

Passed by both Houses



New South Wales

Central Coast Water Corporation Amendment Bill 2010

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Central Coast Water Corporation Act 2006 No 105	3
Schedule 2 Amendment of Energy and Utilities Administration Act 1987 No 103	8

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2010*



New South Wales

Central Coast Water Corporation Amendment Bill 2010

Act No , 2010

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.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Central Coast Water Corporation Amendment Act 2010*.

2 Commencement

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

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

Insert after section 28:

28A Ownership of water management works

- (1) The Corporation is the owner of all water management works (within the meaning of Part 2 of Chapter 6 of the *Water Management Act 2000*):
 - (a) that are installed in or on land by the Corporation, or
 - (b) that were previously installed in or on land and transferred to the Corporation from a constituent council under this Act,
regardless of whether or not the Corporation owns the land in or on which the works are situated.
- (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.
- (3) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

[5] Section 32 Transfer of staff, assets, rights and liabilities

Omit “The Minister” and “a constituent council’s” from section 32 (2).

Insert instead “A constituent council” and “the council’s”, respectively.

[6] Section 32 (3)

Omit the subsection. Insert instead:

- (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.

[7] Section 32 (4) and (5)

Omit the subsections.

[8] Section 32 (8)–(8B)

Omit section 32 (8). Insert instead:

- (8) An order under this section may be made on such terms and conditions as are specified or referred to in the order (including

terms and conditions for the payment of consideration agreed or determined in accordance with subsection (8A)).

- (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:
- (a) determined by agreement between the Corporation and both of the constituent councils, or
 - (b) if such an agreement cannot be reached—determined by an independent arbitrator who is:
 - (i) appointed by the Corporation and both of the councils, or
 - (ii) appointed by the Minister if the Corporation and both of the councils cannot agree on an arbitrator.
- (8B) The determination of any such arbitrator as to an amount of consideration payable is final.

[9] Section 33 Grant of operating licence

Insert after section 33 (2):

- (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 *Water Management Act 2000*.

Note. On the commencement of Schedule 7.2 [4], the *Water Management Act 2000* will be amended to include the Corporation as a water supply authority under that Act.

[10] Section 34 Terms and conditions of operating licences

Omit section 34 (3). Insert instead:

- (3) The regulations may make provision for or with respect to:
- (a) the establishment and operation of the industry ombudsman scheme referred to in subsection (1) (b), and
 - (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.

[11] Section 59A

Insert after section 59:

59A Section 293 of Water Management Act 2000 does not apply to certain functions under this Act

- (1) A constituent council is not subject to the control and direction of the Minister under section 293 of the *Water Management Act 2000* in its capacity as a water supply authority in connection with the exercise by the council of any of the following functions:
 - (a) the making of transfer orders to transfer any of the staff, assets, rights or liabilities of the council to the Corporation,
 - (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),
 - (c) the granting of consent by the council for the purposes of section 32 (3),
 - (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.
- (2) However, this section does not limit the Minister's powers of control and direction under section 293 of the *Water Management Act 2000* when exercised for the purpose of ensuring that a constituent council complies with its undertakings under the Memorandum of Understanding.
- (3) In this section:

Memorandum of Understanding 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.

[12] Schedule 5 Transfer of staff, assets, rights and liabilities

Insert after clause 9 (1) (d):

- (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,

[13] Schedule 5, clause 9 (2)

Insert “(or the making or operation of a transfer order)” after “this Schedule”.

[14] Schedule 5, clause 10

Omit the clause. Insert instead:

10 No compensation payable

- (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.
- (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.

[15] Schedule 5, clause 12

Insert “resulting from a transfer order under section 41” after “a transfer”.

[16] Schedule 8 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Central Coast Water Corporation Amendment Act 2010

[17] Schedule 8, clause 1 (3)

Omit “in the Gazette”. Insert instead “on the NSW legislation website”.

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

[1] Section 3 Definitions

Omit “and includes a licensed network operator or licensed retail supplier within the meaning of the *Water Industry Competition Act 2006*” from the definition of *State water agency* in section 3 (1).

Insert instead:

and includes:

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

[2] Schedule 2 Savings, transitional and other provisions

Insert after Part 5:

Part 6 Provision consequent on enactment of Central Coast Water Corporation Amendment Act 2010

14 Prescription of Central Coast Water Corporation as State water agency

- (1) A regulation that prescribes the Central Coast Water Corporation to be a State water agency for the purposes of the definition of *State water agency* in section 3 (1) may not be made unless a day or days have been appointed under section 2 of the *Central Coast Water Corporation Act 2006* for the commencement of both Schedule 7.2 [2] and [4] to that Act.

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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).