



New South Wales

# Water Management Amendment Bill 2010

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Water Management Act 2000* (the **Principal Act**) as follows:

- (a) to facilitate the granting by the Minister of licences for environmental purposes for the purpose of State or Commonwealth agreements,
- (b) to enable the transformation of irrigation entitlements of landholders in private irrigation districts of private irrigation boards or water supply districts of private water trusts to rights that can be traded under Commonwealth legislation,
- (c) to clarify matters relating to accounting for environmental water,
- (d) to remove restrictions relating to dealings in specific purpose access licences for water and to provide for other matters relating to dealings in access licences, including mandatory conditions of consent and the removal or variation of conditions of licences and approvals,
- (e) to provide for the removal of domestic and stock rights as a consequence of a condition of consent to a dealing in a domestic and stock access licence,
- (f) to re-enact offences relating to the taking of water,

- (g) to make it clear that certain mining activities will require an access licence,
- (h) to make each holder of a licence or approval liable for an offence if a licence or approval is contravened,
- (i) to provide for offences relating to taking water when metering equipment is not working,
- (j) to confer on irrigation corporations powers to appoint authorised officers for enforcement purposes and to impose penalty charges for taking corporation water illegally and damaging corporation works and to make other amendments consistent with the functions to be conferred on private water corporations,
- (k) to make it an offence for an irrigation corporation to contravene the operating licence of the corporation,
- (l) to repeal provisions establishing private irrigation boards, private irrigation districts and private drainage boards,
- (m) to establish private water corporations and provide for the conversion of existing private water boards, private drainage boards and private water trusts to private water corporations,
- (n) to make provisions applying to private water trusts consistent with those that will apply to private water corporations, including abolishing water supply districts of trusts,
- (o) to make it clear that enforcement action may be taken outside the State, so long as the matter affects a matter under the Principal Act,
- (p) to provide for appeals to the Land and Environment Court (the *Court*) against decisions by irrigation and private water corporations imposing penalties and decisions by private water corporations and private water trusts about members' water entitlements,
- (q) to enable the compulsory acquisition of land provisions to be used for acquisitions by the Ministerial Corporation on behalf of private water corporations and private water trusts,
- (r) to make other minor and consequential amendments to the Principal Act and other Acts,
- (s) to make provision of a savings and transitional nature consequent on the enactment of the proposed Act.

## 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      Amendments to Water Management Act 2000 No 92 relating to Commonwealth requirements**

### **Discretionary licences**

**Schedule 1 [1]** inserts proposed sections 63A and 63B. Proposed section 63A enables the Minister to grant an access licence to the Commonwealth, or a person nominated by the Commonwealth, in order to give effect to an agreement entered into by or on behalf of the State, where the licence is to form part of the Commonwealth environmental water holdings. Proposed section 63B enables the Minister to grant an access licence to the State, or a public authority prescribed by the regulations, in order to give effect to an agreement entered into by or on behalf of the State, where the licence is to be used for certain environmental purposes. **Schedule 1 [7] and [9]** make consequential amendments.

**Schedule 1 [6]** removes the right to appeal to the Court against a decision of the Minister to grant a licence under proposed section 63A or 63B, or to impose a discretionary condition on such a licence.

### **Transformation of water entitlements of landholders in private irrigation schemes**

**Schedule 1 [2]** defines a *landholder's water entitlement* as the part of the share component of a private irrigation board's access licence that is available to the landholder of an irrigated holding within a private irrigation district.

**Schedule 1 [3]** inserts proposed Division 10A (proposed sections 190A and 190B) into Part 2 of Chapter 4. Proposed section 190A requires a private irrigation board to determine a landholder's water entitlement if requested to do so by the landholder and specifies matters to be taken into account. Proposed section 190B enables a board to make an application for approval of a dealing in its access licence for the purpose of wholly or partly transforming a landholder's water entitlement to an access licence held by the landholder. The proposed section also removes the landholder's voting rights as a landholder in the private irrigation district, and the board's right to levy rates and charges, if the water entitlement is wholly transformed and there is no right to have water delivered by the board. It also provides for termination charges and other charges to be charged on and after transformation.

**Schedule 1 [4]** defines a *landholder's water entitlement* as the part of the share component of a private water trust's access licence that is available to the landholder of an irrigated holding within a water supply district of the trust.

**Schedule 1 [5]** inserts proposed Division 5A (proposed sections 237A and 237B) into Part 4 of Chapter 4. Proposed section 237A requires the members of a private water trust to determine a landholder's water entitlement if requested to do so by a landholder and specifies matters to be taken into account. Proposed section 237B enables the relevant access licence holders to make an application for approval of a dealing in the licence for the purpose of wholly or partly transforming the

landholder's water entitlement to an access licence held by the landholder. The proposed section also removes the landholder's voting rights as a landholder in the water supply district of the trust, and the trust's right to levy rates and charges, if the water entitlement is wholly transformed and there is no right to have water delivered by the trust. It also provides for termination charges and other charges to be charged on and after transformation.

### **Savings and transitional regulations**

**Schedule 1 [8]** enables regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

## **Schedule 2      Other amendments to Water Management Act 2000 No 92**

### **Environmental water**

**Schedule 2 [1]** defines *licensed environmental water*. **Schedule 2 [97] and [105]** make consequential amendments.

**Schedule 2 [2]** removes the requirement for management plans for water management areas (*management plans*) to contain provisions relating to adaptive environmental water. **Schedule 2 [10]** makes a consequential amendment.

**Schedule 2 [3]** removes the requirement for a management plan to authorise the cancellation of a licence and subsequent committing of water as environmental water before those actions may be taken by the Minister.

**Schedule 2 [4]** removes the requirement for a management plan to authorise the imposition of adaptive environmental water conditions before such a condition may be sought. **Schedule 2 [5]** enables regulations to be made to limit the circumstances in which the Minister must act at the request of the licence holder.

**Schedule 2 [6]** removes the requirement for a management plan to authorise the granting of licences without an application where system improvements result in water savings before such a licence may be granted.

**Schedule 2 [7]** substitutes section 8D. The effect of this is to remove the requirement for a management plan to authorise the transfer of a surrendered licence to a catchment authority or other public body if the share component of the licence is equivalent to that of the surrendered licence. The requirement that the surrendered licence must have been surrendered as a result of water savings before the transfer can occur is also removed. The amendment also enables the Minister to cancel a surrendered licence and to transfer the share component of the licence to another licence if an adaptive environmental water condition is imposed on the licence to which it is transferred.

**Schedule 2 [8]** omits provisions that specified which adaptive environmental water was to be accounted for as extraction in auditing compliance with the long-term extraction limit under the relevant management plan.

**Schedule 2 [9]** inserts proposed section 8F. The proposed section varies the long-term extraction limit under a management plan by the amount of water committed as licensed environmental water. Licensed environmental water is water committed under an adaptive environmental water condition imposed on an access licence or taken or permitted to be taken under an environmental subcategory of an access licence or a class of licence prescribed by the regulations. The amount of the variation is to be determined in accordance with a methodology approved by the Minister and published in the Gazette.

### **Domestic and stock rights**

**Schedule 2 [11]** makes it clear that a landholder who exercises domestic and stock rights over land or water cannot, for that purpose, carry out a controlled activity (including building, carrying out a work, excavation or depositing of material on land) without a controlled activity approval.

**Schedule 2 [12]** inserts proposed section 52A. The proposed section removes the domestic and stock rights over land or water of the owner or occupier of land if the Registrar-General makes a recording on the title to the land to the effect that it is not subject to domestic and stock rights (a *domestic and stock rights removal recording*). Such a recording may only be removed on the application of the Minister. **Schedule 2 [40]** enables the regulations to require such a recording before a dealing in a domestic and stock access licence can be registered (and thereby take effect).

### **Offences**

**Schedule 2 [13]** makes it an offence for a person who takes water under an access licence, but who is not a licence holder, to contravene a term or condition of the licence.

**Schedule 2 [14]** makes each holder of an access licence guilty of an offence if a term or condition of the access licence is contravened by any person. It will be a defence to an offence if the accused person establishes that the contravention was caused by another person, that the other person was not associated with the accused person and that the accused person took all reasonable steps to prevent the offence.

**Schedule 2 [15]** substitutes the current offences relating to taking water when there is no or not enough water credited to the water allocation account for an access licence. The new provision makes it an offence for a person to take water otherwise than in accordance with the water allocation for an access licence if the person intentionally or negligently fails to ascertain whether taking the water is in accordance with any water allocation or the person knows or has reasonable cause to believe that it is not in accordance with any water allocation. There will also be an offence of taking water otherwise than in accordance with the water allocation for an access licence for which no intent will be required to be proved. This replaces the existing offence for which no intent is required to be proved.

**Schedule 2 [17]** clarifies that water is taken for the purposes of the Principal Act (including for the requirement to obtain an access licence and liability for offences

resulting from the failure to obtain a licence) if water is diverted from one water source to another or re-located from one part of an aquifer to another part of an aquifer in the course of carrying out a mining activity.

**Schedule 2 [51]** makes it a defence to the offence of using water without a water use approval if the water was used pursuant to a basic landholder right under the Principal Act. It also makes it a defence to the offence of a water use approval holder using water otherwise than as authorised by the approval or an access licence if the accused person establishes that the contravention was caused by another person, that the other person was not associated with the accused person and that the accused person took all reasonable steps to prevent the offence.

**Schedule 2 [52]** makes it a defence to the offence of constructing or using a water supply work without, or otherwise than as authorised by, a water supply work approval if the water was used pursuant to a basic landholder right under the Principal Act.

**Schedule 2 [53]** makes it an offence for a person who uses water, constructs or uses a water management work, or carries out a controlled activity or aquifer interference activity, pursuant to an approval but who is not the approval holder, to contravene a term or condition of the approval. It also makes each holder of an approval guilty of an offence if a term or condition of the approval is contravened by any person. It will be a defence to an offence if a holder establishes that the contravention was caused by another person, that the other person was not associated with the holder and that the holder took all reasonable steps to prevent the offence.

**Schedule 2 [54]** makes it an offence for a person to take water from a water source by means of a metered work while the metering equipment is not operating properly or is not operating if the person knows or has reasonable cause to believe that it is not operating properly or is not operating.

**Schedule 2 [55]** provides that the offences relating to taking water from a metered work while the metering equipment is not operating properly or is not operating do not apply if the person taking the water reports the problem (in accordance with the regulations) and complies with any requirements of the regulations. The exclusion does not apply to the offence of taking water in such circumstances and intentionally or negligently failing to ascertain whether metering equipment is working.

**Schedule 2 [56]** provides that offences relating to tampering with metering equipment of water supply works or drainage works do not apply if the conduct occurs for the purpose of complying with requirements of the regulations.

**Schedule 2 [57]** removes the general defence to offences relating to approvals where an accused person proves that the offence occurred because of causes over which the accused person had no control. This has been replaced by the new defences inserted by **Schedule 2 [51] and [53]**.

### **Access licences and approvals**

**Schedule 2 [18]** makes it clear that the requirements that local water utility access licences may only be granted to local water utilities and that major utility access

licences may only be granted to major utilities do not prevent transfers to other persons permitted under the Principal Act.

**Schedule 2 [20]** enables regulations to be made for the purposes of prescribing conditions that must be imposed on an access licence. **Schedule 2 [19]** makes a consequential amendment.

**Schedule 2 [21]** removes the mandatory requirement for the Minister to vary each local utility water licence at the end of each 5-year period to reflect variations in population and commercial activities in its area and replaces it with a discretion to make such a variation.

**Schedule 2 [22]** enables the mandatory conditions of an access licence to be amended, revoked or suspended by the Minister whenever it is necessary to do so to enable compliance with or to give effect to the Principal Act, regulations under that Act or the relevant management plan. Currently the power for that purpose is limited to imposing conditions. **Schedule 2 [23] and [24]** make consequential amendments.

**Schedule 2 [25]** removes the prohibition on creating a registered security interest over all specific purpose access licences (including local water utility licences, major utility licences and domestic and stock access licences). The prohibition will now apply to specific purpose access licences of a kind prescribed by the regulations.

**Schedule 2 [26] and [28]** insert notes.

**Schedule 2 [27]** enables a local water utility licence to be permanently transferred to a major utility if the local water utility's water supply functions are to be carried out by the major utility. Currently the licence may only be transferred to another local water utility.

**Schedule 2 [29]** removes the prohibition on the short term transfer of local water utility access licences and supplementary water access licences.

**Schedule 2 [30]** enables the Minister to end a short term transfer of a local water utility access licence or major utility access licence, without the consent of the transferor and the transferee, if satisfied that there is a risk to the utility's water supply or in other circumstances prescribed by the regulations.

**Schedule 2 [31]** removes the prohibition on the cancellation and conversion of local water utility access licences.

**Schedule 2 [32]** removes the prohibition on assigning rights between local water utility access licences in a way that reduces the share or extraction component of a local water utility access licence.

**Schedule 2 [33]** removes the prohibition on cancelling a local water utility access licence and granting a new access licence with a share component specifying a different water source or water management area.

**Schedule 2 [38]** enables regulations to be made in relation to applications for the Minister's consent to general dealings and dealings on default in access licences and assignments of water allocations.

**Schedule 2 [39]** enables the Minister to deal with 2 or more related dealings in access licences at the same time, and in the same application, as if they comprised one dealing.

**Schedule 2 [40]** inserts proposed section 71YA. The proposed section enables the Minister to consent to a dealing in an access licence subject to conditions. The regulations may make provision for or with respect to consent conditions that must be imposed by the Minister on all or any or classes of dealings. The regulations may provide for conditions requiring domestic and stock rights removal recordings to be obtained and may also provide that a dealing cannot be registered in the Access Register (and thus take effect) until a specified consent condition is complied with.

**Schedule 2 [41]** enables the access licence dealing principles to establish conversion factors for the share components of access licences where adaptive environmental water conditions are imposed, or water is committed for environmental purposes, in connection with a dealing in a licence.

**Schedule 2 [43]** makes it discretionary rather than mandatory for the Minister to cancel a specific purpose access licence if the Minister is of the opinion that the purpose for which the licence was granted no longer exists. **Schedule 2 [44]** makes it clear that the Minister may, but is not required to, consider the criteria prescribed by the regulations when determining whether the purpose for which the licence was granted no longer exists.

**Schedule 2 [59]** enables regulations to be made for or with respect to conditions that must be imposed on an approval or changed in connection with a dealing in a licence.

**Schedule 2 [58]** makes a consequential amendment.

**Schedule 2 [63]** enables the mandatory conditions of an approval to be amended, revoked or suspended by the Minister whenever it is necessary to do so to enable compliance with or to give effect to the Principal Act, regulations under that Act or the relevant management plan. Currently the power for that purpose is limited to imposing conditions. **Schedule 2 [60]–[62], [64] and [65]** make consequential amendments.

**Schedule 2 [109]** removes the ability to prescribe an access licence of a subcategory of access licence as a specific purpose access licence.

### **Irrigation corporations**

**Schedule 2 [68]** inserts proposed section 120A. The proposed section enables an irrigation corporation to appoint authorised officers to investigate contraventions of irrigation, water supply or drainage agreements with the corporation and confers powers to enter land and make certain examinations. There is no power to enter any part of premises used only for residential purposes. The corporation must pay compensation for damage caused in exercising the power of entry, unless the occupier obstructed or hindered the authorised officer in the exercise of that power.

**Schedule 2 [69]** inserts proposed section 125A. The proposed section makes it an offence for an irrigation corporation to contravene its operating licence.

**Schedule 2 [70]** changes the process for including additional land in the area of operations of an irrigation corporation. The Minister is to determine the application for inclusion and may include the land by order published in the Gazette. Currently, the Minister determines the application and the Governor includes the land by proclamation published in the Gazette.

**Schedule 2 [71]** changes the process for excluding land from the area of operations of an irrigation corporation. The Minister is to determine the application for exclusion and may exclude the land by order published in the Gazette. Currently, the Minister determines the application and the Governor excludes the land by proclamation published in the Gazette.

**Schedule 2 [72]** inserts proposed section 136A. The proposed section enables an irrigation corporation to charge a person for water knowingly taken from a water management work of the corporation in contravention of the Principal Act, the regulations or an agreement with the corporation. The charge may include a penalty component and be up to 5 times the value of the water taken. The corporation may also impose a charge on a person who destroys, damages or interferes with a work of the corporation. Such a charge may also include a penalty component and be up to 5 times the reasonable cost of any repair or replacement. A person must be given a chance to make submissions and to have those submissions considered before a charge is imposed. A charge cannot be imposed unless the operating licence authorises such charges.

**Schedule 2 [74]** excludes an irrigation corporation, an officer or employee of a corporation or any person acting under their direction from actions, liabilities, claims or demands arising from water-related events caused by acts or omissions that are done or omitted in good faith for the purposes of executing the Principal Act or carrying out the functions of the corporation. The water-related events are water unavailability, the escape of water and failure to supply, distribute or drain water. **Schedule 2 [73]** makes a consequential amendment.

### **Private water corporations**

**Schedule 2 [75]** repeals the provisions relating to private irrigation boards and private irrigation districts and private drainage boards. The amendment inserts proposed Part 2 of Chapter 4. The proposed Part contains the provisions set out below.

#### **Part 2 Private water corporations**

##### **Division 1 Preliminary**

Proposed section 139 defines terms used in the proposed Part.

Proposed section 140 makes it clear that a private water corporation (a *PWC*) must have access licences or approvals for those things that require licences or approvals.

##### **Division 2 Constitution and management of private water corporations**

Proposed section 141 enables 2 or more landholders of landholdings to apply to the Minister to constitute a PWC for the landholdings.

Proposed section 142 enables the Minister to constitute a PWC as a body corporate by order published on the NSW legislation website if satisfied that its purpose is to provide, maintain or operate a water supply system, water distribution system or drainage system. The order will also establish the first board members and the rules and works plan of the PWC. A PWC will not be a NSW government agency, that is, it will not have the status, privileges and immunities of the Crown.

Proposed section 143 confers on the PWC functions of providing a water supply system, water distribution system or drainage system and enables it to supply water under an access licence or approval or for the purposes of a licence or approval held by a person who has transformed their member's water entitlement.

Proposed section 144 provides for PWC boards and confers on them the function of directing, controlling and managing the affairs of the corporation.

Proposed section 145 provides for the matters for which the PWC rules may make provision and provides that the rules are binding on members of the PWC and landholders to whom it provides services.

Proposed section 146 requires a PWC to provide copies of its rules to the Minister and to members.

Proposed section 147 enables a PWC or a PWC board to delegate functions.

### **Division 3 Operational functions**

Proposed section 148 confers on a PWC functions relating to its corporation works, including the construction, installation, maintenance, repair, operation and management of the works. The PWC may enter into arrangements to provide services for other works.

Proposed section 149 enables a PWC to require a member or landholder to whom it provides services to provide water delivery systems or water storage works on their land or to maintain water delivery systems or water storage works. A requirement can only be given if it is necessary to do so for the efficient or effective operation of corporation works or the carrying out of PWC functions.

Proposed section 150 sets out the powers of a PWC to suspend or restrict the supply of, or refuse to supply, water to a member or landholder in specified circumstances.

Proposed section 151 enables a PWC to enter into arrangements with landholders who are not members to supply water for irrigation or other purposes or to drain water.

Proposed section 152 enables the employees or agents of a PWC to enter land to carry out functions, including functions relating to corporation works, meter reading and investigations and inspections relating to proposed works. A PWC is to ensure that as little damage as possible is caused by the exercise of the powers.

Proposed section 153 sets out the requirements for the works plan of a PWC. The plan is to identify water management works that are to be corporation works (that is, works under the management and control of the PWC), specify the location of the works and specify the land to which the plan applies. Works that are on land of former members who have transformed water entitlements may be specified on a works plan.

#### **Division 4 Sale and transformation of water entitlements**

Proposed section 154 provides for the determination of a member's water entitlements (that is, the part of the share component of the PWC's access licence that is available to the member).

Proposed section 155 prohibits a PWC from selling or mortgaging all or part of its water entitlement under its access licence unless the dealing is permitted under, and is in accordance with, its rules.

Proposed section 156 enables a member of a PWC to sell or transfer all or part of the member's water entitlement to another member if it has been approved by the PWC in accordance with its rules and the regulations.

Proposed section 157 enables a PWC to make an application for the purpose of wholly or partly transforming a member's water entitlement into an access licence held by the member. A person ceases to be a member of a PWC if the person wholly transforms their water entitlement and does not have a right to the delivery of water by the PWC. The PWC's right to levy rates and charges for that water (other than termination charges) is also removed. Security may be required to be provided by a person who seeks to transform their member's water entitlement.

#### **Division 5 Changes to private water corporations**

Proposed section 158 requires any membership change that also involves a change to a PWC's works plan to be approved by at least two thirds of the members who are entitled to vote on the question.

Proposed section 159 enables 2 or more PWCs to apply to the Minister to constitute one PWC.

Proposed section 160 enables the Minister to amalgamate 2 or more PWCs as a single body corporate by order published on the NSW legislation website if satisfied that its purpose is to provide, maintain or operate any or all of a water supply system, water distribution system or drainage system. The order will also establish the first board members and the rules and works plan of the PWC.

Proposed section 161 confers on a purchaser of land from a member of a PWC membership of the PWC, with the same entitlements and obligations as a member in relation to the land as the vendor had. The vendor ceases to be a member in respect of that land and must notify the PWC of the sale.

Proposed section 162 provides that the subdivision of land by a member of a PWC does not of itself entitle any other person to be a member or to be supplied with water or other services by the PWC. The PWC will still have functions in relation to any relevant corporation works.

#### **Division 6 Rates and charges**

Proposed section 163 requires a PWC to fix rates and charges for each year commencing on 1 July in respect of landholdings owned or occupied by members. The rates and charges must be sufficient to meet the costs of providing irrigation, water supply and drainage services and the liabilities of the PWC, in addition to other matters specified in the section. A PWC may also fix termination charges on

transformation of a member's water entitlement and delivery charges for water supplied after transformation.

Proposed section 164 requires the owners or occupiers of landholdings on which rates or charges are levied to pay them to the PWC.

Proposed section 165 enables a PWC to waive or reduce rates, charges and interest due. The auditor of the PWC must certify that any waiver is in accordance with the rules and has been approved by the board.

#### **Division 7 Finance**

Proposed section 166 sets out the requirements for PWC accounts, records and financial statements.

Proposed section 167 enables an auditor of a PWC to have access to the accounts and records of the PWC and requires a board member or employee to comply with the auditor's reasonable requests for information or documents.

Proposed section 168 requires a PWC, at the Minister's request, to furnish the Minister with audited financial statements.

Proposed section 169 confers borrowing and investment powers on PWCs and provides that the obligations of a PWC are not guaranteed by the State of New South Wales. The State is also excluded from liability in respect of any exercise by or on behalf of a PWC of a function under the Division.

#### **Division 8 Enforcement powers**

Proposed section 170 enables a PWC to charge a person for water knowingly taken from a water management work of the PWC in contravention of the Principal Act, the regulations, the rules or an agreement with the PWC. The charge may include a penalty component and be up to 5 times the value of the water taken. The PWC may also impose a charge on a person who destroys, damages or interferes with a work of the PWC. Such a charge may also include a penalty component and be up to 5 times the reasonable cost of any repair or replacement. A person must be given a chance to make submissions and to have those submissions considered before a charge is imposed. A charge cannot be imposed unless the Minister approves the application of the proposed section to the PWC.

Proposed section 171 enables a PWC to appoint authorised officers to investigate contraventions of irrigation, water supply, water distribution or drainage agreements with the corporation and confers powers to enter land and make certain examinations. There is no power to enter any part of premises used only for residential purposes. The PWC must pay compensation for damage caused in exercising the power of entry, unless the occupier obstructed or hindered the authorised officer in the exercise of that power.

Proposed section 172 enables the Minister, by notice in writing, to direct a PWC to comply with, or cease to contravene, the rules of the PWC. It will be an offence to contravene a direction.

### **Division 9 Winding up of private water corporations**

Proposed section 173 confers on the Minister power to remove the board members of a PWC from office and to appoint an administrator to conduct the affairs of the PWC. The action may be taken if the Minister is of the opinion that the board or PWC has failed or is unable to carry out its functions, has failed or is unable to provide or maintain water supply, water distribution or drainage services or corporation works, is not able to pay its debts, has regularly or materially contravened the Principal Act, regulations or PWC rules or that in all the circumstances of the case it is just and equitable to do so. The Minister must give notice of the action and consider submissions made in response, unless of the opinion that the special circumstances of the case require immediate action.

Proposed section 174 sets out the administrator's functions. The administrator must report to the Minister on the administration at the Minister's request and may recommend at any time that elections be held for a new board or that the PWC be wound up.

Proposed section 175 provides that a board member who is removed from office is not eligible for re-election at any subsequent election unless the Minister makes a declaration in writing that the person is eligible for election at the election.

Proposed section 176 terminates contracts of employment with the PWC on appointment of an administrator and enables the administrator to terminate any contract for the provision of services to or by the PWC.

Proposed section 177 provides for the winding up of a PWC at the request of 75% of the members or if the administrator recommends that it be wound up. The regulations may make provision for or with respect to the winding up of a PWC and the disposal of residual assets of a PWC.

### **Division 10 Miscellaneous**

Proposed section 178 excludes a PWC, an officer or employee of a PWC or any person acting under their direction from actions, liabilities, claims or demands arising from particular causes of action arising from water-related events caused by acts or omissions that are done or omitted in good faith for the purposes of executing the Principal Act or carrying out the functions of the corporation. The water-related events are water unavailability, the escape of water and failure to supply, distribute or drain water.

Proposed section 179 enables the Minister to change listings of PWCs in proposed Schedule 13 to the Principal Act.

**Schedule 2 [67]** confers on PWCs the rights and obligations currently conferred on private irrigation boards and private drainage boards with respect to approvals.

**Schedule 2 [83]** makes it an offence to destroy, damage or interfere with a work that is owned by or is under the control and management of a PWC or to deposit anything in any such work.

**Schedule 2 [84] and [85]** make it an offence to take water from a water supply work that is owned by or is under the control and management of a PWC, except with the authority of the PWC.

**Schedule 2 [89]** applies provisions of the *Local Government Act 1993* relating to the sale of land by councils for unpaid rates to rates and charges fixed by PWCs.

**Schedule 2 [95]** applies acquisition of land provisions to PWCs instead of private irrigation boards.

**Schedule 2 [99]** extends the existing exclusion from personal liability given in respect of private irrigation boards and their staff to PWCs.

**Schedule 2 [104]** inserts proposed Schedule 13 which will contain the list of PWCs.

**Schedule 2 [108]** omits the definitions of *private drainage board* and *private irrigation board* and inserts a definition of *private water corporation*.

### **Private water trusts**

**Schedule 2 [76] and [77]** omit and insert definitions relating to private water trusts (*PWTs*) consequent on the enactment of the proposed Act.

**Schedule 2 [78] and [79]** make it clear that the trustees of a PWT, and also a PWT, may hold an access licence for the trust activities.

**Schedule 2 [80]** repeals provisions relating to PWTs (apart from Division 1 of Part 4 of Chapter 4 of the Principal Act) and replaces those provisions with provisions that reflect the provisions that will apply to PWCs. The amendment inserts proposed Divisions 2–9 of Part 4 of Chapter 4. The proposed Divisions contain the provisions set out below.

#### **Division 2 Management of private water trusts**

Proposed section 223 provides for the trustees (formerly called members) of a PWT. The number of trustees for a PWT are to be the same number as when the PWT provisions were first commenced in the Principal Act. Trustees are to be elected and to have the function of directing, controlling and managing the affairs of the trust. Trustees are to act for and on behalf of the trust. The proposed section also deems all the trustees to be the holders of any access licence or approval that is still held by a former trustee or member on behalf of the PWT.

Proposed section 224 confers on a PWT functions of providing a water supply system, water distribution system or drainage system and enables it to supply water under an access licence or approval or for the purposes of a licence or approval held by a person who has transformed their member's water entitlement.

Proposed section 225 provides for the matters for which the PWT rules may make provision and provides that the rules are binding on members of the PWT and landholders to whom it provides services.

Proposed section 226 requires a PWT to provide copies of its rules to the Minister and to members.

Proposed section 227 enables a PWT or the trustees of a PWT to delegate functions.

#### **Division 3 Operational functions**

Proposed section 228 confers on a PWT functions relating to corporation works, including the construction, installation, maintenance, repair, operation and

management of the works. The PWT may enter into arrangements to provide services for other works.

Proposed section 229 enables a PWT to require a member or landholder to whom it provides services to provide water delivery systems or water storage works on their land or to maintain water delivery systems or water storage works. A requirement can only be given if it is necessary to do so for the efficient or effective operation of trust works or the carrying out of PWT functions.

Proposed section 230 sets out the powers of a PWT to suspend or restrict the supply of, or refuse to supply, water to a member or landholder in specified circumstances.

Proposed section 231 enables a PWT to enter into arrangements with landholders who are not members to supply water for irrigation or other purposes or to drain water.

Proposed section 232 enables the employees or agents of a PWT to enter land to carry out functions, including functions relating to trust works, meter reading and investigations and inspections relating to proposed works. The PWT is to ensure that as little damage as possible is caused by the exercise of the powers.

Proposed section 233 sets out the requirements for the works plan of a PWT. The plan is to identify water management works that are to be trust works (that is, works under the management and control of the PWT), specify the location of the works and specify the land to which the plan applies. Works that are on land of former members who have transformed water entitlements may be specified on a works plan.

#### **Division 4 Sale and transformation of water entitlements**

Proposed section 234 provides for the determination of a member's water entitlements (that is, the part of the share component of the access licence held by or on behalf of a PWT that is available to the member).

Proposed section 235 prohibits a PWT from selling or mortgaging all or part of its water entitlement under its access licence unless the dealing is permitted under, and is in accordance with, its rules.

Proposed section 236 enables a member of a PWT to sell or transfer all or part of the member's water entitlement to another member if it has been approved in accordance with its rules and the regulations.

Proposed section 237 enables a PWT to make an application for the purpose of wholly or partly transforming a member's water entitlement into an access licence held by the member. A person ceases to be a member of a PWT if the person wholly transforms their water entitlement and does not have a right to the delivery of water by the PWT. Security may be required to be provided by a person who seeks to transform their member's water entitlement.

#### **Division 5 Changes to private water trusts**

Proposed section 238 requires any membership change that also involves a change to a PWT's works plan to be approved by at least two thirds of the members who are entitled to vote on the question.

Proposed section 239 enables 2 or more PWTs to apply to the Minister to constitute one PWC.

Proposed section 239A enables the Minister to amalgamate 2 or more PWTs as a single body by order published on the NSW legislation website if satisfied that its purpose is to provide, maintain or operate any or all of a water supply system, water distribution system or drainage system. The order will also establish the first trustees and the rules and works plan of the PWT.

Proposed section 239B confers on a purchaser of land from a member of a PWT membership of the PWT, with the same entitlements and obligations as a member in relation to the land as the vendor had. The vendor ceases to be a member in respect of that land.

Proposed section 239C provides that the subdivision of land by a member of a PWT does not of itself entitle any other person to be a member or to be supplied with water or other services by the PWT. The PWT will still have functions in relation to any relevant trust works.

Proposed section 239D enables a PWT to apply to the Minister to convert the PWT to a PWC. The Minister may grant the application if satisfied that not less than two thirds of the members have approved of the application being made. For the purposes of the conversion, regulations may be made modifying the provisions of the Principal Act applying to the constitution of a PWC.

#### **Division 6 Rates and charges**

Proposed section 239E requires a PWT to fix rates and charges for each year commencing on 1 July in respect of landholdings owned or occupied by members. The rates and charges must be sufficient to meet the costs of providing irrigation, water supply, drainage and flood control services and the liabilities of the PWT, in addition to other matters specified in the section. A PWT may also fix termination charges on transformation of a member's water entitlement and delivery charges for water supplied after transformation.

Proposed section 239F requires the owners or occupiers of landholdings on which rates or charges are levied to pay them to the PWT.

Proposed section 239G enables a PWT to waive or reduce rates, charges and interest due. The auditor of a PWT must certify that any waiver is in accordance with the rules and has been approved by the trustees.

#### **Division 7 Finance**

Proposed section 239H sets out the requirements for PWT accounts, records and financial statements.

Proposed section 239I enables an auditor to have access to the accounts and records of a PWT and requires a trustee to comply with the auditor's reasonable requests for information or documents.

Proposed section 239J requires a PWT, at the Minister's request, to furnish the Minister with audited financial statements.

Proposed section 239K re-enacts the existing borrowing powers of PWTs and provides for a sinking fund and the obligations of a PWT under loans taken out by the PWT.

#### **Division 8 Winding up of private water trusts**

Proposed section 239L confers on the Minister power to remove the trustees of a PWT from office and to appoint an administrator to conduct the affairs of the PWT. The action may be taken if the Minister is of the opinion that the trustees or PWT have failed or are unable to carry out their functions, have failed or are unable to provide water supply, distribution or drainage services, are not able to pay their debts, have regularly or materially contravened the Principal Act, regulations or PWT rules or that in all the circumstances of the case it is just and equitable to do so. The Minister must give notice of the action and consider submissions made in response, unless of the opinion that the special circumstances require immediate action.

Proposed section 239M sets out the administrator's functions. The administrator must report to the Minister on the administration at the Minister's request and may recommend at any time that elections be held for new trustees or that the PWT be wound up.

Proposed section 239N provides that a trustee who is removed from office is not eligible for re-election at any subsequent election unless the Minister makes a declaration that the person is eligible for election at the election.

Proposed section 239O terminates contracts of employment by or on behalf of the PWT on appointment of an administrator and enables the administrator to terminate any contract for the provision of services to or by the PWT.

Proposed section 239P provides for the winding up of a PWT at the request of 75% of the members or if the administrator recommends that it be wound up. The regulations may make provision for or with respect to the winding up of a PWT and the disposal of residual assets of a PWT.

#### **Division 9 Miscellaneous**

Proposed section 239Q excludes a PWT, the trustees of a PWT, an officer or employee of the trustees or a PWT or a person acting under their direction from actions, liabilities, claims or demands arising from water-related events caused by acts or omissions that are done or omitted in good faith for the purposes of executing the Principal Act or carrying out the functions of the PWT. The water-related events are water unavailability, the escape of water and failure to supply, distribute or drain water.

Proposed section 239R enables the Minister, by notice in writing, to direct a PWT or the trustees to comply with, or cease to contravene, the rules of the trust. It will be an offence to contravene a direction.

Proposed section 239S enables the Minister, by order published in the Gazette, to change the name of a PWT, if the change has been approved by the members in accordance with the rules of the PWT.

Proposed section 239T provides that a PWT is not a NSW government agency.

**Schedule 2 [89]** applies provisions of the *Local Government Act 1993* relating to the sale of land by councils for unpaid rates to rates and charges fixed by PWTs.

**Schedule 2 [96]** enables the Ministerial Corporation to compulsorily acquire land for the purpose of transferring the land to a PWT if the purpose of the acquisition is to enable the PWT or the trustees to exercise functions under the Principal Act.

**Schedule 2 [98]** updates a reference to members of the trust to a reference to trustees.

### **Appeals to Land and Environment Court**

**Schedule 2 [92]** enables an appeal to be made to the Court against a decision of the Minister to give a direction to a PWC, PWT or the trustees of a PWT about compliance with the rules of the PWC or PWT.

**Schedule 2 [93]** enables an appeal to be made to the Court against a decision by an irrigation corporation or a PWC to impose a charge that includes a penalty and a decision by a PWC or a PWT or the trustees of a PWT as to a member's water entitlement.

**Schedule 2 [94]** provides that there is to be no right to appeal to the Court against a decision imposing a condition on consent to a dealing in an access licence, or a decision imposing, amending, revoking or suspending a mandatory condition of any consent or a mandatory condition of an access licence or approval, for purposes related to a dealing in an access licence.

### **Miscellaneous**

**Schedule 2 [16], [34]–[37], [42], [45]–[50], [90], [106] and [107]** correct references to water allocation accounts and water credited to water allocation accounts.

**Schedule 2 [66], [102] and [103]** clarify references to water bores.

**Schedule 2 [81]** enables mandatory guidelines issued by the Minister for the taking and use of water for domestic consumption and stock watering under a domestic and stock right or a domestic and stock licence to apply to any person authorised to do so.

**Schedule 2 [82]** inserts proposed section 340D. The proposed section enables an order, direction or notice given for enforcement purposes under the Principal Act to be given to a person even if the person is outside the State or the matter concerned occurs or is located outside the State, so long as the matter affects a matter to which the Principal Act relates.

**Schedule 2 [86] and [87]** make statute law revision amendments.

**Schedule 2 [91]** adds matters to the matters that may be the subject of a certificate that is admissible in court proceedings as evidence of the facts stated in it. The additional matters relate to whether a specified quantity of water was taken from a specified water source and whether or not the access licence and approval provisions of the Principal Act apply to a specified water source.

### **Savings and transitional provisions**

**Schedule 2 [100]** makes it clear that offences inserted by the *Water Management Amendment Act 2008* extend to certain previously existing water entitlements.

**Schedule 2 [101]** inserts savings and transitional provisions consequent on the enactment of the proposed Act. Among other things, the provisions provide for the conversion of existing private irrigation boards and private drainage boards to PWCs on a single day and for regulations to be made for that purpose. The provisions also provide for the conversion of PWTs to PWCs and for regulations to be made for that purpose.

## **Schedule 3      Amendment of other Acts**

### **3.1 Farm Water Supplies Act 1946 No 22**

**Schedule 3.1** enables the Rural Assistance Authority to make loans to a PWC in the same way as it can currently make loans to a private irrigation board.

### **3.2 Land and Environment Court Act 1979 No 204**

**Schedule 3.2** lists the new appeals that may be made to the Court as a consequence of the proposed Act as Class 1 appeals in the Court.

### **3.3 Roads Act 1993 No 33**

**Schedule 3.3** enables a roads authority under the *Roads Act 1993* to direct a PWC to repair or maintain any water supply work or drainage work situated in, on or over a public road that is controlled by the authority. A PWC may appeal to the Minister against any such direction.



First print



New South Wales

# Water Management Amendment Bill 2010

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New South Wales

# Water Management Amendment Bill 2010

No. , 2010

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## A Bill for

An Act to amend the *Water Management Act 2000* with respect to specific purpose access licences and other access licences, environmental water, offences relating to taking water and water meters and private irrigation and drainage bodies; and for other purposes.

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

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<b>Schedule 1</b>	<b>Amendments to Water Management Act 2000 No 92 relating to Commonwealth requirements</b>	1 2 3
<b>[1] Sections 63A and 63B</b>		4
Insert after section 63:		5
<b>63A Commonwealth and other access licences arising from arrangements</b>		6 7
(1) The Minister may grant an access licence to the Commonwealth, or a person nominated by the Commonwealth, at the Minister's discretion, if the Minister is satisfied that:		8 9 10
(a) the licence is required in order to give effect to an agreement or other arrangement (including, but not limited to, a funding agreement or arrangement) entered into by or on behalf of the State, and		11 12 13 14
(b) the licence is to form part of the Commonwealth environmental water holdings within the meaning of the <i>Water Act 2007</i> of the Commonwealth.		15 16 17
(2) Sections 61 and 63 (1) and (2) do not apply to an access licence granted under this section.		18 19
<b>63B Licences arising out of State arrangements or agreements</b>		20
(1) The Minister may grant an access licence to the State or a public authority prescribed by the regulations, at the Minister's discretion, if the Minister is satisfied that the licence is required in order to give effect to an agreement or other arrangement (including, but not limited to, a funding agreement or arrangement) entered into by or on behalf of the State.		21 22 23 24 25 26
(2) A licence granted by the Minister under this section:		27
(a) may be granted subject to an adaptive environmental water condition, or		28 29
(b) may be a licence of an environmental subcategory, or		30
(c) may be for water taken or permitted to be taken under a licence of a class prescribed by the regulations for environmental purposes.		31 32 33
(3) Sections 61 and 63 (1) and (2) do not apply to an access licence granted under this section.		34 35

<b>[2] Section 140 Definitions</b>	1
Insert in alphabetical order:	2
<i>landholder's water entitlement</i> means the part of the share component of a private irrigation board's access licence that is available to a landholder of an irrigated holding within the private irrigation district.	3 4 5 6
<b>[3] Chapter 4, Part 2, Division 10A</b>	7
Insert after Division 10:	8
<b>Division 10A Transformation of water entitlements</b>	9
<b>190A Water entitlements of landholders</b>	10
(1) A private irrigation board must, if requested to do so in writing by a landholder of an irrigated holding to which water is supplied by the board, determine the landholder's water entitlement.	11 12 13
(2) A board must have regard to the following matters when determining the landholder's water entitlement:	14 15
(a) the nature of agricultural activities on the land,	16
(b) the amount of water currently supplied to the landholder,	17
(c) any present or past water sharing arrangements applicable to the landholder,	18 19
(d) any other matter it considers relevant,	20
(e) any other matter prescribed by the regulations.	21
(3) A determination may specify the different parts of the landholder's water entitlement that are available to the landholder for different purposes.	22 23 24
(4) A determination must be in writing and comply with the requirements prescribed by the regulations. Notice of a determination must be given in writing by the board to the landholder.	25 26 27 28
(5) A determination may be varied or redetermined only on a further application made by the landholder within 3 months of the determination or in the circumstances prescribed by the regulations.	29 30 31 32
(6) A person must not participate in a determination of a landholder's water entitlement if the person or a member of the person's immediate family (within the meaning of the regulations) has an interest in the entitlement.	33 34 35 36

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<b>190B Transformation of landholder's water entitlement</b>	1
(1) A private irrigation board may make an application under Division 4 of Part 2 of Chapter 3 for the purpose of wholly or partly transforming a landholder's water entitlement into an access licence under this Act.	2 3 4 5
(2) On transformation of the whole or part of a landholder's water entitlement to an access licence:	6 7
(a) the landholder is not entitled to vote (as a member of the private irrigation board or as a landholder within the private irrigation district) on any matter relating to the transformation of one or more other landholders' water entitlements or the supply of water to landholders who have not transformed their water entitlements, and	8 9 10 11 12 13
(b) the board may continue to exercise functions in relation to any works that are located on the landholding for which it exercised functions immediately before the transformation (whether or not the board is to deliver the landholders' water entitlement under the access licence or the landholding remains in the private irrigation district).	14 15 16 17 18 19
(3) If the whole of a landholder's water entitlement is transformed and the landholder does not have a right to the delivery of that water by the board:	20 21 22
(a) the landholder is not entitled to vote as a landholder within the private irrigation district, and	23 24
(b) the board must not fix rates and charges in respect of the landholder's landholding for that water (other than termination charges).	25 26 27
(4) The regulations may make provision for or with respect to:	28
(a) other circumstances in which a landholder whose landholder's water entitlement has been transformed ceases to be a voting member, and	29 30 31
(b) the voting rights of landholders who have partially transformed their landholders' water entitlements.	32 33
(5) A board may require a landholder to provide security as a condition of consent to transformation of the whole or part of the landholder's water entitlement, subject to the regulations.	34 35 36
(6) Without limiting subsection (5), the following kinds of security may be required by a board:	37 38
(a) a charge over a part of an irrigation right that is not transformed,	39 40

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(b)	a charge over an access licence or other entitlement to water acquired by the person and resulting from the transformation,	1 2 3
(c)	a guarantee by an authorised deposit-taking institution,	4
(d)	a deposit lodged with the board.	5
(7)	In addition to any other charges it may fix under this Part, a board may fix the following charges:	6 7
(a)	termination charges payable by a landholder after transformation of the whole or part of the landholder's water entitlement,	8 9 10
(b)	charges payable by a landholder for the delivery of water after transformation of the whole or part of the landholder's water entitlement.	11 12 13
<b>[4]</b>	<b>Section 221 Definitions</b>	14
	Insert in alphabetical order:	15
	<i>landholder's water entitlement</i> means the part of the share component of an access licence held by or on behalf of a private water trust that is available to a landholder for irrigation.	16 17 18
<b>[5]</b>	<b>Chapter 4, Part 4, Division 5A</b>	19
	Insert after Division 5:	20
	<b>Division 5A Water entitlements</b>	21
<b>237A</b>	<b>Water entitlements of landholders</b>	22
(1)	The members of a private water trust must, if requested to do so in writing by a landholder of a landholding within the water supply district of the trust to which water is supplied by the trust for irrigation, determine the landholder's water entitlement.	23 24 25 26
(2)	The members of the trust must have regard to the following matters when determining the landholder's water entitlement:	27 28
(a)	the nature of agricultural activities on the land,	29
(b)	the amount of water currently supplied to the landholder,	30
(c)	any present or past water sharing arrangements applicable to the landholder,	31 32
(d)	any other matter they consider relevant,	33
(e)	any other matter prescribed by the regulations.	34

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- (3) A determination may specify the different parts of the landholder's water entitlement that are available to the landholder for different purposes. 1  
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- (4) A determination must be in writing and comply with the requirements prescribed by the regulations. Notice of a determination must be given in writing by the members of the trust to the landholder. 4  
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- (5) A determination may be varied or redetermined only on a further application made by the landholder within 3 months of the determination or in the circumstances prescribed by the regulations. 8  
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- (6) A person must not participate in a determination of a landholder's water entitlement if the person or a member of the person's immediate family (within the meaning of the regulations) has an interest in the entitlement. 12  
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- 237B Transformation of landholder's water entitlement** 16
- (1) The holders of an access licence for the water supply district of a private water trust may make an application under Division 4 of Part 2 of Chapter 3 for the purpose of wholly or partly transforming a landholder's water entitlement into an access licence under this Act. 17  
18  
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- (2) On transformation of the whole or part of a landholder's water entitlement to an access licence: 22  
23
- (a) the landholder is not entitled to vote (as a member of the trust or as a voting member in the water supply district) on any matter relating to the transformation of one or more other landholders' water entitlements or the supply of water to landholders who have not transformed their water entitlements, and 24  
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- (b) the members of the trust and the trust may continue to exercise functions in relation to any works that are located on the landholding for which they exercised functions immediately before the transformation (whether or not the trust is to deliver the landholders' water entitlement under the access licence or the landholding remains in the water supply district of the trust). 30  
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- (3) If the whole of a landholder's water entitlement is transformed and the landholder does not have a right to the delivery of that water by the trust: 37  
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39
- (a) the landholder is not entitled to vote as a landholder within the water supply district of the trust, and 40  
41

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(b)	the trust must not fix rates and charges in respect of the landholder's landholding for that water (other than termination charges).	1 2 3
(4)	The regulations may make provision for or with respect to:	4
(a)	other circumstances in which a landholder whose landholder's water entitlement has been transformed ceases to be a voting member in the water supply district of the trust, and	5 6 7 8
(b)	the voting rights of landholders who have partially transformed their landholders' water entitlements.	9 10
(5)	The members of a trust may require a landholder to provide security as a condition of consent to transformation of the whole or part of the landholder's water entitlement, subject to the regulations.	11 12 13 14
(6)	Without limiting subsection (5), the following kinds of security may be required by the members of a trust:	15 16
(a)	a charge over a part of an irrigation right that is not transformed,	17 18
(b)	a charge over an access licence or other entitlement to water acquired by the person and resulting from the transformation,	19 20 21
(c)	a guarantee by an authorised deposit-taking institution,	22
(d)	a deposit lodged with the trust.	23
(7)	In addition to any other charges it may fix under this Part, the members of a trust may fix the following charges:	24 25
(a)	termination charges payable by a landholder after transformation of the whole or part of the landholder's water entitlement,	26 27 28
(b)	charges payable by a landholder for the delivery of water after transformation of the whole or part of the landholder's water entitlement.	29 30 31
<b>[6]</b>	<b>Section 368 Appeals to Land and Environment Court</b>	32
	Insert at the end of section 368 (2) (b):	33
	, and	34
(c)	no appeal lies against a decision of the Minister to grant a licence under section 63A or 63B or to impose a discretionary condition on such a licence.	35 36 37

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<b>[7] Schedule 1A Access Register</b>	1
Insert “, 63A or 63B” after “63” wherever occurring in clause 1.	2
<b>[8] Schedule 9 Savings, transitional and other provisions</b>	3
Insert at the end of clause 1 (1):	4
<i>Water Management Amendment Act 2010</i>	5
<b>[9] Dictionary, definition of “Ministerial action”</b>	6
Insert “, 63A or 63B” after “section 63” in paragraph (a).	7

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<b>Schedule 2</b>	<b>Other amendments to Water Management Act 2000 No 92</b>	1
		2
<b>[1] Section 8 Environmental water</b>		3
Omit section 8 (1) (b). Insert instead:		4
(b) water ( <i>licensed environmental water</i> ) that is:		5
(i) committed by an adaptive environmental water condition under section 8B, 8C, 8D or 63B, or		6
(ii) taken or permitted to be taken under a licence of an environmental subcategory, or		7
(iii) taken or permitted to be taken under a licence of a class prescribed by the regulations for the purposes of this paragraph.		8
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		12
<b>[2] Section 8 (4)</b>		13
Omit the subsection.		14
<b>[3] Section 8A Planned environmental water</b>		15
Omit “If the relevant management plan so provides, the” from section 8A (1).		16
Insert instead “The”.		17
<b>[4] Section 8B Adaptive environmental water through dedication of existing water entitlements</b>		18
		19
Omit “If the relevant management plan so provides, the” from section 8B (1).		20
Insert instead “The”.		21
<b>[5] Section 8B (2)</b>		22
Omit “licence”. Insert instead “licence, except as provided by the regulations”.		23
<b>[6] Section 8C Adaptive environmental water through system improvements</b>		24
		25
Omit “If the relevant management plan so provides, the” from section 8C (1).		26
Insert instead “The”.		27

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<b>[7] Section 8D</b>	1
Omit the section. Insert instead:	2
<b>8D Adaptive environmental water conditions after surrender of licences</b>	3
	4
(1) The Minister may keep an access licence surrendered by the holder of the licence or transfer it to a catchment management authority or other public body, and may change the licence to a different category or subcategory, if:	5
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	8
(a) the share component of the licence is equivalent to the share component of the surrendered licence (subject to the application of any conversion factor prescribed by the access licence dealing principles or the regulations), and	9
	10
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	12
(b) an adaptive environmental water condition is or has been imposed on the licence.	13
	14
(2) The Minister may cancel an access licence surrendered by the holder of the licence and transfer the share component of the surrendered licence (subject to the application of any conversion factor prescribed by the access licence dealing principles or the regulations) to another licence if an adaptive environmental water condition is or has been imposed on the licence.	15
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<b>[8] Section 8E General provisions relating to access licences with adaptive environmental water conditions</b>	21
	22
Omit section 8E (6).	23
<b>[9] Section 8F</b>	24
Insert after section 8E:	25
<b>8F Auditing of compliance with extraction limits</b>	26
(1) This section applies for the purpose of auditing compliance with the long-term extraction limit (however expressed) under a management plan.	27
	28
	29
(2) The long-term extraction limit is taken to be varied by the amount of any change to the amount of water committed as licensed environmental water.	30
	31
	32
(3) The variation in the long-term extraction limit is to be determined in accordance with a methodology approved by the Minister and published in the Gazette.	33
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(4)	To avoid doubt, water savings in a system (within the meaning of section 8C) are not to be taken into account when determining the variation.	1 2 3
(5)	Water committed as licensed environmental water is not to be accounted for as extraction.	4 5
<b>[10]</b>	<b>Section 20 Core provisions</b>	6
	Omit “and provisions relating to adaptive environmental water” from section 20 (1) (a).	7 8
<b>[11]</b>	<b>Section 52 Domestic and stock rights</b>	9
	Insert at the end of section 52 (2) (c):	10
	, or	11
	(d) to carry out a controlled activity without a controlled activity approval.	12 13
<b>[12]</b>	<b>Section 52A</b>	14
	Insert after section 52:	15
<b>52A</b>	<b>Removal of domestic and stock rights</b>	16
(1)	An owner or occupier of a landholding has no entitlement to domestic and stock rights in respect of land, if a domestic and stock rights removal recording is in force for the land.	17 18 19
(2)	The Registrar-General must, on lodgment of an application by a landholder in the form approved by the Registrar-General, make a recording (a <b><i>domestic and stock rights removal recording</i></b> ) to the effect that the land is not subject to domestic and stock rights under section 52.	20 21 22 23 24
(3)	An application must be consented to by:	25
(a)	each person who is the registered proprietor of an estate or interest in the land, if the land is under the <i>Real Property Act 1900</i> , or	26 27 28
(b)	each person who has a legal interest in the land, if the land is not under the <i>Real Property Act 1900</i> .	29 30
	<b>Note.</b> Regulations under section 71YA may require a domestic and stock rights removal recording to be made before a dealing may be registered in the Access Register.	31 32 33
(4)	A recording is to be made:	34
(a)	by making an entry in the relevant folio of the Register, if the land is under the <i>Real Property Act 1900</i> , or	35 36

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(b)	by registering the application in the General Register of Deeds, if the land is not under the <i>Real Property Act 1900</i> .	1 2
(5)	A domestic and stock rights removal recording may be removed by the Registrar-General only on application by the Minister.	3 4
(6)	The Registrar-General must notify the Minister in writing of any domestic and stock rights removal recording made by the Registrar-General.	5 6 7
<b>[13]</b>	<b>Section 60B Contravention of terms and conditions of access licence</b>	8
	Insert “(other than the holder)” after “person” where firstly occurring.	9
<b>[14]</b>	<b>Section 60B (2) and (3)</b>	10
	Insert at the end of section 60B:	11
(2)	If any term or condition of an access licence is contravened by any person, each holder of the access licence is guilty of an offence. Tier 2 penalty.	12 13 14 15
(3)	It is a defence to a prosecution under subsection (2) if the accused person establishes:	16 17
(a)	that the contravention of the term or condition was caused by another person, and	18 19
(b)	that the other person was not associated with the holder at the time the term or condition was contravened, and	20 21
(c)	that the holder took all reasonable steps to prevent the contravention of the term or condition.	22 23
	A person is associated with the holder for the purposes of this subsection (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the holder.	24 25 26 27
<b>[15]</b>	<b>Section 60C</b>	28
	Omit the section. Insert instead:	29
	<b>60C Taking water for which there is no, or insufficient, water allocation</b>	30
(1)	A person who takes water from a water source to which this Part applies otherwise than in accordance with the water allocation for	31 32

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the access licence by which the taking of water from that water source is authorised and:	1
(a) who intentionally or negligently fails to ascertain whether the taking of water is in accordance with the water allocation, or	2
(b) who knows or has reasonable cause to believe that the taking of the water is not in accordance with the water allocation,	3
is guilty of an offence.	4
Tier 1 penalty.	5
(2) A person who takes water from a water source to which this Part applies otherwise than in accordance with the water allocation for the access licence by which the taking of water from that water source is authorised is guilty of an offence.	6
Tier 2 penalty.	7
(3) If a person who has the control or management of a water supply work takes water by means of that work in contravention of subsection (2), and the water supply work is nominated in relation to an access licence held by some other person, both persons are taken to have contravened that subsection.	8
(4) Either person referred to in subsection (3) may be proceeded against and convicted for an offence under subsection (2), as the case requires, whether or not the other person has been proceeded against or convicted for such an offence.	9
<b>[16] Section 60G Minister may charge for water illegally taken</b>	10
Insert “water allocation” before “account” in section 60G (1) (b).	11
<b>[17] Section 60I</b>	12
Insert after section 60H:	13
<b>60I Access licence required for water used in mining activities</b>	14
(1) A person who takes water in the course of carrying out a mining activity is, for the purposes of this Act, taking water from a water source.	15
(2) Without limiting the generality of subsection (1), a person <i>takes water in the course of carrying out a mining activity</i> if, as a result of or in connection with, the activity or a past mining activity carried out by the person, water is removed or diverted	16
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	from a water source (whether or not water is returned to that water source) or water is re-located from one part of an aquifer to another part of an aquifer.	1 2 3
(3)	To avoid doubt, a person who takes water in the course of carrying out a mining activity as referred to in subsection (2) is required to hold an access licence authorising the taking of that water.	4 5 6 7
(4)	In this section: <i>mineral</i> has the same meaning as it has in the <i>Mining Act 1992</i> . <i>mineral exploration</i> means prospecting pursuant to an assessment lease, exploration licence, mineral claim, mining lease or opal prospecting licence under the <i>Mining Act 1992</i> . <i>mining</i> means the winning or removal of materials by methods such as excavating, dredging, drilling or tunnelling for the purpose of obtaining minerals or petroleum, and includes: (a) the construction, commissioning, operation and decommissioning of associated works, and (b) the stockpiling, processing, treatment and transportation of materials extracted, and (c) the rehabilitation of land affected by mining. <i>mining activity</i> means any of the following: (a) mining, (b) mineral exploration, (c) petroleum exploration. <i>petroleum</i> has the same meaning as it has in the <i>Petroleum (Onshore) Act 1991</i> . <i>petroleum exploration</i> means prospecting pursuant to a petroleum title under the <i>Petroleum (Onshore) Act 1991</i> .	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
(5)	This section does not limit any other provision of this Act.	29
<b>[18]</b>	<b>Section 63 Determination of applications</b>	30
	Insert after section 63 (7):	31
(8)	This section does not prevent the transfer of a local water utility access licence or a major utility access licence to persons other than utilities if it is otherwise permitted under this Act. <b>Note.</b> Such a transfer is permitted under section 71N.	32 33 34 35
<b>[19]</b>	<b>Section 66 Conditions of access licence generally</b>	36
	Insert “or the regulations” after “this Act” in section 66 (1) (a).	37

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<b>[20] Section 66 (1B)</b>	1
Insert after section 66 (1A):	2
(1B) The regulations may make provision for or with respect to conditions of an access licence that are required to be imposed, amended, revoked or suspended in connection with a dealing in, or relating to, that licence.	3 4 5 6
<b>[21] Section 66 (3)</b>	7
Omit “is to”. Insert instead “may”.	8
<b>[22] Section 67 Imposition of conditions after access licence is granted</b>	9
Omit section 67 (2A). Insert instead:	10
(2A) Mandatory conditions of an access licence may be imposed, amended, revoked or suspended by the Minister whenever it is necessary to do so in order to enable compliance with or to give effect to this Act, the regulations or a relevant management plan.	11 12 13 14
<b>[23] Section 67 (3)</b>	15
Insert “, amended, revoked or suspended” after “imposed”.	16
<b>[24] Section 67 (4)</b>	17
Insert “imposed, or a change, as” after “A condition”.	18
<b>[25] Section 71D Creation of registered security interests by recording in Access Register</b>	19 20
Omit section 71D (2) (a). Insert instead:	21
(a) a specific purpose access licence of a kind prescribed by the regulations, or	22 23
<b>[26] Section 71L How does a dealing take effect?</b>	24
Insert after section 71L (1):	25
<b>Note.</b> The regulations may provide that a dealing may not be registered in the Access Register until a condition of consent to that dealing is complied with (see section 71YA (6)).	26 27 28
<b>[27] Section 71M Transfer of access licences</b>	29
Omit section 71M (2). Insert instead:	30
(2) A local water utility access licence may be transferred only if:	31
(a) the transferee is a local water utility, or	32

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	(b) the transferee is a major utility and the water supply functions of the utility from which the licence is transferred are to be carried out by the transferee.	1 2 3
<b>[28]</b>	<b>Section 71M (3)</b>	4
	Insert at the end of the subsection:	5
	<b>Note.</b> The holder of a local water utility access licence or a major utility access licence may transfer the licence to a person other than a local water utility or a major utility for a term transfer (see section 71N).	6 7 8
<b>[29]</b>	<b>Section 71N Term transfers of entitlements under access licences</b>	9
	Omit section 71N (1) and (2). Insert instead:	10
	(1) The holder of an access licence (the <i>actual holder of the licence</i> ) may transfer the whole of the water entitlements conferred by the licence to another person for a specified period of not less than 6 months (a <i>term transfer</i> ).	11 12 13 14
<b>[30]</b>	<b>Section 71N (7B)</b>	15
	Insert after section 71N (7A):	16
	(7B) The Minister may end a term transfer of a local water utility access licence or a major utility access licence, without the consent of the transferor or transferee:	17 18 19
	(a) if the Minister is satisfied that it is necessary to do so because there is a risk to the water supply of a local water utility or major utility, or	20 21 22
	(b) in circumstances of a kind prescribed by the regulations.	23
<b>[31]</b>	<b>Section 71O Conversion of access licence to new category</b>	24
	Omit section 71O (2). Insert instead:	25
	(2) This section does not apply to a supplementary water access licence.	26 27
<b>[32]</b>	<b>Section 71Q Assignment of rights under access licence</b>	28
	Omit section 71Q (5).	29
<b>[33]</b>	<b>Section 71R Amendment of share component of access licence</b>	30
	Omit “local water utility access licence or” from section 71R (2).	31
<b>[34]</b>	<b>Section 71T Assignment of water allocations between access licences</b>	32
	Insert “the water allocation account for” after “credited to” in section 71T (3).	33

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<b>[35] Section 71V Interstate assignment of water allocations</b>	1
Insert “the water allocation account for” after “water allocations to” in section 71V (2).	2 3
<b>[36] Section 71V (2)</b>	4
Insert “the water allocation account for” after “water allocations from”.	5
<b>[37] Section 71V (3)</b>	6
Insert “the water allocation account for” after “credited to”.	7
<b>[38] Section 71Y General</b>	8
Insert at the end of section 71Y (1) (c):	9
, and	10
(d) the regulations.	11
<b>[39] Section 71Y (6)</b>	12
Insert after section 71Y (5):	13
(6) The Minister may, if the Minister thinks it appropriate, deal with 2 or more related dealings under this Act at the same time, and in the same application, as if they comprised one dealing.	14 15 16
<b>[40] Section 71YA</b>	17
Insert after section 71Y:	18
<b>71YA Conditions of consents to dealings in licences</b>	19
(1) The Minister may consent to a dealing in an access licence subject to conditions.	20 21
(2) The regulations may make provision for or with respect to mandatory conditions of consent for dealings ( <b><i>consent conditions</i></b> ) in all or any access licences or access licences of a class prescribed by the regulations.	22 23 24 25
(3) The Minister must impose the applicable consent conditions on a dealing in an access licence.	26 27
(4) Without limiting any other provision of this section, regulations may be made for or with respect to the following consent conditions:	28 29 30
(a) conditions applying to particular locations, areas or water sources,	31 32
(b) conditions requiring a specified proportion of the share component of an access licence of a specified class to be	33 34

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	committed as environmental water in a specified manner or traded for environmental purposes,	1
	(c) conditions requiring or relating to water savings or proposed water savings,	3
	(d) conditions requiring domestic and stock rights removal recordings (within the meaning of section 52A) to be obtained in circumstances prescribed by the regulations.	5
(5)	A consent condition imposed by the Minister under this section has effect despite any condition of the access licence or an approval imposed by or under this Act.	8
(6)	The regulations may provide that the Minister's consent to a dealing does not take effect, or that a dealing must not be registered in the Access Register, until a specified consent condition or a consent condition of a specified class is complied with.	11
(7)	Consent conditions may be imposed, amended, revoked or suspended by the Minister whenever it is necessary to do so in order to enable compliance with or to give effect to this Act, the regulations or a relevant management plan.	16
<b>[41]</b>	<b>Section 71Z Access licence dealing principles</b>	20
	Insert "or on which adaptive environmental water conditions are imposed, or under which water is otherwise required to be committed for environmental purposes, under this Act in connection with a dealing in an access licence" after "Division" in section 71Z (1) (c).	21
<b>[42]</b>	<b>Section 76 Water allocations may be credited</b>	25
	Insert "the water allocation account for" after "recredited to" in section 76 (2).	26
<b>[43]</b>	<b>Section 77A Cancellation of access licences that can no longer be used or are no longer required</b>	27
	Omit "is to cancel" from section 77A (2). Insert instead "may cancel".	28
<b>[44]</b>	<b>Section 77A (3)</b>	30
	Omit "is to consider". Insert instead "may consider".	31
<b>[45]</b>	<b>Section 78 Suspension and cancellation of access licences</b>	32
	Insert "water allocation" before "account" in section 78 (3) (c).	33

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<b>[46] Section 85 Keeping of water allocation accounts</b>	1
Insert “the water allocation account for” before “the licence” wherever occurring in section 85 (1).	2 3
<b>[47] Section 85 (2)–(4)</b>	4
Omit “the account” wherever occurring.	5
Insert instead “the water allocation account”.	6
<b>[48] Section 85 (5) and (6)</b>	7
Omit “an account” wherever occurring.	8
Insert instead “a water allocation account”.	9
<b>[49] Section 85A Authorisation to take water from uncontrolled flows</b>	10
Insert “water allocation” before “accounts” and “account” in section 85A (2) and (6), respectively.	11 12
<b>[50] Section 88 Regulations</b>	13
Omit “under an access licence” wherever occurring in section 88 (1).	14
Insert instead “in the water allocation account for an access licence”.	15
<b>[51] Section 91A Using water without, or otherwise than as authorised by, a water use approval</b>	16 17
Omit section 91A (4). Insert instead:	18
(4) It is a defence to a prosecution under subsection (1) if the accused person establishes that the water was used pursuant to a basic landholder right.	19 20 21
(5) It is a defence to a prosecution under subsection (2) if the accused person establishes:	22 23
(a) that the contravention of the subsection was caused by another person, and	24 25
(b) that the other person was not associated with the accused person at the time the subsection was contravened, and	26 27
(c) that the accused person took all reasonable steps to prevent the commission of the offence.	28 29
A person is associated with the accused person for the purposes of this subsection (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the accused person.	30 31 32 33

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<b>[52] Section 91B Constructing or using water supply work without, or otherwise than as authorised by, a water supply work approval</b>	1 2
Insert after section 91B (4):	3
(5) It is a defence to a prosecution under subsection (1) if the accused person establishes that the water supply work was constructed or used pursuant to a basic landholder right.	4 5 6
<b>[53] Section 91G</b>	7
Omit the section. Insert instead:	8
<b>91G Contravention of terms and conditions of approval</b>	9
(1) A person (other than the holder) who uses water, constructs or uses a water management work or carries out a controlled activity or an aquifer interference activity, pursuant to an approval is guilty of an offence if the person contravenes any term or condition of the approval.	10 11 12 13 14
Tier 2 penalty.	15
(2) If any term or condition of an approval is contravened by any person, each holder of the approval is guilty of an offence.	16 17
Tier 2 penalty.	18
(3) It is a defence to a prosecution under subsection (2) if the accused person establishes:	19 20
(a) that the contravention of the term or condition was caused by another person, and	21 22
(b) that the other person was not associated with the holder at the time the term or condition was contravened, and	23 24
(c) that the holder took all reasonable steps to prevent the contravention of the term or condition.	25 26
A person is associated with the holder for the purposes of this subsection (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the holder.	27 28 29 30

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<b>[54] Section 91I Taking water when metering equipment not working</b>	1
Omit section 91I (1). Insert instead:	2
(1) A person who takes water from a water source to which this Part applies by means of a metered work while its metering equipment is not operating properly or is not operating and:	3
(a) who intentionally or negligently fails to ascertain whether the metering equipment is not operating properly or is operating, or	4
(b) who knows or has reasonable cause to believe that the metering equipment is not operating properly or is not operating,	5
is guilty of an offence.	6
Tier 1 penalty.	7
<b>[55] Section 91I (3)</b>	8
Omit the subsection. Insert instead:	9
(3) Subsections (1) (b) and (2) do not apply if the person who takes the water:	10
(a) reports, in accordance with the regulations, that the metering equipment is not operating properly or is not operating, and	11
(b) complies with the requirements (if any) of the regulations as to the taking of water in such circumstances, the keeping of records and the repair or replacement (including temporary replacement) of the metering equipment.	12
<b>[56] Section 91K Meter tampering</b>	13
Insert after section 91K (4) (b):	14
, or	15
(c) that is done to metering equipment by or on behalf of the holder of the water supply work approval or drainage work approval solely for the purposes of complying with any requirements of regulations made under this Division.	16
<b>[57] Section 91M General defence</b>	17
Omit section 91M (2). Insert instead:	18
(2) It is a defence to a prosecution under this Division in relation to the doing of anything without an approval if the accused person establishes that the person was exempt, pursuant to this Act or the	19
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	regulations, from any requirement for an approval in relation to the doing of that thing.	1 2
<b>[58]</b>	<b>Section 100 Conditions of approval generally</b>	3
	Insert “or the regulations” after “this Act” in section 100 (1) (a).	4
<b>[59]</b>	<b>Section 100 (4)</b>	5
	Insert after section 100 (3) (before the note):	6
	(4) The regulations may make provision for or with respect to conditions of an approval that are required to be imposed, amended, revoked or suspended in connection with a dealing in, or relating to, an access licence.	7 8 9 10
<b>[60]</b>	<b>Section 102 Imposition or change of conditions after approval is granted</b>	11
	Omit “vary” from section 102 (1). Insert instead “amend”.	12
<b>[61]</b>	<b>Section 102 (1) and (2)</b>	13
	Omit “a variation” wherever occurring. Insert instead “an amendment”.	14
<b>[62]</b>	<b>Section 102 (2) (b)</b>	15
	Omit “variation”. Insert instead “amendment”.	16
<b>[63]</b>	<b>Section 102 (3)</b>	17
	Omit the subsection. Insert instead:	18
	(3) Mandatory conditions of an approval may be imposed, amended, revoked or suspended by the Minister whenever it is necessary to do so in order to enable compliance with or to give effect to this Act, the regulations or a relevant management plan.	19 20 21 22
<b>[64]</b>	<b>Section 102 (4)</b>	23
	Omit “or variation made”. Insert “, amended, revoked or suspended”.	24
<b>[65]</b>	<b>Section 102 (5)</b>	25
	Omit “or variation”. Insert “imposed or a change”.	26
<b>[66]</b>	<b>Sections 104 (3) and 109 (1) (c2)</b>	27
	Omit “bore” wherever occurring. Insert instead “water bore”.	28
<b>[67]</b>	<b>Section 106 Land benefited by approval</b>	29
	Omit “private irrigation board, private drainage board” from section 106 (3). Insert instead “private water corporation”.	30 31

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<b>[68] Section 120A</b>	1
Insert after section 120:	2
<b>120A Entry and investigation powers</b>	3
(1) An irrigation corporation may appoint a person to act as an authorised officer of the corporation under this section. An appointment is to be in writing and to comply with any requirements of the regulations.	4 5 6 7
(2) An authorised officer of a corporation may enter land at any reasonable time if the authorised officer is reasonably of the opinion that the landholder has contravened an irrigation, water supply or drainage agreement with the corporation and that it is necessary to enter the land for the purpose of investigating that contravention.	8 9 10 11 12 13
(3) An authorised officer who enters land under this section may exercise the powers set out in section 339B (2) (a)–(g).	14 15
(4) Sections 339D, 339F and 340 apply to authorised officers appointed under this section.	16 17
(5) A corporation, and authorised officers of a corporation, may exercise the functions conferred by this section only if authorised to do so by the operating licence of the corporation.	18 19 20
(6) This section does not empower an authorised officer to enter any part of premises used only for residential purposes.	21 22
(7) An irrigation corporation must compensate all interested parties for any damage caused by a person exercising a power of entry on to land under this section on behalf of the corporation (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the person in the exercise of the power of entry.	23 24 25 26 27 28
<b>[69] Section 125A</b>	29
Insert after section 125:	30
<b>125A Offence to contravene operating licence</b>	31
(1) An irrigation corporation must not contravene the operating licence of the corporation. Tier 2 penalty.	32 33 34
(2) Action may be taken both under this section and section 125 in respect of the same contravention of an operating licence.	35 36

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<b>[70] Section 130</b>	1
Omit sections 130 and 131. Insert instead:	2
<b>130 Inclusion of land in area of operations</b>	3
(1) The Minister may determine an application for the inclusion of land within an irrigation corporation's area of operations by granting or refusing the application.	4 5 6
(2) If the Minister grants the application, the Minister must, by order published in the Gazette, include the land within the irrigation corporation's area of operations.	7 8 9
<b>[71] Section 134</b>	10
Omit sections 134 and 135. Insert instead:	11
<b>134 Exclusion of land from area of operations</b>	12
(1) The Minister may determine an application for the exclusion of land from an irrigation corporation's area of operations by granting or refusing the application.	13 14 15
(2) If the Minister grants the application, the Minister must, by order published in the Gazette, exclude the land from the irrigation corporation's area of operations.	16 17 18
<b>[72] Section 136A</b>	19
Insert after section 136:	20
<b>136A Charges for water illegally taken and damage to works</b>	21
(1) An irrigation corporation may impose a charge on a person for water taken if the corporation is satisfied on the balance of probabilities that the person has knowingly taken water from a water management work that is owned by, or is under the control and management of, the corporation in contravention of this Act, the regulations or an agreement with the corporation.	22 23 24 25 26 27
(2) A corporation may impose a charge on a person for the repair or replacement of a work if the corporation is satisfied on the balance of probabilities that the person has destroyed, damaged or interfered with a work that is owned by, or is under the control or management of, the corporation.	28 29 30 31 32
(3) The charge imposed by the corporation may include a penalty component.	33 34

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(4)	The maximum charge that a corporation may impose under this section:	1
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(a)	for the taking of water, is an amount not exceeding 5 times the value of the water so taken, as determined in accordance with the regulations, or	3
		4
(b)	for destroying, damaging or interfering with a work, is an amount not exceeding 5 times the reasonable cost of the repair or replacement (as required) of the work.	5
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(5)	Action under this section may not be taken against a person unless the corporation:	9
		10
(a)	has given written notice to the person that the corporation proposes to take such action, and	11
		12
(b)	has given the person a reasonable opportunity to make submissions to the corporation with respect to the proposed action, and	13
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(c)	has taken any such submissions into consideration.	16
(6)	A charge imposed by a corporation under this section is recoverable in any court of competent jurisdiction as a debt due to the corporation.	17
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(7)	A corporation is not entitled to take action under this section unless the operating licence of the corporation authorises the corporation to take action under this section.	20
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(8)	Action may be taken under this section against a former member of the corporation.	23
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(9)	The exercise of powers by a corporation under this section is subject to any requirements of, or limits imposed by, the regulations or the operating licence of the corporation.	25
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<b>[73]</b>	<b>Section 137 Indemnities</b>	28
	Insert after section 137 (2):	29
(3)	This section does not apply to an action, liability, claim or demand referred to in section 137A.	30
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<b>[74]</b>	<b>Section 137A</b>	32
	Insert after section 137:	33
<b>137A</b>	<b>Liability for water source and other changes</b>	34
(1)	An irrigation corporation, any officer or employee of an irrigation corporation or a person acting under the direction of a	35
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corporation, officer or employee is not subject to any action, liability, claim or demand arising:	1
(a) from the unavailability of water, or	2
(b) from the escape of water from a water management work owned by, or under the control or management of, the corporation, or	3
(c) from a failure to supply, distribute or drain water that is authorised by its operating licence or this Act or the regulations,	4
as a consequence of anything done or omitted to be done in good faith by the corporation, officer, employee or person for the purposes of executing this Act or carrying out the functions of the corporation.	5
	6
(2) This section does not limit section 397.	7
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<b>[75] Chapter 4 Joint private works</b>	9
Omit Parts 2 and 3. Insert instead:	10
	11
<b>Part 2 Private water corporations</b>	12
	13
<b>Division 1 Preliminary</b>	14
	15
<b>139 Definitions</b>	16
In this Part:	17
<i>board</i> means the board of a corporation.	18
<i>corporation</i> means a private water corporation established under this Part and listed in Schedule 13.	19
<i>corporation work</i> means a water management work, or a proposed water management work, specified in the works plan for a corporation.	20
<i>member's water entitlement</i> means the part of the share component of the corporation's access licence that is available to a member.	21
<i>rules</i> means the rules of a private water corporation, as in force from time to time.	22
<i>works plan</i> means the works plan for a corporation specified for the corporation, as in force from time to time.	23
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<b>140</b>	<b>Requirements for access licences and approvals</b>	1
	Nothing in this Part authorises a corporation or landholder to do anything for which this Act requires an access licence or approval unless the corporation or landholder holds an appropriate access licence or approval.	2 3 4 5
<b>Division 2</b>	<b>Constitution and management of private water corporations</b>	6 7
<b>141</b>	<b>Application for establishment of private water corporations</b>	8
(1)	Two or more landholders of landholdings that are being worked on as 2 or more holdings may apply to the Minister to constitute a private water corporation in relation to those landholdings.	9 10 11
(2)	An application is:	12
(a)	to be in the approved form, and	13
(b)	to be accompanied by a works plan for the corporation and proposed rules for the corporation, and	14 15
(c)	to be accompanied by any other information required by the Minister or prescribed by the regulations, and	16 17
(d)	to be accompanied by the fee (if any) prescribed by the regulations.	18 19
<b>142</b>	<b>Determination of application and constitution of corporation</b>	20
(1)	The Minister may grant an application to establish a corporation if:	21 22
(a)	the Minister is satisfied that the purpose of the corporation is to provide, maintain or operate any or all of a water supply system, water distribution system or drainage system, and	23 24 25 26
(b)	the corporation and any proposed works plan and rules of the corporation comply with any requirements of this Act and the regulations.	27 28 29
(2)	A corporation is to be constituted by the Minister by order published on the NSW legislation website.	30 31
(3)	In addition to constituting the corporation, the order must specify the following:	32 33
(a)	the name of the corporation,	34
(b)	the water supply, water distribution or water drainage purposes of the corporation,	35 36

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(c)	the landholdings for which the corporation may exercise functions and the works plan for the corporation,	1 2
(d)	the members of the corporation,	3
(e)	the board members of the corporation, pending the first election of board members,	4 5
(f)	the date, time and place of the first election of the board members of the corporation,	6 7
(g)	the rules of the corporation.	8
(4)	On the order being published or on such later day as may be specified in the order:	9 10
(a)	the corporation is constituted as a body corporate with the name specified in the order, and	11 12
(b)	the members of the corporation are the members specified in the order, and	13 14
(c)	the rules and works plan specified by the order take effect.	15
(5)	A corporation is not a NSW government agency.	16
<b>143</b>	<b>Functions of private water corporations</b>	17
(1)	A corporation has the following functions:	18
(a)	to provide, maintain or operate a water supply system, water distribution system or drainage system,	19 20
(b)	any other function conferred or imposed on the corporation by or under this or any other Act.	21 22
(2)	A corporation may supply water:	23
(a)	under an access licence or approval held by the corporation, or	24 25
(b)	for the purpose of an access licence or approval held by a member whose member's water entitlement has been transformed under Division 4.	26 27 28
(3)	A corporation must exercise its functions in accordance with this Act, the regulations and the rules.	29 30
<b>144</b>	<b>Boards of private water corporations</b>	31
(1)	There is to be a board of a corporation.	32
(2)	The board is to consist of not less than 3 and not more than 10 members of the corporation.	33 34

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(3)	The board has the following functions:	1
(a)	to direct, control and manage the affairs of the corporation, in accordance with this Act, the regulations and the rules,	2
		3
(b)	any other functions conferred on the board by or under this Act.	4
		5
(4)	A board member holds office for the term prescribed by the rules.	6
(5)	The regulations may prescribe the circumstances in which a board member ceases to be a board member.	7
		8
<b>145</b>	<b>Rules of private water corporations</b>	9
(1)	A corporation may, from time to time, amend or replace the rules of the corporation.	10
		11
(2)	The rules may make provision for or with respect to the following matters:	12
		13
(a)	elections of the board,	14
(b)	the members and procedure of the board,	15
(c)	the members of the corporation,	16
(d)	meetings of the corporation,	17
(e)	the voting rights of members of the corporation, or classes of members of the corporation,	18
		19
(f)	new members of the corporation,	20
(g)	the functions of the corporation that may be exercised only by resolution of the corporation at a meeting of the members of the corporation,	21
		22
		23
(h)	the imposition of rates and charges on members of the corporation for services (including water) provided by the corporation,	24
		25
		26
(i)	the regulation of a water supply, water distribution or drainage system provided by the corporation,	27
		28
(j)	the regulation of the supply, taking or use of water provided by a water supply or water distribution system provided by the corporation,	29
		30
		31
(k)	the regulation of the draining or disposal of water through a drainage system provided by the corporation,	32
		33
(l)	the financial management and systems of the corporation,	34
(m)	the manner in which the rules are to be amended or replaced,	35
		36
(n)	any other matters prescribed by the regulations,	37

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| (o) any other matters necessary for, or ancillary to, the purposes of the corporation.   | 1<br>2               |
| (3) The rules must:  | 3                    |
| (a) not be inconsistent with this Act or the regulations, and  | 4                    |
| (b) comply with any requirements prescribed by the regulations.  | 5<br>6               |
| (4) A corporation must notify changes to the rules, or replaced rules, in the manner prescribed by the regulations.  | 7<br>8               |
| (5) The rules are binding on the members of the corporation, board members and landholders to whom the corporation provides services and it is presumed that the members and any such landholders have notice of the rules.                    | 9<br>10<br>11<br>12  |
| (6) A rule has no effect to the extent to which it is inconsistent with this Act or the regulations.   | 13<br>14             |
| (7) A corporation must not make a change to a rule unless the proposed change has been approved by at least two thirds of the members of the corporation who are entitled to vote on the question or the change is authorised under the rules. | 15<br>16<br>17<br>18 |
| (8) The regulations may vary the proportion of members of a corporation who must approve any such change or any class of change.   | 19<br>20<br>21       |
| <b>146 Corporation must provide copy of rules to Minister</b>  | 22                   |
| (1) A corporation must, if required to do so by the Minister, provide the Minister with a copy of the rules of the corporation.<br>Maximum penalty: 20 penalty units.  | 23<br>24<br>25       |
| (2) A corporation must, on the request of a member and payment by the member of the fee (if any) prescribed by the rules of the corporation, provide the member with a copy of the rules of the corporation.                                   | 26<br>27<br>28<br>29 |
| <b>147 Delegation by corporations and boards</b>   | 30                   |
| A corporation or a board may by instrument in writing delegate:  | 31                   |
| (a) to any member of the corporation or board, or  | 32                   |
| (b) to any employee of the corporation,<br>any of its functions, other than this power of delegation.  | 33<br>34             |
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<b>Division 3</b>	<b>Operational functions</b>	1
<b>148</b>	<b>Corporation works and other works</b>	2
(1)	A corporation may exercise the following functions for the purpose of its water supply, water distribution and drainage functions:	3
		4
		5
(a)	construct, install, maintain, operate and manage corporation works,	6
		7
(b)	repair, replace, maintain, remove, extend, connect, disconnect, improve or do any other things in relation to corporation works that are necessary for the purposes of carrying out its functions.	8
		9
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		11
(2)	The corporation may enter into an arrangement with a landholder to provide services in relation to works that are not corporation works.	12
		13
		14
<b>149</b>	<b>Members may be required to provide distribution works</b>	15
(1)	A corporation may require a member of the corporation, or a landholder who is supplied with water by the corporation, to do any of the following:	16
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		18
(a)	to provide water delivery systems on a landholding to enable the supply of water to the land at the rate specified by the corporation,	19
		20
		21
(b)	to provide water storage works in the locations, and of a kind, specified by the corporation for water supplied for stock or domestic purposes,	22
		23
		24
(c)	to maintain any water delivery systems or water storage works on the land so as to enable the corporation to properly exercise its functions in relation to the supply of water.	25
		26
		27
		28
(2)	The requirement is to be made by notice in writing given by the corporation to the member or landholder.	29
		30
(3)	A requirement may be made under this section only if it is necessary for the efficient or effective operation of corporation works or the carrying out of the corporation's functions.	31
		32
		33
<b>150</b>	<b>Discontinuation of water supply by corporation</b>	34
(1)	A corporation may at any time suspend or restrict the supply of, or refuse to supply, water to a member or landholder if the	35
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corporation is reasonably satisfied that any of the following circumstances exist:	1
	2
(a) the water that is available to the corporation cannot meet the demand,	3
	4
(b) the water that is available to the corporation is not suitable for the required purpose,	5
	6
(c) the corporation is unable to provide sufficient conveyance water in connection with the operation of an irrigation system,	7
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	9
(d) the corporation is not lawfully able to supply the quantity of water,	10
	11
(e) the member or landholder has failed to pay rates or charges for water or other services provided by the corporation,	12
	13
(f) the member or landholder has contravened or failed to comply with a condition on which water or drainage services are supplied by the corporation,	14
	15
	16
(g) the member or landholder has contravened or failed to comply with a requirement of the corporation relating to the provision, maintenance or repair of distribution works or any other requirement made by the corporation in accordance with this Act, the regulations or the rules,	17
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	21
(h) the member or landholder has contravened or failed to comply with a requirement of this Act, the regulations or the rules,	22
	23
	24
(i) the corporation is unable to dispose of water draining into its drainage system because of the degraded quality of the water.	25
	26
	27
(2) A corporation that takes action under this section may reduce the amount of water available by different amounts or proportions according to such factors as the corporation thinks fit.	28
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<b>151 Supply of services to other persons</b>	31
(1) A corporation may enter into an agreement with a person who is not a member of the corporation to supply water for the purpose of irrigating land or other purposes, or to drain water from land, by means of a water supply, water distribution or drainage system provided and managed by the corporation.	32
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(2) A corporation must not supply water for domestic purposes if a supply of water is available to the person from a local water utility or major utility.	37
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<b>152</b>	<b>Powers of entry and inspection</b>	1
(1)	A corporation may, by its employees and agents, enter onto land on which corporation works are situated, or any other land, for the following purposes:	2
	(a) to carry out any of its functions in relation to corporation works,	3
	(b) to read a meter that measures water supplied by the corporation or monitors drainage for quantity or quality or both,	4
	(c) to carry out investigations or inspections, take levels, drill test bore-holes, dig trenches, make surveys and marks, and fix pegs and stakes, for the purposes of designing, constructing or determining the site of a proposed corporation work,	5
	(d) to remove samples of materials from the land for the purposes of carrying out the corporation's functions, but only if the landholder has been consulted and the views of the landholder have been considered,	6
	(e) to exercise any other powers that are incidental to the corporation's functions or that are reasonably necessary for carrying out the corporation's functions.	7
(2)	The powers of entry conferred by this section are not to be exercised for a purpose referred to in subsection (1) (a), (c) or (d) without prior notice to the landholder of the land.	8
(3)	A corporation must ensure that as little damage as possible is caused by the exercise of powers under this section.	9
<b>153</b>	<b>Works plans</b>	10
(1)	A works plan for a corporation must:	11
	(a) identify the water management works or proposed works that are the corporation works, and	12
	(b) specify the location of, and describe, the works, and	13
	(c) specify the land to which the works plan applies.	14
(2)	A works plan must comply with any requirements prescribed by the regulations and the rules.	15
(3)	A works plan may be amended or replaced if the amendment or replacement is consented to by any landholder on whose land an affected work is situated or is authorised by the rules.	16

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(4)	A works plan may specify works on land of former members of the corporation who have transformed their member's water entitlements.	1 2 3
(5)	Regulations may be made for or with respect to the keeping of, and provision of, copies of works plans by corporations.	4 5
<b>Division 4</b>	<b>Sale and transformation of water entitlements</b>	6 7
<b>154</b>	<b>Water entitlements of members</b>	8
(1)	A corporation may, if requested to do so in writing by a member of the corporation, determine the member's water entitlement.	9 10
(2)	The corporation must determine an entitlement if the request is made by a member who is supplied by the corporation with water for irrigation.	11 12 13
(3)	A corporation must have regard to the following matters when determining the member's water entitlement:	14 15
(a)	the nature of agricultural activities on the land to which water is supplied,	16 17
(b)	the amount of water currently supplied to the member,	18
(c)	any present or past water sharing arrangements applicable to the member,	19 20
(d)	any other matter it considers relevant,	21
(e)	any other matter prescribed by the regulations.	22
(4)	A determination may specify the different parts of the member's water entitlement that are available to the member for different purposes.	23 24 25
(5)	A determination must be in writing and comply with the requirements prescribed by the regulations. Notice of a determination must be given in writing by the corporation to the member.	26 27 28 29
(6)	A determination may be varied or redetermined only on a further application made by the member within 3 months of the determination or in the circumstances prescribed by the regulations.	30 31 32 33
(7)	A person must not participate in a determination of a member's water entitlement if the person or a member of the person's immediate family (within the meaning of the regulations) has an interest in the entitlement.	34 35 36 37

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<b>155</b>	<b>Sale or transfer of group entitlement</b>	1
	A corporation must not enter into a dealing to sell or mortgage the whole or part of its water entitlement under its access licence unless the dealing is permitted under, and is in accordance with, the rules of the corporation.	2 3 4 5
<b>156</b>	<b>Sale or transfer of members' water entitlements</b>	6
(1)	A member of a corporation may sell or transfer the whole or any part of the member's water entitlement to another member or to the corporation.	7 8 9
(2)	A member must not sell or transfer the whole or part of the member's water entitlement under this section unless the sale or transfer has been approved by the corporation in accordance with the rules or the regulations.	10 11 12 13
(3)	A sale or transfer by a member does not affect the member's membership of the corporation, except as provided by this Act or the rules of the corporation.	14 15 16
<b>157</b>	<b>Transformation of member's water entitlement</b>	17
(1)	A corporation may make an application under Division 4 of Part 2 of Chapter 3 for the purpose of wholly or partly transforming a member's water entitlement into an access licence under this Act.	18 19 20 21
(2)	On transformation of the whole or part of a member's water entitlement to an access licence:	22 23
(a)	the member is not entitled to vote (as a board member) or as a member of the corporation on any matter relating to the transformation of one or more other members' water entitlements or the supply of water to members who have not transformed their water entitlements, and	24 25 26 27 28
(b)	the corporation may continue to exercise functions in relation to any corporation works that are located on the landholding (whether or not the corporation is to deliver the member's water entitlement under the access licence or the landholder is a member of the corporation).	29 30 31 32 33
(3)	If the whole of a person's water entitlement is transformed and the person does not have a right to the delivery of that water by the corporation:	34 35 36
(a)	the person ceases to be a member of the corporation, and	37

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(b)	the corporation must not fix rates and charges in respect of the person's landholding for that water (other than termination charges).	1 2 3
(4)	The rules may make provision for or with respect to other circumstances in which a person whose member's water entitlement has been transformed ceases to be a member of the corporation.	4 5 6 7
(5)	A corporation may require a member to provide security as a condition of consent to transformation of the whole or part of the member's water entitlement, subject to the regulations.	8 9 10
(6)	Without limiting subsection (5), the following kinds of security may be required by a corporation:	11 12
(a)	a charge over a part of an irrigation right that is not transformed,	13 14
(b)	a charge over an access licence or other entitlement to water acquired by the person and resulting from the transformation,	15 16 17
(c)	a guarantee by an authorised deposit-taking institution,	18
(d)	a deposit lodged with the corporation.	19
<b>Division 5</b>	<b>Changes to private water corporations</b>	20
<b>158</b>	<b>Changes in membership requiring works plan changes</b>	21
(1)	A corporation must not make a change in membership that requires a change to the works plan unless the proposed change to the works plan has been approved by at least two thirds of the members of the corporation who are entitled to vote on the question.	22 23 24 25 26
(2)	The regulations may vary the proportion of members of a corporation who must approve any such change.	27 28
(3)	Any change to the works plan takes effect from the date approval is given or such other date (being an earlier or later date) as is specified in the approval.	29 30 31
<b>159</b>	<b>Application for amalgamation of private water corporations</b>	32
(1)	Two or more corporations may apply to the Minister to constitute one private water corporation.	33 34
(2)	An application is:	35
(a)	to be in the approved form, and	36

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(b)	to be accompanied by a works plan for the land and proposed rules for the new corporation, and	1 2
(c)	to be accompanied by any other information required by the Minister or prescribed by the regulations, and	3 4
(d)	to be accompanied by the fee (if any) prescribed by the regulations.	5 6
<b>160</b>	<b>Determination of application for amalgamation</b>	<b>7</b>
(1)	The Minister may grant an application to amalgamate 2 or more corporations if:	8 9
(a)	the Minister is satisfied that the purpose of the amalgamated corporation is to provide, maintain or operate any or all of a water supply system, water distribution system or drainage system, and	10 11 12 13
(b)	the corporation and any proposed works plan or rules of the corporation comply with any requirements of this Act and the regulations.	14 15 16
(2)	The amalgamated corporation is to be constituted by the Minister by order published on the NSW legislation website.	17 18
(3)	In addition to constituting the corporation, the order must specify the following:	19 20
(a)	the name of the corporation,	21
(b)	the water supply, water distribution or water drainage purposes of the corporation,	22 23
(c)	the landholdings for which the corporation may exercise functions and the works plan of the corporation,	24 25
(d)	the members of the corporation,	26
(e)	the board members of the corporation, pending the first election of board members,	27 28
(f)	the date, time and place for the first election of the board members of the corporation,	29 30
(g)	the rules of the corporation.	31
(4)	On the order being published or on such later day as may be specified in the order:	32 33
(a)	the new corporation is constituted as a body corporate with the name specified in the order, and	34 35
(b)	the members specified in the order are the members of the corporation, and	36 37

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(c)	the rules and works plan specified by the order take effect, and	1 2
(d)	the amalgamated corporations are abolished, and	3
(e)	the new corporation is taken for all purposes to be a continuation of and the same legal entity as each of the amalgamated corporations.	4 5 6
(5)	The new corporation is not a NSW government agency.	7
<b>161</b>	<b>Effect of sale of land</b>	<b>8</b>
(1)	If a member of a corporation sells to a person land to which the corporation provides or is able to provide water supply or drainage services:	9 10 11
(a)	the member ceases to be a member in respect of that land when that sale takes effect, and	12 13
(b)	the purchaser is taken to be a member of the corporation when the sale takes effect, and	14 15
(c)	the purchaser has all the entitlements and liabilities of the vendor as a member, in respect of the land, that the vendor had immediately before the sale took effect.	16 17 18
(2)	A member of a corporation who sells land as referred to in this section must notify the corporation of the sale in accordance with any requirements of the regulations or the rules.	19 20 21
<b>162</b>	<b>Effect of subdivision</b>	<b>22</b>
	The subdivision of land by a member of a corporation:	23
(a)	does not of itself entitle any other person to be a member of the corporation or entitle any other person to be supplied with water or provided with drainage or other services by the corporation, and	24 25 26 27
(b)	does not of itself affect any existing entitlement of any other person in relation to any such service, and	28 29
(c)	does not of itself affect any functions of the corporation in relation to corporation works.	30 31
<b>Division 6</b>	<b>Rates and charges</b>	<b>32</b>
<b>163</b>	<b>Fixing of rates and charges</b>	<b>33</b>
(1)	A corporation must for each year commencing on 1 July fix the rates and charges payable in respect of each landholding that is a landholding owned or occupied by its members for which the	34 35 36

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Schedule 2 Other amendments to Water Management Act 2000 No 92

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- corporation may exercise functions, or for which it provides water or drainage services in that year. 1  
2
- (2) In determining the amount of rates and charges payable, the corporation must fix an amount that it considers is sufficient to meet the estimated costs of the following: 3  
4  
5
- (a) the corporation's likely costs in providing irrigation, water supply and drainage services for that year, 6  
7
- (b) the liabilities of the corporation, 8
- (c) the corporation's likely costs relating to corporation works, including (but not limited to) maintenance, improvement and replacement of works and new works, 9  
10  
11
- (d) provision for a sinking fund (if necessary), 12
- (e) any other matters prescribed by the regulations. 13
- (3) The rates and charges payable may (but are not required to) be fixed on the basis of any one or more of the following: 14  
15
- (a) the volume or quality of water supplied or proposed to be supplied to a landholding, 16  
17
- (b) the area of a landholding, 18
- (c) whether or not water or drainage services are or are proposed to be provided to a landholding, 19  
20
- (d) the purpose for which water services are supplied or proposed to be supplied to a landholding. 21  
22
- (4) If rates and charges are payable on the basis of the area of a landholding, a landholding that has an area equal to a number of hectares and a remaining fraction of a hectare is to be rounded up to the nearest hectare. 23  
24  
25  
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- (5) A corporation may also fix the following charges: 27
- (a) termination charges payable by a member or former member after transformation of the whole or part of the member's water entitlement, 28  
29  
30
- (b) charges payable for the delivery of water to a member or former member after transformation of the whole or part of the member's water entitlement. 31  
32  
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- (6) A corporation must give notice of its fees and charges for a year in the manner prescribed by the regulations and must specify in the notice the basis on which the rates and charges are calculated. 34  
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(7)	The rules of a corporation must provide for the procedures for setting rates and charges and the period within which rates and charges must be paid.	1 2 3
	<b>Note.</b> The regulations may prescribe requirements for rules made under this section (see section 145 (3) (b)).	4 5
<b>164</b>	<b>Recovery of unpaid rates and charges</b>	6
(1)	The owner or occupier of a landholding for which rates or charges are levied by a corporation must pay the rates and charges to the corporation.	7 8 9
(2)	If a landholding for which rates or charges are levied is owned or occupied by more than one person the following provisions apply:	10 11 12
(a)	the rates or charges may be levied on one or more of those persons and may be recovered by the corporation from any one or more of those persons,	13 14 15
(b)	the corporation is not entitled to recover more than the total amount of the rates and charges (and any interest payable).	16 17
(3)	If any land in a holding reverts to the Crown during any year for which rates or charges are or are to be assessed, the person who immediately before the reversion was the landholder of the land is liable for payment of only that part of the rates or charges proportionate to the part of the year for which the land was held by the person, and any excess payment by the person must be refunded to the person.	18 19 20 21 22 23 24
	<b>Note.</b> Rates and charges are a charge on the land, procedures for the sale of land for overdue rates are set out in Part 4 of Chapter 7.	25 26
<b>165</b>	<b>Abandonment of rates and charges</b>	27
(1)	A corporation may, in accordance with the rules, waive or reduce rates, charges and interest due.	28 29
(2)	Rates and charges may be waived under this section only if the auditor of the corporation certifies that the waiver is in accordance with the rules and has been approved by the board of the corporation.	30 31 32 33
<b>Division 7</b>	<b>Finance</b>	34
<b>166</b>	<b>Financial records</b>	35
(1)	A corporation must cause proper accounts and records to be kept in relation to all its operations.	36 37

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(2)	A corporation must prepare financial statements for each financial year of the corporation.	1 2
(3)	Sections 41B and 41BA of the <i>Public Finance and Audit Act 1983</i> apply to financial statements required to be prepared under this section in the same way that they apply to financial reports required to be prepared under that Act.	3 4 5 6
(4)	The financial statements must be submitted for verification and certification to an auditor appointed by the corporation in the manner prescribed by the rules of the corporation.	7 8 9
(5)	The regulations may provide for the qualifications for appointment as an auditor under this section.	10 11
(6)	A member of a corporation or a board member of the corporation must not be appointed to audit the financial statements of the corporation.	12 13 14
<b>167</b>	<b>Auditor's right to access to information</b>	<b>15</b>
(1)	An auditor of a corporation has a right of access at all reasonable times to the accounts and records of the corporation.	16 17
(2)	A board member, or an employee of, a corporation must comply with any reasonable request by the auditor of the corporation to provide information or documents relating to the accounts or financial statements or related records of the corporation. Maximum penalty: 20 penalty units.	18 19 20 21 22
<b>168</b>	<b>Presentation of audited financial statements</b>	<b>23</b>
(1)	A corporation must, at the request of the Minister, furnish to the Minister the audited financial statements and any other documents requested within the time specified in the request.	24 25 26
(2)	The audited financial statements must be laid before the annual general meeting of the corporation following their verification and certification by the auditor.	27 28 29
<b>169</b>	<b>Borrowing and investment by corporations</b>	<b>30</b>
(1)	A corporation may obtain financial accommodation, and may invest the funds of the corporation, in any manner it thinks fit.	31 32
(2)	A corporation may, for the purpose of obtaining financial accommodation:	33 34
(a)	charge the whole or any part of any of its property (including any income arising from rates or charges) by debenture, mortgage or in any other manner, and	35 36 37

(b) enter into arrangements to provide guarantees or indemnities.	1 2
(3) If a corporation defaults in carrying out its obligations under a debenture charged on income arising from rates or charges, the Supreme Court may, on the application of a creditor or a trustee for the debenture holders:	3 4 5 6
(a) direct the corporation to appropriate a specified portion of its income to satisfy its obligations under the debenture, or	7 8
(b) direct the corporation to raise a specified amount by way of charges and direct the amount to be applied towards satisfying those obligations,	9 10 11
and may give any other ancillary or incidental directions that it thinks fit.	12 13
(4) The rights of a creditor or trustee in subsection (3) are in addition to any other rights of the creditor or trustee.	14 15
(5) The obligations of a corporation are not guaranteed by the State of New South Wales.	16 17
(6) The State of New South Wales is not liable to any action, liability, claim or demand in respect of the exercise by or on behalf of a corporation of any function under this Division.	18 19 20
(7) In this section:	21
<i><b>funds</b></i> includes any funds under the control of the corporation and real property, securities or other property comprising an investment.	22 23 24
<i><b>obtaining of financial accommodation</b></i> has the same meaning as it has in the <i>Public Authorities (Financial Arrangements) Act 1987</i> .	25 26 27
<b>Division 8 Enforcement powers</b>	28
<b>170 Charges for water illegally taken and damage to works</b>	29
(1) A corporation may impose a charge on a person for water taken if the corporation is satisfied on the balance of probabilities that the person has knowingly taken water from a water management work that is owned by, or is under the control and management of, the corporation in contravention of this Act, the regulations, the rules or an agreement with the corporation.	30 31 32 33 34 35
(2) A corporation may impose a charge on a person for the repair or replacement of a work if the corporation is satisfied on the balance of probabilities that the person has destroyed, damaged	36 37 38

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	or interfered with a work that is owned by, or is under the control or management of, the corporation.	1 2
(3)	The charge imposed by the corporation may include a penalty component.	3 4
(4)	The maximum charge that a corporation may impose under this section:	5 6
	(a) for the taking of water, is an amount not exceeding 5 times the value of the water so taken, as determined in accordance with the regulations, or	7 8 9
	(b) for destroying, damaging or interfering with a work, is an amount not exceeding 5 times the reasonable cost of the repair or replacement (as required) of the work.	10 11 12
(5)	Action under this section may not be taken against a person unless the corporation:	13 14
	(a) has given written notice to the person that the corporation proposes to take such action, and	15 16
	(b) has given the person a reasonable opportunity to make submissions to the corporation with respect to the proposed action, and	17 18 19
	(c) has taken any such submissions into consideration.	20
(6)	A charge imposed by a corporation under this section is recoverable in any court of competent jurisdiction as a debt due to the corporation.	21 22 23
(7)	A corporation is not entitled to take action under this section unless the Minister has approved the application of this section to the corporation.	24 25 26
(8)	Action may be taken under this section against a former member of the corporation.	27 28
(9)	The exercise of powers by a corporation under this section is subject to any requirements of, or limits imposed by, the regulations or the rules of a corporation.	29 30 31
<b>171</b>	<b>Entry and investigation powers</b>	32
(1)	A corporation may appoint a person to act as an authorised officer of the corporation under this section. An appointment is to be in writing and is to comply with any requirements of the regulations.	33 34 35 36
(2)	An authorised officer of a corporation may enter land at any reasonable time if the authorised officer is reasonably of the	37 38

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	opinion that the landholder has contravened an irrigation, water supply, water distribution or drainage agreement with the corporation and that it is necessary to enter the land for the purpose of investigating that contravention.	1 2 3 4
(3)	An authorised officer who enters land under this section may exercise the powers set out in section 339B (2) (a)–(g).	5 6
(4)	Sections 339D, 339F and 340 apply to authorised officers appointed under this section.	7 8
(5)	A corporation, and authorised officers of a corporation, may exercise the functions conferred by this section only if authorised to do so by the rules of the corporation.	9 10 11
(6)	This section does not empower an authorised officer to enter any part of premises used only for residential purposes.	12 13
(7)	A corporation must compensate all interested parties for any damage caused by a person exercising a power of entry on to land under this section on behalf of the corporation (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the person in the exercise of the power of entry.	14 15 16 17 18 19
<b>172</b>	<b>Ministerial directions about rules</b>	20
(1)	The Minister may, by notice in writing to a corporation, direct the corporation to comply with, or cease to contravene, the rules of the corporation.	21 22 23
(2)	The notice may direct the corporation to take specified action or to cease to take specified action.	24 25
(3)	A corporation must not contravene a direction under this section. Tier 2 penalty.	26 27
<b>Division 9</b>	<b>Winding up of private water corporations</b>	28
<b>173</b>	<b>Appointment of an administrator</b>	29
(1)	The Minister may, by order published in the Gazette, remove the members of the board of a corporation from office and appoint an administrator to conduct the affairs of the corporation.	30 31 32
(2)	The Minister may make an order if the Minister is of the opinion that:	33 34
(a)	the board or the corporation has failed, or is unable to, carry out its functions as required by or under this Act, or	35 36

(b)	without limiting paragraph (a), the corporation has failed or is unable to provide or maintain water supply, water distribution or drainage services or corporation works, or	1 2 3
(c)	the corporation is unable to pay its debts as they fall due, or	4
(d)	the board or corporation has regularly or materially contravened this Act, the regulations or the rules of the corporation, or	5 6 7
(e)	in all the circumstances of the case it is just and equitable to do so.	8 9
(3)	Before making an order, the Minister must:	10
(a)	cause notice of the proposed order to be published in a newspaper circulating in the local area in which the corporation provides services, and	11 12 13
(b)	in that notice, invite submissions to be made to the Minister about the proposal within the period of 4 weeks following the publication of the notice, and	14 15 16
(c)	consider any submissions made within that period.	17
(4)	The Minister is not required to comply with subsection (3) if the Minister is of the opinion that the special circumstances of the case require the order to be made immediately.	18 19 20
<b>174</b>	<b>Functions of administrator</b>	21
(1)	The administrator of a corporation appointed under this Division holds office for such period as is specified in the order appointing the administrator. The administrator ceases to hold office if the Minister, by a subsequent order published in the Gazette, revokes the appointment or on the election of a new board under this section.	22 23 24 25 26 27
(2)	The administrator has and may exercise the functions of the board of the corporation or corporation specified in the administrator's order of appointment (subject to any conditions specified in that order) but is not required to comply with the rules of the corporation.	28 29 30 31 32
(3)	The administrator may amend the rules of the corporation and take such other action as is necessary to enable the corporation to properly exercise its functions.	33 34 35
(4)	The administrator is entitled to be paid such remuneration, from the funds of the corporation, as the Minister may from time to time determine.	36 37 38

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(5)	The Minister may at any time, by order published in the Gazette, extend the period of appointment of an administrator.	1 2
(6)	The administrator must, if required to do so by the Minister, report to the Minister on the administrator's conduct of the affairs of the corporation.	3 4 5
(7)	The administrator may at any time recommend to the Minister that elections be held for a new board or that the corporation be wound up.	6 7 8
(8)	The administrator must, if required to do so by the Minister, arrange for elections to be held for a new board.	9 10
<b>175</b>	<b>Removed board members not eligible for re-election</b>	11
	If the board of a corporation has been removed from office, each of the board members is ineligible for election to the board at any subsequent election, unless the Minister declares in writing that the board member is eligible for election at such an election.	12 13 14 15
<b>176</b>	<b>Effect of administration on existing contracts</b>	16
	On the appointment of an administrator of a corporation:	17
	(a) all contracts of employment with the corporation are terminated, and	18 19
	(b) the administrator may terminate any contract for the provision of services to or by the corporation.	20 21
<b>177</b>	<b>Winding up of corporations</b>	22
(1)	The Minister may, by order published in the Gazette, order that a corporation be wound up if:	23 24
	(a) requested to do so by the corporation, after a resolution to wind up the corporation was passed at a meeting of the corporation by not less than 75% of the members, or	25 26 27
	(b) the administrator of the corporation has recommended that the corporation be wound up.	28 29
(2)	The order must appoint a person as the liquidator of the corporation.	30 31
(3)	The regulations may make provision for or with respect to the winding up of a corporation and for the disposal of residual assets of the corporation.	32 33 34
(4)	The Minister may, by order published in the Gazette, abolish a corporation if satisfied that the winding up of the corporation under this section has been completed.	35 36 37

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<b>Division 10</b>	<b>Miscellaneous</b>	1
<b>178</b>	<b>Liability for water source and other changes</b>	2
(1)	A corporation, any officer or employee of a corporation or a person acting under the direction of the corporation, officer or employee is not subject to any action, liability, claim or demand arising:	3
		4
		5
		6
	(a) from the unavailability of water, or	7
	(b) from the escape of water from a corporation work, or	8
	(c) from a failure to supply, distribute or drain water that is authorised by the rules, this Act or the regulations,	9
		10
	as a consequence of anything done or omitted to be done in good faith by the corporation, officer, employee or person for the purposes of executing this Act or of carrying out the functions of the corporation.	11
		12
		13
		14
(2)	This section does not limit section 397.	15
<b>179</b>	<b>Amendment of Schedule 13 to insert, change, omit name of corporation</b>	16
		17
	The Minister may, by order published on the NSW legislation website, amend Schedule 13:	18
		19
	(a) to insert the name of a private water corporation constituted under this Act, or	20
		21
	(b) to change the name of a private water corporation constituted under this Act, or	22
		23
	(c) to omit the name of a private water corporation, if the corporation is abolished.	24
		25
<b>[76]</b>	<b>Section 221 Definitions</b>	26
	Insert in alphabetical order:	27
	<i>member's water entitlement</i> means the part of the share component of an access licence held by or on behalf a private water trust that is available to a member.	28
		29
		30
	<i>rules</i> means the rules of a private water trust, as in force from time to time.	31
		32
	<i>trust work</i> means a water management work, or a proposed water management work, specified in the works plan for a private water trust.	33
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	<i>works plan</i> means the works plan for a private water trust specified for the trust, as in force from time to time.	36
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<b>[77] Section 221</b>	1
Omit the definitions of <i>member</i> and <i>water supply district</i> .	2
Insert in alphabetical order:	3
<i>trustee</i> of a private water trust means a trustee elected under section 223.	4
	5
<b>[78] Section 222 Requirements for access licences and approvals</b>	6
Insert “, the trustees of a trust” after “private water trust” where firstly occurring.	7
	8
<b>[79] Section 222</b>	9
Omit “private water trust” where secondly occurring.	10
Insert instead “(or the trustees on behalf of the trust)”.	11
<b>[80] Chapter 4, Part 4, Divisions 2–9</b>	12
Omit Chapter 4, Part 4, Divisions 2–6. Insert instead:	13
<b>Division 2 Management of private water trusts</b>	14
<b>223 Trustees of private water trusts</b>	15
(1) The number of trustees of a private water trust is to be the number when section 220 commenced.	16
	17
(2) The trustees of a trust are to be elected.	18
(3) The trustees must elect one of the trustees as chairperson of the trust.	19
	20
(4) The trustees have the following functions:	21
(a) to direct, control and manage the affairs of the trust, in accordance with this Act, the regulations and the rules,	22
	23
(b) any other functions conferred on the trustees by or under this Act.	24
	25
(5) The trustees are to act for and on behalf of the trust.	26
(6) A trustee holds office for the term prescribed by the rules.	27
(7) The regulations may prescribe the circumstances in which a trustee ceases to be a trustee.	28
	29
(8) For the purposes of this Act and the regulations, a trust is taken to be the holder of any access licence or approval that is held by any former or other current trustees on behalf of the trust.	30
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(9)	A trustee must, as soon as practicable after ceasing to be a trustee, take all necessary action to transfer any interest in property held by the former trustee on behalf of the trust to the trustees of the trust or the trust.	1 2 3 4
<b>224</b>	<b>Water supply and other functions of trusts</b>	5
(1)	A private water trust has the following functions:	6
(a)	to provide, maintain or operate a water supply system, water distribution system or drainage system,	7 8
(b)	any other function conferred or imposed on the trust by or under this or any other Act.	9 10
(2)	The trust may supply water:	11
(a)	under an access licence or approval held by the trustees or trust, or	12 13
(b)	for the purpose of an access licence or approval held by a member whose member's water entitlement has been transformed under Division 4.	14 15 16
<b>225</b>	<b>Rules of private water trusts</b>	17
(1)	A private water trust may, from time to time, amend or replace the rules of the trust.	18 19
(2)	The rules may make provision for or with respect to the following matters:	20 21
(a)	elections of trustees,	22
(b)	the trustees and procedures of the trustees,	23
(c)	the members of the trust,	24
(d)	meetings of the trust,	25
(e)	meetings of trustees of the trust,	26
(f)	the voting rights of members of the trust, or classes of members of the trust,	27 28
(g)	new members of the trust,	29
(h)	the functions of the trust that may be exercised only by resolution at a meeting of the members of the trust,	30 31
(i)	the imposition of rates and charges on members of the trust for services (including water) provided by the trust,	32 33
(j)	the regulation of a water supply, water distribution or drainage system provided by the trust,	34 35

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(k)	the regulation of the supply, taking or use of water provided by a water supply or water distribution system provided by the trust,	1 2 3
(l)	the regulation of the draining or disposal of water through a drainage system provided by the trust,	4 5
(m)	the financial management and systems of the trust,	6
(n)	the manner in which the rules are to be amended or replaced,	7 8
(o)	any other matters prescribed by the regulations,	9
(p)	any other matters necessary for, or ancillary to, the purposes of the trust.	10 11
(3)	The rules must:	12
(a)	not be inconsistent with this Act or the regulations, and	13
(b)	comply with any requirements prescribed by the regulations.	14 15
(4)	A trust must notify changes to the rules, or replaced rules, in the manner prescribed by the regulations.	16 17
(5)	The rules are binding on the trustees and members of the trust and landholders to whom the trust provides services and it is presumed that the trustees, members and landholders have notice of the rules.	18 19 20 21
(6)	A rule has no effect to the extent to which it is inconsistent with this Act or the regulations.	22 23
(7)	A trust must not make a change to a rule unless the proposed change has been approved by at least two thirds of the members of the trust who are entitled to vote on the question or the change is authorised by the rules.	24 25 26 27
(8)	The regulations may vary the proportion of members of a trust who must approve any such change or any class of change.	28 29
<b>226</b>	<b>Trustees must provide copy of rules</b>	30
(1)	A trustee of a private water trust must, if required to do so by the Minister, provide the Minister with a copy of the rules of the trust. Maximum penalty: 20 penalty units.	31 32 33 34
(2)	A private water trust must, on the request of a member of the trust and payment by the member of the fee (if any) prescribed by the rules of the trust, provide the member with a copy of the rules of the trust.	35 36 37 38

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<b>227</b>	<b>Delegation</b>	1
	A private water trust or the trustees of a trust may by instrument in writing delegate:	2
		3
	(a) to any trustee or to any member of the trust, or	4
	(b) to any employee of the trust,	5
	any of their functions, other than this power of delegation.	6
	<b>Division 3 Operational functions</b>	7
<b>228</b>	<b>Trust works and other works</b>	8
(1)	A private water trust may exercise the following functions for the purpose of its water supply, water distribution and drainage functions:	9
		10
		11
	(a) construct, install, maintain, operate and manage trust works,	12
		13
	(b) repair, replace, maintain, remove, extend, connect, disconnect, improve or do any other things in relation to trust works that are necessary for the purpose of carrying out their functions.	14
		15
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(2)	A private water trust may enter into an arrangement with a landholder to provide services in relation to works that are not trust works.	18
		19
		20
<b>229</b>	<b>Members may be required to provide distribution works</b>	21
(1)	A private water trust may require a member of the trust, or a landholder who is supplied with water by the trust, to do any of the following:	22
		23
		24
	(a) to provide water delivery systems on a landholding to enable the supply of water to the land at the rate specified by the trust,	25
		26
		27
	(b) to provide water storage works in the locations, and of a kind, specified by the trust for water supplied for stock or domestic purposes,	28
		29
		30
	(c) to maintain any water delivery systems or water storage works on the land so as to enable the trust to properly exercise functions in relation to the supply of water.	31
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(2)	The requirement is to be made by notice in writing given by the trust to the member or landholder.	34
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(3)	A requirement may be made under this section only if it is necessary for the efficient or effective operation of trust works or the carrying out of the trust's functions.	1 2 3
<b>230</b>	<b>Discontinuation of water supply by trust</b>	4
(1)	A private water trust may at any time suspend or restrict the supply of, or refuse to supply, water to a member or landholder if the trust is reasonably satisfied that any of the following circumstances exist:	5 6 7 8
(a)	the water that is available to the trust cannot meet the demand,	9 10
(b)	the water that is available to the trust is not suitable for the required purpose,	11 12
(c)	the trust is unable to provide sufficient conveyance water in connection with the operation of an irrigation system,	13 14
(d)	the trust is not lawfully able to supply the quantity of water,	15 16
(e)	the member or landholder has failed to pay charges or fees for water or other services provided by the trust,	17 18
(f)	the member or landholder has contravened or failed to comply with a condition on which water or drainage services are supplied by the trust,	19 20 21
(g)	the member or landholder has contravened or failed to comply with a requirement of the trust relating to the provision, maintenance or repair of distribution works or any other requirement made by the trust in accordance with this Act, the regulations or the rules,	22 23 24 25 26
(h)	the member or landholder has contravened or failed to comply with a requirement of this Act, the regulations or the rules,	27 28 29
(i)	the trust is unable to dispose of water draining into its drainage system because of the degraded quality of the water.	30 31 32
(2)	A private water trust that takes action under this section may reduce the amount of water available by different amounts or proportions according to such factors as it thinks fit.	33 34 35
<b>231</b>	<b>Supply of services to other persons</b>	36
(1)	A private water trust may enter into an agreement with a person who is not a member of the trust to supply water for the purpose of irrigating land or other purposes, or to drain water from land,	37 38 39

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	by means of a water supply, water distribution or drainage system provided and managed by the trust.	1 2
(2)	A private water trust must not supply water for domestic purposes if a supply of water is available to the person from a local water utility or a major utility.	3 4 5
<b>232</b>	<b>Powers of entry and inspection</b>	6
(1)	A private water trust may, by its employees or agents, enter onto land on which trust works are situated, or any other land, for the following purposes:	7 8 9
(a)	to carry out any of the trust's functions in relation to trust works,	10 11
(b)	to read a meter that measures water supplied by the trust or monitors drainage for quantity or quality or both,	12 13
(c)	to carry out investigations or inspections, take levels, drill test bore-holes, dig trenches, make surveys and marks, and fix pegs and stakes, for the purposes of designing, constructing or determining the site of a proposed trust work,	14 15 16 17 18
(d)	to remove samples of materials from the land for the purpose of carrying out trust functions, but only if the landholder has been consulted and the views of the landholder have been considered,	19 20 21 22
(e)	to exercise any other powers that are incidental to the trust's functions that are reasonably necessary for carrying out those functions.	23 24 25
(2)	The powers of entry conferred by this section are not to be exercised for a purpose referred to in subsection (1) (a), (c) or (d) without prior notice to the landholder of the land.	26 27 28
(3)	The trust must ensure that as little damage as possible is caused by the exercise of powers under this section and must repair any damage caused or pay compensation for the damage.	29 30 31
<b>233</b>	<b>Works plans</b>	32
(1)	A works plan for a trust must:	33
(a)	identify the water management works or proposed works that are the trust works, and	34 35
(b)	specify the location of, and describe, the works, and	36
(c)	specify the land to which the works plan applies.	37

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(2)	A works plan must comply with any requirements prescribed by the regulations and the rules.	1 2
(3)	A works plan may be amended or replaced if the amendment or replacement is consented to by any landholder on whose land affected works are situated or is authorised by the rules.	3 4 5
(4)	A works plan may specify works on land of former members of the trust who have transformed their member's water entitlements.	6 7 8
(5)	Regulations may be made for or with respect to the keeping of, and provision of, copies of works plans.	9 10
<b>Division 4</b>	<b>Sale and transformation of water entitlements</b>	11 12
<b>234</b>	<b>Water entitlements of members</b>	13
(1)	A private water trust may, if requested to do so by a member of the trust, determine the member's water entitlement.	14 15
(2)	The trust must determine a member's water entitlement if the request is made by a member who is supplied by the trust with water for irrigation.	16 17 18
(3)	The trust must have regard to the following matters when determining the member's water entitlement:	19 20
(a)	the nature of agricultural activities on the land to which water is supplied,	21 22
(b)	the amount of water currently supplied to the member,	23
(c)	any present or past water sharing arrangements applicable to the member,	24 25
(d)	any other matter it considers relevant,	26
(e)	any other matter prescribed by the regulations.	27
(4)	A determination may specify the different parts of the member's water entitlement that are available to the landholding for different purposes.	28 29 30
(5)	A determination must be in writing and comply with the requirements of the regulations. Notice of a determination must be given in writing by the trust to the member.	31 32 33
(6)	A determination may be varied or redetermined only on a further application made by the member within 3 months of the determination or in the circumstances prescribed by the regulations.	34 35 36 37

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(7)	A person must not participate in a determination of a member's water entitlement if the person or a member of the person's immediate family (within the meaning of the regulations) has an interest in the entitlement.	1 2 3 4
<b>235</b>	<b>Sale or transfer of group entitlement</b>	5
	A private water trust must not enter into a dealing to sell or mortgage the whole or part of the water entitlement of a trust under an access licence unless the dealing is permitted under, and is in accordance with, the rules of the trust.	6 7 8 9
<b>236</b>	<b>Sale or transfer of members' water entitlements</b>	10
(1)	A member of a private water trust may sell or transfer the whole or any part of the member's water entitlement to another member or to the trust.	11 12 13
(2)	A member must not sell or transfer the whole or part of the member's water entitlement under this section unless the sale or transfer has been approved by the trust in accordance with the rules or the regulations.	14 15 16 17
(3)	A sale or transfer by a member does not affect the member's membership of the trust, except as provided by this Act and the rules of the trust.	18 19 20
<b>237</b>	<b>Transformation of member's water entitlements</b>	21
(1)	A private water trust may make an application under Division 4 of Part 2 of Chapter 3 for the purpose of wholly or partly transforming a member's water entitlement into an access licence under this Act.	22 23 24 25
(2)	On transformation of the whole or part of a member's water entitlement to an access licence:	26 27
(a)	the member is not entitled to vote (as a trustee) or as a member on any matter relating to the transformation of one or more other members' water entitlements or the supply of water to members who have not transformed their water entitlements, and	28 29 30 31 32
(b)	the trust may continue to exercise functions in relation to any trust works that are located on the landholding (whether or not the trust is to deliver the member's water entitlement under the access licence or the landholder remains a member of the trust).	33 34 35 36 37

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(3)	If the whole of a person's water entitlement is transformed and the person does not have a right to the delivery of that water by the trust:	1
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		3
(a)	the person ceases to be a member of the trust, and	4
(b)	the trust must not fix rates and charges in respect of the person's landholding for that water (other than termination charges).	5
		6
		7
(4)	The rules may make provision for or with respect to other circumstances in which a person whose member's water entitlement has been transformed ceases to be a member of the trust.	8
		9
		10
		11
(5)	The trust may require a member to provide security as a condition of consent to transformation of the whole or part of the member's water entitlement, subject to the regulations.	12
		13
		14
(6)	Without limiting subsection (5), the following kinds of security may be required by the trust:	15
		16
(a)	a charge over a part of an irrigation right that is not transformed,	17
		18
(b)	a charge over an access licence or other entitlement to water acquired by the person and resulting from the transformation,	19
		20
		21
(c)	a guarantee by an authorised deposit-taking institution,	22
(d)	a deposit lodged with the trust.	23
		24
<b>Division 5</b>	<b>Changes to private water trusts</b>	
<b>238</b>	<b>Changes in membership requiring works plan changes</b>	25
(1)	A private water trust must not make a change in membership that results in a consequential change to the works plan of the trust unless the proposed change to the works plan has been approved by at least two thirds of the members of the trust who are entitled to vote on the question.	26
		27
		28
		29
		30
(2)	The regulations may vary the proportion of the members of the trust who must approve any such change.	31
		32
(3)	Any change to the works plan takes effect from the date approval is given or such other date (being an earlier or later date) as is specified in the approval.	33
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<b>239</b>	<b>Application for amalgamation of private water trusts</b>	1
(1)	Two or more private water trusts may apply to the Minister to constitute one private water trust.	2 3
(2)	An application is:	4
(a)	to be in the approved form, and	5
(b)	to be accompanied by a works plan and proposed rules for the new trust, and	6 7
(c)	to be accompanied by any other information required by the Minister or prescribed by the regulations, and	8 9
(d)	to be accompanied by the fee (if any) prescribed by the regulations.	10 11
<b>239A</b>	<b>Determination of application for amalgamation</b>	12
(1)	The Minister may grant an application to amalgamate 2 or more trusts if:	13 14
(a)	the Minister is satisfied that the purpose of the amalgamated trust is to provide, maintain or operate any or all of a water supply system, water distribution system or drainage system, and	15 16 17 18
(b)	the trust and any proposed works plan or rules of the trust comply with any requirements of this Act and the regulations.	19 20 21
(2)	The amalgamated private water trust is to be constituted by the Minister by order published on the NSW legislation website.	22 23
(3)	In addition to constituting the trust, the order must specify the following:	24 25
(a)	the name of the trust,	26
(b)	the water supply, water distribution or water drainage purposes of the trust,	27 28
(c)	the landholdings for which the trust may exercise functions and the works plan of the trust,	29 30
(d)	the members of the trust,	31
(e)	the trustees of the trust, pending the first election of trustees,	32 33
(f)	the date, time and place for the first election of the trustees,	34
(g)	the rules of the trust.	35

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(4)	On the order being published or on such later day as may be specified in the order:	1
	(a) the new trust is constituted, and	2
	(b) the members of the trust are the members specified in the order, and	3
	(c) the rules and works plan specified by the order take effect, and	4
	(d) the amalgamated trusts are abolished, and	5
	(e) the new trust is taken for all purposes to be a continuation of and the same legal entity as each of the amalgamated trusts.	6
(5)	The new trust is not a NSW government agency.	7
<b>239B</b>	<b>Effect of sale of land</b>	8
(1)	If a member of a private water trust sells to a person land to which the trust provides or is able to provide water supply or drainage services:	9
	(a) the member ceases to be a member in respect of that land when that sale takes effect, and	10
	(b) the purchaser is taken to be a member of the trust when the sale takes effect, and	11
	(c) the purchaser has all the entitlements and liabilities of the vendor as a member, in respect of the land, that the vendor had immediately before the sale took effect.	12
(2)	A member of a trust who sells land as referred to in this section must notify the trust of the sale in accordance with any requirements of the regulations or the rules.	13
<b>239C</b>	<b>Effect of subdivision</b>	14
	The subdivision of land by a member of a private water trust:	15
	(a) does not of itself entitle any other person to be a member of the trust or entitle any other person to be supplied with water or provided with drainage or other services by the trustees or trust, and	16
	(b) does not of itself affect any existing entitlement of any other person in relation to any such service, and	17
	(c) does not of itself affect any functions of the trustees or trust in relation to trust works.	18

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<b>239D</b>	<b>Conversion of private water trust to private water corporation</b>	1
(1)	A private water trust may apply to the Minister to convert the trust to a private water corporation.	2 3
(2)	An application is:	4
	(a) to be in the approved form, and	5
	(b) to be accompanied by a works plan for the corporation and proposed rules for the corporation, and	6 7
	(c) to be accompanied by any other information required by the Minister or prescribed by the regulations, and	8 9
	(d) to be accompanied by the fee (if any) prescribed by the regulations.	10 11
(3)	The Minister must not grant the application unless the Minister is satisfied that not less than two thirds of the members of the trust have approved of the application being made.	12 13 14
(4)	The application is to be dealt with as if it were an application for the constitution of a corporation made in accordance with Part 2.	15 16
(5)	The regulations may make provision for or with respect to the following matters:	17 18
	(a) the modification of the application of the provisions of Part 2 for the purposes of this section,	19 20
	(b) provisions of a savings and transitional nature and any other matter consequent on or ancillary to the creation of the corporation.	21 22 23
<b>Division 6</b>	<b>Rates and charges</b>	24
<b>239E</b>	<b>Fixing of rates and charges</b>	25
(1)	A private water trust must for each year commencing on 1 July fix the rates and charges payable in respect of each landholding owned or occupied by its members that is a landholding for which the trust may exercise functions, or for which it provides water or drainage services in that year.	26 27 28 29 30
(2)	In determining the amount of rates and charges payable, the trust must fix an amount that it considers is sufficient to meet the estimated costs of the following:	31 32 33
	(a) the trust's likely costs in providing irrigation, water supply, drainage and flood control services for that year,	34 35
	(b) the liabilities of the trust,	36

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(c)	the likely costs relating to trust works, including (but not limited to) maintenance, improvement and replacement of works and new works,	1 2 3
(d)	provision for a sinking fund (if necessary),	4
(e)	any other matters prescribed by the regulations.	5
(3)	The rates and charges payable may (but are not required to) be fixed on the basis of any one or more of the following:	6 7
(a)	the volume or quality of water supplied or proposed to be supplied to a landholding,	8 9
(b)	the area of a landholding,	10
(c)	whether or not water or drainage services are or are proposed to be provided to a landholding,	11 12
(d)	the purpose for which water services are supplied or proposed to be supplied to a landholding.	13 14
(4)	If rates and charges are payable on the basis of the area of a landholding, a landholding that has an area equal to a number of hectares and a remaining fraction of a hectare is to be rounded up to the nearest hectare.	15 16 17 18
(5)	The trust may also fix the following charges:	19
(a)	termination charges payable by a member or former member after transformation of the whole or part of the member's water entitlement,	20 21 22
(b)	charges payable for the delivery of water to a member after transformation of the whole or part of the member's water entitlement.	23 24 25
(6)	A trust must give notice of its fees and charges for a year in the manner prescribed by the regulations and must specify in the notice the basis on which the rates and charges are calculated.	26 27 28
(7)	The rules of a trust must provide for the procedures for setting rates and charges and the period within which rates and charges must be paid.	29 30 31
	<b>Note.</b> The regulations may prescribe requirements for rules made under this section (see section 225 (3) (b)).	32 33
<b>239F</b>	<b>Recovery of unpaid rates and charges</b>	34
(1)	The owner or occupier of a landholding for which rates or charges are levied by a private water trust must pay the rates and charges to the trust.	35 36 37

(2)	If a landholding for which rates or charges are levied is owned or occupied by more than one person the following provisions apply:	1 2 3
(a)	the rates or charges may be levied on one or more of those persons and may be recovered by the trust from any one or more of those persons,	4 5 6
(b)	the trust is not entitled to recover more than the total amount of the rates and charges (and any interest payable).	7 8
(3)	If any land in a holding reverts to the Crown during any year for which rates or charges are or are to be assessed, the person who immediately before the reversion was the landholder of the land is liable for payment of only that part of the rates or charges proportionate to the part of the year for which the land was held by the person, and any excess payment by the person must be refunded to the person.	9 10 11 12 13 14 15
	<b>Note.</b> Rates and charges are a charge on the land, procedures for the sale of land for overdue rates are set out in Part 4 of Chapter 7.	16 17
<b>239G</b>	<b>Abandonment of rates and charges</b>	18
(1)	A private water trust may, in accordance with the rules, waive or reduce rates, charges and interest due.	19 20
(2)	Rates and charges may be waived under this section only if the auditor of the private water trust certifies that the waiver is in accordance with the rules and has been approved by the trustees of the trust.	21 22 23 24
<b>Division 7</b>	<b>Finance</b>	25
<b>239H</b>	<b>Financial records</b>	26
(1)	A private water trust must cause proper accounts and records to be kept in relation to all the operations of the trust.	27 28
(2)	The trust must prepare financial statements for each financial year of the trust.	29 30
(3)	Sections 41B and 41BA of the <i>Public Finance and Audit Act 1983</i> apply to financial statements required to be prepared under this section in the same way that they apply to financial reports required to be prepared under that Act.	31 32 33 34
(4)	The financial statements must be submitted for verification and certification to an auditor appointed in the manner prescribed by the rules of the trust.	35 36 37

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(5)	The regulations may provide for the qualifications for appointment as an auditor under this section.	1 2
(6)	A trustee of a trust or a member of a trust must not be appointed to audit the financial statements of the trust.	3 4
<b>239I</b>	<b>Auditor's right to access to information</b>	5
(1)	An auditor of a private water trust has a right of access at all reasonable times to the accounts and records of the trust.	6 7
(2)	A trustee of a trust must comply with any reasonable request by the auditor of the trust to provide information or documents relating to the accounts or financial statements or related records of the trust.	8 9 10 11
	Maximum penalty: 20 penalty units.	12
<b>239J</b>	<b>Presentation of audited financial statements</b>	13
(1)	A private water trust must, at the request of the Minister, furnish to the Minister the audited financial statements and any other documents requested within the time specified in the request.	14 15 16
(2)	The audited financial statement must be laid before the annual general meeting of the trust following their verification and certification by the auditor.	17 18 19
<b>239K</b>	<b>Borrowing by private water trusts</b>	20
(1)	A private water trust has and may exercise the following functions:	21 22
(a)	to pay to the Treasury, at such times as may be fixed by the Minister, the interest and charges payable by the trust,	23 24
(b)	to borrow money, but only as provided by this section.	25
(2)	A loan by way of limited overdraft may be obtained for the purpose of meeting necessary legitimate expenditure prior to the collection of rates or for the purpose of carrying out urgent works of renewal, or replacement, or other emergency, for which sufficient funds are not immediately available.	26 27 28 29 30
(3)	On application by a trust the Minister may issue a certificate of limit of overdraft, in which must be named the purpose in respect of which the loan may be obtained and the limit of the amount to be borrowed.	31 32 33 34
(4)	The sum to be stated in the certificate as the limit of the overdraft is in the discretion of the Minister, but must not exceed the estimated amount required for the purpose mentioned therein plus 10% of such amount.	35 36 37 38

- (5) The loan is subject to any conditions inserted by the Minister in the certificate, and the money borrowed is taken to be secured on the income of the trust and must be repaid within the time fixed in the certificate. 1  
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- (6) All sums received on account of a trust's sinking fund must be carried by the Treasurer to a special account, to be called "The Water Supply Loan Redemption Fund", and all other sums to the Consolidated Fund. 5  
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- (7) The regulations may make provision for or with respect to regulating the payment to the Crown of interest. 9  
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**Division 8 Winding up of private water trusts** 11

**239L Appointment of an administrator** 12

- (1) The Minister may, by order published in the Gazette, remove the trustees of a private water trust from office and appoint an administrator to conduct the affairs of the trust. 13  
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- (2) The Minister may make an order if the Minister is of the opinion that: 16  
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  - (a) the trustees or the trust have failed, or are unable to, carry out their functions as required by or under this Act, or 18  
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  - (b) without limiting paragraph (a), the trustees or trust have failed or are unable to provide or maintain water supply, water distribution or drainage services or trust works, or 20  
21  
22
  - (c) the trust is unable to pay its debts as they fall due, or 23
  - (d) the trustees or trust have regularly or materially contravened this Act, the regulations or the rules of the trust, or 24  
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  - (e) in all the circumstances of the case it is just and equitable to do so. 27  
28
- (3) Before making an order, the Minister must: 29
  - (a) cause notice of the proposed order to be published in a newspaper circulating in the local area in which the trust provides services, and 30  
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  - (b) in that notice, invite submissions to be made to the Minister about the proposal within the period of 4 weeks following the publication of the notice, and 33  
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  - (c) consider any submissions made within that period. 36

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(4)	The Minister is not required to comply with subsection (3) if the Minister is of the opinion that the special circumstances of the case require the order to be made immediately.	1 2 3
<b>239M</b>	<b>Functions of administrator</b>	4
(1)	The administrator of a private water trust appointed under this Division holds office for such period as is specified in the order appointing the administrator. The administrator ceases to hold office if the Minister, by a subsequent order published in the Gazette, revokes the appointment or on the appointment of new trustees under this section.	5 6 7 8 9 10
(2)	The administrator has and may exercise the functions of the trust specified in the administrator's order of appointment (subject to any conditions specified in that order) but is not required to comply with the rules of the trust.	11 12 13 14
(3)	The administrator may amend the rules of the trust and take such other action as is necessary to enable the trust to properly exercise its functions.	15 16 17
(4)	The administrator is entitled to be paid such remuneration, from the funds of the trust, as the Minister may from time to time determine.	18 19 20
(5)	The Minister may at any time, by order published in the Gazette, extend the period of appointment of an administrator.	21 22
(6)	The administrator must, if required to do so by the Minister, report to the Minister on the administrator's conduct of the affairs of the trust.	23 24 25
(7)	The administrator may at any time recommend to the Minister that new trustees be appointed or that the trust be wound up.	26 27
(8)	The administrator must, if required to do so by the Minister, arrange for elections to be held for new elected trustees.	28 29
<b>239N</b>	<b>Removed trustees not eligible for re-election</b>	30
	If the trustees of a private water trust have been removed from office, each of the trustees is ineligible for subsequent appointment or election as a trustee of the trust, unless the Minister declares in writing that the trustee is eligible for subsequent appointment or election.	31 32 33 34 35

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<b>239O</b>	<b>Effect of administration on existing contracts</b>	1
	On the appointment of an administrator of a private water trust:	2
	(a) all contracts of employment by or on behalf of the trust are terminated, and	3 4
	(b) the administrator may terminate any contract for the provision of services to or by or on behalf of the trust.	5 6
<b>239P</b>	<b>Winding up of private water trusts</b>	7
	(1) The Minister may, by order published in the Gazette, order that a private water trust be wound up if:	8 9
	(a) requested to do so by the trustees after a resolution to wind up the trust was passed at a meeting of the trust by not less than 75% of the members of the trust, or	10 11 12
	(b) the administrator of the trust has recommended that the trust be wound up.	13 14
	(2) The order must appoint a person as the liquidator of the trust.	15
	(3) The regulations may make provision for or with respect to the winding up of a trust and for the disposal of residual assets held by or on behalf of the trust.	16 17 18
	(4) The Minister may, by order published in the Gazette, abolish a trust if satisfied that the winding up of the trust under this section has been completed.	19 20 21
<b>Division 9</b>	<b>Miscellaneous</b>	22
<b>239Q</b>	<b>Liability for water source and other changes</b>	23
	(1) A private water trust, the trustees of a trust, any officer or employee of the trustees of a trust or a person acting under the direction of the trust, trustees, officer or employee is not subject to any action, liability, claim or demand arising:	24 25 26 27
	(a) from the unavailability of water, or	28
	(b) from the escape of water from a trust work, or	29
	(c) from a failure to supply, distribute or drain water that is authorised by the rules, this Act or the regulations,	30 31
	as a consequence of anything done or omitted to be done in good faith by the trust, trustees, officer or employee or person for the purposes of executing this Act or of carrying out the functions of the trust.	32 33 34 35
	(2) This section does not limit section 397.	36

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<b>239R</b>	<b>Ministerial directions about rules</b>	1
(1)	The Minister may, by notice in writing to a private water trust or the trustees of a trust, direct the trust or trustees to comply with, or cease to contravene, the rules of the trust.	2 3 4
(2)	The notice may direct the trust or trustees to take specified action or to cease to take specified action.	5 6
(3)	A trust or the trustees of a trust must not contravene a direction under this section. Tier 2 penalty.	7 8 9
<b>239S</b>	<b>Name changes</b>	10
	The Minister may, by order published in the Gazette, change the name of a private water trust, if the trust has been approved by the voting members in accordance with the rules of the trust.	11 12 13
<b>239T</b>	<b>Private trusts not NSW government agencies</b>	14
	A private water trust is not a NSW government agency.	15
<b>[81]</b>	<b>Section 336B Mandatory guidelines</b>	16
	Insert “or other persons” after “landholders” in section 336B (1).	17
<b>[82]</b>	<b>Section 340D</b>	18
	Insert after section 340C:	19
<b>340D</b>	<b>Extraterritorial application</b>	20
	An order, direction or notice may be given under this Chapter to a person in respect of a matter even though the person is outside the State or the matter occurs or is located outside the State, so long as the matter affects a matter to which this Act relates.	21 22 23 24
<b>[83]</b>	<b>Section 342 Destruction, damage and interference with certain works</b>	25
	Omit “a private irrigation board, a private drainage board” wherever occurring in section 342 (1) and (2).	26 27
	Insert instead “a private water corporation”.	28
<b>[84]</b>	<b>Section 343 Taking water from public or private works</b>	29
	Omit “a private irrigation board, a private drainage board” from section 343 (1).	30 31
	Insert instead “a private water corporation”.	32

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<b>[85] Section 343 (1)</b>	1
Omit “corporation, board,”. Insert instead “corporation,”.	2
<b>[86] Section 346 Unlicensed bore drilling</b>	3
Omit “of any kind”.	4
<b>[87] Section 346</b>	5
Omit “of that kind”.	6
<b>[88] Section 354 Definition</b>	7
Omit “a private irrigation board, a private drainage board”.	8
Insert instead “a private water corporation”.	9
<b>[89] Section 359 Sale of land for unpaid rates and charges</b>	10
Insert “, private water corporation or private water trust” after “authority” wherever occurring in section 359 (1) and (3) (a)–(c).	11 12
<b>[90] Section 367 Evidentiary certificates</b>	13
Insert “the water allocation account for” before “a specified access licence” wherever occurring in section 367 (2) (q) and (r).	14 15
<b>[91] Section 367 (2) (s1) and (s2)</b>	16
Insert after section 367 (2) (s):	17
(s1) a specified quantity of water that was taken was, or was not, taken from a specified water source or part of a specified water source, or	18 19 20
(s2) Part 2 or 3 of Chapter 3 of this Act does, or does not, apply to a specified water source or part of a specified water source, or	21 22 23
<b>[92] Section 368 Appeals to Land and Environment Court</b>	24
Insert after section 368 (1) (o):	25
(p) a decision by the Minister to give a direction to a private water corporation, private water trust or the trustees of a trust to comply with, or to cease to contravene, the rules of the corporation or trust.	26 27 28 29

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<b>[93] Section 368 (1A)</b>	1
Insert after section 368 (1):	2
(1A) An appeal lies to the Land and Environment Court against any of the following decisions:	3
(a) a decision by a private water corporation or an irrigation corporation to impose a charge under section 136A or 170 on a member, landholder or other person,	4
(b) a decision by a private water corporation as to a member's water entitlement,	5
(c) a decision by a private water trust or the trustees of a trust as to a member's water entitlement.	6
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<b>[94] Section 368 (2) (a1)</b>	12
Insert after section 368 (2) (a):	13
(a1) no appeal lies against a decision imposing a condition on consent to a dealing in an access licence, or any decision imposing, amending, revoking or suspending a mandatory condition of consent or a mandatory condition of an access licence or an approval, for purposes related to a dealing in an access licence, and	14
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<b>[95] Section 375 Acquisition of land</b>	20
Omit "private irrigation board" wherever occurring in section 375 (2).	21
Insert instead "private water corporation".	22
<b>[96] Section 375 (2A)</b>	23
Insert after section 375 (2):	24
(2A) The acquisition of land by the Ministerial Corporation for the purposes of a private water trust is taken to be for the purposes of this Act if the purpose of the acquisition is to enable the trustees of the trust or the trust to exercise functions under this Act.	25
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<b>[97] Section 389A Conferral of water management functions on catchment management authorities</b>	29
	30
Omit "adaptive environmental water" from section 389A (1) (b).	31
Insert instead "licensed environmental water (within the meaning of section 8)".	32
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<b>[98] Section 397 Exclusion of personal liability</b>	34
Insert "or trustee" after "member" in section 397 (1) (b).	35

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<b>[99] Section 397 (2) (f) and (g)</b>	1
Omit the paragraphs. Insert instead:	2
(f) a private water corporation, or	3
(g) the administrator of a private water corporation or a private water trust, or	4
	5
<b>[100] Schedule 9 Savings, transitional and other provisions</b>	6
Insert after clause 73:	7
<b>73A Application of metering offences</b>	8
(1) A reference in sections 91H and 91I to a condition of an access licence or approval includes a reference to a condition of an entitlement as referred to in clause 2 of Schedule 10.	9
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	11
(2) This clause does not apply in respect of any proceedings for an offence under those sections commenced before the date of assent to the <i>Water Management Amendment Act 2010</i> .	12
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	14
(3) Subclause (1) is taken to have commenced on the commencement of section 91H.	15
	16
<b>[101] Schedule 9</b>	17
Insert at the end of the Schedule with appropriate Part and clause numbering:	18
<b>Part Provisions consequent on enactment of Water Management Amendment Act 2010</b>	19
	20
<b>Definitions</b>	21
In this Part:	22
<i>new corporation</i> means a private water corporation constituted under this Part.	23
	24
<i>the 2010 amending Act</i> means the <i>Water Management Amendment Act 2010</i> .	25
	26
<b>Continuing application of provisions to private irrigation boards, private irrigation districts and private drainage boards</b>	27
	28
(1) Parts 2 and 3 of Chapter 4 of the Act, and any regulations made for the purposes of those Parts, as in force immediately before the repeal of those Parts, continue to apply to a private irrigation	29
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board and its private irrigation district, or a private drainage board, until they are wound up, abolished, or converted to private water corporations under this Part (whichever occurs first).	1 2 3
(2) This clause is subject to this Part.	4
<b>Conversion of existing private irrigation boards and districts and private drainage boards</b>	5 6
(1) This clause applies to a private irrigation board and a private irrigation district, or a private drainage board, in existence immediately before the repeal of Parts 2 and 3 of Chapter 4 of the Act by the 2010 amending Act.	7 8 9 10
(2) On the commencement of this clause:	11
(a) each private irrigation board and each private drainage board is constituted as a body corporate that is a private water corporation, and	12 13 14
(b) each private irrigation board and its associated private irrigation district and each private drainage board are abolished.	15 16 17
(3) Each private water corporation constituted by this clause:	18
(a) has the same name as the private irrigation board or private drainage board it replaces, unless the Minister otherwise approves, and	19 20 21
(b) is taken for all purposes to be a continuation of and the same legal entity as the private irrigation board or private drainage board it replaces.	22 23 24
(4) The regulations may make provision for or with respect to the following matters:	25 26
(a) deeming provisions of an instrument under this Act or an instrument of the relevant board to be rules of the corporation,	27 28 29
(b) deeming works (including works for which the board exercises functions after transformation of a landholder's entitlement) to be corporation works of the corporation,	30 31 32
(c) specifying works and other matters that are deemed to comprise the works plan of the corporation,	33 34
(d) the landholdings for which the corporation may exercise functions,	35 36
(e) deeming existing rates and charges to be rates and charges of the corporation,	37 38

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(f)	deeming existing members of private irrigation boards and private drainage boards to be board members of the corporation, pending the first election of board members,	1 2 3
(g)	the date, time and place for the first election of the board members of the corporation,	4 5
(h)	the members of the corporation,	6
(i)	requirements for the preparation and adoption of a works plan and rules of the corporation,	7 8
(j)	provisions of a savings or transitional nature and any other matter consequent on or ancillary to the creation of a new corporation.	9 10 11
(5)	A corporation constituted under this clause is not a NSW government agency.	12 13
	<b>Conversion of private water trusts to private water corporations</b>	14
(1)	The members of a private water trust may apply to the Minister to convert the trust to a private water corporation.	15 16
(2)	If an application is made under this clause, the Minister may convert the trust to a private water corporation under section 239D and may dispense with any of the requirements of that section.	17 18 19 20
(3)	The Minister may approve an application under this clause subject to conditions requiring compliance with those requirements within a period specified by the Minister.	21 22 23
(4)	The regulations may make provision for or with respect to the following matters:	24 25
(a)	deeming provisions of an instrument under this Act or an instrument of the trust to be rules of the corporation,	26 27
(b)	deeming works (including works for which the trust exercises functions after transformation of a landholder's entitlement) to be corporation works of the corporation,	28 29 30
(c)	specifying works and other matters that are deemed to comprise the works plan of the corporation,	31 32
(d)	the landholdings for which the corporation may exercise functions,	33 34
(e)	deeming existing rates and charges to be rates and charges of the corporation,	35 36
(f)	deeming existing members of trusts or trustees to be board members of the corporation, pending the first election of board members,	37 38 39

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(g) the date, time and place for the first election of the board members of the corporation,	1 2
(h) the members of the corporation,	3
(i) requirements for the preparation and adoption of a works plan and rules of the corporation,	4 5
(j) provisions of a savings or transitional nature and any other matter consequent on or ancillary to the creation of the corporation.	6 7 8
(5) This clause ceases to have effect 24 months after the commencement of section 239D, as inserted by the 2010 amending Act.	9 10 11
<b>Existing chairpersons of private water trusts</b>	12
The substitution of section 223 by the 2010 amending Act does not affect the appointment of any chairperson of a private water trust who held office as chairperson immediately before that substitution.	13 14 15 16
<b>Existing members of trusts</b>	17
(1) A member of a trust who held office immediately before the commencement of section 223, as inserted by the 2010 amending Act, is taken to have been elected as a trustee of the trust for the period ending on the expiry of the period of the person's last appointment, or until elections are held for trustees of the trust, whichever first occurs.	18 19 20 21 22 23
(2) A reference in any instrument to a member of a private water trust (other than a voting member of such a trust) is taken to be a reference to a trustee of a private water trust.	24 25 26
<b>Rules of private water trusts</b>	27
(1) Clauses 50, 53–55, Divisions 6–12 of Part 7 and Part 9 (other than Division 2) of the <i>Water Management (General) Regulation 2004</i> , as in force immediately before the commencement of section 225 (as inserted by the 2010 amending Act), continue to apply to or in respect of the trustees of a private water trust and private water trusts and are taken to be the rules of the trust until they are amended or replaced under section 225 (as inserted by the 2010 amending Act).	28 29 30 31 32 33 34 35
(2) This clause is subject to the regulations.	36

<b>Works plans of private water trusts</b>	1
The regulations may make provision for or with respect to the following:	2 3
(a) deeming works (including works for which a private water trust exercises functions after transformation of an entitlement) to be trust works of a private water trust,	4 5 6
(b) specifying the works and other matters that are deemed to comprise the works plan of a private water trust,	7 8
(c) the landholding for which a private water trust may exercise functions.	9 10
<b>Existing rates and charges of private water trusts</b>	11
(1) The rates and charges fixed by a private water trust, and in force immediately before the commencement of section 239E, as inserted by the 2010 amending Act, continue to apply until new rates and charges are fixed under this Act.	12 13 14 15
(2) Until rules are adopted for a trust for the purposes of Division 6 of Part 4 of Chapter 4, as substituted by the 2010 amending Act:	16 17
(a) sections 232 and 233, as in force immediately before that substitution, continue to apply to or in respect of the trust and its water supply district, and	18 19 20
(b) sections 239E and 239F, as inserted by the 2010 amending Act, do not apply to or in respect of the trust.	21 22
(3) This clause is subject to the regulations.	23
<b>Transfer of property by former trust members</b>	24
(1) This clause applies to a former member of a private water trust who had ceased to be such a member before the commencement of section 223, as inserted by the 2010 amending Act.	25 26 27
(2) The former member must take all action necessary to transfer any interest in property held by the former member on behalf of the private water trust to the trust or as directed in writing by the current trustees.	28 29 30 31
<b>References to adaptive environmental water conditions</b>	32
A reference in any instrument to an adaptive environmental water condition is taken to be a reference to a condition referred to in section 8 (1) (b) (i), as inserted by the 2010 amending Act.	33 34 35

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	<b>Application of new defences</b>	1
	Sections 91A (4) and (5), 91B (5) and 91I (3), as inserted by the 2010 amending Act, do not apply to proceedings for offences commenced before the commencement of those subsections.	2 3 4
[102]	<b>Schedule 10 Conversion of former entitlements to access licences and approvals</b>	5 6
	Omit “bore” wherever occurring in the definition of <i>entitlement</i> in clause 2.	7
	Insert instead “water bore”.	8
[103]	<b>Schedule 10, clause 16</b>	9
	Omit “bore” wherever occurring. Insert instead “water bore”.	10
[104]	<b>Schedule 13</b>	11
	Insert after Schedule 12:	12
	<b>Schedule 13 Private water corporations</b>	13
	(Sections 139 and 179)	14
[105]	<b>Dictionary, definition of “adaptive environmental water condition”</b>	15
	Omit “section 8 (1) (b)”. Insert instead “section 8 (1) (b) (i)”.	16
[106]	<b>Dictionary, definition of “assignment dealing”</b>	17
	Insert “the water allocation account for” before “an access licence” in paragraph (b).	18 19
[107]	<b>Dictionary, definition of “nominated water supply work”</b>	20
	Insert “the water allocation account for” after “water credited to”.	21
[108]	<b>Dictionary, definitions of “private drainage board” and “private irrigation board”</b>	22 23
	Omit the definitions. Insert instead:	24
	<i>private water corporation</i> means a private water corporation constituted under Part 2 of Chapter 4.	25 26
[109]	<b>Dictionary, definition of “specific purpose access licence”</b>	27
	Omit paragraph (d).	28

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<b>Schedule 3</b>	<b>Amendment of other Acts</b>	1
<b>3.1</b>	<b>Farm Water Supplies Act 1946 No 22</b>	2
[1]	<b>Section 16A Loan to private water corporation</b>	3
	Omit the definition of <i>Board</i> from section 16A (1).	4
	Insert in alphabetical order:	5
	<i>private water corporation</i> means a private water corporation within the meaning of the <i>Water Management Act 2000</i> .	6 7
[2]	<b>Section 16A (2), (4) and (6)</b>	8
	Omit “Board” wherever occurring.	9
	Insert instead “private water corporation”.	10
[3]	<b>Section 16A (5)</b>	11
	Omit “Board” where firstly occurring.	12
	Insert instead “private water corporation”.	13
[4]	<b>Section 16A (5)</b>	14
	Omit “Board” where secondly occurring.	15
	Insert instead “corporation”.	16
<b>3.2</b>	<b>Land and Environment Court Act 1979 No 204</b>	17
	<b>Section 17 Class 1—environmental planning and protection appeals</b>	18
	Omit “section 368” from section 17 (c).	19
	Insert instead “section 368 (1) and (1A)”.	20

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**3.3 Roads Act 1993 No 33**

1

**Section 99 Private bodies to maintain or repair certain water supply and drainage works**

2

3

Omit “a private irrigation board, a private drainage board” from section 99 (1).

4

Insert instead “a private water corporation”.

5