



New South Wales

Central Coast Water Corporation Amendment Bill 2010

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Central Coast Water Corporation Act 2006*:
 - (i) to facilitate the establishment of the Central Coast Water Corporation (the **Corporation**) as a water supply authority and to enhance the role of the current water supply authorities, Gosford City Council and Wyong Shire Council (the **constituent councils**), in the process for that establishment and the transfer to the Corporation of the water supply, sewerage and drainage functions of the councils, and
 - (ii) to make amendments in the nature of statute law revision, and
- (b) to amend the *Energy and Utilities Administration Act 1987* to provide for the Corporation to become a contributor to the Climate Change Fund instead of the constituent councils after the Corporation becomes a water supply authority and the councils cease to be such authorities.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Central Coast Water Corporation Act 2006 No 105

Making of proclamations to establish Corporation and relating to its water supply, sewerage and drainage functions

Schedule 1 [1] amends section 2 of the *Central Coast Water Corporation Act 2006 (the Act)* to provide that the Minister may not recommend the making of the following proclamations to commence provisions of the Act unless requested to do so by the constituent councils:

- (a) a proclamation to commence section 4 of the Act so as to constitute the Corporation,
- (b) a proclamation to commence Schedule 7.2 [2] to the Act so as to remove the constituent councils as water supply authorities under the *Water Management Act 2000*,
- (c) a proclamation to commence Schedule 7.2 [4] so as to establish the Corporation as a water supply authority under the *Water Management Act 2000*.

Schedule 1 [3] makes a consequential amendment to section 10 of the Act.

Transfer of assets, rights and liabilities of constituent councils to Corporation

Schedule 1 [5] amends section 32 of the Act to provide for the constituent councils (rather than the Minister) to transfer their assets, rights and liabilities in connection with their water supply, sewerage and drainage functions to the Corporation. **Schedule 1 [7], [14] and [15]** make consequential amendments to section 32 and Schedule 5 to the Act.

Schedule 1 [6] amends section 32 of the Act to provide that an order making such a transfer may not be made by a constituent council without the consent of the other constituent council.

Schedule 1 [8] amends section 32 of the Act to provide that any consideration for a transfer of any asset, right or liability of a constituent council to the Corporation is to be determined by agreement (based on a fair value) between the Corporation and both constituent councils or, failing such agreement, by an independent arbitrator.

Schedule 1 [13] amends clause 9 of Schedule 5 to the Act to provide that the making or operation of a transfer order does not give rise to civil liability.

Water supply, sewerage and drainage functions of Corporation

Schedule 1 [4] inserts proposed section 28A in the Act to confirm that the Corporation is the owner of all water management works that it installs or that are

transferred to it under the Act from the constituent councils regardless of whether or not it owns the land on or in which the works are situated. The proposed section also confirms that the Corporation has power to replace, repair, maintain and remove those works.

Schedule 1 [9] amends section 33 of the Act to provide that the Corporation will not be required to have an operating licence granted under the Act to carry out its functions until it becomes a water supply authority under the *Water Management Act 2000*.

Schedule 1 [10] amends section 34 of the Act to enable the Governor to make regulations for or with respect to when certain mandatory conditions will, or will not, be required to be included in an operating licence granted to the Corporation.

Directions of Minister to constituent councils

Section 293 of the *Water Management Act 2000* provides that water supply authorities (such as the constituent councils) are subject to the control and direction of the Minister in the exercise of their functions, except in relation to the contents of reports or recommendations made by them.

Schedule 1 [11] inserts proposed section 59A in the Act to limit the Minister's powers of control and direction over the constituent councils in connection with the exercise by the councils of any of the following functions:

- (a) the making of transfer orders to transfer any of the staff, assets, rights or liabilities of a council to the Corporation,
- (b) the making of a request by a council for the Minister to recommend the making of a proclamation to commence a provision to remove the constituent councils as water supply authorities under the *Water Management Act 2000* or to establish the Corporation as a water supply authority under that Act,
- (c) the granting of consent by a council for the making of a transfer order by the other constituent council,
- (d) the determination of the consideration (if any) for any assets, rights or liabilities of a council that are, or are proposed to be, transferred to the Corporation under the Act.

However, the constituent councils will remain subject to the control and direction of the Minister in relation to the exercise of these functions so as to enable the Minister to ensure that the councils comply with their undertakings under the Memorandum of Understanding entered into by the Minister and the councils on 9 August 2010.

Amendments in the nature of statute law revision

Schedule 1 [2] amends the definitions of *assets*, *liabilities* and *rights* in section 3 of the Act to reflect current drafting conventions concerning the defining of these terms in connection with transfers of assets, rights and liabilities. **Schedule 1 [12]** makes a related amendment to clause 9 of Schedule 5 to the Act.

Schedule 1 [17] amends clause 1 of Schedule 8 to the Act to replace a reference to the publication of regulations in the Gazette (which was formerly the practice) with a reference to the publication of regulations on the NSW legislation website (which is the current practice).

Savings and transitional provisions

Schedule 1 [16] amends clause 1 of Schedule 8 to the Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Energy and Utilities Administration Act 1987 No 103

Schedule 2 [1] amends the definition of *State water agency* in section 3 of the *Energy and Utilities Administration Act 1987* to enable the Corporation to be prescribed by the regulations under that Act as a State water agency for the purpose of making contributions to the Climate Change Fund once the Corporation acquires clients in its capacity as a water supply authority.

Schedule 2 [2] amends Schedule 2 to the *Energy and Utilities Administration Act 1987* to make it clear that:

- (a) the Corporation cannot be prescribed to be a State water agency until the Corporation becomes a water supply authority under the *Water Management Act 2000* and the constituent councils cease to be water supply authorities, and
- (b) the constituent councils cease to be liable to make future contributions to Climate Change Fund once the Corporation becomes liable to make them.

First print



New South Wales

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New South Wales

Central Coast Water Corporation Amendment Bill 2010

No. , 2010

A Bill for

An Act to amend the *Central Coast Water Corporation Act 2006* to facilitate the establishment of the Central Coast Water Corporation as a water supply authority; to amend the *Energy and Utilities Administration Act 1987* to provide for the Corporation to be made a contributor to the Climate Change Fund; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Central Coast Water Corporation Amendment Act 2010</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1 Amendment of Central Coast Water Corporation Act 2006 No 105

[1] Section 2 Commencement

Omit section 2 (2)–(8). Insert instead:

(2) The following proclamations may not be made except on the Minister’s recommendation:

(a) a proclamation to commence section 4 (the *proclamation constituting the Corporation*),

(b) a proclamation to commence Schedule 7.2 [2],

(c) a proclamation to commence Schedule 7.2 [4].

(3) The Minister may not recommend the making of a proclamation referred to in subsection (2) unless:

(a) in the case of the proclamation constituting the Corporation—each of the constituent councils:

(i) has, by a resolution of the council, approved the same constitution for the Corporation (being a constitution that complies with section 8), and

(ii) has, pursuant to a resolution of the council, entered into a voting shareholders’ agreement with the other constituent council (being an agreement that complies with section 10), and

(b) each of the constituent councils has, pursuant to a resolution of the council, requested that the Minister recommend the making of the proclamation.

[2] Section 3 Definitions

Omit “and whether vested or contingent” wherever occurring from the definitions of *assets*, *liabilities* and *rights* in section 3 (1).

Insert instead “, whether vested or contingent and whether personal or assignable”.

[3] Section 10 Voting shareholders’ agreement

Omit “section 2 (3) (c) or (8)” from section 10 (2) (a) (i).

Insert instead “section 2 (3) (b)”.

[4] Section 28A	1
Insert after section 28:	2
28A Ownership of water management works	3
(1) The Corporation is the owner of all water management works (within the meaning of Part 2 of Chapter 6 of the <i>Water Management Act 2000</i>):	4
(a) that are installed in or on land by the Corporation, or	5
(b) that were previously installed in or on land and transferred to the Corporation from a constituent council under this Act,	6
regardless of whether or not the Corporation owns the land in or on which the works are situated.	7
(2) The Corporation may operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that are necessary or appropriate to any such works to ensure that, in the opinion of the Corporation, the works are used in an efficient manner for the purposes for which the works were installed.	8
(3) The provisions of this section have effect despite anything contained in section 42 of the <i>Real Property Act 1900</i> .	9
[5] Section 32 Transfer of staff, assets, rights and liabilities	10
Omit “The Minister” and “a constituent council’s” from section 32 (2).	11
Insert instead “A constituent council” and “the council’s”, respectively.	12
[6] Section 32 (3)	13
Omit the subsection. Insert instead:	14
(3) A transfer order under subsection (2) may not be made by a constituent council unless the other constituent council has consented to the transfer order.	15
[7] Section 32 (4) and (5)	16
Omit the subsections.	17
[8] Section 32 (8)–(8B)	18
Omit section 32 (8). Insert instead:	19
(8) An order under this section may be made on such terms and conditions as are specified or referred to in the order (including	20

	terms and conditions for the payment of consideration agreed or determined in accordance with subsection (8A)).	1 2
(8A)	The consideration, if any, to be paid by the Corporation or a constituent council in respect of the transfer of any asset, right or liability of a constituent council to the Corporation is to be a fair value:	3 4 5 6
	(a) determined by agreement between the Corporation and both of the constituent councils, or	7 8
	(b) if such an agreement cannot be reached—determined by an independent arbitrator who is:	9 10
	(i) appointed by the Corporation and both of the councils, or	11 12
	(ii) appointed by the Minister if the Corporation and both of the councils cannot agree on an arbitrator.	13 14
(8B)	The determination of any such arbitrator as to an amount of consideration payable is final.	15 16
[9]	Section 33 Grant of operating licence	17
	Insert after section 33 (2):	18
(3)	The Corporation is not required to have an operating licence to carry out the functions referred to in subsection (1) (a) or (b) until such time as it becomes a water supply authority for the purposes of the <i>Water Management Act 2000</i> .	19 20 21 22
	Note. On the commencement of Schedule 7.2 [4], the <i>Water Management Act 2000</i> will be amended to include the Corporation as a water supply authority under that Act.	23 24 25
[10]	Section 34 Terms and conditions of operating licences	26
	Omit section 34 (3). Insert instead:	27
(3)	The regulations may make provision for or with respect to:	28
	(a) the establishment and operation of the industry ombudsman scheme referred to in subsection (1) (b), and	29 30
	(b) when any one or more of the conditions for an operating licence referred to in subsection (1) or (2) will, or will not, be required to be included in an operating licence.	31 32 33

[11] Section 59A	1
Insert after section 59:	2
59A Section 293 of Water Management Act 2000 does not apply to certain functions under this Act	3
	4
(1) A constituent council is not subject to the control and direction of the Minister under section 293 of the <i>Water Management Act 2000</i> in its capacity as a water supply authority in connection with the exercise by the council of any of the following functions:	5
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(a) the making of transfer orders to transfer any of the staff, assets, rights or liabilities of the council to the Corporation,	9
	10
(b) the making of a request by the council for the Minister to recommend the making of a proclamation referred to in section 2 (2) (b) or (c),	11
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(c) the granting of consent by the council for the purposes of section 32 (3),	14
	15
(d) the determination of the consideration (if any) for any assets, rights or liabilities of a constituent council that are, or are proposed to be, transferred to the Corporation under this Act.	16
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(2) However, this section does not limit the Minister's powers of control and direction under section 293 of the <i>Water Management Act 2000</i> when exercised for the purpose of ensuring that a constituent council complies with its undertakings under the Memorandum of Understanding.	20
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(3) In this section:	25
<i>Memorandum of Understanding</i> means the Memorandum of Understanding entered into by the Minister and the constituent councils on 9 August 2010 concerning the transfer under this Act of the functions of the councils as water supply authorities to the Corporation.	26
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[12] Schedule 5 Transfer of staff, assets, rights and liabilities	31
Insert after clause 9 (1) (d):	32
(d1) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,	33
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[13] Schedule 5, clause 9 (2)	1
Insert “(or the making or operation of a transfer order)” after “this Schedule”.	2
[14] Schedule 5, clause 10	3
Omit the clause. Insert instead:	4
10 No compensation payable	5
(1) Subject to subclause (2) and section 32 (8) and (8A), no compensation is payable to any person or body in connection with a transfer.	6
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(2) A transfer order under section 41 (3) may provide for the extent (if any) of compensation payable in connection with a transfer to which the order gives rise.	9
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[15] Schedule 5, clause 12	12
Insert “resulting from a transfer order under section 41” after “a transfer”.	13
[16] Schedule 8 Savings, transitional and other provisions	14
Insert at the end of clause 1 (1):	15
<i>Central Coast Water Corporation Amendment Act 2010</i>	16
[17] Schedule 8, clause 1 (3)	17
Omit “in the Gazette”. Insert instead “on the NSW legislation website”.	18

Schedule 2	Amendment of Energy and Utilities Administration Act 1987 No 103	1
		2
[1] Section 3 Definitions		3
	Omit “and includes a licensed network operator or licensed retail supplier within the meaning of the <i>Water Industry Competition Act 2006</i> ” from the definition of <i>State water agency</i> in section 3 (1).	4
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	Insert instead:	7
	and includes:	8
	(c) a licensed network operator or licensed retail supplier within the meaning of the <i>Water Industry Competition Act 2006</i> , and	9
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		11
	(d) the Central Coast Water Corporation on and from the time when it is prescribed by the regulations to be a State water agency for the purposes of this definition.	12
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[2] Schedule 2 Savings, transitional and other provisions		16
	Insert after Part 5:	17
Part 6	Provision consequent on enactment of Central Coast Water Corporation Amendment Act 2010	18
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14	Prescription of Central Coast Water Corporation as State water agency	21
		22
	(1) A regulation that prescribes the Central Coast Water Corporation to be a State water agency for the purposes of the definition of <i>State water agency</i> in section 3 (1) may not be made unless a day or days have been appointed under section 2 of the <i>Central Coast Water Corporation Act 2006</i> for the commencement of both Schedule 7.2 [2] and [4] to that Act.	23
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- (2) Both Gosford City Council and Wyong Shire Council cease to be liable to make future contributions to the Climate Change Fund on and from the day on which the Central Coast Water Corporation is prescribed by the regulations to be a State water agency for the purposes of the definition of *State water agency* in section 3 (1).
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