occurring.

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

Omit section 91B(1) and (2). Insert instead—

- (1) A person must not construct or use a water supply work for which the person does not have a water supply work approval.
Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.
- (2) The holder of a water supply work approval must not, other than as authorised by the approval, construct or use a water supply work.
Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[43] Section 91B(5)

Insert “, or proceedings for a contravention of a civil penalty provision,” after “prosecution”.

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

Omit section 91C(1) and (2). Insert instead—

- (1) A person must not construct or use a drainage work for which the person does not have a drainage work approval.
Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.
- (2) The holder of a drainage work approval must not, other than as authorised by the approval, construct or use a drainage work.
Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.

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

Omit section 91D(1) and (2). Insert instead—

- (1) A person must not construct or use a flood work for which the person does not have a flood work approval.
Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.
- (2) The holder of a flood work approval must not, other than as authorised by the approval, construct or use a flood work—
 - (a) in or near a river or lake, or
 - (b) within a floodplain.Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.

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

Omit section 91E(1) and (2). Insert instead—

- (1) A person must not, in, on or under waterfront land, carry out a controlled activity for which the person does not have a controlled activity approval.
Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.
- (2) The holder of a controlled activity approval must not, in, on or under waterfront land, carry out a controlled activity other than as authorised by the approval.
Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.

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

Omit section 91F(1) and (2). Insert instead—

- (1) A person must not carry out an aquifer interference activity for which the person does not have an aquifer interference approval.
Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.
- (2) The holder of an aquifer interference approval must not, other than as authorised by the approval, carry out an aquifer interference activity.
Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.

[48] Section 91G Contravention of terms and conditions of approval

Omit section 91G(1) and (2). Insert instead—

- (1) A person must not, when undertaking a relevant activity under an approval, contravene a term or condition of the approval.
Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.
- (2) If a term or condition of an approval for a relevant activity is contravened, each holder of the approval commits a contravention.
Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.

[49] Section 91G(3)

Insert “, or proceedings for a contravention of a civil penalty provision,” after “prosecution”.

[50] Section 91G(4)

Insert after section 91G(3)—

- (4) In this section—
relevant activity means the following—
 - (a) the use of water,
 - (b) the construction or use of a water management work,
 - (c) a controlled activity,
 - (d) an aquifer interference activity.

[51] Section 91H

Omit the section. Insert instead—

91H Failure to install, use or maintain metering equipment

- (1) A person must not fail to install or use in connection with a water management work metering equipment the person is required to install or use under—
 - (a) the conditions of an access licence or approval, or
 - (b) a direction under section 326, or
 - (c) a regulation made under Chapter 3, Part 6.Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

- (2) A person must not fail to ensure the proper operation of metering equipment that has been installed in connection with a water management work.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

- (3) A person must not, for metering equipment used in connection with a water management work, fail to comply with a regulation setting out—

(a) a standard or requirement for the installation or location of metering equipment, or

(b) another standard or requirement relating to metering equipment.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

- (4) It is a defence to proceedings under subsection (3) if the accused person establishes that the failure to comply with the regulation was caused by work done to the metering equipment by a duly qualified person.

[52] Section 91I Taking water when metering equipment not working

Omit “or is operating” from section 91I(1)(a). Insert instead “or is not operating”.

[53] Section 91I(2)

Omit the subsection. Insert instead—

- (2) A person must not take water from a water source to which this part applies by means of a metered work while the metering equipment is—

(a) not operating properly, or

(b) not operating.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier A civil penalty.

[54] Section 91IA

Omit the section. Insert instead—

91IA Failure to report metering equipment not working

A person who is the holder of an approval for a work in connection with which metering equipment has been installed must not fail to give notice, in accordance with regulations made for this section, that the metering equipment is not operating properly, or is not operating, within 24 hours after becoming aware of that fact.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[55] Section 91J Metering records

Omit section 91J(1). Insert instead—

- (1) A person must not fail to keep the metering records the person is required under this Act to keep for metering equipment that has been installed in connection with a water management work.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[56] Section 91J(2), penalty

Omit the penalty. Insert instead—

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[57] Section 91K Meter tampering

Omit section 91K(2). Insert instead—

- (2) A person must not interfere with, damage, destroy or disconnect metering equipment that has been installed in connection with a water management work.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[58] Section 91L, heading

Omit “offences”. Insert instead “contraventions”.

[59] Section 91L(3)

Insert “or contravened the provision” after “committed the offence”.

[60] Section 91L(4)

Insert after section 91L(3)—

- (4) In this section—

occupier, of premises, includes a person who has control or management of the premises.

[61] Section 91M General defence

Insert “, or proceedings for a contravention of a civil penalty provision,” after “prosecution” in section 91M(2).

[62] Section 91O

Insert after section 91N—

91O Minister may charge for water taken without approval

- (1) The Minister may impose a charge on a person under this section if the Minister is satisfied, on the balance of probabilities, the person has—
- (a) contravened section 91B(1) or (2), 91G(1) or (2), 91H(1) or (2) or 91I(2), and
 - (b) in connection with the contravention, taken water.
- (2) A charge imposed by the Minister under subsection (1) must be—
- (a) no less than the value of the water taken, and
 - (b) no more than 5 times the value of the water taken.
- (3) Before imposing a charge on a person under this section, the Minister must—
- (a) give the person a written notice that states—
 - (i) the Minister proposes to impose the charge, and
 - (ii) the person may, within 28 days after the notice is given, or the longer period determined by the Minister, make a submission about the proposal to impose the charge, and

- (b) consider a submission made by the person in accordance with the notice.
- (4) In imposing a charge on a person under this section, the Minister—
 - (a) may determine the volume of water taken in accordance with a prescribed methodology, and
 - (b) must determine the value of water taken in accordance with a prescribed methodology, and
 - (c) must take the following matters into account—
 - (i) the harm or potential harm to other water users, or the environment, reasonably attributable to the contravention,
 - (ii) an estimate of the monetary benefit obtained by the person,
 - (iii) matters that aggravate or mitigate the contravention,
 - (iv) whether or not the person has admitted the contravention,
 - (v) whether the person has previously been found by a court to have engaged in similar conduct,
 - (vi) whether the person has previously received a penalty under this section,
 - (vii) the maximum amount that could be imposed by a court as a Tier 2 penalty, not including an amount that could be imposed for a continuing offence,
 - (viii) matters prescribed by the regulations.
- (5) When estimating a monetary benefit for subsection (4)(c)(ii), the Minister may take into account the matters the Land and Environment Court may take into account under section 353F(2).
- (6) This section applies to a contravention of section 91B(2) or 91G(1) only if the contravened approval restricted—
 - (a) the volume of water allowed to be taken from a water source, or
 - (b) the circumstances in which water could be taken from a water source.
- (7) The Minister—
 - (a) may impose a charge under this section whether or not a charge has been imposed on the person under section 60G for substantially the same conduct, and
 - (b) must not impose a charge under this section on a person who has been—
 - (i) found guilty of an offence for the same conduct, or
 - (ii) made the subject of a civil penalty order for the same conduct.
- (8) A charge under this section must be imposed within 3 years after the later of—
 - (a) the day the contravention occurred, or
 - (b) the day evidence of the contravention first came to the attention of an authorised officer.

[63] Section 109 Suspension and cancellation of approvals

Insert before section 109(1)—

- (1A) The Minister may suspend or cancel an approval, or part of an approval, by written notice to the holder of the approval.

[64] Section 109(1)(a)

Omit “that”. Insert instead “the Minister reasonably believes”.

[65] Section 109(1)(b1)

Insert after section 109(1)(b)—

- (b1) the Minister reasonably believes the holder of the approval has contravened a provision of this Act or the regulations,

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

Omit “civil” wherever occurring. Insert instead “administrative”.

[67] Section 109(2)

Omit “a civil”. Insert instead “an administrative”.

[68] Section 109(2B)

Insert after section 109(2A)—

- (2B) An approval may be suspended—
 - (a) for the period of time specified in the notice under subsection (1A), or
 - (b) until the holder of the approval takes the action specified in the notice under subsection (1A).

[69] Section 109(5)

Insert after section 109(4)—

- (5) While an approval is suspended, an application must not be made for another approval for the same work or activity.

[70] Section 115 Regulations may impose mandatory conditions

Omit “Natural Resources Access” from section 115(1)(d).

[71] Section 120 Entry on to land

Omit section 120(4), penalty. Insert instead—

Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.

[72] Section 172 Ministerial directions about rules

Omit section 172(3), penalty. Insert instead—

Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.

[73] Section 239R Ministerial directions about rules

Omit section 239R(3), penalty. Insert instead—

Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.

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

Omit section 256(1), penalty. Insert instead—

Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.

[75] Section 297 Entry on land for inspections

Omit “dwelling-house” wherever occurring. Insert instead “dwelling house”.

[76] Section 318A Exposure of underground pipes

Omit the penalty. Insert instead—

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[77] Section 326 Directions to install, replace, use and maintain metering equipment

Omit “use or to” from section 326(1).

Insert instead “use, ensure and certify the accuracy of or”.

[78] Section 326(2)(a1)

Insert after section 326(2)(a)—

(a1) a direction that the accuracy of the equipment be certified, and

[79] Section 326(2A)

Insert “, certify the accuracy of” after “maintain”.

[80] Section 326(4)

Insert after section 326(3)—

(4) The accuracy of metering equipment is certified only if it is certified by a duly qualified person or a person specified under subsection (2A).

[81] Section 326B

Omit the section. Insert instead—

326B Use of information

Information in an audit report or other document given to the Minister in connection with a compliance audit—

- (a) may be taken into consideration by the Minister and used for a purpose under this Act, and
- (b) is admissible in evidence in the following—
 - (i) a prosecution of the holder of an access licence or approval for an offence under this Act or another law,
 - (ii) proceedings against the holder of an access licence or approval for a contravention of a civil penalty provision under this Act or another law.

[82] Section 336A

Omit the section. Insert instead—

336A Compliance cost notices

- (1) The Minister may give a person who is given a direction under this part a compliance cost notice.
- (2) A compliance cost notice is a written notice requiring the person to whom it is given to pay the costs and expenses reasonably incurred by the Minister for the following—

- (a) preparing and giving of the direction,
 - (b) monitoring compliance with the direction,
 - (c) other matters prescribed by the regulations.
- (3) A compliance cost notice must specify—
 - (a) the amount required to be paid, and
 - (b) a reasonable period, not less than 28 days, within which the amount must be paid.
- (4) The Minister may recover an unpaid amount specified in a compliance cost notice as a debt in a court of competent jurisdiction.
- (5) The regulations may provide for the following—
 - (a) the issue of compliance cost notices,
 - (b) the form of compliance cost notices,
 - (c) the calculation of the amount to be paid under a compliance cost notice, including setting the maximum amount that may be charged for particular matters.

[83] Section 336C Contravention of certain directions

Omit section 336C(1). Insert instead—

- (1) A person must not fail to comply with a direction under this part.
Maximum penalty—Tier 2 penalty.
Maximum civil penalty—Tier C civil penalty.

[84] Section 336E Enforcement of undertakings

Omit “Natural Resources Access” wherever occurring in section 336E(1) and (5).

[85] Chapter 7, Part 1, Division 9

Insert after section 336F—

Division 9 Remedial measures

336G Definitions

In this division—

authorised person—

- (a) means a person appointed under section 336H(1), and
- (b) includes an employee or contractor of the person.

remedial measures means the measures required to be taken in accordance with a direction under this part.

336H Remedial measures may be taken by Minister

- (1) If a person refuses or fails to take one or more remedial measures, the Minister may, by instrument, appoint a person to take the measures.
- (2) Before making an appointment under this section, the Minister must give the person to whom the direction was given reasonable notice of the Minister’s intention to make the appointment.
- (3) Costs and expenses incurred by an authorised person in taking remedial measures are recoverable from the person to whom the direction was given in a court of competent jurisdiction as a debt due to the Ministerial Corporation.

Note— See also the *Natural Resources Access Regulator Act 2017*, section 11(1)(e) and Schedule 2.

336I Power to enter premises

- (1) An authorised person may enter premises at a reasonable time for the purpose of taking the remedial measures for which the authorised person is appointed.
- (2) For the purpose of entering or leaving premises, an authorised person may enter other premises.
- (3) A power to enter premises conferred by this section authorises entry by any reasonable means.
- (4) An authorised person may, while on premises under this section, take action reasonably necessary to take the remedial measures, including—
 - (a) interfering with land or anything on the land, and
 - (b) interfering with a water supply work.
- (5) An authorised person must, if asked by the owner or occupier of premises, produce a copy of the authorised person's instrument of appointment.
- (6) This section does not authorise an authorised person to enter premises used solely for residential purposes except with the consent of the occupier of the premises.

336J Offence to hinder, intimidate or obstruct authorised person

A person must not hinder, intimidate or obstruct an authorised person.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

336K Care to be taken

An authorised person must do as little damage as possible when entering premises, or taking remedial measures on premises, under this division.

336L Compensation

The Minister must compensate an owner or occupier of premises for damage caused by an authorised person in exercising a power under this division to enter premises, but not another power, unless the damage resulted from the occupier hindering, intimidating or obstructing the authorised person.

[86] Section 338D Power of authorised officers to demand name and address

Omit “committed, or to be committing, an offence against” from section 338D(1).

Insert instead “contravened, or to be contravening, a provision of”.

[87] Section 339 Powers of authorised officers to enter premises

Insert after section 339(4)—

- (5) In this section—

aircraft includes a drone and other remotely controlled airborne craft.

vehicle includes a remotely controlled vehicle.

vessel includes a remotely controlled vessel.

[88] Section 339B Powers of authorised officers to do things at premises

Omit “an offence against” from section 339B(2)(h). Insert instead “a contravention of”.

[89] Section 339B(3)–(5)

Omit section 339B(3) and (4). Insert instead—

- (3) The power to seize a thing connected with a contravention includes the power to seize the following—
 - (a) a thing in relation to which the contravention has occurred,
 - (b) a thing that may be evidence of the contravention,
 - (c) a thing used in the contravention.
- (4) An authorised officer who seizes a thing under this section must, within 24 hours after seizing the thing, take all reasonable steps to give the person from whom the thing was seized a receipt acknowledging the seizure.
- (5) In this section—
contravention includes a contravention the authorised officer has reasonable grounds to believe has occurred.

[90] Section 339C Search warrants

Omit “matter or a thing that is connected with an offence under” from section 339C(1)(b).
Insert instead “a matter or thing connected with a contravention of”.

[91] Section 339C(4)

Omit the subsection. Insert instead—

- (4) In this section—
contravention includes a contravention the authorised officer has reasonable grounds to believe has occurred or is occurring.
matter or thing, connected with a contravention, means the following—
 - (a) a matter or thing in relation to which the contravention has occurred,
 - (b) a matter or thing that may be evidence of the contravention,
 - (c) a matter or thing used, or intended to be used, in the contravention.

[92] Chapter 7, Part 2, Division 3A

Insert after section 339G—

Division 3A Seized things

339H Definition

In this division—

seized thing means a thing seized by an authorised officer under section 339B.

339I Storage of and interference with seized things

- (1) Subject to the directions of the Minister, a seized thing may be kept or stored at—
 - (a) the premises at which the thing was seized, or
 - (b) another place the authorised officer who seized the thing considers appropriate.
- (2) A person must not remove, alter or interfere with a seized thing without the approval of—
 - (a) an authorised officer, or

(b) the Minister.

Maximum penalty for subsection (2)—Tier 3 penalty.

339J Release of seized things

- (1) A seized thing must be released at the end of the period of 12 months after the seizure (the *return period*) unless, before the end of the return period, the Minister gives written notice to the person from whom the thing was seized extending the return period.
- (2) The Minister must not extend the return period for a thing unless satisfied the thing is required by the Regulator for—
 - (a) the investigation of a suspected contravention of this Act or the regulations, or
 - (b) proceedings commenced, or intended to be commenced, by the Regulator for a contravention of this Act or the regulations.
- (3) A seized thing may be released—
 - (a) by or at the direction of—
 - (i) the authorised officer who seized the thing, or
 - (ii) the Minister, and
 - (b) to the owner of the thing or the person from whom the thing was seized.
- (4) This section does not prevent a seized thing from being released before the end of the return period.

339K Forfeiture of seized things by order

- (1) A seized thing is forfeited to the State if the Minister makes an order under this section declaring the forfeiture of the thing.
- (2) The Minister may, by written order, declare the seized thing to be forfeited to the State—
 - (a) if satisfied—
 - (i) a person has been convicted of an offence in connection with the seized thing, or
 - (ii) a person has been the subject of a civil penalty order for a contravention in connection with the seized thing, or
 - (iii) the owner of the seized thing or the person from whom the thing was seized cannot be found despite inquiries being made that are reasonable in the circumstances, or
 - (iv) the seized thing cannot be returned to the owner or the person from whom the thing was seized for other reasons despite efforts being made that are reasonable in the circumstances, or
 - (b) otherwise—on prescribed grounds.
- (3) At least 21 days before making an order, the Minister must give the apparent owner of a seized thing written notice of the intention to declare the seized thing to be forfeited.
- (4) The notice must specify a period within which the apparent owner may make submissions to the Minister before the order is made.
- (5) The Minister is not required to give notice to the apparent owner of a seized thing if satisfied—

- (a) the owner of the seized thing cannot be found despite inquiries being made that are reasonable in the circumstances, or
 - (b) the seized thing cannot be returned to the owner or the person from whom the thing was seized for other reasons despite efforts being made that are reasonable in the circumstances.
- (6) The Minister must consider submissions made in accordance with the notice.

339L Forfeiture of seized things with consent

- (1) The owner of a seized thing may give written consent for the forfeiture of the thing.
- (2) The seized thing is forfeited to the State when the written consent is given.

339M Disposal of forfeited things

A seized thing forfeited under this division may be disposed of in the way directed by the Minister, whether generally or in a particular circumstance or class of circumstances.

[93] Section 340A, heading

Insert “**and contraventions**” after “**offences**”.

[94] Section 340A(1), penalty

Omit the penalty. Insert instead—

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[95] Section 340A(2), penalty

Omit the penalty. Insert instead—

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[96] Section 340A(3), penalty

Omit the penalty. Insert instead—

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[97] Section 340A(4), penalty

Omit the penalty. Insert instead—

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[98] Section 340B Provisions relating to requirements to furnish records, information or answer questions

Omit “is not guilty of an offence” from section 340B(1).

Insert instead “does not commit an offence or contravene a civil penalty provision”.

[99] Section 340B(1)

Omit “is an offence”.

Insert instead “may be an offence or a contravention of a civil penalty provision”.

[100] Section 340B(3)

Insert “or proceedings for a contravention of a civil penalty provision” after “criminal proceedings”.

[101] Section 340B(3)

Insert “or a contravention” after “offence”.

[102] Section 340B(4)

Insert “or proceedings for a contravention of a civil penalty provision” after “criminal proceedings”.

[103] Chapter 7, Part 3, heading

Insert “and contraventions” after “Offences”.

[104] Section 341

Insert before section 342—

341 Receiving monetary benefits

- (1) A related person who, as a result of an underlying matter, obtains a monetary benefit—

- (a) if the underlying matter is an offence—commits an offence, or
- (b) if the underlying matter is a contravention of a civil penalty provision—contravenes a civil penalty provision.

Maximum penalty for subsection (1)(a)—the lesser of—

- (a) a Tier 2 penalty, or
- (b) the maximum penalty for the underlying matter.

Maximum civil penalty for subsection (1)(b)—Tier C civil penalty.

- (2) Proceedings under this section may be commenced no later than the later of the following—

- (a) the date that is 12 months after the date on which a court finds the underlying matter proved,
- (b) the date by which—
 - (i) criminal proceedings may be commenced under section 364, or
 - (ii) civil penalty proceedings may be commenced under section 370G.

[105] Section 342 Destruction, damage and interference with certain works

Omit section 342(1), penalty. Insert instead—

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[106] Section 342(2), penalty

Omit the penalty. Insert instead—

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[107] Section 342(3)

Omit “is not guilty of an offence against”.

Insert instead “does not contravene”.

[108] Section 342(3)

Omit “offence”. Insert instead “contravention”.

[109] Section 343 Taking water from public or private works

Omit section 343(1), penalty. Insert instead—

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[110] Section 343(2)

Omit “is not guilty of an offence against”.

Insert instead “does not contravene”.

[111] Section 343(2)

Omit “offence”. Insert instead “contravention”.

[112] Section 344 False or misleading information

Omit the penalty. Insert instead—

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

- (2) A person must not, for a purpose under this Act, give the Minister or an authorised officer information if the person knows the information is false or misleading in a material particular.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[113] Section 345 Harm to aquifers and waterfront land

Omit section 345(2). Insert instead—

- (2) A person must not harm an aquifer or waterfront land.

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier B civil penalty.

[114] Section 345(3)

Insert “, or proceedings for a contravention of a civil penalty provision,” after “prosecution”.

[115] Section 346 Unlicensed bore drilling

Omit the penalty. Insert instead—

Maximum penalty—Tier 2 penalty.

Maximum civil penalty—Tier C civil penalty.

[116] Chapter 7, Part 3A, heading

Insert “and contraventions” after “offences”.

[117] Section 353 Operation of Part

Omit section 353(2), definition of *harm to the environment*. Insert instead—

harm to the environment includes—

- (a) harm, likely harm or potential harm to a water source or waterfront land, and
- (b) other likely or potential harm to the environment.

[118] Section 353F–353FB

Omit section 353F. Insert instead—

353F Orders to forfeit monetary benefits

- (1) The Land and Environment Court may, when dealing with an offence involving taking water, order an offender to pay one or more amounts estimated by the Court as monetary benefits obtained by the offender or a related person as a result of the offence.
- (2) In estimating a monetary benefit obtained by an offender or a related person, the Court may take into account the following—
 - (a) the value of the water taken, determined using a prescribed methodology,
 - (b) the volume of water taken,
 - (c) additional revenue the Court reasonably considers the offender or a related person received from the sale of goods produced in connection with the offence,
 - (d) capital or operating costs for the offender or a related person that were delayed or avoided,
 - (e) a charge imposed by the Minister on the offender or a related person under—
 - (i) section 60G, or
 - (ii) section 91O,
 - (f) matters prescribed by the regulations,
 - (g) other matters the Court considers relevant.
- (3) In this section—
related person includes a related person of a corporation.

353FA Recovery of monetary benefits from related persons

- (1) This section applies if the Land and Environment Court finds a corporation has contravened a provision of this Act or the regulations.
- (2) The Minister may apply to the Court for an order that a related person of the corporation pay an amount estimated to be the monetary benefit obtained by the related person as a result of the contravention.
- (3) The Court may, in making an order under this section, take the matters in section 353F(2) into account.
- (4) The Court may make an order under this section only if satisfied, on the balance of probabilities, that the related person obtained the estimated monetary benefit as a result of the contravention.

353FB Cancellation orders

- (1) The court may make an order (a *cancellation order*) cancelling an access licence or an approval held by an offender.

- (2) The court may, when making a cancellation order, set a period of time during which one or more of the following are prohibited from applying for the same or a similar type of licence or approval as the cancelled licence or approval—
 - (a) the offender,
 - (b) a related body corporate of the offender,
 - (c) a related entity of the offender,
 - (d) a related person of the offender.
- (3) Before making a cancellation order, the court must consider the following—
 - (a) the circumstances of the offences committed by the offender,
 - (b) the offender's record of compliance, or failure to comply, with this Act or the regulations,
 - (c) matters prescribed by the regulations.
- (4) In this section—
related person includes a related person of a corporation.

[119] Section 353G Additional orders

Omit “a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,” from section 353G(1)(b).

Insert instead—

the following projects or activities—

- (i) a specified project for the restoration or enhancement of the environment in a public place,
- (ii) a specified project, social activity or community activity the offender has agreed to carry out for the benefit of a community affected by the offence or the general public,

[120] Section 353G(1A)

Insert after section 353G(1)—

- (1A) If the court makes an order under subsection (1)(b), the court may—
 - (a) for an order that the offender contribute a specified amount to the cost of carrying out a project or activity—order the amount be paid to—
 - (i) the Environmental Trust established under the *Environmental Trust Act 1998*, or
 - (ii) another specified organisation, or
 - (b) for an order that the offender carry out a specified project or activity—order the offender to give the Regulator a financial assurance in the way and amount the court considers appropriate, but only if the Regulator is a party to the proceedings.

[121] Chapter 7, Part 3B

Insert after section 353H—

Part 3B Financial assurances

353I Application of part

This part applies if a court makes an order under section 353G(1A)(b) requiring an offender to give the Regulator a financial assurance.

353J Form of financial assurance

- (1) A financial assurance may be given in one or more of the following forms—
 - (a) a bank guarantee,
 - (b) a bond,
 - (c) a form of security prescribed by the regulations,
 - (d) another form of security the court considers appropriate.
- (2) The court must not require a financial assurance for an amount that is more than the reasonably estimated cost of carrying out the specified project or activity, including reasonable costs associated with the Regulator supervising the carrying out of the project or activity.

353K Claim on financial assurance

- (1) If the Regulator is satisfied on reasonable grounds that an offender has failed to carry out or complete the project or activity ordered by the court, the Regulator may—
 - (a) carry out or complete the project or activity, including by having a third party carry out or complete the project or activity, and
 - (b) make a claim on or realise the financial assurance.
- (2) Before making a claim on or realising the financial assurance, the Regulator must give the offender written notice that includes details of the following—
 - (a) the project or activity the offender was ordered to carry out,
 - (b) the grounds on which the Regulator is satisfied the offender has failed to carry out or complete the project or activity,
 - (c) the amount to be claimed or realised from the financial assurance,
 - (d) an opportunity for the offender to make submissions about why the Regulator should not make a claim on or realise the financial assurance,
 - (e) the date, not less than 28 days after the date of the notice, by which the offender may make a submission about the Regulator's intention to make a claim on or realise the financial assurance.
- (3) If, after considering a submission made in accordance with subsection (2), the Regulator decides to make a claim on or realise the financial assurance, the Regulator must give the offender written notice that specifies—
 - (a) the decision, and
 - (b) the amount of the financial assurance to be claimed.
- (4) If the amount of the financial assurance is insufficient to cover the Regulator's reasonable costs and expenses in carrying out or completing the project or activity, the Regulator may recover the outstanding amount from the offender as a debt in a court of competent jurisdiction.

353L Lapsing of financial assurance

An order to give a financial assurance ceases to have effect if the Regulator gives the offender written notice that the project or activity to which the financial assurance relates has been completed satisfactorily.

353M Limitation of liability

The offender is liable for anything done or omitted to be done in good faith by the Regulator under section 353K(1) in connection with the carrying out or completion of the relevant project or activity.

353N Financial assurance does not affect other penalty or charge

A financial assurance may be claimed or realised despite, and without affecting—

- (a) the liability of the offender to pay a penalty for an offence or other contravention to which the assurance relates, and
- (b) other action that might be taken or is required to be taken in relation to a contravention or other circumstances to which the assurance relates.

353O Disputes about calling on or using financial assurance

The Land and Environment Court has jurisdiction to determine disputes about claiming or realising financial assurances.

353P Regulations

The regulations may provide for the following—

- (a) the form and amount of a financial assurance required to be given,
- (b) the way the Regulator may make a claim or realise a financial assurance,
- (c) the giving of notice for this part.

[122] Section 362A Joint owners

Omit “civil” wherever occurring in section 362A(1). Insert instead “administrative”.

[123] Section 362B Certificate as to charges outstanding in relation to access licences

Omit “civil” from section 362B(1)(a). Insert instead “administrative”.

[124] Section 362C, heading

Omit “civil”. Insert instead “administrative”.

[125] Section 362C(1)

Omit “Any civil”. Insert instead “An administrative”.

[126] Section 362C(2) and (3)

Omit “civil” wherever occurring. Insert instead “administrative”.

[127] Section 364 Proceedings for offences

Omit section 364(6)(a) and (b). Insert instead—

- (a) for a corporation—2,000 penalty units, or
 - (b) otherwise—1,000 penalty units.
- (6A) For a continuing offence, the Local Court may also impose a penalty of up to 10% of the further monetary penalty specified for the offence for each day the offence continues.

[128] Section 364A Matters to be considered in imposing penalty

Omit section 364A(1)(c). Insert instead—

- (b1) the impact, likely impact or potential impact of the offence on the spiritual, social, customary or economic use or value of land and water by or for Aboriginal people,
- (b2) for an offence with an impact, likely impact or potential impact on the spiritual, social, customary or economic use or value of land and water

by or for Aboriginal people—the views of Aboriginal persons impacted or likely to be impacted,

- (c) the harm, likely harm or potential harm to the environment, including, in particular, to a water source or waterfront land, by the commission of the offence,

[129] Section 364A(1)(d)

Omit “that harm”. Insert instead “the harm, likely harm or potential harm”.

[130] Section 364A(1)(e)

Omit “caused or likely to be caused”. Insert instead “, likely harm or potential harm”.

[131] Section 364A(1)(g)

Omit “(that is, in contravention of an order in force under section 49A, 49B or 324)”.

Insert instead “, including while an order is in force under section 49A, 49B or 324”.

[132] Section 364A(1)(k)–(m)

Omit section 364A(1)(k). Insert instead—

- (k) action taken under section 60G for substantially the same conduct,
- (l) a charge imposed on the person under section 91O for substantially the same conduct,
- (m) a civil penalty order made against the person for substantially the same conduct.

[133] Section 365A

Omit the section. Insert instead—

365A Continuing offences

- (1) A person is guilty of a continuing offence for each day a contravention of a legal requirement continues if—
 - (a) the contravention of the legal requirement is an offence against this Act or the regulations, and
 - (b) a penalty for a continuing offence is included for the offence.

Note— A provision with a Tier 1 or 2 penalty includes a penalty for a continuing offence.

- (2) The person continues to be required to comply with the legal requirement despite a time specified for compliance having passed.
- (3) The continuing offence ceases if—
 - (a) the legal requirement is complied with, or
 - (b) for a legal requirement imposed by a notice—the notice is revoked or otherwise ceases to apply.

- (4) In this section—

legal requirement means a requirement imposed by the following that requires a person to do or stop doing something—

- (a) this Act,
- (b) the regulations,
- (c) a notice or direction given under this Act or the regulations,

- (d) a condition of a licence or approval.

[134] Section 367B Rebuttable presumptions

Omit “any proceedings for an offence against” wherever occurring in section 367B(1)–(3).

Insert instead “proceedings for an offence or a contravention of a civil penalty provision under”.

[135] Sections 367C and 367D

Insert after section 367B—

367C Multiple contraventions

- (1) This section applies if 2 or more contraventions by a person of the same provision of this Act or the regulations arise from—
 - (a) the same factual circumstances, or
 - (b) the same activity being carried out at the same premises.
- (2) The contraventions may be dealt with as—
 - (a) a single offence, or
 - (b) a single civil penalty contravention.

367D Evidence from photographs and other images

- (1) This section applies to a photographic or other image of an area of land formed from data captured by a device carried by an aircraft, satellite or other craft, and information recorded on the image, that the Minister certifies as an approved image.
- (2) The approved image is admissible in proceedings under this Act and, in the absence of evidence to the contrary, is evidence of the following—
 - (a) the matter depicted on the image,
 - (b) the information recorded on the image relating to the location or boundaries of the land,
 - (c) the time when, or the period during which, the image was taken,
 - (d) other matters prescribed by the regulations.
- (3) In proceedings in which the approved image is admitted in evidence—
 - (a) the image is presumed, in the absence of evidence to the contrary, to be orthorectified, and
 - (b) evidence is not required, in the absence of evidence to the contrary, of the accuracy of a process used to—
 - (i) orthorectify the image, or
 - (ii) determine the boundaries of land recorded in the image.

[136] Section 368 Appeals to Land and Environment Court

Omit “a civil” wherever occurring in section 368(1)(la) and (m).

Insert instead “an administrative”.

[137] Section 368(1)(mb)

Insert after section 368(1)(ma)—

- (mb) a decision to impose a charge under section 91O,

[138] Chapter 7, Part 6

Insert after section 368—

Part 6 Civil penalty provisions

Division 1 Preliminary

369 Definition

In this part—

Court means the Land and Environment Court.

370 When provision is civil penalty provision

A provision of this Act or the regulations is a civil penalty provision if the words “Maximum civil penalty” and a civil penalty tier level are set out at the end of the provision.

370A Certain activities excluded

- (1) The Court must not find an individual has contravened a civil penalty provision if the individual’s conduct was one or more of the following—
 - (a) taking water for domestic consumption or stock watering,
 - (b) installing a flood work solely to protect a dwelling,
 - (c) undertaking, for the sole purpose of providing access to a dwelling, a controlled activity that does not involve impounding water,
 - (d) an activity prescribed by the regulations.
- (2) This section does not apply to an individual taken to have contravened a civil penalty provision in accordance with section 370C or 370D.
- (3) In this section—

domestic consumption, in relation to land, includes domestic consumption within the meaning of section 52.

stock watering, in relation to land, includes stock watering within the meaning of section 52.

370B Involvement in contravention taken to be contravention

- (1) A person who is involved in, causes or permits a contravention of a civil penalty provision is taken to have contravened the provision.
- (2) A person is involved in a contravention of a civil penalty provision only if the person has—
 - (a) aided, abetted, counselled or procured the contravention, or
 - (b) induced the contravention, whether by threats or promises or otherwise, or
 - (c) been knowingly involved in or a party to the contravention, whether directly or indirectly, or
 - (d) conspired with others to effect the contravention.

370C Contravention by corporation

- (1) If a corporation contravenes a civil penalty provision, each of the following persons is taken to have contravened the same provision if the person

knowingly authorised or permitted the act or omission constituting the contravention—

- (a) a director of the corporation,
 - (b) a person involved in the management of the corporation.
- (2) Proceedings may be taken against a person for a contravention of a civil penalty provision whether or not proceedings have been taken against the corporation.
- (3) Nothing in this section affects any liability imposed on a corporation for a contravention of a civil penalty provision by the corporation.

370D Contravention by co-holders of access licence or approval

- (1) If the holder of an access licence or approval contravenes a civil penalty provision, each co-holder of the licence or approval is taken to have contravened the same provision unless the co-holder establishes—
- (a) the contravention was committed by another person, whether or not the other person was a co-holder of the licence or approval, and
 - (b) the other person was not associated with the co-holder at the time of the contravention, and
 - (c) the co-holder took all reasonable steps to prevent the contravention.
- (2) Without limiting the circumstances in which a person may be associated with a co-holder, a person is associated with a co-holder for subsection (1)(b) if the person is an employee, agent, licensee, contractor or subcontractor of the co-holder.
- (3) Proceedings may be taken against the co-holder of a licence or approval for a contravention of a civil penalty provision whether or not proceedings have been taken against another person for the same contravention.

370E Continuing contraventions

- (1) A person commits a continuing contravention for each day a contravention of a civil penalty provision of this Act or the regulations continues.
- (2) The person continues to be required to comply with a civil penalty provision despite a time specified for compliance having passed.
- (3) A continuing contravention ceases if the relevant provision is complied with.

370F Civil penalty levels

- (1) The following table sets out the maximum civil penalties under this Act—

Tier	Penalty for individuals		Penalty for corporations	
	Penalty	Additional penalty for each day contravention continues	Penalty	Additional penalty for each day contravention continues
Tier A	the greater of 45,450 penalty units or 5 times the value of the water taken	2,200 penalty units	the greater of 90,900 penalty units or 5 times the value of the water taken	4,500 penalty units

Tier	Penalty for individuals		Penalty for corporations	
	Penalty	Additional penalty for each day contravention continues	Penalty	Additional penalty for each day contravention continues
Tier B	45,450 penalty units	2,200 penalty units	90,900 penalty units	4,500 penalty units
Tier C	23,000 penalty units	1,100 penalty units	46,000 penalty units	2,200 penalty units

- (2) In this section—
value of the water taken means the value of the water taken determined using a prescribed methodology.

Division 2 Procedure

370G Limitation period for civil penalty proceedings

Proceedings for a contravention of a civil penalty provision may be brought within 3 years after the later of the following—

- (a) the day the contravention occurred,
- (b) the day the contravention first came to the attention of an authorised officer.

370H Proceedings for contravention of civil penalty provision

- (1) Proceedings may be brought in the Court against a person for a contravention of a civil penalty provision.
- (2) The Court must apply the rules of evidence and procedure for civil proceedings when hearing proceedings for a contravention of a civil penalty provision.

370I Proceedings may be brought by Minister

Proceedings for a contravention of a civil penalty provision may be brought by the Minister.

370J Civil proceedings during or after criminal proceedings

- (1) Proceedings against a person for a contravention of a civil penalty provision must not be commenced if criminal proceedings have been commenced against the person for an offence in relation to substantially the same conduct.
- (2) If proceedings against a person for a contravention of a civil penalty provision are underway when criminal proceedings are commenced against the person for an offence in relation to substantially the same conduct, the civil penalty provision proceedings must be dismissed by the Court.

370K Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

370L Evidence given in civil penalty proceedings not admissible in criminal proceedings

- (1) Evidence of information given by an individual or evidence of the production of a document by the individual is not admissible in criminal proceedings against the individual if—
 - (a) the information or document is only known to the prosecutor because the individual relied on the information or document in proceedings against the individual for a contravention of a civil penalty provision, and
 - (b) the conduct alleged to constitute the offence is substantially the same as the conduct alleged to constitute the contravention of the civil penalty provision.
- (2) This section does not apply to criminal proceedings in relation to the individual giving false evidence in the proceedings for the contravention of the civil penalty provision.

370M Contravention of more than one civil penalty provision

- (1) If a person's conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against the person in relation to the contravention of one or more of the provisions.
- (2) Despite subsection (1), a person is not liable to more than one civil penalty under this Act for the same conduct.

370N Multiple contraventions of civil penalty provision

- (1) The Court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if—
 - (a) proceedings for the contraventions rely on the same facts, or
 - (b) the contraventions form, or are part of, a series of contraventions of the same or a similar character.
- (2) The penalty must not be more than the sum of the maximum penalties that could be imposed if a separate penalty were ordered for each contravention.

370O Proceedings may be heard together

The Court may direct that 2 or more proceedings for contraventions of civil penalty provisions be heard together.

370P Proof of state of mind not required

- (1) In proceedings against a person for a contravention of a civil penalty provision, it is not necessary to prove the following—
 - (a) the person's intention,
 - (b) the person's knowledge,
 - (c) the person's recklessness,
 - (d) the person's negligence,
 - (e) another state of mind of the person.
- (2) Subsection (1) does not apply to proceedings for—
 - (a) a contravention under section 91J(2), 340A(2) or 344(1) or (2), or
 - (b) a matter that is taken, for section 370B, 370C or 370D, to be a contravention.

- (3) Despite subsection (1), the defence of honest and reasonable mistake of fact may be established.

370Q Evidential burden

In proceedings for a contravention of a civil penalty provision, a person who wishes to rely on an exception, exemption, excuse, qualification or justification that applies to the civil penalty provision has the evidential burden in relation to that matter.

Division 3 Orders

370R Orders for contravention of civil penalty provision

- (1) If the Court is satisfied a person has contravened a civil penalty provision, the Court may—
- (a) order the person to pay a monetary penalty, not more than the maximum civil penalty amount for the provision, the Court considers appropriate, and
 - (b) order the person to pay an additional penalty for each day the contravention continues, and
 - (c) make an order under one or more of the following as if the person had been found guilty of an offence—
 - (i) section 353B,
 - (ii) section 353C,
 - (iii) section 353D,
 - (iv) section 353E,
 - (v) section 353FB,
 - (vi) section 353G, and
 - (d) make another order the Court considers appropriate, including an injunction.
- (2) In determining the amount to be paid by a person as a civil penalty, the Court must have regard to the following—
- (a) the nature and extent of the contravention,
 - (b) the actual and potential environmental harm or detriment to the public interest resulting from the contravention,
 - (c) the circumstances in which the contravention took place,
 - (d) the financial or other benefit the person stood to gain from the contravention,
 - (e) whether the person has previously been found, in proceedings under this Act, to have engaged in similar conduct,
 - (f) whether or not action has been taken against the person under section 60G,
 - (g) whether or not a charge has been imposed on the person under section 91O,
 - (h) other matters the Court considers relevant.
- (3) The failure by a person to comply with an order made in accordance with subsection (1)(c) or (d) is a civil penalty contravention.
Maximum civil penalty—Tier B civil penalty.

- (4) Subsection (3) does not apply to an order made under section 353C, 353D or 353E.

370S Orders as to costs

The Court may, in proceedings under this part, make orders about the costs of the proceedings the Court thinks just and reasonable.

370T Recovery of civil penalty amounts

If the Court orders a person to pay a civil penalty—

- (a) the penalty is payable to the State, and
- (b) the State may enforce the order as if it were a judgment of the Court.

370U Civil double jeopardy

The Court must not make a civil penalty order against a person under this part if an order has been made against the person under a civil penalty provision of the *Water Act 2007* of the Commonwealth in relation to substantially the same conduct.

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

Omit “civil” from section 391A(2)(a). Insert instead “administrative”.

[140] Section 394 Service of documents

Omit section 394(1). Insert instead—

- (1) A document authorised or required by this Act or the regulations to be served on a person may be served by the following methods—
 - (a) for an individual—by personal delivery to the person,
 - (b) by post to the address specified by the person for the service of documents of that kind,
 - (c) for an individual who has not specified an address—by post to the residential or business address of the person last known to the person serving the document,
 - (d) for a corporation—by post to the registered office or another office of the corporation or by leaving the document at the office with a person who is apparently more than 16 years of age,
 - (e) if the person has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by electronic communication—by electronic communication,
Examples of impliedly consenting to service of documents by electronic communication— previously using email to correspond with the person or authority serving the document or including an email address in an application to, or other official communication with, the person or authority
 - (f) by another method authorised by the regulations for the service of documents of that kind.

[141] Section 394(4)

Insert after section 394(3)—

- (4) In this section—
electronic communication has the same meaning as in the *Electronic Transactions Act 2000*.
serve includes give or send.

[142] Section 394A

Insert after section 394—

394A Methodologies for determining water volume and value

- (1) The regulations may prescribe methodologies by which a determination of the following may be made for the purposes of this Act—
 - (a) a volume of water,
 - (b) the value of water.
- (2) A prescribed methodology may be used to determine a volume of water if—
 - (a) a provision of this Act or the regulations expressly provides for the use of a prescribed methodology, or
 - (b) an actual measurement is unavailable, including due to the absence of metering equipment or a fault in metering equipment.
- (3) A prescribed methodology must be used to determine the value of water if a provision of this Act or the regulations expressly provides for the use of a prescribed methodology.
- (4) A methodology may be prescribed for—
 - (a) one or more specific provisions of this Act or the regulations, or
 - (b) all provisions of this Act and the regulations.

[143] Section 397 Exclusion of personal liability

Insert after section 397(1)(c)—

- (c1) an authorised person appointed under Chapter 7, Part 1, Division 9, or

[144] Section 397(1)(d)

Omit “or (c)”. Insert instead “, (c) or (c1)”.

[145] Section 397(2)(b)

Insert after section 397(2)(a)—

- (b) the Regulator, or

[146] Section 400 Regulations

Omit “exceeding 20 penalty units.” from section 400(3). Insert instead—

exceeding—

- (a) for a corporation—200 penalty units, or
- (b) otherwise—100 penalty units.

[147] Schedule 9 Savings, transitional and other provisions

Insert at the end of the schedule, with appropriate part and clause numbering—

Part Provisions consequent on enactment of Water Management Legislation Amendment (Stronger Enforcement and Penalties) Act 2025

Definitions

In this part—

amending Act means the *Water Management Legislation Amendment (Stronger Enforcement and Penalties) Act 2025*.

commencement day means the day of assent to the amending Act.

Offences and contraventions

Sections 60A, 60B, 60C, 60D, 60E(1) and (2), 60F, 87C(1), 91A, 91B, 91C, 91D, 91E, 91F, 91G, 91H, 91I(2), 91IA, 91J, 91K(2), 91L(3), 91M, 120(4), 172(3), 239R(3), 256(1), 318A, 336C(1), 340A, 342, 343, 344(1), 345(2) and (3) and 346, as inserted or amended by the amending Act, apply to conduct—

- (a) that occurred before the commencement day, and
- (b) for which proceedings had not commenced on the commencement day.

Charges under section 91O for water taken

The Minister may impose a charge under section 91O for a contravention that occurred before 1 January 2026.

Orders relating to monetary benefits

Sections 353F and 353FA, as inserted by the amending Act, apply to proceedings commenced but not finally determined before 1 January 2026.

Cancellation orders

Section 353FB applies to conduct that occurred before 1 January 2026 whether or not proceedings had commenced before that day.

Community benefit projects

Section 353G, as amended by the amending Act, applies to conduct that occurred before 1 January 2026 whether or not proceedings had commenced before that day.

Jurisdictional limits for proceedings in Local Court

Section 364, as amended by the amending Act, applies to conduct that occurred before the commencement day whether or not proceedings had commenced before that day.

Multiple contraventions

Section 367C, as inserted by the amending Act, extends to contraventions arising out of circumstances that occurred, or the carrying out of an activity, before the commencement of the amending Act, Schedule 3[135] if proceedings in relation to the contraventions had not commenced before the commencement of the item.

Use of photographs and images in proceedings

- (1) Section 367D, as inserted by the amending Act, applies to the use of photographs and other images in proceedings for an offence commenced but not finally determined before the commencement day.
- (2) Photographs and other images taken or created before the commencement of the amending Act, section 367D may be used in proceedings in accordance with section 367D.

Orders for contravention of civil penalty provision

Chapter 7, Part 6 applies to conduct—

- (a) that occurred before 1 January 2026, and
- (b) for which proceedings had not commenced before that day.

Prescribed methodology—value of water

The method for determining the value of water illegally taken set out in the *Water Management (General) Regulation 2025*, section 139, as in force immediately before the commencement day, is taken to be a prescribed methodology for section 394A—

- (a) on and from the commencement day, and
- (b) until the repeal or amendment of the *Water Management (General) Regulation 2025*, section 139.

[148] Schedule 13A Uncommenced amendments to Act

Omit Schedule 13A.1[2], proposed section 125A(1), penalty.

Insert instead—

- Maximum penalty—Tier 2 penalty.
- Maximum civil penalty—Tier C civil penalty.

[149] Schedule 13A.3, proposed section 346A(1), penalty

Omit the penalty. Insert instead—

- Maximum penalty—Tier 2 penalty.
- Maximum civil penalty—Tier C civil penalty.

[150] Schedule 13A.3, proposed section 346A(2) and (4)

Omit “accused” wherever occurring.

[151] Schedule 13A.3, proposed section 346A(2) and (4)

Omit “a prosecution” wherever occurring. Insert instead “proceedings”.

[152] Schedule 13A.3, proposed section 346A(3), penalty

Omit the penalty. Insert instead—

- Maximum penalty—Tier 2 penalty.
- Maximum civil penalty—Tier C civil penalty.

[153] Dictionary

Insert in alphabetical order—

administrative penalty means the following—

- (a) a charge under section 60G(1)(a) or 91O,
- (b) a water allocation account debit under section 60G(1)(b),
- (c) a penalty imposed by the Minister under section 78(2) or 109(2),
- (d) a penalty imposed by the Governor under section 125(2)(a).

authorised person, for Chapter 7, Part 1, Division 9—see section 336G.

civil penalty order means an order under section 370R.

Court, for Chapter 7, Part 6—see section 369.

dwelling and ***dwelling house*** have the same meaning as in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

harm to the environment, for Chapter 7, Part 3A—see section 353.

monetary benefit means a monetary, financial or economic benefit.

Regulator means the Natural Resources Access Regulator constituted by the *Natural Resources Access Regulator Act 2017*, section 4.

related body corporate and ***related entity*** have the same meaning as in the *Corporations Act 2001* of the Commonwealth.

related person, of a corporation for an underlying matter, means the following—

- (a) a person who is, or at the time of the commission of the underlying matter was, a director of, or involved in the management of the affairs of, the corporation,
- (b) a related entity,
- (c) a person who is, or at the time of the commission of the underlying matter was, a director of, or involved in the management of the affairs of, a related body corporate.

seized thing, for Chapter 7, Part 2, Division 3A—see section 339H.

the court, for Chapter 7, Part 3A—see section 353.

the offender, for Chapter 7, Part 3A—see section 353.

underlying matter means—

- (a) the proven commission by a corporation of an offence under this Act or the regulations, or
- (b) the proven contravention by a corporation of a civil penalty provision under this Act or the regulations.

Schedule 4 Amendment of Water Management (General) Regulation 2025

[1] Sections 97–104

Omit “20 penalty units” wherever occurring. Insert instead “100 penalty units”.

[2] Section 140A

Insert after section 140—

140A Compliance cost notices—the Act, s 336A

- (1) A compliance cost notice must include the following—
 - (a) the name of the person required to comply with the notice,
 - (b) a copy of the direction to which the notice relates,
 - (c) the amount to be paid under the notice,
 - (d) the details of each cost and expense to be paid under the notice, including the function to which the cost relates,
 - (e) the date by which the payment must be made,
 - (f) how the payment may be made,
 - (g) information about the enforcement activity that may be taken if the person does not comply with the notice.
- (2) The amount to be paid under a compliance cost notice—
 - (a) must be calculated by reference to the hourly pay rate of the departmental officers undertaking the relevant compliance functions, and
 - (b) may include a reasonable amount for on-costs.
- (3) The maximum amount that may be included in a compliance cost notice for the preparation of a direction is \$2,000.
- (4) The maximum amount that may be included in a compliance cost notice for each compliance inspection is \$1,000.

[3] Schedule 4 Access licence and approval exemptions

Omit section 1, definition of *dwelling house*.

[4] Schedule 11 Penalty notice offences

Insert at the end of the table—

Offences under this regulation

Section 97(2)	\$1,000	—
Section 98(1) or (2)	\$1,000	—
Section 99(1) or (2)	\$1,000	—
Section 100(1) or (2)	\$1,000	—
Section 101(3)	\$1,000	—
Section 102(3)	\$1,000	—
Section 103(3)	\$1,000	—
Section 104(2)	\$1,000	—

[5] Schedule 12 Savings and transitional provisions

Insert after section 3—

**Part 2 Transitional provisions consequent on enactment
of Water Management Legislation Amendment
(Stronger Enforcement and Penalties) Act 2025**

4 Penalty notices

For the Act, section 365, an authorised officer may issue a penalty notice for an offence under this regulation, section 97(2), 98(1) or (2), 99(1) or (2), 100(1) or (2), 101(3), 102(3), 103(3) or 104(2) committed before the date of assent to the *Water Management Legislation Amendment (Stronger Enforcement and Penalties) Act 2025*.

5 Prescribed methodology—value of water

(1) If, for a contravention under the Act, a prescribed methodology must be used to determine the value of water taken, the determination must use the prescribed methodology in force when the contravention occurred.

(2) In this section—

prescribed methodology means—

- (a) the methodology prescribed by this regulation, section 139, or
- (b) the methodology prescribed by the *Water Management (General) Regulation 2018*, clause 20 or 20A.

[6] Schedule 13 Dictionary

Omit the definition of *dwelling house*.

Schedule 5 Amendment of other Acts

5.1 Crimes (Appeal and Review) Act 2001 No 120

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

Natural Resources Access Regulator means the Natural Resources Access Regulator constituted by the *Natural Resources Access Regulator Act 2017*, section 4.

[2] Section 42 Appeals as of right

Insert “or the Natural Resources Access Regulator” after “Authority” in section 42(1).

[3] Section 42(2AA)

Insert after section 42(2)—

(2AA) The Natural Resources Access Regulator may appeal to the Land and Environment Court against a sentence imposed on a person by the Local Court for an offence under the *Water Management Act 2000* if the proceedings were prosecuted by or on behalf of the Natural Resources Access Regulator.

[4] Section 42(2A) and (2B)

Insert “, the Natural Resources Access Regulator” after “Prosecutions” wherever occurring.

[5] Section 43 Appeals requiring leave

Insert “the Natural Resources Access Regulator or” after “than” in section 43(1).

[6] Section 43(1B) and (1C)

Insert after section 43(1A)—

(1B) The Natural Resources Access Regulator may, with the leave of the Land and Environment Court, appeal to that Court against—

- (a) an order that has been made by a Magistrate in relation to a person in committal proceedings for a natural resources management offence, or
- (b) an interlocutory order that has been made by the Local Court in relation to a person in summary proceedings for a natural resources management offence.

(1C) Subsection (1B) applies only if—

- (a) the proceedings for the offence have been prosecuted by or on behalf of the Natural Resources Access Regulator, and
- (b) the ground involves a question of law alone.

[7] Section 43(3)

Insert after section 43(2)—

(3) In this section—

natural resources management offence means an offence under the natural resources management legislation, within the meaning of the *Natural Resources Access Regulator Act 2017*.

5.2 Criminal Appeal Act 1912 No 16

[1] Section 5D Appeal by Crown against sentence

Insert after section 5D(1B)—

- (1BA) The Natural Resources Access Regulator may appeal to the Court of Criminal Appeal against a sentence imposed by the Land and Environment Court in proceedings for a natural resources management offence, other than on an appeal, if the proceedings have been instituted or carried on by or on behalf of the Natural Resources Access Regulator.

[2] Section 5D(1C)

Omit “subsection (1B)”. Insert instead “subsection (1B) or (1BA)”.

[3] Section 5D(2B)

Insert in alphabetical order—

Natural Resources Access Regulator means the Natural Resources Access Regulator constituted by the *Natural Resources Access Regulator Act 2017*, section 4.

natural resources management offence means an offence under the natural resources management legislation, within the meaning of the *Natural Resources Access Regulator Act 2017*.

5.3 Land and Environment Court Act 1979 No 204

[1] Section 20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement

Insert “, 353FA or 353O” after “353D” in section 20(1)(dg).

[2] Section 20(1)(dg1)

Insert after section 20(1)(dg)—

- (dg1) proceedings for a contravention of a civil penalty provision under the *Water Management Act 2000*,