

[Act 1998 No 145]



New South Wales

Water Legislation Amendment (Drinking Water and Corporate Structure) Bill 1998

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 *Public Health Act 1991*, the *State Owned Corporations Act 1989*, the *Water Board (Corporatisation) Act 1994* and the *Hunter Water Board (Corporatisation) Act 1991*, so as:

- (a) to strengthen the powers of the Department of Health concerning the safety of drinking water, and
- (b) to replace the companies responsible for water supply and other matters in the Sydney and Hunter regions with new statutory corporations (Sydney Water Corporation and Hunter Water Corporation), and

* Amended in committee—see table at end of volume.

- (c) to disestablish those companies as company State owned corporations (“company SOCs”) and to establish the new statutory corporations as statutory State owned corporations (“statutory SOCs”), and
- (d) to facilitate the giving of certain directions to boards of statutory SOCs and the compliance by them with any such directions.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Public Health Act 1991* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *State Owned Corporations Act 1989* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Water Board (Corporatisation) Act 1994* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Hunter Water Board (Corporatisation) Act 1991* set out in Schedule 4.

Clause 7 is a formal provision giving effect to the amendments to Acts as set out in Schedule 5.

Clause 8 contains a transitional provision to deal with the possibility that references may be made in legislation to a new statutory corporation before the corresponding company ceases to be a State owned corporation. The clause treats such a reference as extending to the company.

Clause 9 provides that notes in the proposed Act do not form part of the Act.

Schedule 1 Amendment of Public Health Act 1991

Schedule 1 [1] replaces the current heading (Health risks) to Part 2 of the *Public Health Act 1991* (the principal Act) in consequence of the proposed insertion of the new Part 2A (Safety of drinking water) by Schedule 1 [3].

Schedule 1 [2] repeals section 7 (Closure of water supply) of the principal Act. The section is proposed to be re-enacted in the proposed new Part 2A.

Schedule 1 [3] inserts proposed Part 2A (sections 10A-10M).

Proposed section 10A defines certain terms (including *boil water advice*, *drinking water* and *supplier of drinking water*) for the purposes of the proposed Part.

Proposed section 10B provides that the Chief Health Officer of the Department of Health (the Chief Health Officer) may from time to time prepare advice for the benefit of the public concerning the safety of available drinking water (or drinking water available from a particular supplier). The advice is to be provided to the relevant supplier and issued to the public by it in the form and manner specified by the Director-General of the Department of Health (the Director-General). However, the Chief Health Officer may also issue the advice to the public.

Proposed section 10C enables the Chief Health Officer to require a supplier of drinking water to retract or correct any information or advice relating to the safety of drinking water issued to the public by or on behalf of the supplier if the Chief Health Officer considers the information or advice to be misleading.

Proposed section 10D makes it clear that the Chief Health Officer may delegate any of his or her functions (other than the power of delegation).

Proposed section 10E permits the Director-General to declare that, in relation to a particular supplier of drinking water, the function of determining whether or not a "boil water advice" should be issued or withdrawn (and of determining the additional information (if any) that is to be provided in connection with such an advice), is to be exercised only by the Chief Health Officer. (However, the Chief Health Officer may delegate the power to exercise that function.) Such declarations are taken to have been made in respect of Sydney Water Corporation and Hunter Water Corporation on the commencement of the proposed section.

Proposed section 10F empowers a person authorised by the Director-General for the purposes of the proposed section to enter premises of a supplier of drinking water and carry out the various examinations and inspections, and take the various samples, recordings and copies of records, specified in the proposed section.

Proposed section 10G empowers the Director-General to require a supplier of drinking water to carry out various tests in relation to water that it has available for supply.

Proposed section 10H enables the Director-General to require a supplier of drinking water to produce certain information to the Director-General (including the results of any tests carried out under proposed section 10G).

Proposed section 10I re-enacts section 7 (Closure of water supply) with modifications and additions. The proposed section allows the Minister administering the Act to give certain directions in relation to drinking water that the Minister has reason to suspect is not fit for human consumption and any other water that the Minister suspects on reasonable grounds constitutes (or is likely to constitute) a risk to public health. However, before giving such a direction to certain suppliers of drinking water (or to a person who treats or supplies water on behalf of any of those suppliers), the Minister must consult with the Minister administering the Act under which the supplier is constituted (and, in the case of local councils and county councils, with the Minister administering the *Water Supply Authorities Act 1987* as well as the Minister administering the *Local Government Act 1993*).

Proposed section 10J protects the State of New South Wales, Ministers of the Crown in right of New South Wales and officers of the Department of Health from any action, liability, claim or demand arising from the provision of any information or advice concerning drinking water by the Chief Health Officer exercising certain functions under proposed Part 2A for the purpose of executing the principal Act.

Proposed section 10K is an evidentiary provision. It provides that a certificate signed by the Minister, the Director-General or the Chief Health Officer to the effect that the signatory gave a specified direction to a specified person on a specified day is admissible in evidence and is prima facie evidence of the facts stated in it.

Proposed section 10L provides that proceedings for offences under the proposed Part may be dealt with summarily by the Supreme Court in its summary jurisdiction. The proceedings may be commenced at any time within 2 years after the date of the alleged offence.

Proposed section 10M empowers the making of regulations concerning specific matters dealt with by the proposed Part.

Schedule 1 [4] makes a consequential amendment to section 79 (Proceedings for offences).

Schedule 1 [5] amends Schedule 4 (Savings and transitional provisions) to the principal Act so as to allow the making of savings and transitional provisions consequent on the enactment of proposed Schedule 1. **Schedule 1 [6]** makes a consequential amendment.

Schedule 2 Amendment of State Owned Corporations Act 1989

Part 1 of Schedule 2 deals with the status of the companies mentioned in the Overview above as company SOCs.

Schedule 2 [1] and [2] omit the names of the companies from Schedule 1 to the *State Owned Corporations Act 1989*. This will have the effect of disestablishing the companies as company SOCs, as the expression *company SOC* is defined in the Act as “a company for the time being specified in Schedule 1”.

Part 2 of Schedule 2 makes other amendments to the Act.

Schedule 2 [3] makes it clear that directors and other officers of a SOC have no personal liability in connection with anything done to comply with a public sector policy notified to the board by the portfolio Minister under the Act, a direction of the portfolio Minister given in the public interest to the board under the Act, or a request of the portfolio Minister under the Act to the board for information relating to the affairs of the SOC or of its subsidiaries.

Schedule 2 [4] makes a consequential amendment to the Act.

The Act will also be amended by provisions proposed to be inserted into the Acts being amended by Schedules 3 and 4 to the proposed Act. These amendments will insert the names of the new statutory corporations into Schedule 5 to the Act.

Schedule 3 Amendment of Water Board (Corporatisation) Act 1994

Schedule 3 creates a new statutory corporation named “Sydney Water Corporation”, and establishes it as a statutory SOC.

Schedule 3 [1] changes the name of the Act, so as to remove the reference in it to the previous Water Board. Section 70 of the *Interpretation Act 1987* provides for references to Acts whose citations have changed to be read as references to the changed citations.

Schedule 3 [5] inserts provisions that create a new statutory corporation with the name "Sydney Water Corporation", and that insert its name into Schedule 5 of the *State Owned Corporations Act 1989*, thereby making it a statutory SOC.

Schedule 3 [6] amends provisions relating to the transfer of assets, rights and liabilities, so that they apply for the transfer of assets, rights and liabilities of the existing company (Sydney Water Corporation Limited) to the new statutory corporation.

Schedule 3 [10] inserts provisions that enable the portfolio Minister to give the new statutory corporation a direction in the public interest under section 20P of the *State Owned Corporations Act 1989*, without the necessity of consulting the board of the corporation and requesting its advice as to whether the direction would be in the best interests of the corporation. This action will be able to be taken if the Minister decides that it is warranted on grounds involving urgency, public health or public safety. A statement of reasons will be required to be published.

Schedule 3 [20] inserts provisions of a savings or transitional nature. These provisions state that the existing company ceases to have relevant functions, makes further provisions for the transfer of the assets, rights and liabilities of the existing company to the new statutory corporation, and provides that the new statutory corporation is the successor to the existing company.

Schedule 3 contains other amendments of a minor, consequential or ancillary nature.

Schedule 4 Amendment of Hunter Water Board (Corporatisation) Act 1991

Schedule 4 creates a new statutory corporation named "Hunter Water Corporation". and establishes it as a statutory SOC.

Schedule 4 [1] changes the name of the Act, so as to remove the reference in it to the previous Hunter Water Board. Section 70 of the *Interpretation Act 1987* provides for references to Acts whose citations have changed to be read as references to the changed citations.

Schedule 4 [5] inserts provisions that create a new statutory corporation with the name "Hunter Water Corporation". and that insert its name into Schedule 5 of the *State Owned Corporations Act 1989*, thereby making it a statutory SOC.

Schedule 4 [6] amends provisions relating to the transfer of assets, rights and liabilities, so that they apply for the transfer of assets, rights and liabilities of the existing company (Hunter Water Corporation Limited) to the new statutory corporation.

Explanatory note

Schedule 4 [9] inserts provisions that enable the portfolio Minister to give the new statutory corporation a direction in the public interest under section 20P of the *State Owned Corporations Act 1989*, without the necessity of consulting the board of the corporation and requesting its advice as to whether the direction would be in the best interests of the corporation. This action will be able to be taken if the Minister decides that it is warranted on grounds involving urgency, public health or public safety. A statement of reasons will be required to be published.

Schedule 4 [12] inserts provisions of a savings or transitional nature. These provisions state that the existing company ceases to have relevant functions, makes further provisions for the transfer of the assets, rights and liabilities of the existing company to the new statutory corporation, and provides that the new statutory corporation is the successor to the existing company.

Schedule 4 contains other amendments of a minor, consequential or ancillary nature.

Schedule 5 Consequential amendments

Schedule 5 contains consequential amendments to other Acts.