

Passed by both Houses



New South Wales

# Water Industry Competition Amendment Bill 2021

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

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

*, 2021*



New South Wales

## **Water Industry Competition Amendment Bill 2021**

Act No , 2021

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*An Act to amend the *Water Industry Competition Act 2006* to make further provision about competition in the supply of water and the provision of sewerage services; to repeal the *Water Industry Competition Amendment (Review) Act 2014*; and for other purposes.*

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

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Water Industry Competition Amendment Act 2021*.

**2 Commencement**

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

**3 Repeal**

The *Water Industry Competition Amendment (Review) Act 2014* No 57 is repealed.

## **Schedule 1      Amendment of Water Industry Competition Act 2006 No 104**

### **[1] Long title**

Omit the long title. Insert instead—

An Act to facilitate and regulate the water industry excluding certain public water utilities; to make provision for the continuity of essential services provided by the industry; to establish an access regime for significant water industry infrastructure; and for other purposes.

### **[2] Section 2A**

Insert after section 2—

#### **2A Objects of Act**

The objects of this Act are—

- (a) to protect public health and safety and the environment in connection with the water industry, including in the longer term, and
- (b) to protect the interests of consumers, particularly small retail customers, in the quality, reliability and price of water and sewerage services, including in the longer term, and
- (c) to facilitate the efficient, reliable and sustainable provision of water and sewerage services, having regard to financial, environmental and social considerations, and
- (d) to promote the sustainable use of resources in connection with the water industry, and
- (e) to facilitate competition in the water industry with a view to encouraging innovation and improved efficiency in the industry.

### **[3] Section 3A**

Insert after section 3—

#### **3A Meaning of “classes” of water industry infrastructure**

The *classes* of water industry infrastructure are as follows—

- (a) infrastructure for the purpose of the production or supply of drinking water,
- (b) infrastructure for the purpose of the capture and treatment of stormwater for the production, supply and use of recycled water,
- (c) infrastructure for the purpose of the collection and treatment of sewage for the production, supply and use of recycled water,
- (d) infrastructure for the purpose of the collection and further treatment of recycled water for the supply and use of the further treated recycled water,
- (e) infrastructure for the purpose of the collection and treatment of sewage for disposal and the disposal of the treated sewage,
- (f) infrastructure for another purpose prescribed by the regulations.

### **[4] Part 2**

Omit the Part. Insert instead—

## **Part 2 Approvals and licences for certain water industry infrastructure**

### **Division 1 Preliminary**

#### **5 Water industry infrastructure to which Part applies**

- (1) This Part applies to the following—
  - (a) water industry infrastructure used or to be used for providing water or sewerage services to 30 or more small retail customer premises (a *category A scheme*),
  - (b) water industry infrastructure used or to be used for the production of drinking water, including a filtration, treatment or desalination facility, that has a design capacity of more than 500 kilolitres each day, together with a reticulation network connected to the infrastructure and used to convey anything to or from the infrastructure,
  - (c) water industry infrastructure used or to be used for the treatment of sewage, stormwater or recycled water that has a design capacity of more than 750 kilolitres each day, together with a reticulation network connected to the infrastructure and used to convey anything to or from the infrastructure,
  - (d) water industry infrastructure declared by the regulations to be water industry infrastructure to which this Part applies.
- (2) However, this Part does not apply to the following—
  - (a) water industry infrastructure within the area of operations of a public water utility and operated by or on behalf of the public water utility, other than as a last resort provider,
  - (b) water industry infrastructure excluded from the application of this Part by the regulations.
- (3) For the purposes of determining whether this Part applies to water industry infrastructure by operation of subsection (1)—
  - (a) initial and planned future stages of development of the infrastructure are to be taken into account, and
  - (b) the design capacity of the infrastructure is to be determined in accordance with guidelines issued by IPART and published in the Gazette and on IPART's website.

#### **5A Additional objects of Part**

In considering whether or not an approval or licence is to be granted or varied under this Part and what conditions are to be imposed on an approval or licence, regard is to be had to the objects of this Act and the following additional objects—

- (a) to promote the adoption of written policies concerning the use of water resources as prescribed by the regulations, if any,
- (b) to mitigate the potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the approval or licence,
- (c) to promote the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security.

## **Division 2 Requirements for approvals and licences**

### **6 Requirements for construction of water industry infrastructure**

- (1) A person must not construct water industry infrastructure to which this Part applies unless the construction—
  - (a) is authorised by a scheme approval, and
  - (b) is carried out by or on behalf of the registered operator for the scheme.Maximum penalty—
  - (a) for a corporation—18,000 penalty units, or
  - (b) for an individual—3,500 penalty units.
- (2) The regulations may prescribe exceptions to this section.

### **6A Requirements for operation of water industry infrastructure**

- (1) A person must not operate water industry infrastructure to which this Part applies unless—
  - (a) the infrastructure is substantially constructed as authorised by a scheme approval, and
  - (b) the operation is authorised by an operational approval, and
  - (c) the person is the registered operator for the infrastructure.Maximum penalty—
  - (a) for a corporation—18,000 penalty units, or
  - (b) for an individual—3,500 penalty units.
- (2) This section does not apply to the operation of water industry infrastructure in the course of commissioning the infrastructure.
- (3) The regulations may prescribe further exceptions to this section.

### **6B Requirements for sale of water and sewerage services from regulated schemes**

- (1) A person must not sell water or sewerage services provided by means of a regulated scheme, including the service of connecting premises to the water or sewerage services, unless—
  - (a) the person is the registered retailer for the infrastructure, and
  - (b) the sale is authorised by the person's retailer licence.Maximum penalty—
  - (a) for a corporation—18,000 penalty units, or
  - (b) for an individual—3,500 penalty units.
- (2) In this section, *sell water or sewerage services* includes charging a fee or amount to connect premises to a water or sewerage service, including charging an infrastructure charge, developer charge or administration charge related to connecting premises to a service.
- (3) Subsection (1) does not apply to a council.
- (4) This section does not apply to the sale of the service of connecting premises to the water or sewerage services by a registered operator for a scheme if—
  - (a) the scheme is under construction, and
  - (b) no person has been registered as the registered retailer for the scheme.

- (5) The regulations may prescribe further exceptions to this section.

### **Division 3 Approvals**

**Note.** A scheme approval authorises the construction of water industry infrastructure to which this Part applies as specified in the approval.

Scheme approvals are granted by IPART.

An operational approval authorises the operation of water industry infrastructure to which this Part applies as specified in the approval.

Operational approvals are granted by IPART.

#### **7 Application for approval**

- (1) An application for a scheme approval or operational approval is to be made to IPART.

**Note.** Section 12 imposes requirements for an application and allows an application to be rejected if the requirements are not complied with.

- (2) An application for a scheme approval for water industry infrastructure—

- (a) may be made by any person, and
- (b) must only be made with the consent of the owner of the land on which the infrastructure, other than pipelines within the reticulation network connected to the infrastructure, is or is to be located.

- (3) An application for an operational approval for water industry infrastructure—

- (a) may be made by any person, and
- (b) must specify the scheme and scheme approval to which it relates.

#### **7A Process for dealing with an application for approval**

- (1) For all applications for an approval, IPART must invite submissions—

- (a) from the Department of the Public Service responsible to the Minister administering this Part, and
- (b) from the Department of the Public Service responsible to the Minister administering the *Public Health Act 2010*, and
- (c) as otherwise required by the regulations.

- (2) In addition, if the application is for a scheme approval, IPART must also invite submissions from—

- (a) the public, by notice published on IPART's website and otherwise as considered appropriate by IPART, and
- (b) the council for the local government area within which the proposed area of operations of the scheme is located or to whose infrastructure the scheme is to be connected, and
- (c) the Department of the Public Service responsible to the Minister administering the *Environmental Planning and Assessment Act 1979*, and
- (d) if a licence under the *Protection of the Environment Operations Act 1997* may also be required—the appropriate regulatory authority under that Act, and
- (e) if the infrastructure is or is proposed to be within the area of operations of a public water utility—the public water utility, and
- (f) if an authorisation, however described, under the *Water Management Act 2000* may also be required—the Department of the Public Service responsible to the Minister administering that Act, Chapter 3.

- (3) An invitation to make submissions on an application must—
  - (a) allow at least 28 days for submissions to be made, and
  - (b) be accompanied by a copy of the application, other than material that IPART considers to be confidential, or set out how a copy of the application may be obtained.
- (4) IPART must not accept a variation of an application after an invitation to make submissions has been given unless satisfied that—
  - (a) the application as varied will be substantially the same as the original application, and
  - (b) no prejudice will be caused to a person who made a submission concerning the original application.
- (5) If a variation is not accepted, the applicant may withdraw the application and make a new application.

#### **7B Determining an application for approval**

- (1) IPART is to determine an application for an approval by granting the approval, either as applied for or with modifications IPART considers appropriate, or by refusing to grant the approval.
- (2) If IPART proposes to refuse to grant an approval or to grant an approval with modifications, IPART must—
  - (a) give written notice of the proposed refusal or modifications to the applicant specifying the reasons for it, and
  - (b) allow the applicant at least 14 days within which to make submissions to IPART about the proposed refusal or modifications.
- (3) On determining an application for an approval, IPART must ensure notice of the determination is given to the applicant and published on IPART's website.

#### **7C Grant of scheme approval**

- (1) A scheme approval must not be granted unless IPART is satisfied as to each of the following—
  - (a) the infrastructure will, if constructed as authorised by the approval, be fit for purpose and capable of operating—
    - (i) safely and reliably, and
    - (ii) in a way consistent with the national safety guidelines for the control of public health risks, and
    - (iii) in a way that does not present a significant risk of harm to the environment,
  - (b) the applicant has established it is highly likely the proposed scheme will become financially viable to operate within a reasonable period of time and will then remain financially viable for the life of the scheme,
  - (c) the applicant has established, for a regulated scheme, that it is not reasonably foreseeable that the operation of the scheme will have significant adverse financial implications for small retail customers,
  - (d) the proposed registered operator of the scheme—
    - (i) if the applicant is the proposed registered operator, holds an appropriate operator licence, and



- (ii) if the applicant is not the proposed registered operator, has entered into an agreement with the applicant for the operation of the scheme,
  - (e) the applicant has established that the proposed area of operations of the scheme is appropriate,
    - Note.** IPART may consider a proposed area of operations is not appropriate if—
      - (a) the scheme is unlikely to be capable of supplying water supply or sewerage services to all premises within the proposed area of operations within a reasonable period, or
      - (b) the proposed area of operations excludes premises within the outermost boundary of, or near, the area of operations, including, for example, by excluded enclaves or unusual boundaries, unless the exclusion is reasonable, having regard to the characteristics of the proposed scheme, the characteristics of the premises or the services already available to the premises.
  - (f) for a scheme proposed to be constructed in stages—the applicant has established that the group of premises proposed to be serviced by each stage is reasonable having regard to the orderly and economic use and development of land in the area,
  - (g) matters prescribed by the regulations.
- (2) In determining an application for a scheme approval, IPART must have regard to the following—
- (a) whether disciplinary action against the proposed registered operator is pending or, as a result of disciplinary action against the proposed registered operator, the proposed registered operator is prohibited from being registered as the registered operator under a further scheme approval,
  - (b) whether, in the reasonable suspicion of IPART, a statutory default within the meaning of Division 6 has occurred within 2 years before the determination is made, and the proposed registered operator, or a related corporation of the proposed registered operator, is the alleged defaulter,
  - (c) the proposed registered operator, or a related corporation of the proposed registered operator, has failed to provide a service, or a connection to infrastructure, after granting a certificate of compliance relating to the service or infrastructure.
- Note.** Section 5A also requires the decision-maker to have regard to the objects of this Act and other additional objects when considering whether or not an approval or licence is to be granted or varied under this Part and what conditions are to be imposed on an approval or licence.
- (3) On the grant of the scheme approval, IPART must—
- (a) register the proposed registered operator referred to in subsection (1)(d) as the registered operator for the scheme, and
  - (b) consider whether to make a determination under section 54 that the scheme is essential infrastructure.
- (4) For the purposes of this section, disciplinary action is pending from the time when notice is given to the licensee requiring the licensee to show cause why disciplinary action should not be taken against the licensee until—
- (a) disciplinary action is taken against the licensee, or
  - (b) the decision is made that disciplinary action will not be taken against the licensee.

## 7D Grant of operational approval

- (1) An operational approval must not be granted unless IPART is satisfied as to each of the following—
  - (a) the infrastructure has been substantially constructed as authorised by a scheme approval for the infrastructure,
  - (b) the infrastructure is fit for purpose and is capable of operating—
    - (i) safely and reliably, and
    - (ii) in a way consistent with the national safety guidelines for the control of public health risks, and
    - (iii) in a way that does not present a significant risk of harm to the environment,
  - (c) there are adequate plans and systems in place to ensure the infrastructure continues to be fit for purpose and operated—
    - (i) safely and reliably, and
    - (ii) in a way consistent with the national safety guidelines for the control of public health risks, and
    - (iii) in a way that does not present a significant risk of harm to the environment,
  - (d) the infrastructure is capable of operating in compliance with this Act and the regulations, the plans and systems referred to in paragraph (c) and the conditions of the registered operator's operator licence,
  - (e) if the infrastructure is or is likely to be essential infrastructure—a last resort provider has been designated for each essential service provider,
  - (f) the applicant is the registered operator or has entered into an agreement with the registered operator for the operation of the infrastructure,
  - (g) in relation to a regulated scheme, the applicant—
    - (i) holds a retailer licence or is a council, or
    - (ii) has entered into an agreement with a public water utility or an appropriately authorised licensed retailer for the sale of the water or sewerage services provided by the infrastructure,
  - (h) matters prescribed by the regulations.
- (2) In determining an application for an operational approval, IPART must have regard to the following—
  - (a) whether disciplinary action against the proposed registered retailer is pending or, as a result of disciplinary action against the proposed registered retailer, the proposed registered retailer is prohibited from being registered as the registered retailer under a further operational approval,
  - (b) whether, in the reasonable suspicion of IPART, a statutory default within the meaning of Division 6 has occurred within 2 years before the determination was made, and the proposed registered retailer, or a related corporation of the proposed registered retailer, is the alleged defaulter.

**Note.** Section 5A also requires the decision-maker to have regard to the objects of this Act and other additional objects when considering whether or not an approval or licence is to be granted or varied under this Part and what conditions are to be imposed on an approval or licence.
- (3) On the grant of the operational approval, IPART must—

- (a) unless already registered, register the person referred to in subsection (1)(f) as the registered operator for the scheme, and
  - (b) register the person referred to in subsection (1)(g) as the registered retailer for the scheme.
- (4) For the purposes of this section, disciplinary action is pending from the time when notice is given to the licensee requiring the licensee to show cause why disciplinary action should not be taken against the licensee until—
- (a) disciplinary action is taken against the licensee, or
  - (b) the decision is made that disciplinary action will not be taken against the licensee.

#### **7E Grant of approval—general**

- (1) IPART may refuse to grant an approval if not satisfied—
- (a) the proposed registered operator of the infrastructure has the capacity to comply with the conditions of its operator licence, having regard to all the infrastructure it operates or will operate under the licence, or
  - (b) for a regulated scheme—the proposed licensed retailer of water or sewerage services provided by means of the scheme has the capacity to comply with conditions of its retailer licence, having regard to all the water and sewerage services it sells or will sell under its licence, or
  - (c) about other matters IPART considers relevant, having regard to the public interest.
- (2) Before determining an application, IPART may require an application audit to be undertaken.

#### **7F Approval to specify certain matters**

- (1) A scheme approval must specify the following—
- (a) the area (the *area of operations*) within which the water industry infrastructure, including a reticulation network connected to the infrastructure, is authorised to be constructed,
  - (b) the location that the water industry infrastructure, other than pipelines within the reticulation network connected to the infrastructure, is authorised to be constructed,
  - (c) the class or classes of water industry infrastructure authorised by the approval,
  - (d) the design capacity of the water industry infrastructure, as expressed in kilolitres per day, authorised by the approval,
  - (e) the purposes for which the water industry infrastructure is intended to be operated after its construction,
  - (f) for a scheme to be constructed in stages—
    - (i) the water industry infrastructure authorised to be constructed in each stage, and
    - (ii) the part of the area of operations within which the infrastructure is authorised to be constructed in each stage.
- (2) An operational approval must specify the following—
- (a) the scheme and scheme approval to which it applies,
  - (b) the purposes for which the water industry infrastructure is authorised to be operated,

- (c) for a scheme that is to be constructed in stages, the stage or stages to which the operational approval applies.
- (3) The same land may be within the area of operations of more than one approval.

#### **7G Conditions of approval—imposition, variation and revocation**

- (1) The authority conferred by an approval is subject to the following—
  - (a) conditions imposed by this Act,
  - (b) conditions imposed by the regulations,
  - (c) conditions imposed by IPART on the grant of an approval or subsequently under this Act.
- (2) IPART may, on the application of the registered operator of water industry infrastructure to which an approval applies or on its own initiative, impose further conditions on the approval or vary or revoke conditions of the approval, other than conditions imposed by this Act or the regulations.
- (3) If IPART proposes to impose further conditions on, or vary or revoke conditions of, an approval on its own initiative, IPART must—
  - (a) give written notice of the proposal to the registered operator of the infrastructure concerned specifying the reasons for it, and
  - (b) allow the registered operator at least 14 days within which to make submissions to IPART about the proposal.
- (4) If IPART considers it appropriate to invite submissions on a proposal or application to impose further conditions on or vary or revoke conditions of an approval because of the importance or effect of the conditions, IPART may invite submissions on the proposal or application as if it were an application for an approval.
- (5) Before determining an application to impose further conditions on, or vary or revoke conditions of, an approval, IPART may require an application audit to be undertaken.
- (6) Subject to the expression of a contrary intention, the following regulations apply to approvals whether granted before or after the regulations are made—
  - (a) regulations imposing conditions on an approval,
  - (b) regulations varying or revoking conditions of an approval imposed by the regulations.

**Note.** Section 5A also requires that the decision-maker have regard to the objects of this Act and other additional objects when considering whether or not an approval is to be granted or varied under this Part and what conditions are to be imposed on an approval.

#### **7H Conditions of scheme approval**

- (1) Without limiting section 7G, conditions of a scheme approval imposed by the regulations or by IPART may require the following—
  - (a) completion of the construction of the infrastructure in accordance with specified plans and specifications,
  - (b) the giving and maintaining of security, in an amount and form determined by IPART, for compliance with the conditions of approval and the completion of the construction of the infrastructure,
  - (c) the maintaining of insurance of a type and at a level specified in the condition,

- (d) the completed infrastructure to meet specified criteria for safe and reliable operation and the protection of the environment and public health,
  - (e) the installation of individual meters for each household or business,
  - (f) the testing, certification or auditing of the infrastructure,
  - (g) the submission to IPART of notifications relating to the infrastructure,
  - (h) the preparation of plans or systems for operation of the scheme.
- (2) A registered operator constructing water industry infrastructure to which this Part applies must—
- (a) comply with the conditions of the relevant scheme approval, and
  - (b) ensure compliance with the conditions by other persons who are engaged by or act on behalf of the registered operator or for whom the registered operator is otherwise responsible in connection with the construction of the infrastructure.

Maximum penalty—

- (a) for a corporation—18,000 penalty units, or
- (b) for an individual—3,500 penalty units.

#### **7I Conditions of operational approval**

- (1) Without limiting section 7G, conditions of an operational approval imposed by the regulations or by IPART may require the following—
- (a) the operation of the infrastructure in accordance with specified plans and systems and other requirements,
  - (b) the infrastructure to meet specified criteria for safe and reliable operation and the protection of the environment and public health.
- (2) A registered operator operating water industry infrastructure to which this Part applies must—
- (a) comply with the conditions of the relevant operational approval and the relevant scheme approval, and
  - (b) ensure compliance with the conditions by other persons who are engaged by or act on behalf of the registered operator or for whom the registered operator is otherwise responsible in connection with the operation of the infrastructure.

Maximum penalty—

- (a) for a corporation—18,000 penalty units, or
- (b) for an individual—3,500 penalty units.

#### **7J Duration of approval**

An approval remains in force until it is cancelled or surrendered.

#### **7K Variation of approval**

- (1) An application may be made to IPART for the variation of an approval.  
**Note.** Section 12 imposes requirements for an application and allows an application to be rejected if the requirements are not complied with.
- (2) An application for the variation of an approval may be made only by the applicant for the approval or the registered operator of the scheme.

- (3) An application for the variation of an approval may relate to an aspect of the approval, including a matter required to be specified under section 7F.
- (4) IPART must invite submissions on a proposed variation from the registered operator of the infrastructure if the registered operator is not the applicant and may invite submissions from persons IPART considers appropriate.
- (5) An invitation to make submissions must allow at least 14 days for submissions to be made and must be accompanied by a copy of the application or indicate how a copy of the application may be obtained.
- (6) IPART is to determine an application for variation by approving the variation, either as applied for or with modifications IPART considers appropriate, or by refusing to approve the variation.
- (7) IPART must refuse to approve a variation of an approval if an application for the approval as proposed to be varied would be required to be refused under section 7C(1)(a) or 7D(1)(a)–(d).  
**Note.** Section 5A also requires that the decision-maker have regard to the objects of this Act and other additional objects when considering whether or not an approval is to be granted or varied under this Part and what conditions are to be imposed on an approval.
- (8) IPART may refuse to approve a variation on 1 or more grounds on which an application for the approval as proposed to be varied would be permitted to be refused.
- (9) IPART is not to approve a variation of an approval if in its the opinion the proposed variation is so significant as to be better dealt with by a fresh application for the approval.  
**Note.** If IPART refuses to vary an approval, a new approval can be applied for.
- (10) If IPART proposes to refuse to approve the variation of an approval, IPART must—
  - (a) give written notice of the proposed refusal to the applicant and, if the registered operator was not the applicant, to the registered operator of the infrastructure, specifying the reasons for the proposed refusal, and
  - (b) allow each person given notice of the proposed refusal at least 14 days to make submissions to IPART about the proposed refusal.
- (11) If IPART approves a variation of an approval—
  - (a) IPART is to give notice of the variation to the applicant and, if the registered operator was not the applicant, to the registered operator of the infrastructure, for the variation, and
  - (b) the varied approval replaces the original approval as from the date determined by IPART to be the registration date of the variation.
- (12) Before determining an application to vary an approval, IPART may require an application audit to be undertaken.
- (13) To avoid doubt, a variation of an approval is not required for additional pipeline reticulation within a scheme's area of operations.
- (14) If IPART is satisfied an approval contains an obvious error or mis-description, IPART may grant a replacement approval to correct the error or mis-description.
- (15) On granting a replacement approval, IPART must ensure notice of the grant of the replacement approval is given to the applicant and published on IPART's website.

## 7L Staged approval

- (1) An approval may be granted—
  - (a) for the activity or one or more of the activities for which the approval is sought, or
  - (b) for an activity, except for a specified part or aspect of the activity, or
  - (c) for a specified part or aspect of an activity.
- (2) An approval may be granted subject to a condition that an activity or a specified part or aspect of an activity, or a thing associated with the activity or the carrying out of the activity, must be the subject of either one or both of the following—
  - (a) a further approval,
  - (b) a variation of an existing approval.
- (3) In this section, *activity* means—
  - (a) in relation to a scheme approval—the construction of water industry infrastructure to which this Part applies, and
  - (b) in relation to an operational approval—the operation of water industry infrastructure to which this Part applies.

## Division 4 Licences

### 8 Operator licence

An operator licence authorises the construction and operation of water industry infrastructure of the class specified in the licence for which the licensee is the registered operator.

**Note.** Operator licences are granted by the Minister.

### 8A Retailer licence

A retailer licence authorises the sale of water or sewerage services provided by means of water industry infrastructure for which the licensee is the registered retailer.

**Note.** Retailer licences are granted by the Minister.

### 8B Applying for a licence

- (1) An application for a licence is to be made to IPART and determined by the Minister.
  - (2) On receiving an application for a licence, IPART must—
    - (a) give a copy of the application to the Minister, and
    - (b) invite submissions on the application from persons as required by the regulations, and
    - (c) invite submissions on the application from the public by notice published on IPART's website and otherwise as considered appropriate by IPART.
- Note.** Section 12 imposes requirements for an application and allows an application to be rejected if the requirements are not complied with.
- (3) An invitation to make submissions on an application must allow at least 28 days for submissions to be made and must be accompanied by a copy of the application, other than material IPART considers to be confidential, or set out how a copy of the application may be obtained.

- (4) After considering an application for a licence and the submissions on the application, IPART is to provide a report on the application to the Minister.
- (5) The report must include recommendations regarding the following—
  - (a) whether or not a licence should be granted,
  - (b) the licence conditions, if any, that should be imposed on the licence.
- (6) IPART is not required to notify the applicant about, or give the applicant an opportunity to make submissions about, a report or proposed report to the Minister on an application despite a requirement of the rules of procedural fairness.
- (7) Before providing a report on an application to the Minister, IPART may require an application audit to be undertaken.
- (8) The Minister must consider, but is not bound to accept, IPART's report and recommendations and may seek further advice from IPART on an application.

### **8C Determining an application for a licence**

- (1) The Minister is to determine an application for a licence by granting the licence, either as applied for or with modifications the Minister considers appropriate, or by refusing to grant the licence.

**Note.** Section 5A also requires the decision-maker to have regard to the objects of this Act and other additional objects when considering whether or not a licence is to be granted or varied under this Part and what conditions are to be imposed on a licence.
- (2) A licence must be granted only to a corporation or council.
- (3) A licence must not be granted unless the Minister is satisfied as to each of the following—
  - (a) that the applicant is a suitable corporation to be granted the licence,
  - (b) other matters specified by the regulations.
- (4) The Minister may refuse to grant the licence for another reason the Minister considers relevant, having regard to the public interest.
- (5) If the Minister proposes to refuse to grant a licence or to grant a licence with modifications, the Minister must—
  - (a) give written notice of the proposed refusal or modifications to the applicant specifying the reasons for the refusal or modifications, and
  - (b) allow the applicant at least 14 days within which to make submissions to the Minister about the proposed refusal or modifications.
- (6) On making a decision on an application, the Minister must ensure notice of the Minister's decision is given to the applicant and published on IPART's website.

### **8D Meaning of "suitable corporation"**

- (1) A corporation is a *suitable corporation* to be granted a licence under this Part only if the Minister has determined that—
  - (a) the corporation has the capacity, including technical, financial and organisational capacity, to comply with obligations under this Act and to carry out the activities to be authorised by the licence, and
  - (b) the corporation is otherwise suitable to be granted the licence, taking into account the mandatory considerations under this section and the non-mandatory considerations under this section that the Minister thinks appropriate.



- (2) For the purpose of determining whether a council is a suitable corporation, the only relevant capacity for determination is technical capacity and none of the mandatory or non-mandatory considerations are to be taken into account.
- (3) A council is a suitable corporation if the Minister has determined that the council has the technical capacity to comply with obligations under this Act and to carry out the activities to be authorised by the licence.
- (4) A corporation is not a suitable corporation to be granted a licence if the corporation is a disqualified corporation.
- (5) The following considerations are the **mandatory considerations** to be taken into account in determining whether a corporation is a suitable corporation to be granted a licence—
  - (a) whether an insolvency official has been appointed for the corporation or the whole or part of the property of the corporation, an order has been made for the winding-up of the corporation or a resolution has been passed for the winding-up of the corporation,
  - (b) whether the corporation or a director of the corporation has committed an offence against this Act or another law of this State, the Commonwealth, another State or a Territory relating to the water industry, public health, environment protection, development control or consumer protection,
  - (c) whether the corporation or a director of the corporation has held a statutory authorisation that has been cancelled or suspended or has been disqualified from obtaining a statutory authorisation,
  - (d) whether a director of the corporation is of good repute and character, having particular regard to honesty and integrity,
  - (e) whether a director of the corporation has become, within the previous 3 years, an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth,
  - (f) whether a director of the corporation has been, within the previous 3 years, the director of a body corporate when an insolvency official has been appointed for the corporation or the whole or part of the property of the corporation, an order has been made for the winding-up of the corporation or a resolution has been passed for the winding-up of the corporation,
  - (g) other matters prescribed by the regulations.
- (6) The following considerations are the **non-mandatory considerations** that may be taken into account in determining whether a corporation is a suitable corporation to be granted a licence—
  - (a) each of the mandatory considerations for a related corporation of the corporation under consideration as if a reference in the mandatory considerations to the corporation were a reference to a related corporation of that corporation,
  - (b) each of the mandatory considerations for a person concerned in the management of the corporation under consideration as if a reference in the mandatory considerations to a director of the corporation were a reference to a person concerned in the management of the corporation,
  - (c) whether the corporation is a related corporation of a disqualified corporation,
  - (d) other considerations the Minister considers relevant.

- (7) For the purposes of determining whether a corporation has the relevant capacity to be a suitable corporation to be granted a licence, the following must be taken into account—
- (a) the extent to which the corporation relies on arrangements with contractors or subcontractors, including related corporations, for the necessary capacity,
  - (b) the suitability of the arrangements,
  - (c) proposed licence conditions relating to the arrangements.
- (8) In this section, *statutory authorisation* means a licence, approval or other authorisation whether under the law of this State, the Commonwealth, another State or a Territory.

**8E Operator licences to specify certain matters**

An operator licence must specify the following—

- (a) the activities authorised by the licence,
- (b) the class or classes of water industry infrastructure authorised by the licence,
- (c) the maximum number of schemes the licensee is authorised to construct or operate,
- (d) the maximum scale of the schemes the licensee is authorised to construct or operate, whether determined by reference to the number of customers, connections, volumetric limits or otherwise.

**8F Retailer licences to specify certain matters**

A retailer licence must specify the following—

- (a) the activities authorised by the licence,
- (b) the maximum scale of the schemes for which the licensee is authorised to act as retailer, whether determined by reference to the number of customers, connections or otherwise.

**8G Licence conditions—imposition, variation and revocation**

- (1) A licence is subject to the following conditions—
- (a) conditions imposed by this Act,
  - (b) conditions imposed by the regulations,
  - (c) conditions imposed by the Minister on the grant of the licence or subsequently under this Act.

**Note.** Section 12 imposes requirements for an application and allows an application to be rejected if the requirements are not complied with.

- (2) The Minister may, by written notice to a licensee, impose further conditions on, or vary or revoke conditions of, the licence, other than conditions imposed by this Act or the regulations—
- (a) on the application of the licensee, or
  - (b) on the recommendation of IPART, or
  - (c) on the Minister's own initiative.

**Note.** Section 5A also requires the decision-maker to have regard to the objects of this Act and other additional objects when considering whether or not a licence is to be granted or varied under this Part and what conditions are to be imposed on a licence.

- (3) Nothing in Part 3 limits the power of the Minister to impose licence conditions.
- (4) If the Minister proposes to impose further conditions on, or vary or revoke conditions of, a licence on the recommendation of IPART or on the Minister's own initiative, the Minister must—
  - (a) give written notice of the proposal to the licensee specifying the reasons for it, and
  - (b) allow the licensee at least 14 days within which to make submissions to the Minister about the proposal.
- (5) If the Minister considers it is appropriate to invite submissions on a proposal or application to impose further licence conditions or vary or revoke licence conditions because of the importance or effect of the conditions, IPART must, at the request of the Minister, invite submissions on the proposal or application as if it were an application for a licence.
- (6) An application by a licensee to impose further licence conditions or vary or revoke licence conditions is to be made to IPART and determined by the Minister.
- (7) After considering an application by a licensee to impose further licence conditions or vary or revoke licence conditions, IPART is to provide a report on the application to the Minister.
- (8) Before providing a report to the Minister on an application by the licensee to impose further licence conditions or vary or revoke licence conditions, IPART may require an application audit to be undertaken.
- (9) Regulations that impose licence conditions or vary or revoke licence conditions imposed by the regulations apply, subject to the expression of a contrary intention, to licences whether granted before or after the regulations are made.

#### **8H Operator licence conditions**

- (1) The following conditions are conditions of an operator licence—
  - (a) the licensee must comply with the conditions of each approval that applies to water industry infrastructure for which the licensee is the registered operator,
  - (b) the licensee must ensure the water industry infrastructure for which the licensee is the registered operator is operated only for the purposes authorised by the relevant approval,
  - (c) the licensee must operate water industry infrastructure for which the licensee is the registered operator—
    - (i) safely and reliably, and
    - (ii) in a way consistent with the national safety guidelines for the control of public health risks, and
    - (iii) in a way that does not present a significant risk of harm to the environment,
  - (d) the licensee must have and maintain the capacity, including technical, financial and organisational capacity, to operate all the infrastructure for which the licensee is the registered operator,
  - (e) the licensee must give written notice to IPART of a failure by the licensee to maintain technical, financial or organisational capacity as soon as practicable after the failure occurs,

- (f) if the licensee proposes to cease or ceases to operate water industry infrastructure for which the licensee is the registered operator, the licensee must give written notice to IPART of that fact within the period required by the regulations,
  - (g) the licensee must establish and maintain privacy policies and practices that lawfully enable customer information to be provided to and used by the following—
    - (i) a last resort provider in connection with a declared failure or last resort contingency planning,
    - (ii) another licensee who is substituted as the registered operator for the scheme.
  - (h) if the licensee is the registered operator of a regulated scheme, but is not the registered retailer for the scheme, the licensee must—
    - (i) ensure a water or sewerage service provided by means of the scheme is not sold except by the registered retailer for the scheme or a public water utility, and
    - (ii) if the water or sewerage service provided by means of the scheme is sold by a registered retailer—maintain and give effect to an agreement with the registered retailer, being an agreement that complies with the requirements of the regulations, if any, for the sale by the registered retailer of the water or sewerage services,
  - (i) if the licensee is the registered operator of a scheme, the licensee must, for essential infrastructure, take all reasonable steps to prevent circumstances arising that permit a declaration of a failure of an essential service provider under Part 5, Division 3.
- (2) Without limiting section 8G, conditions imposed on an operator licence by the regulations or the Minister may require the following—
- (a) the licensee to give and maintain security, in an amount and form determined by the Minister, for compliance with licence conditions,
  - (b) the licensee to maintain an appropriate level of insurance, taking into account all the water industry infrastructure operated by the licensee under the licence,
  - (c) the licensee to supply to IPART statements that detail the following—
    - (i) the extent to which the licence, or the provisions of this Act or the regulations, have or have not been complied with,
    - (ii) the particulars of failures to comply with the licence or provisions,
    - (iii) the reasons for failures to comply with the licence or provisions,
    - (iv) actions taken, or to be taken, to prevent a recurrence of the failures or to mitigate the effects of the failures.

## **8I Retailer licence conditions**

- (1) The following conditions are conditions of a retailer licence—
- (a) if the licensee proposes to cease, or ceases, to provide retail services under the licence for a particular regulated scheme, the licensee must give written notice to IPART of that fact within the period required by the regulations,
  - (b) the licensee must have and maintain the capacity, including financial and organisational capacity, to provide all the retail services provided by the licensed retailer under the licence,

- (c) the licensee must give IPART written notice of a failure by the licensee to maintain technical, financial or organisational capacity as soon as practicable after the failure occurs,
  - (d) the licensee must establish and maintain privacy policies and practices that lawfully enable customer information to be provided to and used by the following—
    - (i) a last resort provider in connection with a declared failure or last resort contingency planning,
    - (ii) another licensee who is substituted as the registered retailer for the scheme.
- (2) Without limiting section 8G, conditions imposed on a retailer licence by the regulations or the Minister may require the following—
- (a) the licensee to give and maintain security, in an amount and form determined by the Minister, for compliance with licence conditions,
  - (b) the licensee to maintain an appropriate level of insurance, taking into account all the retail services provided by the licensee under the licence,
  - (c) the licensee to obtain the approval of the Minister or IPART before entering into an agreement with the registered operator for a regulated scheme for the sale of further water or sewerage services provided by means of the regulated scheme,
  - (d) if the licence authorises the sale of drinking water—for the purpose of promoting the equitable sharing of the costs of State water security among public water utilities and licensed retailers of drinking water, the following—
    - (i) the licensee to obtain a specified proportion of the water that it supplies under the authority of its licence by means of specified water industry infrastructure,
    - (ii) the licensee to contribute to the costs of specified water industry infrastructure, whether or not it is supplied with water from that infrastructure, calculated in a way specified in the regulations or by condition and payable to a person or persons specified in the regulations or by condition,
  - (e) the licensee to supply to IPART statements that detail the following—
    - (i) the extent to which the licence, or the provisions of this Act or the regulations, have or have not been complied with,
    - (ii) the particulars of failures to comply with the licence or provisions,
    - (iii) the reasons for failures to comply with the licence or provisions,
    - (iv) actions taken, or to be taken, to prevent a recurrence of the failures or to mitigate the effects of the failures.

**8J Offence—failure to comply with licence conditions**

A licensee must comply with the conditions of the licence.

Maximum penalty—

- (a) for a corporation—18,000 penalty units, or
- (b) for an individual—3,500 penalty units.

**8K Composite operator and retailer licences**

- (1) An operator licence and retailer licence may be applied for and granted together as the component licences of a composite licence.

- (2) An application for a composite licence is to be dealt with and determined as if it were an application for each of the component licences of the composite licence.
- (3) A composite licence operates as both the operator licence and retailer licence that are its component licences and each of the licences is, as a component licence, subject to the conditions to which it would be subject as a separate licence.
- (4) The regulations may make provision for the following—
  - (a) the circumstances in which an operator licence and retailer licence may or must be applied for as a composite licence,
  - (b) the splitting of a composite licence into its component licences.

#### **8L Duration of licence**

- (1) A licence remains in force until it is cancelled or it is surrendered by the licensee with the consent of the Minister.
- (2) A licence that is suspended does not authorise the following while suspended but otherwise remains in force for the purposes of this Act—
  - (a) for an operator licence—the operation of water industry infrastructure, or
  - (b) for a retailer licence—the sale of water or sewerage services provided by means of water industry infrastructure.

#### **8M Variation of licence**

- (1) An application for the variation of a licence may be made to IPART for determination by the Minister.  
**Note.** Section 12 imposes requirements for an application and allows an application to be rejected if the requirements are not complied with.
- (2) An application for the variation of a licence may be made only by the licensee.
- (3) An application for the variation of a licence can relate to an aspect of the licence, including to a matter required to be specified in sections 8E and 8F, as applicable.
- (4) Before determining an application to vary a licence, IPART may require an application audit to be undertaken.
- (5) If the Minister is satisfied that a licence contains an obvious error or mis-description, the Minister may grant a replacement licence to correct the error or mis-description.
- (6) On granting a replacement licence, the Minister must ensure notice of the grant of the replacement licence is given to the applicant and published on IPART's website.

#### **8N Annual fees and returns**

- (1) A licensee must, in each year before the date fixed for that purpose by the Minister by written notice—
  - (a) pay to the Minister the annual licence fee determined by the Minister, and
  - (b) lodge with IPART an annual return containing the information required by—
    - (i) the Minister, or

(ii) IPART.

- (2) The Minister may, by written notice, require information in an annual return be verified in a specified way.
- (3) IPART may, by written notice, require specified information in an annual return be verified in a specified way.
- (4) If a licensee fails to pay a fee or lodge a return as required, the Minister may, by written notice, require the licensee to make good the default and, in addition, pay the Minister the amount fixed by the regulations as a penalty for default.
- (5) A matter specified in a written notice under this section may be varied by a further written notice.

**8O Surrender of licence**

- (1) A licence may be surrendered with the consent of the Minister.
- (2) The Minister must consent to the surrender of a licence unless otherwise required under this section.
- (3) If, on application for consent to the surrender of a licence, the Minister is satisfied further steps are necessary for the protection of public health or safety, the environment or small retail customers, the Minister—
  - (a) must not consent to the surrender of the licence, and
  - (b) must impose further licence conditions the Minister considers appropriate for the protection of public health or safety, the environment or small retail customers, as applicable (*protection conditions*).
- (4) The Minister may consent to the surrender of the licence referred to in subsection (3) on the licensee satisfying the Minister that the protection conditions have been fulfilled or satisfactory arrangements have been made for their fulfilment.
- (5) If the licensee provides an essential service under the licence, the Minister must not consent to the surrender of the licence unless the Minister is satisfied satisfactory arrangements are in place for the continued provision of the service.

**8P Transfer of licence**

A licence is not transferable.

**Division 5 Special provisions addressing risk to public health or safety**

**9 Public health and safety directions**

- (1) A regulatory authority may, if of the reasonable opinion it is necessary to deal with a risk to public health or safety arising from the construction or operation of water industry infrastructure to which this Part applies, give a direction (*public health and safety direction*) to a person requiring specified action to be taken to manage, reduce or eliminate the risk.
- (2) A public health and safety direction may be given orally or in writing.
- (3) Without limiting the public health and safety directions that may be given, if in the opinion of the regulatory authority the risk is sufficiently serious to

warrant it, the directions may require cessation of operation of the infrastructure.

- (4) Before giving a public health and safety direction, the regulatory authority must, unless the urgency of the circumstances preclude it, consult with the Minister responsible for the administration of the *Public Health Act 2010*, or that Minister's nominee, and SafeWork NSW.
- (5) If a person contravenes a public health and safety direction, the regulatory authority concerned may arrange for the required action to be taken by a person authorised by IPART to take the action.
- (6) A person who contravenes a public health and safety direction must pay the regulatory authority concerned an amount equal to the reasonable cost of action taken under subsection (5).
- (7) A person who contravenes a public health and safety direction is guilty of an offence.  
Maximum penalty—
  - (a) for a corporation—18,000 penalty units, or
  - (b) for an individual—3,500 penalty units.

## **Division 6      Enforcement and cancellation of approvals and licences**

### **10      Statutory default**

- (1) A *statutory default* occurs if—
  - (a) a person contravenes a requirement of this Act to hold a licence or obtain an approval, or
  - (b) a licensee contravenes this Act or the regulations, including a condition of a licence or approval, or
  - (c) a licence is improperly obtained, or
  - (d) an event occurs or circumstances come to light that mean the licensee would not be granted the licence if an application for the licence were now to be made.
- (2) Action may be taken against a person under this Division for a statutory default even though the person has since ceased to hold a licence.

### **10A      Effect of criminal proceedings**

- (1) A regulatory authority may exercise its powers under this Division in relation to a statutory default whether or not criminal proceedings have been, or are to be, taken for the default and even though a penalty may have already been imposed for the default.
- (2) However, the regulatory authority must, in imposing a monetary penalty, take into account a fine that has already been imposed in criminal proceedings.

### **10B      Compliance notice**

- (1) If a statutory default occurs, IPART may give written notice (a *compliance notice*) to the alleged defaulter specifying the default and requiring the alleged defaulter to take specified action, within a period specified in the notice, to remedy or mitigate the consequences of the default or to prevent the continuance or recurrence of the default.
- (2) Without limiting the action that may be specified, a compliance notice may—



- (a) require a notice to be given to customers or to be published, or
  - (b) require an audit and compliance program to be undertaken, or
  - (c) require a training program to be undertaken.
- (3) If the alleged defaulter fails to take the specified action within the time allowed in the notice, the alleged defaulter is guilty of an offence.  
Maximum penalty—
- (a) for a corporation—18,000 penalty units, or
  - (b) for an individual—3,500 penalty units.
- (4) IPART is not required to give an alleged defaulter an opportunity to make submissions on a compliance notice or proposed compliance notice before it is given despite a requirement of the rules of procedural fairness.

### **10C Injunctive remedies**

- (1) If a statutory default occurs or there are reasonable grounds to suspect that a statutory default may occur or be attempted, the Supreme Court may, on application by IPART, grant an injunction to prevent the statutory default or to prevent recurrence of the statutory default.
- (2) The injunction may be granted on terms the Court considers appropriate.
- (3) An injunction may be granted under this section whether or not—
- (a) there has been some previous statutory default of the same or a similar nature, or
  - (b) there is imminent danger of substantial damage to a person.
- (4) No undertaking as to damages can be required of IPART in proceedings under this section.

### **10D Disciplinary action by IPART**

- (1) If a statutory default occurs, IPART may give written notice to the alleged defaulter specifying the default and requiring the alleged defaulter to show cause, within a period specified in the notice, why disciplinary action should not be taken against the alleged defaulter.
- (2) IPART must allow at least 14 days for written submissions to be made, or provide for a hearing at which oral submissions may be made, to IPART by—
- (a) the alleged defaulter, and
  - (b) a related corporation or person—if an allegation in relation to the statutory default is made against—
    - (i) the related corporation of the alleged defaulter, or
    - (ii) a person who is a director or person concerned in the management of the alleged defaulter or the related corporation of the alleged defaulter.
- (3) After considering submissions made by the alleged defaulter, IPART may, by order, do 1 or more of the following (a *disciplinary action*)—
- (a) censure the alleged defaulter,
  - (b) impose a fine on the alleged defaulter of up to—
    - (i) for a corporation—4,500 penalty units, or
    - (ii) for an individual—1,000 penalty units,

- (c) order the forfeiture to the Crown of the whole or part of security given under this Act by the alleged defaulter,
  - (d) for an approval—
    - (i) impose further conditions or vary conditions of the approval, or
    - (ii) suspend the approval for a specified period, until the fulfilment of specified conditions or until further order of the authority, or
    - (iii) with the written concurrence of the Minister—cancel the approval,
  - (e) for a licence, with the written concurrence of the Minister—
    - (i) impose further licence conditions or vary the licence conditions, including by imposing a condition that prohibits the licensee from providing a particular service under the licence, or
    - (ii) suspend the licence for a specified period, until the fulfilment of specified conditions or until further order of the authority, or
    - (iii) prohibit the licensee being registered as the registered operator under a further scheme approval for a specified period, until the fulfilment of specified conditions or until further order of the authority, or
    - (iv) cancel the licence,
  - (f) declare that the alleged defaulter, or a related corporation of the alleged defaulter, is a disqualified corporation for a specified period, or until the fulfilment of specified conditions or until further order of the authority,
  - (g) declare that a person who is a director or concerned in the management of the alleged defaulter or a related corporation of the alleged defaulter is a disqualified individual for a specified period, until the fulfilment of specified conditions or until further order of the authority.
- (4) If the alleged defaulter owns essential infrastructure or provides an essential service, IPART must, in determining the appropriate disciplinary action to take and the date when it is to take effect, consider whether there are suitable arrangements in place for the continuity of the service.
- (5) Disciplinary action takes effect on the date the order is served on the alleged defaulter or on a later date specified in the order.
- (6) If a statutory default comprises an offence for which a penalty notice may be issued, a penalty notice has been issued for the default and the penalty has been paid, no fine may be imposed under subsection (3)(b) for the default.

**10E Disciplinary action by Minister**

- (1) If a statutory default has occurred and IPART has not taken disciplinary action under section 10D, not including giving a written notice under section 10D(1), the Minister may give IPART a written notice requiring IPART to take disciplinary action against the alleged defaulter, within a period specified in the notice.
- (2) If IPART does not take disciplinary action within the specified period—
  - (a) section 10D is to be read as if references to IPART were references to the Minister, and
  - (b) the Minister may accordingly take action under that section in relation to the statutory default, and
  - (c) IPART may not take action under that section in relation to the statutory default.

**10F Court orders in addition to penalty**

- (1) If, in proceedings for an offence under this Act, the court finds the defendant contravened this Part, the court may, in addition to the imposition of a penalty, do one or more of the following—
  - (a) order the person to take specified action to remedy or mitigate the consequences of the contravention or to prevent the continuance or recurrence of the contravention,
  - (b) order the person to take specified action to publicise the contravention and its consequences and a compliance notice or other order made against the person,
  - (c) order the person to pay a public authority reasonable costs and expenses incurred by the authority in taking action to remedy or mitigate the consequences of the contravention,
  - (d) order the person to pay to a person, other than a public authority, reasonable costs and expenses incurred by the person, or compensation of an amount determined by the court for injury, loss or damage suffered by the person, as a result of the contravention,
  - (e) order the person to pay reasonable costs and expenses incurred during the investigation of the contravention, including costs and expenses in taking samples or conducting inspections, tests, measurements or analysis, or transporting, storing or disposing of evidence,
  - (f) order the person to pay an amount not exceeding the court's estimation of the amount of the economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
- (2) An economic benefit obtained by delaying or avoiding costs is to be taken to be an economic benefit acquired by the person, or accrued or accruing to the person, as a result of a contravention if the contravention can be attributed, in whole or in part, to that delay or avoidance.
- (3) The court may, by an order under this section, fix a period for compliance and impose other requirements the court considers necessary or expedient for enforcement of the order.
- (4) The Local Court—
  - (a) may not make an order under subsection (1)(e), and
  - (b) may not make an order under this section for the payment of an amount that exceeds in total the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.

**10G Cancellation of approval and forfeiture of security**

- (1) There are grounds for the cancellation of an approval under this section if—
  - (a) for a scheme approval—
    - (i) 5 years have elapsed since the grant of the approval and the construction of the infrastructure has not substantially commenced, or
    - (ii) there is no longer an intention to construct or bring into operation water industry infrastructure as proposed, or
  - (b) for an operational approval—operation of the infrastructure under this Act has ceased on a permanent basis or it is intended that operation of the infrastructure under this Act cease on a permanent basis.
- (2) However, an approval for essential infrastructure may not be cancelled—

- (a) in circumstances that may result in a declared failure or in which a failure of a provider of the essential service may be declared, or
  - (b) during a declared failure of a provider of the essential service, or
  - (c) in circumstances in which directions may be given to an insolvency official under Part 5, Division 3 in relation to a provider of the essential service.
- (3) IPART may, by written notice given to the registered operator of water industry infrastructure, require the operator to show cause, within a period specified in the notice, being a period of not less than 14 days—
- (a) if IPART is acting on its own initiative—why a scheme approval or operational approval for the infrastructure should not be cancelled and the security given by the registered operator, if any, be forfeited, or
  - (b) if the registered operator has applied for the cancellation of a scheme approval or operational approval for the infrastructure—why the security given by the registered operator, if any, should not be forfeited.
- (4) IPART must allow the registered operator to show cause by making written submissions to IPART or by providing for a hearing at which the registered operator may make oral submissions to IPART.
- (5) After considering submissions made by the registered operator, if IPART is satisfied there are grounds for the cancellation of an approval—
- (a) IPART may—
    - (i) cancel the approval, or
    - (ii) impose further conditions on the approval and cancel the approval only after the registered operator has satisfied IPART that the further conditions have been fulfilled or that satisfactory arrangements have been made for their fulfilment, and
  - (b) IPART may order the forfeiture to the Crown of the whole or part of the security given by the registered operator under this Act.

#### **10H Cancellation of approval in public interest**

- (1) The Minister may, by written notice to a registered operator of an approval, cancel the approval if the Minister considers the cancellation to be in the public interest.
- (2) Another Minister or IPART may make a written recommendation to the Minister that the cancellation of an approval is in the public interest.
- (3) The notice must specify whether the cancellation is on the Minister's own initiative or on the written recommendation of another Minister or IPART.
- (4) Cancellation may apply to the whole or a specified part of the water industry infrastructure to which the approval relates.
- (5) Cancellation takes effect on the day specified in the notice of cancellation.
- (6) In determining when the cancellation is to take effect, the Minister is to consider the public interest and, if the cancellation is on the recommendation of another Minister or IPART, that Minister's or IPART's reasons for the recommendation.
- (7) The registered operator of an approval may bring proceedings for compensation in the Supreme Court—
  - (a) if the cancellation was on the Minister's own initiative or on the recommendation of IPART—against the Minister, or

- (b) if the cancellation was on the written recommendation of another Minister—against that Minister.
- (8) The Supreme Court is to hear the proceedings and determine whether it is just for compensation to be paid to the plaintiff because of the cancellation.
- (9) If the Supreme Court determines it is just for compensation to be paid, the Supreme Court must determine the amount of compensation and give judgment accordingly.

## **Division 7 Administrative review and appeal**

### **11 Administrative review by Civil and Administrative Tribunal**

- (1) An application in accordance with this section may be made to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of a decision under this Part specified in this section.
- (2) An applicant for an approval may apply for an administrative review of a decision of IPART—
  - (a) refusing to grant an approval or granting an approval with modifications not agreed to by the applicant, or
  - (b) refusing to accept a variation of an application after an invitation to make submissions has been given, or
  - (c) fixing conditions of an approval.
- (3) A registered operator of a scheme, the owner of water industry infrastructure forming part of a scheme or the owner of the land on which water industry infrastructure forming part of a scheme is located, other than pipelines within the reticulation network connected to the infrastructure, may apply for an administrative review of a decision of IPART relating to the scheme—
  - (a) varying an approval or refusing to approve a variation of an approval, or
  - (b) refusing to vary or revoke conditions of an approval, or
  - (c) refusing to give a consent or grant an approval required by conditions of an approval, or
  - (d) varying or imposing further conditions of an approval, or
  - (e) refusing to cancel an approval on application.
- (4) An applicant for a licence may apply for an administrative review of a decision of the Minister—
  - (a) refusing to grant a licence or granting a licence with modifications not agreed to by the applicant, or
  - (b) fixing conditions of a licence.
- (5) A licensee may apply for an administrative review of a decision of the Minister—
  - (a) refusing to vary the classes of infrastructure that may be operated under the licence, or
  - (b) refusing to vary or revoke licence conditions, or
  - (c) refusing to give a consent or grant an approval required by licence conditions, or
  - (d) varying or imposing further licence conditions, or
  - (e) refusing to consent to the surrender of the licence.

- (6) In determining an application for an administrative review of a decision under this Part, the Civil and Administrative Tribunal is to decide what the correct and preferable decision is—
  - (a) having regard to the material available to the decision-maker at the time of the decision, and
  - (b) disregarding new material or new evidence provided by the applicant.
- (7) Subsection (6) has effect despite the provisions of the *Administrative Decisions Review Act 1997* and the *Civil and Administrative Tribunal Act 2013*.

#### **11A Appeal to Land and Environment Court**

- (1) The following appeals may be made to the Land and Environment Court against a decision under this Part—
  - (a) a person to whom a compliance notice is issued by the Minister or IPART may appeal against the decision to issue the notice,
  - (b) a person against whom disciplinary action is taken by the Minister or IPART may appeal against the decision to take that action,
  - (c) the registered operator of an approval that is cancelled on the initiative of the Minister or IPART may appeal against the decision to cancel the approval,
  - (d) a person against whom an order for forfeiture of security is made may appeal against the decision to make the order or as to the amount to be forfeited.
- (2) An appeal is to be made in accordance with the rules of court, but may not be made more than 21 days after the day on which written notice of the decision is served on the person.
- (3) Subject to an order made by the Land and Environment Court, an appeal does not operate to stay the decision to which the appeal relates.
- (4) Despite the *Land and Environment Court Act 1979*, section 39(3), in determining an appeal against a decision under this Part, the Land and Environment Court is not to have regard to new material or new evidence provided by the appellant that was not available to the person who made the decision to which the application relates at the time of the decision.

### **Division 8 Miscellaneous**

#### **12 Applications**

- (1) An application under this Part, other than under Division 7—
  - (a) must be made in the way and be accompanied by the information—
    - (i) in relation to an application for an approval—specified by IPART, or
    - (ii) in another case—specified by the Minister, and
  - (b) in relation to an application for an approval—must set out the proposed area of operations for the approval, and
  - (c) must comply with the requirements set out in the regulations, and
  - (d) must be accompanied by the fee determined for the application by the Minister.

- (2) The Minister or IPART may, by written notice to an applicant, require the applicant—
  - (a) to give the Minister or IPART additional information reasonably required to decide the application, or
  - (b) to have information in the application or additional information verified in a specified way.
- (3) An applicant must establish to the satisfaction of IPART that the State is authorised to use, by the giving of a licence or warranty or otherwise, free of charge for the purposes of this Act, including the publication of a notice, copyright material that is part of or provided by the applicant in connection with the application.
- (4) If an application or the applicant does not comply with the requirements of this section or the regulations, the application may be rejected.
- (5) An application that is rejected is taken not to have been made.

**12A Only one registered retailer permitted for each regulated scheme**

- (1) IPART may only register one registered retailer for each separate service provided by regulated scheme.
- (2) In this section, *separate service* means—
  - (a) drinking water service,
  - (b) recycled water service,
  - (c) sewerage service.

**[5] Section 42 Service providers to have approved cost allocation manuals**

Omit the penalty provision from section 42(10). Insert instead—

Maximum penalty—

- (a) for a corporation—500 penalty units, or
- (b) for an individual—100 penalty units.

**[6] Section 43 Hindering access to certain services**

Omit the penalty provision from section 43(1). Insert instead—

Maximum penalty—

- (a) for a corporation—500 penalty units, or
- (b) for an individual—100 penalty units.

**[7] Part 5, heading**

Omit “**retail**”. Insert instead “**industry**”.

**[8] Part 5, Division 1AA**

Insert before Division 1—

**Division 1AA Small retail customer contracts for regulated schemes**

**46AA Definitions**

In this Division—

*contract charge* means a fee or charge payable by a customer under a contract with a licensed operator or licensed retailer for water or sewerage services.

*lease* means a lease, licence, permit or other agreement under which a person (the *lessor*) parts with possession of premises to another (the *lessee*).

*regulated scheme licence* means—

- (a) an operator licence under which the licensee operates infrastructure that connects a regulated scheme to a customer's premises, or
- (b) a retailer licence.

*standard contract charges* of a licensed operator or licensed retailer means the contract charges of the licensee referred to in section 46AC.

#### **46AB Deemed customer contracts for regulated schemes**

- (1) A small retail customer who is the owner of premises to which water or sewerage services are provided by means of a regulated scheme is taken to have entered into a contract for the services with the following persons on the terms and conditions set out in the regulations and for the standard contract charges of the licensee (the *deemed customer contract*)—
  - (a) the registered operator of the infrastructure that connects the scheme to the premises, and
  - (b) the registered retailer for that infrastructure.
- (2) However, a deemed customer contract is not taken to have been entered into if the connection of the premises to the scheme is an unauthorised connection.
- (3) A connection is an *unauthorised connection* if it was not authorised by the registered operator of the infrastructure at or before the time of connection.
- (4) The registered operator of infrastructure may subsequently approve a connection that was unauthorised at the time of connection and the connection then ceases to be an unauthorised connection.
- (5) A deemed customer contract is not taken to have been entered into to the extent that it would conflict with an order in force under section 83.
- (6) The regulations may make provision for or about the following—
  - (a) requiring the registered operator of infrastructure that connects a scheme to premises to notify the registered retailer for the infrastructure when the premises are connected to the scheme,
  - (b) exempting a registered operator or registered retailer, or a class of registered operators or registered retailers, conditionally or unconditionally, from the operation of this section,
  - (c) enabling IPART to modify or exclude the application of the deemed customer contract for a registered operator or registered retailer, or a class of registered operators or registered retailers, generally or in specified circumstances,
  - (d) fees for making applications for exemptions from the operation of this section.

#### **46AC Standard contract charges for regulated schemes**

- (1) It is a condition of a regulated scheme licence that the licensee must, for each regulated scheme for which the licensee provides services under the licence—
  - (a) publish on its website—
    - (i) the contract charges payable for the services during the current financial year and the subsequent 3 financial years, and



- (ii) the rebates, refunds, discounts or similar payments available to customers, or classes of customers, for the services during the current financial year, and
    - (iii) if the contract charges are to be varied—the date from which the charges as varied become payable, and
  - (b) give IPART written notice of the contract charges, and of a variation of the contract charges and reason for the variation, and
  - (c) only charge customers the contract charges, and
  - (d) only pay a rebate, refund, discount or similar payment to a customer in accordance with—
    - (i) the deemed customer contract taken to have been entered into under section 46AB, or
    - (ii) a publication made under paragraph (a)(ii).
- (2) The publication of information under subsection (1)(a) must be made in a way that is—
  - (a) conspicuous to customers, and
  - (b) specified by the regulations, if any.
- (3) It is a condition of a regulated scheme licence that the licensee must give each customer at least 3 months written notice, or a shorter period of notice approved by IPART on application, of an increase in a contract charge payable by the customer.
- (4) For a licensed retailer, it is a condition of the licence that the notice must be sent with, or included in, an account or invoice for a service provided under the licence.
- (5) No amount of an increase in a contract charge may be recovered by the licensee from a customer if notice of the increase has not been given to the customer as required by this section.
- (6) Notice of an increase in a contract charge payable for a service by a customer is not required under this section if—
  - (a) the increase does not exceed a maximum increase prescribed by the regulations, by reference to a consumer price index or other method, or
  - (b) the increase is in accordance with a determination under Division 2, or
  - (c) the licensee has complied with a regulated price parity arrangement for the increase.
- (7) A **regulated price parity arrangement** for an increase in a contract charge payable for a service is an arrangement under which the licensee—
  - (a) has a policy of maintaining price parity with the pricing of a comparable service of a public water utility whose services are the subject of a determination of pricing by IPART, and
  - (b) within 28 days of IPART commencing an investigation for the purposes of a determination of the pricing for a comparable service of the public water utility, notifies the customer—
    - (i) the investigation has commenced, and
    - (ii) the contract charge payable for the service by the customer will not exceed the maximum price determined by IPART or in accordance with the methodology determined by IPART for that comparable service.

**46AD Certificates as to amounts due under customer contract**

- (1) It is a condition of a regulated scheme licence that the licensee must, on application and payment of the fee fixed by the licensee and approved by IPART, issue the applicant a certificate—
  - (a) containing particulars of the contract charges payable to the licensee for water or sewerage services provided to specified premises as at a specified date, or
  - (b) to the effect that there are no contract charges payable.
- (2) An application for a certificate must—
  - (a) be written, and
  - (b) specify the name and address of the applicant, and
  - (c) identify the premises to which the application relates.
- (3) A certificate of a licensee is conclusive proof, in favour of a purchaser in good faith and for value of the premises to which the certificate relates, that, at the date specified in the certificate, no contract charges were payable to the licensee for water or sewerage services provided to the premises other than the amounts specified in the certificate.

**46AE New owner liable for unpaid charges under customer contract on change of ownership of premises**

On a change of ownership of premises to which water or sewerage services are provided by means of a regulated scheme, the new owner of the premises is liable for the amount of unpaid contract charges, if any, for the services owed to a licensed operator or licensed retailer as if the new owner had entered into the contract under which the charges are owed.

**46AF Lessee may pay and recover charges under customer contract**

If water or sewerage services are provided to premises by means of a regulated scheme and a lease of the premises provides, expressly or impliedly, that the lessor of the premises is to pay contract charges to a licensed operator or licensed retailer, the lessee may pay to the licensed operator or licensed retailer the charges that are due but unpaid by the lessor and may—

- (a) recover the amount paid from the lessor as a debt due to the lessee, or
- (b) deduct the amount paid from the rent, licence fee or other occupation fee payable by the lessee to the lessor.

**[9] Section 47 Internal review of certain decisions disputed by small retail customers**

Omit section 47(1). Insert instead—

- (1) A small retail customer may apply to a licensed operator or licensed retailer for a review of the following—
  - (a) a matter arising under a contract for water or sewerage services provided to the customer,
  - (b) the exercise or proposed exercise of powers under Part 6, Division 2 by or on behalf of the licensed operator,
  - (c) other matters prescribed by the regulations.

**[10] Section 47(2)(b)**

Omit “retail suppliers”.

**[11] Section 49 Approved ombudsman scheme**

Omit section 49(1)(a)–(b). Insert instead—

- (a) disputes and complaints under contracts for water or sewerage services provided to small retail customers, and
- (b) disputes and complaints concerning the exercise, or proposed exercise, of functions under Part 6, Division 2, and
- (c) other disputes and complaints of a class prescribed by the regulations, whether or not under contracts for water supply or sewerage services referred to in paragraph (a).

**[12] Section 49(2)(a) and (c)**

Omit “licensed retail suppliers and authorised licensed network operators” wherever occurring.

Insert instead “registered retailers and registered operators”.

**[13] Section 49(2)(f)**

Omit “water supply or sewerage service contracts”.

Insert instead “contracts for water supply or sewerage services”.

**[14] Section 49(5)**

Omit “licensed retail supplier or authorised licensed network operator”.

Insert instead “registered retailer or registered operator”.

**[15] Section 50 Licence conditions relating to approved ombudsman scheme**

Omit “supplies water or provides sewerage services (or both)” from section 50(1).

Insert instead “provides water or sewerage services”.

**[16] Section 50(1)(a) and (b)**

Omit “retail supplier” wherever occurring.

Insert instead “licensed retailer”.

**[17] Section 50(2)**

Omit the subsection. Insert instead—

- (2) If an operator licence is a regulated scheme licence within the meaning of Division 1AA, it is a condition of the operator licence that—
  - (a) the licensed operator must be a member of an approved ombudsman scheme, and
  - (b) the operator is bound by, and must comply with, a decision of the ombudsman under the scheme relating to a dispute or complaint involving the operator and a small retail customer or entitled person.

**[18] Section 50A**

Insert after section 50—

**50A Obligations of insolvency official**

If an insolvency official has been appointed for a licensed operator or licensed retailer, or the whole or a part of the property of a licensed operator or licensed retailer, the following provisions apply—

- (a) a dispute or complaint about the licensee may, or may continue to, be dealt with under this Act,
- (b) the insolvency official must facilitate the resolution of the complaint or dispute,
- (c) the insolvency official is bound by this Act as if the insolvency official were the licensee.

**[19] Part 5, Division 2**

Omit Divisions 2 and 3. Insert instead—

**Division 2 Monopoly services and suppliers**

**50B Definitions**

In this Division—

*monopoly service* means a water or sewerage service declared to be a monopoly service under this Division.

*monopoly supplier* means—

- (a) a licensed operator that operates infrastructure by means of which a monopoly service is provided, or
- (b) a licensed retailer that sells a monopoly service to a customer.

**51 Declaration of monopoly services**

- (1) The Minister may, by order published in the Gazette, declare that a specified water or sewerage service provided or to be provided by means of a scheme is a monopoly service.
- (2) The declaration may be limited to apply in relation to—
  - (a) a specified area, or
  - (b) a specified class of customers, or
  - (c) both.
- (3) The declaration may only be made in relation to a service if the Minister is satisfied it is a service—
  - (a) for which there are no other suppliers to provide competition in the part of the market concerned, and
  - (b) for which there is no contestable market by potential suppliers in the short term in that part of the market.
- (4) The declaration must be revoked if the Minister ceases to be satisfied as to the matter referred to in subsection (3)(a).

**52 Pricing determinations for monopoly services**

- (1) IPART may, on a referral by the Minister, investigate, report on and determine a pricing methodology for a monopoly service, or a class of monopoly services, including a pricing methodology for connection charges relating to a monopoly service.
- (2) Without limiting subsection (1)—
  - (a) a pricing methodology determined by IPART may—
    - (i) apply generally or be limited in its application by reference to specified exceptions or factors, or

- (ii) apply differently according to different factors of a specified kind, and
- (b) IPART may determine a pricing methodology for a monopoly service despite a previous determination under this section already applying to that service.

**Example.** A pricing methodology may apply differently to different classes of services based on location, the service provided and the infrastructure concerned.
- (3) Subject to the regulations, the provisions of the *Independent Pricing and Regulatory Tribunal Act 1992*, Part 3 in relation to government monopoly services apply to and for a matter referred to IPART under this section in the same way as they apply to and for a matter referred to IPART under that Act, section 12.
- (4) Without limiting the kinds of regulations that may be made under subsection (3), the regulations may deal with the processes that IPART must use in investigating and determining a pricing methodology.
- (5) It is a condition of a monopoly supplier's licence that the monopoly supplier must comply with a relevant determination by IPART under this section.
- (6) In this section, **connection charge** means a fee or amount charged to connect premises to a water or sewerage service, and includes an infrastructure charge, developer charge or administration charge related to connecting premises to a service.

### 53 Obligations of monopoly suppliers

- (1) It is a condition of a monopoly supplier's licence that the supplier must connect premises within the area to which the monopoly service declaration under this Division applies and supply the monopoly service to the premises, if the owner of the premises requests the supplier to do so.
- (2) Without limiting subsection (1), the regulations may impose further conditions on a monopoly supplier's licence relating to the connection and supply of the monopoly service to premises within the area to which the monopoly service declaration under this Division applies.
- (3) Subsection (1) does not apply to a licensee until—
  - (a) an operational approval has been granted that enables the monopoly supplier to supply the monopoly service to the premises concerned, and
  - (b) the owner of the premises concerned has complied with the conditions set out in the regulations, if any, or the reasonable conditions specified by the licensee to ensure the safe, reliable and financially viable supply of the monopoly service, if any.
- (4) Subsection (1) does not apply in relation to premises if—
  - (a) the premises have been disconnected from the scheme providing the monopoly service by order of a court or in accordance with a customer contract referred to in section 46AB, or
  - (b) the requested service is part of a coupled service, being a service that the licensee cannot provide on a scheme-wide basis without providing another service, and the owner of the premises refuses to accept the coupled service, or

**Example.** Recycled water and sewerage services may be coupled if it is necessary to provide recycled water produced from the treatment of sewage to provide the sewerage service.

  - (c) other circumstances, if any, prescribed by the regulations exist.

**[20] Part 5A**

Insert after Part 5—

**Part 5A Last resort arrangements**

**Division 1 Essential infrastructure and services**

**54 Meaning of “essential infrastructure”**

- (1) IPART may, by written notice to the registered operator of a scheme, determine that the scheme is *essential infrastructure* under this Act if satisfied—
  - (a) a failure in the provision of a water or sewerage service provided by, or proposed to be provided by, means of the scheme would have an adverse effect on customers of the service, and
  - (b) either—
    - (i) alternative arrangements for the provision of a replacement service would not be, and could not readily be made to be, reasonably available, or
    - (ii) it is reasonably necessary for customers of the service to be automatically transferred to the provider of a replacement service if there is a failure in the provision of the service.
- (2) Despite subsection (1), IPART may not determine that a scheme is essential infrastructure under this Act if a council—
  - (a) is the registered operator of the scheme, or
  - (b) owns all the water industry infrastructure comprising the scheme, other than reticulation pipelines.

**54A Revocation of determination of essential infrastructure**

- (1) IPART may, on application by an essential service provider or last resort provider or on its own initiative, revoke the determination of water industry infrastructure as essential infrastructure if satisfied the determination would not now be made.
- (2) On receiving an application for revocation of a determination, IPART must invite submissions on the application from each provider or last resort provider of the essential service, other than the applicant.
- (3) An invitation to make submissions on an application must allow at least 28 days for submissions to be made and must be accompanied by a copy of the application or set out how a copy of the application may be obtained.
- (4) If IPART proposes to refuse an application or to revoke the determination on its own initiative, IPART must—
  - (a) give written notice of the proposed refusal to each provider or last resort provider of the essential service specifying the reasons for it, and
  - (b) allow them at least 14 days to make submissions to IPART about the proposed refusal.
- (5) On making a decision on an application or revoking a determination on its own initiative, IPART must ensure notice of the decision is given to the Minister and each provider or last resort provider of the essential service and publish the decision on IPART’s website.

- (6) If IPART revokes the determination, the designation of a last resort provider for the former essential infrastructure is of no further effect.

## **Division 2 Last resort providers and contingency planning**

### **55 Designation of last resort providers of essential service**

- (1) The Minister may, by order published in the Gazette, designate a public water utility or licensee as a last resort provider to take the place of a provider of an essential service if the provider of the essential service is declared to have failed.
- Note.** The declaration of a failure is made under section 56.
- (2) IPART is to investigate and make a recommendation to the Minister as to the person to be designated as the last resort provider.
- (3) The person recommended by IPART is to be—
- (a) a public water utility in whose area of operations the essential infrastructure is located, or
  - (b) a licensee who has expressed interest and who satisfies the criteria prescribed by the regulations for appointment as a last resort provider, if any.
- (4) Expressions of interest from licensees to be designated as a last resort provider are to be sought in the cases in which IPART determines it to be appropriate or if the Minister so directs in a particular case.
- (5) If a recommendation is to be made following an application for a scheme approval, IPART need not commence the necessary investigation until works for the essential infrastructure have substantially commenced under the scheme approval.
- (6) The Minister—
- (a) must, unless the urgency of the circumstances precludes it, consider IPART's recommendations, but is not bound to accept them, and
  - (b) may seek further advice from IPART on the designation of last resort providers.
- (7) Without limiting the terms of a designation of a last resort provider, a public water utility may be designated as the last resort provider of all essential services provided within its area of operations if a provider of an essential service is declared to have failed.
- (8) If the person to be designated as a last resort provider is not a person recommended by IPART following the seeking of expressions of interest from licensees, the Minister must, before designating the person, unless the urgency of the circumstances precludes it—
- (a) give written notice of the proposed designation to—
    - (i) the provider of the essential service for which the last resort provider is to be designated, and
    - (ii) the person proposed to be designated as the last resort provider, and
    - (iii) the other providers, if any, or last resort provider of the essential service, and
  - (b) allow them at least 14 days within which to make submissions to the Minister about the proposed designation.

- (9) If the person designated as a last resort provider is a licensee, IPART—
  - (a) must, as part of its review of the licensee's licence under section 85(2), investigate and make a recommendation to the Minister regarding the continuation of that designation, and
  - (b) may investigate and make a recommendation to the Minister regarding the continuation of that designation after a statutory default by the licensee or a related corporation of the licensee.
- (10) The regulations may provide for additional matters relating to the designation of last resort providers.

**55A Contingency planning by last resort providers**

- (1) The regulations may make provision for and about the continued provision of the essential service if there is a declared failure.
- (2) Without limiting subsection (1), the regulations may deal with the following—
  - (a) the preparation and testing of a plan for that continued provision of service (a *contingency plan*), including providing that a specified person must—
    - (i) submit, within a specified period, a contingency plan to IPART, and
    - (ii) review and resubmit, at intervals determined by IPART, the contingency plan for the approval of IPART, and
    - (iii) conduct exercises to test the operation of the approved contingency plan as referred to in the plan or as required by IPART,
  - (b) the content of contingency plans,
  - (c) the approval of contingency plans by IPART,
  - (d) the implementation of contingency plans, including—
    - (i) processes for the transfer of customers to the last resort provider if there is a declared failure and the ways transferred customers are to be notified of the transfer, and
    - (ii) arrangements under which staff of the essential service provider assist the last resort provider to provide the essential service during a declared failure.
  - (e) the appointment of technical experts to prepare or test contingency plans,
  - (f) last resort readiness testing,
  - (g) the payment by the essential services provider of the reasonable costs of other persons, including, for example, the last resort provider or a technical expert, in connection with contingency planning and last resort readiness.
- (3) The following persons must, on written request given to the person by IPART or a person specified by the regulations for the purposes of this subsection, including, for example, a technical expert specified by the regulations, assist in the preparation and review of a contingency plan and the conduct of required exercises to test the operation of the contingency plan or a last resort readiness assessment—
  - (a) the owner of the essential infrastructure,
  - (b) an essential service provider,



- (c) the last resort provider.
- Maximum penalty—
- (a) for a corporation—2,500 penalty units, or
  - (b) for an individual—500 penalty units.

### **Division 3 Last resort events**

#### **56 Declaration of failure of essential service provider**

- (1) The Minister may, by order published in the Gazette, declare an essential service provider has failed if no other arrangement is in place for the continued provision of the service under this Act and the Minister is satisfied—
  - (a) the essential service provider has ceased or is about to cease providing an essential service, or
  - (b) an insolvency official has been appointed for the essential service provider or the whole or part of the property of the essential service provider, or
  - (c) an order has been made for the winding-up of the essential service provider or a resolution has been passed for the winding-up of the essential service provider, or
  - (d) other criteria specified in the regulations, if any, have been met.
- (2) The order must specify the following—
  - (a) the scheme affected by the failure,
  - (b) the reason for the declaration,
  - (c) the essential service provider who is declared to have failed (the *failed licensee*),
  - (d) the last resort provider who is to replace the failed licensee for the provision of the essential service,
  - (e) the date, or the way of fixing the date, that is to be the transfer date of the failure, which must not be a date before the date of publication of the order.
- (3) A single order may relate to more than one essential service and, if it does, this Division applies separately to each essential service to which the order relates.
- (4) The Minister must ensure a copy of the order is given to—
  - (a) the failed licensee, and
  - (b) the last resort provider, and
  - (c) other providers or last resort providers of the essential service.
- (5) The Minister must ensure the order is made available on IPART's website.

#### **56A Effect of declaration of failure**

- (1) On the transfer date of a declared failure, despite the other provisions of this Act—
  - (a) the licence of the failed licensee, if then in force, becomes subject to a condition prohibiting the licensee from providing the essential service under the licence, and
  - (b) if the last resort provider is a public water utility—the utility is taken to have been assigned the function of providing the essential service previously provided by the failed licensee.

- (2) If the last resort provider is a public water utility, the utility is, for the duration of a declared failure, to be regarded as the licensed operator or licensed retailer, as the case requires, of the essential service for the purposes of this Act and bound by the relevant licence and approval conditions imposed under this Act or the regulations, other than conditions specified by IPART by written notice given to the last resort provider.
- (3) The Minister may, on application by a last resort provider that is a public water utility, exempt the last resort provider from specified licence and approval conditions referred to in subsection (2).
- (4) An agreement between the failed licensee and a person other than the last resort provider, whether entered into before or after the declaration of a failure, is of no effect to the extent that it provides for a person other than the last resort provider to be, at any time during a declared failure—
  - (a) if the last resort provider operates the essential infrastructure—the registered operator of the essential infrastructure, or
  - (b) if the last resort provider sells the essential service—the registered retailer of the essential service.

**56B Provision of essential service by last resort provider**

- (1) The last resort provider must, for the duration of a declared failure, provide the essential service and, for that purpose, may have access to infrastructure and customer data systems and other property as reasonably required.
- (2) During a declared failure, the failed licensee and last resort provider or other providers of the essential service must—
  - (a) facilitate the provision of the essential service by the last resort provider, and
  - (b) take action as required by the approved contingency plan or the regulations, and
  - (c) comply with reasonable directions given by the last resort provider in providing the essential service.
- (3) To avoid doubt—
  - (a) the failed licensee must enable the last resort provider to access customer information, including personal information under the *Privacy and Personal Information Protection Act 1998* and health information under the *Health Records and Information Privacy Act 2002*, in connection with the provision of the essential service, and
  - (b) the provision of the essential service includes exercising a right of the licensee under an easement or right of way relating to the essential service as if the last resort provider were the failed licensee.
- (4) A person must not obstruct the last resort provider's access to property, or the provision of the essential service by the last resort provider, during a declared failure.  
Maximum penalty—
  - (a) for a corporation—2,500 penalty units, or
  - (b) for an individual—500 penalty units.

**56C Relationship between last resort provider and regulated scheme customers during failure**

- (1) This section applies to a last resort provider that, following the declaration of a failure—
  - (a) operates essential infrastructure that connects a regulated scheme to a customer's premises, or
  - (b) is a retailer of the essential service.
- (2) On the transfer date of a declared failure, each person who was a customer of the failed licensee for the essential service immediately before the transfer date ceases to be a customer of the failed licensee and becomes a customer of the last resort provider of the essential service (a *transferred customer*).
- (3) Rights and obligations that have accrued under a contract between the failed licensee and a transferred customer before the transfer date are not affected and no early termination charge becomes payable.
- (4) Part 5, Division 1AA applies to transferred and new customers of a last resort provider, subject to the following modifications—
  - (a) a reference to terms and conditions set out in the regulations is to be read as a reference to the last resort contract conditions,
  - (b) a reference to standard contract charges is to be read as a reference to the last resort contract charges,
  - (c) the last resort contract charges may not be increased as referred to in that Division.
- (5) This section applies to a last resort provider that is a public water utility despite the provisions of the utility's Act and despite the *Independent Pricing and Regulatory Tribunal Act 1992*.

- (6) In this section—

***last resort contract charges*** means a transfer fee not exceeding an amount determined by the Minister on the recommendation of IPART, and the standard contract charges within the meaning of Part 5, Division 1AA of the failed licensee.

**Note.** For certain public water utilities, the standard contract charges of the utility are subject to a maximum price determined by IPART, which may be varied from time to time.

***last resort contract conditions*** means—

- (a) the terms and conditions that would have applied if the service were provided by the failed licensee, or
- (b) if, for a last resort provider that is a public water utility, the contingency plan identifies terms and conditions as standard contract conditions of the utility—the standard contract conditions of the utility as identified in the contingency plan.

**56D Relationship between last resort provider and others during failure**

- (1) On and from the transfer date of a declared failure, the last resort provider is to be taken to be a party, in substitution for the failed licensee, to the agreement necessary for the provision of the essential service between the failed licensee and another licensee or a public water utility, as in force immediately before the transfer date, subject to the regulations and modifications agreed between the parties, if any.

- (2) If the last resort provider proposes a modification to an agreement referred to in this section on the basis that the modification is reasonably necessary for the efficient provision of the essential service by the provider, including a modification relating to a payment to be made by the provider, the other party to the agreement must not unreasonably withhold agreement to the modification.
- (3) A dispute between the last resort provider and another person as to the application of subsection (1) or (2) is subject to arbitration under the *Commercial Arbitration Act 2010*.

**56E Immunity from liability for last resort providers**

- (1) A last resort provider assumes no financial or other liability of a failed licensee that accrued before the transfer date.
- (2) A last resort provider is not liable for loss, damage or injury arising from the following, except to the extent to which the loss, damage or injury arises as a consequence of the negligence of the last resort provider—
  - (a) an act or omission of the failed licensee, or
  - (b) the condition of the essential infrastructure.

**56F Cost recovery scheme**

- (1) If a declared failure occurs, the Minister may, on the application of the last resort provider and subject to the regulations—
  - (a) direct IPART to assess the reasonable costs and expenses of the last resort provider, as known or reasonably able to be estimated at the date of the application, arising from—
    - (i) dealing with or remedying an act or omission of the failed licensee or the condition of the essential infrastructure, or
    - (ii) providing the essential service as a last resort provider, and
  - (b) provide, by order published in the Gazette, for a cost recovery scheme as set out in this section or as otherwise prescribed by the regulations.
- (2) More than one application may be made under this section and a cost recovery scheme may be provided for progressively during and after the declared failure.
- (3) Subject to the regulations, a cost recovery scheme may provide as follows—
  - (a) for the recovery of the whole or a part of the amount assessed from the failed licensee or a related corporation of the failed licensee,
  - (b) in circumstances in which it is unlikely the whole of the amount assessed is able to be recovered from the failed licensee or a related corporation of the failed licensee—
    - (i) for the recovery of outstanding amounts through an industry contribution scheme, or
    - (ii) with the consent of the Treasurer, for the payment of outstanding amounts from the Consolidated Fund.
- (4) If a cost recovery scheme provides for the recovery of an amount from a person, the amount may be recovered in a court of competent jurisdiction as a debt owed to the Crown according to the terms of the scheme.
- (5) If a cost recovery scheme provides for an industry contribution scheme, the following provisions apply, subject to the regulations—

- (a) the scheme may provide for the Minister to require, as the Minister considers just and reasonable in the circumstances, contributions to be made to IPART, for payment to the last resort provider, by licensees, the owner of the essential infrastructure or a public water utility,
  - (b) the Minister must—
    - (i) give written notice of the proposed scheme to each proposed contributor specifying how the contributors have been selected and the amount of the contributions calculated, and
    - (ii) allow the proposed contributors at least 28 days within which to make submissions to the Minister about the proposed scheme,
  - (c) contributions are to be imposed by written notice to the contributor,
  - (d) if IPART determines a maximum price for a water or sewerage service provided by a public water utility required to make a contribution—the requirement to make the contribution is to be treated for the purposes of the *Independent Pricing and Regulatory Tribunal Act 1992*, section 16A as a requirement with which the utility must comply in providing the service.
- (6) If a cost recovery scheme provides for the payment of an amount from the Consolidated Fund, the Consolidated Fund is appropriated to the extent necessary to pay the amount concerned and the amount paid from the Consolidated Fund may be recovered from the failed licensee or a related corporation of the failed licensee by the Minister as a debt for payment into the Consolidated Fund.
- (7) In this section—  
*last resort contract charges* has the same meaning as in section 56C.

**56G Obligations and rights of insolvency official**

- (1) If an insolvency official has been appointed for an essential service provider or owner of the essential infrastructure, or the whole or part of the property of the essential service provider or owner, the following provisions apply—
- (a) the insolvency official must take all reasonable steps to facilitate compliance with the conditions of the operational approval for the essential infrastructure and continuity of the provision of the essential service,
  - (b) a document required to be given to the provider or owner under this Division must also be given to the insolvency official,
  - (c) an invitation to make submissions extended to the provider or owner under this Division must also be extended to the insolvency official,
  - (d) the requirements imposed under this Division on the provider or owner are, subject to necessary modifications, also imposed on the insolvency official, and, in particular, during a declared failure, the insolvency official must—
    - (i) facilitate the provision of the essential service by the last resort provider, and
    - (ii) take action as required by the approved contingency plan or the regulations, and
    - (iii) comply with reasonable directions given by the last resort provider in providing the essential service,

- (e) the insolvency official must comply with directions of the Minister designed to ensure compliance with the obligations of the insolvency official under paragraph (a) or (d).
- (2) An insolvency official to whom directions are given under this section incurs no liability for loss, damage or injury arising out of compliance with the directions except to the extent to which the loss, damage or injury arises as a consequence of the negligence of the insolvency official.

#### **Division 4 Review of failure and resolution**

##### **57 Review of failure by IPART**

- (1) IPART must, at least once in each 6 months, review a declared failure with a view to making recommendations to the Minister about how the failure may be resolved as quickly as possible.
- (2) In conducting a review, IPART must invite submissions from—
  - (a) the last resort provider, and
  - (b) the failed licensee, and
  - (c) the last resort provider or other providers of the essential service.
- (3) The Minister must consider, but is not bound to accept, IPART's recommendations and may seek further advice from IPART on the resolution of the failure.

##### **57A Resolution of failure by acquisition by public water utility**

- (1) If the Minister is satisfied a declared failure should be resolved by a public water utility providing a water or sewerage service under the utility's Act to replace the provision of the essential service under this Act on a permanent basis, the Minister may, by order published in the Gazette, declare that this section applies to the declared failure.
- (2) If this section is declared to apply—
  - (a) the statutory power of the utility to acquire land by negotiation or compulsorily, if any, is to be read as extending to a power to acquire essential infrastructure and land for the purposes of the declaration, and
  - (b) the statutory power to acquire land and the *Land Acquisition (Just Terms Compensation) Act 1991* are to be read subject to the modification that a reference to land includes a reference to essential infrastructure and subject to other modifications prescribed by the regulations.

##### **57B Declaration of end of failure**

- (1) The Minister may, by order published in the Gazette, declare the end of the failure if—
  - (a) arrangements are in place for the essential service subject to a declared failure to be provided by another licensee in place of the last resort provider, or
  - (b) the essential service subject to a declared failure is no longer to be provided under this Act, or
  - (c) the Minister is satisfied the failure has otherwise been resolved or is about to otherwise be resolved.
- (2) The order must specify the following—

- (a) the essential service for which the failure is at an end,
  - (b) if the service is to continue to be provided under this Act—
    - (i) the last resort provider who is to be replaced, and
    - (ii) the licensee who is to replace the last resort provider (the *new licensee*),
  - (c) if the service is to be replaced by a service provided under a public water utility's Act—the replacement service and the public water utility that is to provide it,
  - (d) the date, or the way of fixing the date, that is to be the end date of the failure, which must not be a date before the date of publication of the order.
- (3) A single order may relate to more than one essential service and, if it does, this Division applies separately to each essential service to which the order relates.
- (4) The end date must not be earlier than 6 months after the transfer date unless the last resort provider consents to an earlier end date.
- (5) In fixing the end date, the Minister must consider the extent to which the last resort provider has been able, or is expected to be able, to recover its costs and expenses from the failed licensee, the registered operator of the operational approval for the essential infrastructure, customers of the essential service or otherwise.
- (6) The Minister must ensure that a copy of the declaration is given to—
- (a) the registered operator of the operational approval for the essential infrastructure, and
  - (b) the last resort provider, and
  - (c) the new licensee, and
  - (d) the failed licensee, and
  - (e) the last resort provider or other providers of the essential service.
- (7) The Minister must ensure the order is made available on IPART's website.

**57C Effect of end of failure**

- (1) On the end date of a declared failure—
- (a) if the last resort provider is a public water utility—the utility ceases to have the function of providing the essential service under this Act, and
  - (b) if the last resort provider is a licensee—the licensee is taken to have notified IPART that the licensee has ceased to provide the essential service as required under Part 2, Division 4, and
  - (c) if the essential service is to continue to be provided under this Act in circumstances in which section 56C applied to the last resort provider—
    - (i) each person who was a customer of the last resort provider for the essential service immediately before the end date ceases to be a customer of the last resort provider and becomes a customer of the new licensee for the essential service, and
    - (ii) the contract for the essential service taken to have been entered into with the last resort provider under Part 5, Division 1AA (the *deemed contract*) as modified by this Division ceases and is taken to have been entered into with the new licensee under Part 5, Division 1AA, and

- (iii) the modifications of the deemed contract expressly agreed between the last resort provider and a customer, if any, continue to apply as if they had been agreed under Part 5, Division 1AA between the new licensee and the customer, subject to further modification by express agreement under that Division, and
- (d) if the essential service is to be replaced by a service provided under a public water utility's Act and section 56C applied to the last resort provider—
  - (i) each person who was a customer of the last resort provider for the essential service immediately before the end date ceases to be a customer of the last resort provider under this Act and becomes a customer of the public water utility for the replacement service under the utility's Act, and
  - (ii) the contract for the service taken to have been entered into under Part 5, Division 1AA (the *deemed contract*) as modified by this Division ceases and is instead taken to have been entered into under the public water utility's Act, and
  - (iii) the modifications of the deemed contract expressly agreed between the last resort provider and a customer, if any, continue to apply as if they had been agreed under the public water utility's Act, subject to further modification by express agreement under that Act.
- (2) Rights and obligations accrued under a contract between the last resort provider and a customer before the end date are not affected and no early termination charge becomes payable.
- (3) The last resort provider, the registered operator of the essential infrastructure and other provider, if any, or last resort provider of the essential service must—
  - (a) facilitate the provision of the essential service by the new licensee or the provision of the service to replace the essential service by a public water utility, and
  - (b) take action as required by the approved contingency plan or the regulations.

## **Division 5      General**

### **57D   Applications**

- (1) An application under this Part—
  - (a) must be made in the way approved by the Minister, and
  - (b) must comply with requirements set out in the regulations, and
  - (c) must be accompanied by the fee determined by the Minister, and
  - (d) must be lodged at the office of IPART.
- (2) The Minister or IPART may, by written notice to an applicant, require the applicant—
  - (a) to give the Minister or IPART additional information reasonably required to decide the application, or
  - (b) to have information in the application or additional information verified in a specified way.



**57E Confidentiality requirement**

A last resort provider or new licensee must not use or disclose confidential or commercially sensitive information obtained under this Division other than for the purpose for which it is given unless—

- (a) the use or disclosure is authorised by the person to whom the information belongs, or
- (b) the last resort provider or new licensee is required by law to disclose the information.

**57F Enforcement**

- (1) A public water utility is under a statutory duty to comply with requirements imposed on it under this Part.
- (2) It is a condition of a licence that the licensee must comply with requirements imposed on it under this Part.
- (3) It is a condition of an operational approval that the registered operator must comply with requirements imposed on it under this Part.

**[21] Part 6 Work relating to water industry infrastructure**

Omit each term or expression set out in Column 1 below wherever occurring in Part 6, Division 1.

Insert instead the term or expression set out opposite in Column 2—

<b>Column 1</b>	<b>Column 2</b>
licensed network operator	registered operator
licensed network operator's	registered operator's
The network operator	The registered operator
the network operator	the registered operator
the network operator's	the registered operator's

**[22] Part 6, Division 1AA**

Insert before Division 1—

**Division 1AA Preliminary**

**58 Definition**

In this Part—

*authorised agent* of a registered operator means a person appointed by the registered operator under section 65F.

**[23] Section 58A**

Renumber section 58 (Erection and placement of water industry infrastructure) as section 58A.

**[24] Section 58A (as renumbered by this Schedule)**

Omit section 58A(1) and (2). Insert instead—

- (1) This section applies to work connected with the construction, maintenance or removal of water industry infrastructure that forms part of a scheme in or under a public road or public reserve.
- (2) For the purposes of this Act, a registered operator may carry out work to which this section applies.

**[25] Section 58A(3A)–(3C)**

Insert after section 58A(3), as renumbered by this Schedule—

- (3A) The local council or roads authority may require the registered operator to comply with conditions in exercising its powers under this section, including conditions about the location of the infrastructure, the timing of work and the restoration of the area concerned.
- (3B) If a public road or public reserve is damaged by a malfunction of infrastructure of the registered operator, the local council or roads authority may require the registered operator to make good the damage without delay.
- (3C) If the registered operator fails to comply with a condition under subsection (3A) or a requirement under subsection (3B), the person affected by the failure may remedy it and recover the cost of doing so as a debt owed to the person by the registered operator.

**[26] Section 64 Ownership of water industry infrastructure**

Insert “, or on whose behalf it is constructed or installed,” after “constructs or installs it” in section 64(1).

**[27] Section 64(2)**

Omit the subsection.

**[28] Section 65 Meter readers**

Omit “licensed retail supplier” and “retail supplier” wherever occurring in section 65(1), (2)(b) and (d) and (3)(a) and (b).

Insert instead “registered retailer”.

**[29] Section 65(4)**

Omit the penalty provision. Insert instead—  
Maximum penalty—20 penalty units.

**[30] Part 6, Division 2, heading**

Omit the heading. Insert instead—

**Division 2 Powers of entry of registered operators**

**[31] Section 65A Interpretation**

Omit the section.

**[32] Section 65B Entry of land**

Omit “An authorised licensed network operator” from section 65B(1).

Insert instead “A registered operator”.

**[33] Section 65B(1)(b1)**

Insert after section 65B(1)(b)—

- (b1) to carry out work to remove or replace part of its water industry infrastructure,

**[34] Section 65B(1)(d)**

Insert after section 65B(1)(c)—

- (d) to carry out an inspection of, or repair or maintenance work on, a customer's infrastructure, but only if there are reasonable grounds to believe the customer's infrastructure is having or will have a negative impact on the registered operator's capacity to operate its water industry infrastructure in a way that protects public health and safety and the environment.

**[35] Section 65C Notice of entry**

Omit "an authorised licensed network operator" from section 65C(1).

Insert instead "a registered operator".

**[36] Section 65C(1) and (3)(b)**

Omit "the authorised licensed network operator" wherever occurring.

Insert instead "the registered operator".

**[37] Section 65D Use of force**

Omit "authorised licensed network operator" from section 65D(1).

Insert instead "registered operator".

**[38] Section 65E Compensation**

Omit "An authorised licensed network operator" from section 65E(1).

Insert instead "A registered operator".

**[39] Section 65F Certificates of authority to enter land**

Omit "An authorised licensed network operator" from section 65F(1).

Insert instead "A registered operator".

**[40] Section 65F(1), (2) and (3)**

Omit "the authorised licensed network operator" wherever occurring.

Insert instead "the registered operator".

**[41] Section 65F(3)(e1)**

Insert after section 65F(3)(e)—

- (e1) must specify the area of operations, or part of an area of operations, to which the power extends, and

**[42] Section 65F(3)(f)(ii)**

Omit "that operator" wherever occurring.

Insert instead "that registered operator".

**[43] Section 65F(4)**

Omit “an authorised licensed network operator” and “the operator” wherever occurring.  
Insert instead “a registered operator” and “the registered operator”, respectively.

**[44] Section 65H Warrants of entry**

Omit “An authorised licensed network operator” from section 65H(1).  
Insert instead “A registered operator”.

**[45] Section 65H(1) and (2)**

Omit “the authorised licensed network operator” wherever occurring.  
Insert instead “the registered operator”.

**[46] Section 65I Other powers of entry unaffected**

Omit “a licensed network operator”.  
Insert instead “a registered operator”.

**[47] Section 66A**

Insert before section 66—

**66A On-selling drinking water services**

- (1) A person, other than a public water utility, must not on-sell a drinking water service to another person, unless—
  - (a) the person also supplies a sewerage service to the other person, and
  - (b) both services are the subject of a single contract between the person and the other person.Maximum penalty—
  - (a) for a corporation—2,500 penalty units, or
  - (b) for an individual—500 penalty units.
- (2) In this section, *on-sell a drinking water service* means to sell a drinking water service where the drinking water—
  - (a) is obtained from a public water utility, and
  - (b) is provided using water industry infrastructure.

**[48] Sections 66 and 67**

Omit “a licensed network operator’s water industry infrastructure” wherever occurring.  
Insert instead “water industry infrastructure that forms part of a scheme”.

**[49] Sections 66–70**

Omit “the network operator” wherever occurring. Insert instead “the registered operator of the scheme”.

**[50] Section 66 Exposure of underground pipes**

Omit the penalty provision. Insert instead—  
Maximum penalty—

- (a) for a corporation—200 penalty units, or
- (b) for an individual—35 penalty units.

**[51] Sections 67–70**

Omit the penalty provision wherever occurring. Insert instead—

Maximum penalty—

- (a) for a corporation—2,500 penalty units, or
- (b) for an individual—500 penalty units.

**[52] Sections 68–70**

Omit “licensed network operator’s water main or sewer main” wherever occurring.

Insert instead “water main or sewer main that forms part of a scheme”.

**[53] Sections 71 and 72**

Omit the sections. Insert instead—

**71 Offence to discharge into drains and sewers**

- (1) A person must not, directly or indirectly, discharge a substance into a stormwater drain or sewer main that forms part of a scheme except—
  - (a) with the written permission of the registered operator of the scheme or, if the stormwater drain or sewer main is part of a regulated scheme, the registered retailer of the sewerage service, or
  - (b) under a contract or arrangement with the registered operator of the scheme or, if the stormwater drain or sewer main is part of a regulated scheme, the registered retailer of the sewerage service.

Maximum penalty—

- (a) for a corporation—2,500 penalty units, or
- (b) for an individual—500 penalty units.

- (2) In this section, a contract with a registered operator of a scheme includes a deemed customer contract.

**72 Unauthorised use of water**

- (1) A person must not take, waste, divert, consume or use water conveyed by water industry infrastructure that forms part of a scheme except—
  - (a) with the written permission of the registered operator of the scheme or, if the stormwater drain or sewer main is part of a regulated scheme, the registered retailer of the sewerage service, or
  - (b) under a contract or arrangement with the registered operator of the scheme or, if the stormwater drain or sewer main is part of a regulated scheme, the registered retailer of the sewerage service.

Maximum penalty—

- (a) for a corporation—2,500 penalty units, or
- (b) for an individual—500 penalty units.

- (2) In this section, a contract with a registered operator of a scheme includes a deemed customer contract.

**[54] Section 73 Unlicensed plumbing and drainage work**

Omit section 73(1) and (2). Insert instead—

- (1) A person must not do any kind of plumbing or drainage work on infrastructure that is connected or is intended to be connected, whether directly or indirectly, to a water main or sewer main that forms part of a scheme, unless the person—
  - (a) holds an endorsed contractor licence or a supervisor certificate in force under the *Home Building Act 1989* authorising the holder to do that kind of work, or
  - (b) does the work under the immediate supervision of the holder of a licence or certificate referred to in paragraph (a), or
  - (c) holds a tradesperson certificate in force under the *Home Building Act 1989* authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).Maximum penalty—
  - (a) for a corporation—2,500 penalty units, or
  - (b) for an individual—500 penalty units.
- (2) The regulations may make provision for or about plumbing work or drainage work, including the standards for and supervision of plumbing work or drainage work and the grant of permission by a registered operator for the performance of plumbing work or drainage work.

**[55] Sections 73A–73E**

Insert after section 73—

**73A Actions that prevent continuing operation of water industry infrastructure**

- (1) An owner of water industry infrastructure to which Part 2 applies, or an owner of premises on which that water industry infrastructure is located, must not take action to prevent the continuing operation of the infrastructure, including action to prevent a registered operator or last resort provider accessing or operating the infrastructure.  
Maximum penalty—18,000 penalty units.
- (2) Subsection (1) does not apply to prevent the substitution of a registered operator under section 89C.

**73B Obstruction of auditor or technical expert**

A person must not obstruct or hinder an auditor or technical expert in the exercise of the auditor or technical expert's functions under this Act or the regulations.

Maximum penalty—

- (a) 22,500 penalty units for a corporation, or
- (b) 5,000 penalty units for an individual.

**73C Provision of false or misleading information to auditor**

- (1) A person must not, in connection with an audit, provide information to an auditor that the person knows to be false or misleading in a material particular.  
Maximum penalty—
  - (a) 22,500 penalty units for a corporation, or
  - (b) 5,000 penalty units for an individual.
- (2) In this section—

*auditor* includes an individual who is an identified individual for the conduct of audits by an auditor.

**73D Provision of false or misleading information to Minister or IPART**

A person must not, for the purposes of this Act, give to the following persons or bodies, whether orally or in writing, information or a document that the person knows to be false or misleading in a material particular, unless the person informs the person or body of that fact—

- (a) the Minister,
- (b) IPART,
- (c) an inspector.

Maximum penalty—

- (a) 22,500 penalty units for a corporation, or
- (b) 5,000 penalty units for an individual.

**73E Victimization**

A person must not take an action that detrimentally affects the employment of another person, or threaten to do so, because that other person has assisted IPART, the Minister, an auditor or inspector in the performance of auditing or regulatory functions or in an investigation under this Act.

Maximum penalty—

- (a) for a corporation—2,500 penalty units, or
- (b) for an individual—500 penalty units.

**[56] Part 7, Division 2 Powers of inspectors**

Omit the Division.

**[57] Section 82 Penalty notices**

Insert “IPART or” before “the Minister” in section 82(6).

**[58] Sections 82A and 82B**

Insert after section 82—

**82A Provision of information, records and answering questions—  
self-incrimination**

- (1) A person is not guilty of an offence of failing to comply with a requirement under this Act to provide information or records or to answer a question unless the person was warned on the occasion that a failure to comply is an offence.
- (2) A person is not excused from a requirement under this Act to provide information or records or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) However, information provided or answer given by a natural person in compliance with a requirement under this Act is not admissible in evidence against the person in criminal proceedings, except proceedings for an offence against section 73C or 73D, if—
  - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or

- (b) the person was not warned on that occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.
- (4) A record provided by a person in compliance with a requirement under this Act is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) Further information obtained as a result of information or a record provided or of an answer given in compliance with a requirement under this Act is not inadmissible on the ground—
  - (a) that the information or records had to be provided or the answer had to be given, or
  - (b) that the information or record provided or answer given might incriminate the person.
- (6) This section extends to a requirement under this Act to state a person's name and address.

**82B Increase in penalties if operation of infrastructure causes harm to public health or safety**

- (1) The maximum penalty for an offence against this Act is increased as provided by this section if the prosecution proves—
  - (a) the water industry infrastructure to which Part 2 applies was operated in contravention of a provision of this Act, and
  - (b) the operation of the infrastructure involved an act or omission that caused, directly or indirectly, actual or potential harm to the health or safety of human beings, and
  - (c) the act or omission was intentional or negligent.
- (2) The maximum penalty for the offence is increased—
  - (a) for a corporation—to a penalty not exceeding 45,500 penalty units if the act or omission was intentional or 27,500 penalty units if the act or omission was negligent, or
  - (b) for an individual—to a penalty not exceeding 9,000 penalty units if the act or omission was intentional or 5,500 penalty units if the act or omission was negligent.
- (3) A court must not impose a penalty for an offence on the basis of this section unless the process by which the proceedings are commenced specifies—
  - (a) the factors mentioned in subsection (1) apply to the commission of the offence, and
  - (b) whether the act or omission is alleged to have been intentional or negligent.

**[59] Section 83 Court may order disconnection and discontinuance of water supply**

Omit “of the licensed network operator” from section 83(1)(a).

**[60] Section 84 Court may order payment for stolen water**

Omit “licensed network operator or licensed retail supplier” from section 84(1).

Insert instead “registered operator or registered retailer”.



**[61] Section 84(2)(a)**

Omit “network operator or retail supplier”.

Insert instead “registered operator or registered retailer”.

**[62] Part 7A**

Insert after Part 7—

## **Part 7A Enforcement**

### **Division 1 Preliminary**

#### **84A Purposes for which functions may be exercised**

Functions may be exercised under this Part only for 1 or more of the following purposes—

- (a) for determining whether there has been compliance with or a contravention of this Act or the regulations or an access undertaking, access agreement, licence, approval, notice or requirement under this Act or the regulations,
- (b) for obtaining information or records for purposes connected with the administration of this Act or the regulations,
- (c) generally for administering this Act or the regulations.

#### **84B Appointment of inspectors**

- (1) The following may appoint inspectors, either for the purposes of this Act and the regulations generally or for the purposes of specified provisions of this Act or the regulations—
  - (a) the Minister,
  - (b) IPART.
- (2) The appointment of a person as an inspector can be made subject to conditions, including conditions that limit the circumstances in which and the offences for which the functions of the inspector can be exercised, and the functions of the person as an inspector are subject to the conditions.

### **Division 2 Information and records**

#### **84C Application of Division**

This Division applies whether or not a power of entry under Division 3 is being or has been exercised.

#### **84D Powers to require information and records**

- (1) The Minister may, by written notice given to a person, require the person to provide to the Minister the information or records, or both, that the Minister may require.
- (2) IPART may, by written notice given to a person, require the person to provide to IPART the information or records, or both, that IPART may require.
- (3) An inspector may, by written notice given to a person, require the person to provide to the inspector the information or records, or both, that the inspector may require.

- (4) A notice under this Division must specify the way in which information or records are required to be provided and a reasonable time by which the information or records are required to be provided.
- (5) A notice under this Division may only require a person to provide existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (6) The person to whom a record is provided under this Division may take copies of it.
- (7) If a record required to be provided under this Division is in electronic, mechanical or other form, the notice may require the record to be provided in written form.

**84E Power to require answers to questions**

- (1) If an inspector suspects on reasonable grounds that a person knows of matters and the inspector reasonably requires information about the matters, the inspector may require the person to answer questions about the matters.
- (2) The Minister or IPART may, by written notice, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions from an inspector appointed by the Minister or IPART, as the case requires, under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.
- (4) An inspector may, by written notice, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required to enable the questions to be properly put and answered.
- (5) The place and time at which a person may be required to attend under subsection (4) is to be—
  - (a) a place or time nominated by the person, or
  - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the inspector that is reasonable in the circumstances.
- (6) The inspector may, in the notice under subsection (4) or in a subsequent notice, authorise the person to answer the questions using an audio link or audio visual link of a kind approved by the inspector.
- (7) If the questions are to be answered by the person using an audio link or audio visual link—
  - (a) the place at which the person is required to attend is taken to be a place having adequate facilities for the answering of questions in that way at the time nominated under subsection (5), and
  - (b) the person must ensure the audio link or audio visual link is operated appropriately so the answers given to the questions are clear to the inspector.
- (8) In this section—

**audio link** means technology that enables continuous and contemporaneous audio communication between persons at different places, including telephones.

*audio visual link* means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.

**84F Recording of evidence**

- (1) An inspector may cause questions and answers to questions given under this Division to be recorded if the inspector has informed the person who is to be questioned that the record is to be made.
- (2) A record may be made using sound recording apparatus or audio visual apparatus, or another method determined by the inspector.
- (3) A copy of a record made under this section must be provided by the inspector to the person who is questioned as soon as practicable after it is made.
- (4) A record may be made under this section despite the provisions of another law.

**84G Power of inspector to demand name and address**

- (1) An inspector may require a person whom the inspector suspects on reasonable grounds to have committed, or to be committing, an offence against this Act or the regulations to state his or her full name and residential address.
- (2) An inspector may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence to fail to comply with the request.
- (3) A person may, without another warrant than this Act be apprehended by the inspector and taken before a Magistrate or court officer to be dealt with according to law, if the person, after being required to do so under this section—
  - (a) refuses to state his or her name or residential address, or
  - (b) states a name or residential address that in the opinion of the inspector is false,
- (4) A Magistrate or court officer before whom a person is taken under this section may make a bail decision under the *Bail Act 2013* about the person.
- (5) If the person has not been charged with an offence, the *Bail Act 2013* applies as if the person were accused of an offence.
- (6) For the purpose of applying the *Bail Act 2013*, a court officer has the same functions as an authorised justice under that Act.
- (7) In this section—

*court officer* means an authorised officer under the *Criminal Procedure Act 1986*.

**Division 3 Entry and search of land**

**84H Powers of inspector to enter land**

- (1) An inspector may enter land at a reasonable time.
- (2) A power to enter land conferred by this Act authorises entry by foot, by vehicle, vessel or aircraft or by another means.
- (3) Entry may be effected under this Act by an inspector with the aid of police officers as the inspector considers necessary and with the use of reasonable force.

- (4) Entry may be effected to land with the authority of a search warrant under this Division.

**84I Entry into residential land only with permission or warrant**

This Division does not empower an inspector to enter a part of land used only for residential purposes without the permission of the occupier or the authority of a search warrant under this Division.

**84J Powers of inspector to do things on land**

- (1) An inspector may, on land lawfully entered, do anything that in the opinion of the inspector is necessary to be done for the purposes of this Part, including but not limited to the things specified in subsection (2).
- (2) An inspector may do 1 or more of the following—
- (a) examine and inspect works,
  - (b) take and remove samples,
  - (c) make examinations, inquiries and tests that the inspector considers necessary,
  - (d) take photographs, films, audio, video and other recordings that the inspector considers necessary,
  - (e) require records to be produced for inspection,
  - (f) examine and inspect records,
  - (g) copy records,
  - (h) seize anything that the inspector has reasonable grounds for believing is connected with an offence against this Act or the regulations,
  - (i) for the purposes of paragraph (h), direct the occupier of the land where the thing is seized to keep it on that land or at another place under the control of the occupier,
  - (j) other things that the inspector is empowered to do under this Part.
- (3) The power to seize anything connected with an offence includes a power to seize—
- (a) a thing to which the commission of the offence relates, and
  - (b) a thing that will afford evidence of the commission of the offence, and
  - (c) a thing that was used for the purpose of committing the offence.
- (4) In this section, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

**84K Search warrants**

- (1) An inspector may apply to an authorised officer for the issue of a search warrant if the inspector believes on reasonable grounds that—
- (a) a provision of this Act or the regulations is being or has been contravened on land, or
  - (b) there is, on land, matter or a thing that is connected with an offence under this Act or the regulations.
- (2) An authorised officer to whom an application is made may, if satisfied there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant—

- (a) to enter the land, including premises or part of premises used for residential purposes, and
  - (b) to exercise a function of an inspector under this Division.
- (3) The *Law Enforcement (Powers and Responsibilities) Act 2002*, Part 5, Division 4 applies to a search warrant issued under this section.

- (4) In this section—

**authorised officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**matter or a thing** connected with an offence means—

- (a) a matter or a thing to which the commission of the offence relates, or
- (b) a matter or a thing that will afford evidence of the commission of an offence, or
- (c) a matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.

**offence** includes an offence that there are reasonable grounds for believing has been, or is to be, committed.

**84L Inspector may request assistance**

A person may accompany an inspector and take all reasonable steps to assist an inspector in the exercise of the inspector's functions under this Division if the inspector is of the opinion that the person is capable of providing assistance to the inspector in the exercise of the functions.

**84M Assistance to be given to inspector**

- (1) The Minister or IPART may, by written notice given to the owner or occupier of land, require the owner or occupier to provide the reasonable assistance and facilities specified in the notice within a specified time and in a specified way for the purpose of enabling an inspector appointed by the Minister or IPART, as the case requires, to exercise the functions of an inspector under this Division in connection with the land.
- (2) The regulations may prescribe the kinds of assistance and facilities that can be required under this section but the assistance and facilities that can be required under this section are not limited by the regulations.

**84N Care to be taken**

In the exercise of a function of entering or searching land under this Division, an inspector must do as little damage as possible.

**84O Compensation**

The Minister or IPART must compensate all interested parties for loss or damage caused by an inspector appointed by the Minister or IPART, as the case requires, in the exercise of a function under this Division, but not for loss or damage arising from the exercise of a function in the course of an inspection that reveals a contravention of this Act or the regulations by the person who suffers that loss or damage.

## **Division 4      General**

### **84P      Identification**

- (1) Every inspector is to be provided with evidence of his or her authority as an inspector.
- (2) When exercising the functions of an inspector, the inspector must, if requested to do so by a person affected by the exercise of an inspector's function, produce to the person the inspector's evidence of authority.

### **84Q      Offences**

- (1) A person must not, without lawful excuse, neglect or fail to comply with a requirement made of the person under this Part.
- (2) A person must not threaten, hinder, obstruct or delay an inspector in the exercise of the inspector's functions under this Part.
- (3) A person must not impersonate an inspector.  
Maximum penalty—
  - (a) for a corporation—22,500 penalty units, or
  - (b) for an individual—5,000 penalty units.

### **84R      Revocation or variation**

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (4) A notice may only be revoked or varied by the person or body who gave it.

### **[63]      Part 8, Division 1, heading**

Omit “**Licence auditing**”. Insert instead “**Auditing**”.

### **[64]      Sections 85 and 85A**

Omit section 85. Insert instead—

#### **85      Compliance functions**

- (1) IPART's functions under this Division are to monitor, including by way of audit, and to report to the Minister on the extent of, compliance by licensees with this Act, the regulations, approvals and licences and on the continued relevance and appropriateness of the arrangements for last resort providers.
- (2) Without limiting the way in which IPART carries out its functions, IPART is to conduct reviews of approvals and licences at intervals of not more than 5 years and at other times that the Minister may direct.
- (3) A report about a review under this section may include recommendations as to the variation or revocation of existing licences, including licence conditions, the imposition of new licence conditions or the variation or revocation of the arrangements for last resort providers.

**Note.** Section 7G enables IPART to impose conditions on an approval or vary or revoke the conditions of the approval, other than conditions imposed by this Act or the regulations.

**85A Compliance audits**

- (1) IPART may, at any time, require a compliance audit to be conducted.
- (2) It is a condition of each approval and licence that the registered operator and licensee, as applicable, (the *audit target*) must co-operate with and facilitate a compliance audit.
- (3) IPART is to give the audit target notice of the decision to require a compliance audit, unless the giving of notice would defeat the purpose of the audit.

**[65] Section 86 Recovery of IPART's costs**

Insert “and the schemes for which the licensee is registered” after “the licensee” in section 86(1).

**[66] Section 86(2)**

Omit “a licence”. Insert instead “an approval or licence”.

**[67] Section 87, heading**

Insert “**registered operators and**” after “**direct**”.

**[68] Section 87**

Omit “a licensee, require the licensee”.

Insert instead “the registered operator of an approval or a licensee, require the registered operator or licensee”.

**[69] Section 87(2)**

Insert at the end of section 87—

- (2) A person must not, without reasonable excuse, refuse or fail to comply with a notice under this section.  
Maximum penalty—
  - (a) for a corporation—2,500 penalty units, or
  - (b) for an individual—500 penalty units.

**[70] Section 88 Failure to keep records or furnish information**

Omit the section.

**[71] Section 89 Annual reports**

Omit section 89(1). Insert instead—

- (1) IPART must, on or before 31 October in each year, provide the Minister with a report on the performance of its functions under this Division during the preceding financial year, including—
  - (a) details of the outcome of each audit conducted during the preceding financial year, and
  - (b) the extent to which approval and licence conditions have been contravened during the preceding financial year.

**[72] Part 8, Division 1A**

Insert after Division 1—

## **Division 1A Register**

### **89A Register of approvals and licences**

IPART is to maintain a register of the following and make the register publicly available, free of charge, on IPART's website—

- (a) schemes and associated approvals,
- (b) licences,
- (c) registered operators,
- (d) registered retailers.

### **89B Information on register**

- (1) For each scheme, the register is to include the following information—
  - (a) a copy of the scheme approval and the date that it was granted or varied,
  - (b) a map showing the location or proposed location of the water industry infrastructure to which the approval applies (the *approved infrastructure*) and the area of operations,
  - (c) a copy of an operational approval that is in force for the approved infrastructure and the date the operational approval was granted,
  - (d) contact details for the registered operator and registered retailer, if any, for the scheme,
  - (e) a copy of a declaration under section 51 that applies to the scheme, if any,
  - (f) whether or not the infrastructure is essential infrastructure,
  - (g) a copy of a declaration under section 56 that affects water or sewerage services provided by means of the scheme, if any,
  - (h) contact details for the designated last resort provider, if applicable,
  - (i) for a scheme that is to be constructed in stages, a map showing the following—
    - (i) the location or proposed location of the water industry infrastructure to be constructed in each stage,
    - (ii) the part of the area of operations within which the water industry infrastructure is to be constructed in each stage,
    - (iii) the infrastructure that is operational and that part of the area of operations that is currently being serviced,
  - (j) whether there has been a determination of a pricing methodology under section 52 in relation to a water or sewerage service provided, or to be provided, by means of the scheme.
- (2) For each licence, the register is to include the following information—
  - (a) a copy of the licence and the date that it was granted or varied,
  - (b) contact details of the licensee,
  - (c) details of disciplinary actions taken against the licensee,
  - (d) if the licensee is required to be a member of an ombudsman scheme under Part 5, Division 1—details of the scheme.
- (3) For each licensee, the register is to include details of each scheme for which the licensee is the registered operator or registered retailer.
- (4) The register may include other information IPART considers appropriate.



**89C Substitution of registered operator**

- (1) The holder of an operator licence may apply to IPART to be registered as the registered operator for a specified scheme in the place of another registered operator if the water industry infrastructure is of a class that is authorised to be operated under the licence.
- (2) IPART may grant or refuse the application.
- (3) In determining an application, IPART must have regard to the following—
  - (a) the public interest,
  - (b) whether disciplinary action against the licensee is pending or, as a result of disciplinary action against the licensee, the licensee is prohibited from being registered as the registered operator under a further scheme approval,
  - (c) whether, in the reasonable suspicion of IPART, a statutory default within the meaning of Part 2, Division 6 has occurred within 2 years before the application was made and the applicant, or a related corporation of the applicant, is the alleged defaulter,
  - (d) whether the applicant, or a related corporation of the applicant, has failed to provide a service, or a connection to infrastructure, after granting a certificate of compliance relating to the service or infrastructure,
  - (e) whether disciplinary action against the existing registered operator is pending or, as a result of disciplinary action against the existing registered operator, the existing registered operator is prohibited from being registered as the registered operator under a scheme approval,
  - (f) whether, in the reasonable suspicion of IPART, a statutory default within the meaning of Part 2, Division 6 has occurred within 2 years before the application was made and the existing registered operator, or a related corporation of the existing registered operator, is the alleged defaulter,
  - (g) whether the existing registered operator, or a related corporation of the existing registered operator, has failed to provide a service, or a connection to infrastructure, after granting a certificate of compliance relating to the service or infrastructure.
- (4) Disciplinary action is pending from the time when notice is given to a person requiring the person to show cause why disciplinary action should not be taken against the person until—
  - (a) disciplinary action is taken against the person, or
  - (b) the decision is made that disciplinary action will not be taken against the person.
- (5) IPART must not grant an application under this section if the existing registered operator—
  - (a) satisfies IPART that it owns all the water industry infrastructure comprising the scheme to which the scheme approval relates, other than reticulation pipelines, and
  - (b) does not consent to the substitution.
- (6) IPART must not grant an application under this section if the scheme to which the scheme approval relates was constructed and in operation before the substitution of Part 2 by the *Water Industry Competition Amendment Act 2021*.

**89D Substitution of registered retailer**

- (1) The holder of a retailer licence may apply to IPART to be registered as the registered retailer for a specified scheme in the place of another registered retailer.
- (2) IPART may grant or refuse the application.
- (3) In determining an application, IPART must have regard to the following—
  - (a) whether disciplinary action against the licensee is pending or, as a result of disciplinary action against the licensee, the licensee is prohibited from being registered as the registered retailer under a further operational approval,
  - (b) whether, in the reasonable suspicion of IPART, a statutory default within the meaning of Part 2, Division 6 has occurred within 2 years before the application was made and the applicant, or a related corporation of the applicant, is the alleged defaulter,
  - (c) whether the applicant, or a related corporation of the applicant, has failed to provide a service, or a connection to infrastructure, after granting a certificate of compliance relating to the service or infrastructure,
  - (d) whether disciplinary action against the existing registered retailer is pending or, as a result of disciplinary action against the existing registered retailer, the existing registered retailer is prohibited from being registered as the registered retailer under a scheme approval,
  - (e) whether, in the reasonable suspicion of IPART, a statutory default within the meaning of Part 2, Division 6 has occurred within 2 years before the application was made and the existing registered retailer, or a related corporation of the existing registered retailer, is the alleged defaulter,
  - (f) whether the existing registered retailer, or a related corporation of the existing registered retailer, has failed to provide a service, or a connection to infrastructure, after granting a certificate of compliance relating to the service or infrastructure.
- (4) Disciplinary action is pending from the time when notice is given to a person requiring the person to show cause why disciplinary action should not be taken against the person until—
  - (a) disciplinary action is taken against the person, or
  - (b) the decision is made that disciplinary action will not be taken against the person.
- (5) IPART must not grant an application under this section if the existing registered retailer—
  - (a) satisfies IPART that it owns all the water industry infrastructure comprising the scheme to which the scheme approval relates, other than reticulation pipelines, and
  - (b) does not consent to the substitution.
- (6) IPART must not grant an application under this section if the scheme to which the operational approval relates was constructed and in operation before the substitution of Part 2 by the *Water Industry Competition Amendment Act 2021*.

**[73] Section 91A**

Insert after section 91—

**91A Advice to Minister**

- (1) IPART is to provide advice to the Minister on a matter concerning the operation or administration of this Act on which the Minister requests IPART's advice.
- (2) IPART may request the Minister to refer a matter concerning the operation or administration of this Act to it for its advice.

**[74] Sections 93A and 93B**

Insert after section 93—

**93A Extension of application of Parts 6 and 7 to declared operators**

- (1) IPART may, by order published on IPART's website, declare a person who is an owner or operator of water industry infrastructure to which Part 2 does not apply to be a declared operator in relation to that infrastructure (*declared operator*).
- (2) A declaration under this section must specify—
  - (a) the name of the declared operator, and
  - (b) the water industry infrastructure subject to the declaration, and
  - (c) the provisions of Parts 6 and 7 that are to apply, with or without specified modification, to the declared operator as if the declared operator were the registered operator of a scheme.
- (3) IPART is to maintain a public register of declarations made under this section.
- (4) The provisions of Parts 6 and 7 specified in a declaration, with or without specified modification, apply to a declared operator as if the declared operator were a registered operator.

**93B Time limit for determination of applications**

- (1) The Minister and IPART must use their best endeavours to determine applications under this Act as quickly as reasonably practicable.
- (2) If IPART has not advised an applicant under this Act of its decision on the application within the period fixed by the regulations for the application (the *fixed period*), the applicant may, after giving 14 days written notice to IPART, apply to the Minister for a direction to IPART requiring the decision to be made within a time fixed by the Minister.
- (3) In determining whether the fixed period has passed, a period between the date when, in accordance with this Act, the applicant is asked by the Minister or IPART to provide further information or to take other action to enable the application to be determined and the date when the information is provided or the action taken is to be disregarded.
- (4) The regulations may provide that other periods of time are not to be taken into consideration in determining whether the fixed period has passed.

**[75] Section 94 Delegation of functions**

Omit “and the Director-General may delegate to any person any of their functions under this Act” from section 94(1).

Insert instead “may delegate a function of the Minister under this Act to a person or body”.

**[76] Section 94(2)**

Omit the subsection (but not the note).

**[77] Sections 94A and 94B**

Insert after section 94—

**94A Disclosure of records and information**

- (1) The Minister and IPART may each disclose to the other records or information obtained in the execution or administration of this Act.
- (2) This section extends to authorise the disclosure of records or information despite an express or implied obligation not to disclose the records or information, whether or not the obligation arises under law.

**94B Sharing of land ownership information**

The Registrar-General may disclose information relating to land ownership to a registered operator, registered retailer or last resort provider in relation to premises within the area of operations of the registered operator, registered retailer or last resort provider for the following purposes—

- (a) communicating with an owner of premises in relation to the provision of a water or sewerage service by the registered operator, registered retailer or last resort provider,
- (b) a purpose prescribed by the regulations.

**[78] Sections 95 and 95A**

Omit section 95. Insert instead—

**95 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on a person may be served by 1 or more of the following methods—
  - (a) for an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) for an individual who has not specified an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) for a corporation—by post to the registered office or another office of the corporation or by leaving it at the office with a person apparently over the age of 16 years,
  - (e) by email to an email address specified by the person for the service of documents of that kind,
  - (f) by another method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of a provision of a law or of the rules of a court authorising a document to be served on a person or IPART by another method.
- (3) In this section, *serve* includes give or send.

**95A Extraterritorial application**

An order, direction or notice may be given under this Act to a person about 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.

**[79] Section 96**

Omit the section. Insert instead—

**96 Personal liability**

- (1) A matter or thing done or omitted to be done by the following persons does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under this Act, subject the person to personal action, liability, claim or demand—
  - (a) the Minister,
  - (b) an inspector,
  - (c) a person acting under the direction of the Minister or an inspector.
- (2) However, the liability attaches instead to the Crown.

**[80] Section 96A**

Insert after section 96—

**96A Continuing offences**

- (1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—
  - (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-tenth of the maximum penalty prescribed for that offence, and
  - (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one-tenth of the maximum penalty prescribed for that offence.
- (2) An obligation to do something is to be regarded as continuing until the act is done despite the fact that a period within which, or time before which, the act is required to be done has expired or passed.
- (3) An omission is to be regarded as continuing for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

**[81] Section 97, heading**

Omit the heading. Insert instead—

**97 Liability of directors and managers for offences by corporation—offences attracting executive liability**

**[82] Section 97(1)(a) and (b)**

Omit the paragraphs. Insert instead—

- (a) Part 2, Division 2,
- (b) section 7H(2),
- (c) section 7I(2),
- (d) section 8J,
- (e) section 10B(3).

**[83] Section 97C**

Insert after section 97B—

**97C Corporations Act displacement**

Sections 50A and 56G are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapter 5 of that Act.

**Note.** Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State or Territory law declares a provision of a State or Territory law to be a Corporations legislation displacement provision, a provision of the Corporations legislation with which the State or Territory provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

**[84] Section 98**

Omit the section. Insert instead—

**98 Proceedings for offences**

Proceedings for an offence arising under this Act or the regulations may be dealt with summarily before the Land and Environment Court in its summary jurisdiction.

**[85] Section 98A**

Insert after section 98—

**98A Time within which proceedings may be commenced**

- (1) Proceedings for an offence against this Act or the regulations may be commenced not later than 3 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for an offence against this Act or the regulations may also be commenced within, but not later than, 3 years after the date on which evidence of the alleged offence first came to the attention of the Minister, IPART or an inspector.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice or application must contain particulars of the date on which evidence of the offence first came to the attention of the Minister, IPART or an inspector and need not contain particulars of the date on which the offence was committed.
- (4) The date on which evidence first came to the attention of the Minister, IPART or an inspector is the date specified in the court attendance notice or application, unless the contrary is established.
- (5) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (6) In this section—

*evidence* of an offence means evidence of an act or omission constituting the offence.

**[86] Section 99 Recovery of monetary penalties**

Omit “on a licensee”.

**[87] Section 99**

Insert “under this Act” before “may”.

**[88] Section 100**

Omit the section. Insert instead—

**100 Evidentiary certificates**

In proceedings, a certificate signed by the Minister or IPART certifying as to a matter relating to 1 or more of the following constitutes proof, in the absence of proof to the contrary, of the matter so certified—

- (a) an approval or licence,
- (b) the appointment of a person as an inspector,
- (c) a delegation under this Act,
- (d) a notice, order, requirement or direction of the Minister or IPART,
- (e) another decision of the Minister or IPART,
- (f) the receipt or non-receipt by the Minister or IPART of a notification or information required to be given to the Minister or IPART under this Act or the regulations,
- (g) an entry in a register kept by IPART under this Act,
- (h) guidelines issued or published by IPART.

**[89] Section 101 Regulations**

Omit section 101(2)–(4). Insert instead—

- (2) In particular, the regulations may—
  - (a) make provision for or about the matters set out in Schedule 2, and
  - (b) create an offence punishable by a penalty not exceeding, for a corporation, 1,000 penalty units and, for an individual, 200 penalty units, and
  - (c) apply, adopt or incorporate the provisions of a standard, code, specification or other document, either as in force on a particular day or as in force for the time being, and
  - (d) provide for conditional or unconditional exemptions from specified provisions of this Act, and
  - (e) make provision for or about the payment of fees by instalments.

**[90] Schedule 2 Regulation-making powers**

Insert “, **operation**” before “**and maintenance**” in the heading to clause 2.

**[91] Schedule 2, clause 2**

Insert “, operation” before “and maintenance of water industry infrastructure”.

**[92] Schedule 2, clause 2(a)**

Insert “operation,” before “maintenance”.

**[93] Schedule 2, clause 2(d)–(f)**

Omit “by licensed network operators” wherever occurring.

Insert instead “by registered operators”.

**[94] Schedule 2, clause 3(c1)**

Insert after clause 3(c)—

- (c1) the implementation of other programs, including, for example, the granting of payment assistance, discounts or rebates, to ensure that water and sewerage services are available to people in need, including people suffering financial hardship and people living in remote areas,

**[95] Schedule 2, clause 3(m)**

Insert after clause 3(l)—

- (m) the provision to, and use by last resort providers, substituted registered operators and substituted registered retailers, of customer information, including personal information under the *Privacy and Personal Information Protection Act 1998* and health information under the *Health Records and Information Privacy Act 2002*.

**[96] Schedule 2, clause 3A**

Omit “holder” wherever occurring. Insert instead “registered operator”.

**[97] Schedule 2, clause 3A(a)(ii)(B)**

Omit “, installation or alteration”.

**[98] Schedule 2, clauses 5A and 5B**

Insert after clause 5—

**5A Water industry audits**

Matters relating to audits under this Act, including the following—

- (a) the appointment of auditors and their functions,
- (b) directions to applicants for approvals or licences and licensees (*audit targets*) to engage auditors or otherwise co-operate with auditors appointed by IPART,
- (c) the recovery of fees from audit targets as debts,
- (d) functions, powers and duties of auditors,
- (e) permitting an auditor to accompany an inspector who enters premises under this Act, Part 7A for the purpose of exercising the auditor’s functions.

**5B Fees and charges**

Fees and charges payable under this Act, including the following—

- (a) requiring the payment of fees and charges for the supply of a service or product under this Act,



- (b) requiring the payment of charges by a person who is investigated, reviewed or audited under this Act to cover the costs of the investigation, review or audit,
- (c) requiring the payment of fees or charges by a person at whose request or for whose benefit research or an investigation is carried out under this Act,
- (d) providing for the amount of a fee or charge to be as determined in accordance with the regulations, including as determined by a person specified in the regulations,
- (e) requiring a deposit or prepayment for a fee or charge.

**[99] Schedule 2, clause 6(c)**

Insert “and enforcement” after “imposition”.

**[100] Schedule 2, clause 6(d1)**

Insert after clause 6(d)—

- (d1) matters relating to the substitution of registered operators and registered retailers,

**[101] Schedule 4 Savings, transitional and other provisions**

Omit clause 1. Insert instead—

**1 Savings or transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
  - (a) a provision of this Act, or
  - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—
  - (a) for a provision of this Act, the date of assent to this Act, or
  - (b) for a provision amending this Act, the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not, before its publication—
  - (a) affect the rights of a person in a way prejudicial to the person, or
  - (b) impose liabilities on a person about anything done or omitted to be done.
- (6) In this clause—  
*person* does not include the State or an authority of the State.

**[102] Schedule 4, Part 4**

Insert after Part 3—

## **Part 4 Provisions consequent on enactment of Water Industry Competition Amendment Act 2021**

### **8 Definitions**

In this Part—

*amending Act* means the *Water Industry Competition Amendment Act 2021*.

*former Part 2* means this Act, Part 2 as in force immediately before its substitution by the amending Act.

*substituted Part 2* means this Act, Part 2 as inserted by the amending Act.

### **9 Existing licences to continue in force for transitional period**

- (1) If, immediately before the commencement of substituted Part 2, a licence was in force authorising the operation of water industry infrastructure to which former Part 2 applied and the supply of water or sewerage services provided by means of the infrastructure—
  - (a) the licence continues in force, and
  - (b) this Act, as in force immediately before the substitution of that Part by the amending Act, continues to apply to the licence, the operation of the water industry infrastructure and the supply of water or sewerage services provided by means of the infrastructure, and
  - (c) this Act, as in force after that substitution, does not apply to the licence, the operation of the water industry infrastructure and the supply of water or sewerage services provided by means of the infrastructure.
- (2) Regulations may be made for or about the application of this Act, Part 5A, or specified provisions of Part 5A, with or without modification, to the operation of the water industry infrastructure and the supply of water or sewerage services provided by means of the infrastructure.
- (3) This clause ceases to have effect on the later of the following—
  - (a) 12 months after the date of the commencement of substituted Part 2,
  - (b) a later date specified by the regulations, being a date not later than 2 years after that commencement date.

### **10 Approvals and licences granted to replace existing licences**

- (1) If, immediately before the commencement of substituted Part 2, a licence was in force under former Part 2, IPART must grant approvals and licences in accordance with this clause, as appropriate, for the construction and operation of the infrastructure and the sale of water or sewerage services as authorised by the licence.
- (2) An approval or licence granted by IPART in accordance with this clause is taken to be an approval or licence granted under substituted Part 2.
- (3) The provisions of substituted Part 2 apply to the grant of an approval or licence subject to this clause and the regulations.
- (4) Approvals and licences are to be granted in accordance with this clause without application or the payment of an application fee.
- (5) IPART may establish a process for the determination of matters relating to the grant of approvals and licences in accordance with this clause and, as reasonably necessary for that purpose, may require information to be provided, and verified in a specified way, by—

- (a) a person proposed to be granted a licence or a proposed registered operator, or
  - (b) a licensed retail supplier of services provided by means of the infrastructure or a person specified in the licence of the retail supplier.
- (6) This Act, sections 7F, 7G, 7H(1) and 7I(1) apply, and sections 7C–7E do not apply, to the grant of approvals in accordance with this clause.
- (7) This Act, sections 8E, 8F, 8G, 8H(2) and 8I(2) apply, and section 8C does not apply, to the grant of licences in accordance with this clause.
- (8) To avoid doubt, IPART may, under this Act, section 54, determine whether the water industry infrastructure that is to be the subject of an approval or licence granted in accordance with this clause is essential infrastructure.
- (9) Before an approval or licence is granted for water industry infrastructure in accordance with this clause, IPART must—
  - (a) consult with the existing licensee, and
  - (b) allow the existing licensee at least 21 days to make a submission to IPART.
- (10) Subject to the regulations, IPART must cause details of approvals and licences granted in accordance with this clause to be included in the register kept by IPART under this Act, Part 8, Division 1A.
- (11) An operational approval must not be granted unless IPART is satisfied, if the water industry infrastructure concerned is or is likely to be essential infrastructure, that a last resort provider has been designated for each essential service provider unless the essential service provider is a council.
- (12) An approval or licence may be granted in accordance with this clause despite an irregularity regarding the licence in force under former Part 2.
- (13) An approval granted in accordance with this clause may specify an area of operations that differs in a non-substantial respect from an area, however described, to which the relevant licence in force under former Part 2 applied.
- (14) An approval granted in accordance with this clause may, with the written consent of a licensee in force under former Part 2, specify an area of operations that differs in a substantial respect from an area, however described, to which the relevant licence applied, but only if IPART considers it necessary having had regard to the following—
  - (a) whether services can be made available to all premises within the proposed area of operations within a reasonable period of time,
  - (b) whether the proposed area of operations excludes premises within the outermost boundary of, or in the vicinity of, the area of operations, including, for example, by excluded enclaves or unusual boundaries, unless the exclusion is reasonable having regard to the characteristics of the proposed scheme, the characteristics of the premises or the services already available to the premises.
- (15) A licence granted in accordance with this clause—
  - (a) must specify the matters referred to in section 8E(a), (b) and (d) in a way that authorises the licensee to carry out the activities that were authorised to be carried out by the substituted licence, and
  - (b) must specify the matter referred to in section 8E(c) in a way that authorises the licensee to construct or operate the schemes that were authorised to be constructed or operated by the substituted licence, and

- (c) if the licensee, being a corporation, requests, may specify in the matter referred to in section 8E(c) a greater maximum number of schemes that the licensee is authorised to operate, but only if IPART is satisfied that the licensee is a suitable corporation, within the meaning of section 8D, for the greater maximum number of schemes.

#### **11 Pending applications for licences**

- (1) If an application for a licence was made under former Part 2 and was not determined before the commencement of substituted Part 2, the application is taken to be an application for a licence or approval or both under substituted Part 2 and is to be dealt with accordingly, subject to the other provisions of this clause.
- (2) The regulations may make provision for either or both of the following—
  - (a) the modification of specified provisions of Part 2 that apply to an application for a licence or approval, including the determination of the application,
  - (b) the exemption of an application for a licence or approval from the operation of specified provisions of Part 2.
- (3) The Minister or IPART may, by written notice, at any time before making a decision about the application, require the applicant to provide, or require the applicant to authorise another person to provide, the Minister or IPART, as applicable, with further information in relation to the application as is specified in the notice and, until the information is provided, may defer consideration of the application.

#### **12 Customer contracts**

- (1) This Act, Part 5, Division 1AA extends, after the commencement of that Division, to the provision of water or sewerage services that were provided to a customer immediately before the commencement of the Division regardless of the terms or conditions of a contract for the services then in force with the customer.
- (2) However, a contract for water or sewerage services with a customer in force immediately before the commencement of Part 5, Division 1AA is not to be regarded as having been terminated and, consequently, rights and obligations that have accrued under the contract before that commencement are not affected and no early termination charge becomes payable.

#### **13 Monopoly suppliers**

- (1) An order in force under section 51 immediately before the commencement of Schedule 1[19] of the amending Act declaring that a specified licensed retail supplier or licensed network operator is a monopoly supplier in relation to a specified water or sewerage service, a specified area and a specified class of customers is to be taken to be a declaration in force under section 51 as substituted by the amending Act that the specified water or sewerage service provided in the specified area to the specified class of customers is a monopoly service.
- (2) A determination of IPART in force immediately before the commencement of Schedule 1[19] of the amending Act that specifies the price a monopoly supplier, as declared under section 51 as then in force, can charge its customers is to be read as specifying the price that may be charged for the water or sewerage service provided in the area to the class of customers specified in the declaration of the monopoly supplier under section 51 as then in force.

#### **14 Existing unlicensed schemes**

- (1) This clause applies to an *existing unlicensed scheme*, being water industry infrastructure to which—
  - (a) former Part 2, as in force immediately before the commencement of substituted Part 2, did not apply, and
  - (b) substituted Part 2 would, but for this clause, apply.
- (2) Substituted Part 2, Division 2 —
  - (a) does not apply to an existing unlicensed schemes—for the period of 12 months beginning on the date of the commencement of substituted Part 2, and
  - (b) if an application for a licence or approval in relation to an existing unlicensed scheme was lodged by a person before the end of the 12-month period—does not apply to the existing unlicensed scheme for a further period of 12 months.
- (3) A fee is not payable for an application for a licence or approval by a person in relation to an existing unlicensed scheme.
- (4) To avoid doubt, IPART may, under this Act, section 54, determine whether an existing unlicensed scheme is essential infrastructure.
- (5) The regulations may, for an existing unlicensed scheme, make provision for the modification of specified provisions of Part 2 that apply to an application for a licence or approval for the scheme, including the determination of the application.
- (6) The Minister or IPART may, by written notice, at any time before making a decision about the application, require the applicant to provide, or require the applicant to authorise another person to provide, the Minister or IPART, as applicable, with further information in relation to the application as is specified in the notice and, until the information is provided, may defer consideration of the application.
- (7) IPART may exempt an existing unlicensed scheme from the operation of specified provisions of Part 2, and the regulations under Part 2, if a licence and approval for the scheme is granted.

#### **[103] Dictionary**

Omit the following definitions—

*area of operations*

*authorised licensed network operator*

*Department*

*Director-General*

*land*

*licence*

*licensed network operator*

*licensed retail supplier*

*monopoly supplier*

*network operator's licence*

*public water utility*

*recycled water*

*related person*

*retail supplier's licence*  
*retailer of last resort*  
*small retail customer*  
*water*  
*water supply or sewerage service contract*

**[104] Dictionary**

Insert the following definitions in alphabetical order—

***application audit*** means an audit that is conducted for the purposes of assessing an application for the grant of, or variation to, an approval or licence.

***approval*** for Parts 2 and 8, means a scheme approval or operational approval.

***area of operations*** of a public water utility—see ***public water utility***.

***audit*** means an application audit or compliance audit.

***auditor*** means a person appointed by IPART, in accordance with the regulations, as an auditor.

***authorised agent*** of a registered operator—see section 58.

***class*** of water industry infrastructure—see section 3A.

***commission***, in relation to water industry infrastructure, means the process by which the infrastructure, before being used to provide services, is tested to verify its functions against its design objectives or specifications, and includes re-commission.

***compliance audit*** means an audit that is conducted for 1 or more of the following purposes—

- (a) to assess compliance with the requirements imposed by or under this Act and the regulations, including requirements imposed by or under an approval or licence,
- (b) to assess or identify a contravention or suspected contravention of the requirements imposed by or under this Act, including a contravention or other deficiency identified in another audit,
- (c) to identify measures for improved compliance with the requirements imposed by or under this Act,
- (d) to investigate or assess a matter identified by IPART that relates to a scheme, approval or licence, including, for example, a matter relating to the environment, public health or safety,
- (e) to investigate or assess a statutory default,
- (f) a purpose prescribed by the regulations.

***compliance notice***—see section 10B.

***contract charge***—see section 46AA.

***construction*** of water industry infrastructure includes the commissioning, alteration and installation of the infrastructure.

***contingency plan***—see section 55A.

***corporation*** includes a body corporate.

***declared failure*** means a failure of an essential service provider declared under section 56, beginning on the transfer date and ending on the end date.

***deemed customer contract***—see section 46AB.

***drinking water*** means water that is intended, or likely, to be used for human consumption, or for purposes connected with human consumption, such as—

- (a) the washing or cooling of food, or

(b) the making of ice for consumption, or for the preservation of unpackaged food,

whether or not the water is used for other purposes.

**end date** of a declared failure means the end date fixed under section 57B (2)(d).

**essential infrastructure**—see section 54.

**essential service** means a water or sewerage service provided by means of essential infrastructure.

**essential service provider** or **provider of an essential service** means a registered operator or registered retailer of a scheme that is essential infrastructure.

**failed licensee**—see section 56(2)(c).

**insolvency official** means a receiver, receiver and manager, administrator, provisional liquidator, liquidator, trustee in bankruptcy or person having a similar or analogous function.

**land** includes—

(a) in Part 6, Division 2 and Part 7A, Division 3, any building or part of a building, or any structure or part of a structure, located on, under or above land.

(b) in Part 7A, Division 3, premises.

**last resort provider** means a person designated as a last resort provider under Part 5, Division 2.

**licence** means an operator licence or a retailer licence.

**licensed operator** means the licensee under an operator licence.

**licensed retailer** means the licensee under a retailer licence.

**long term lease** means a lease that confers a right, including a contingent or future right, to the use or possession of water industry infrastructure for a term extending to a time, or commencing, more than 25 years after the making of the lease.

**monopoly service**—see section 50B.

**monopoly supplier**—see section 50B.

**national safety guidelines** means the guidelines or another document concerning the safe provision of water services or sewerage services prescribed by the regulations, whether as in force at a particular time or from time to time.

**new licensee**—see section 57B(2)(b)(ii).

**occupier** of premises includes a person having the care, control or management of premises.

**operate** water industry infrastructure means operate a part of the infrastructure, and includes maintaining the infrastructure.

**operational approval** means an operational approval granted by IPART under Part 2.

**operator licence** means an operator licence granted by the Minister under Part 2.

**owner** of water industry infrastructure means—

(a) if the infrastructure is not subject to a long term lease—the person who owns the infrastructure as set out in section 64, or

(b) if the infrastructure is subject to a long term lease—the lessee under the long term lease.

**premises** includes land.

**provider of an essential service**—see *essential service provider*.

**providing** an essential service means—

- (a) if the service is provided by a registered operator or a person designated as the last resort provider for the registered operator—operating essential infrastructure, or
- (b) if the service is provided by a registered retailer or a person designated as the last resort provider for the registered retailer—selling water or sewerage services provided by means of essential infrastructure.

**public health and safety directions**—see section 9(1).

**public water utility**—each of the bodies listed below is a public water utility and the *utility's Act* and *area of operations* are as set out in the entry for the body—

<b>Public water utility</b>	<b>Utility's Act</b>	<b>Utility's area of operations</b>
Hunter Water Corporation	<i>Hunter Water Act 1991</i>	its area of operations under section 16 of its Act
Sydney Water Corporation	<i>Sydney Water Act 1994</i>	its area of operations under section 10 of its Act
Water NSW	<i>Water NSW Act 2014</i>	its area of operations under section 15 of its Act
a county council providing water or sewerage services	<i>Local Government Act 1993</i>	its area of operations established under section 393 of its Act
a council providing water or sewerage services in an area that is not within the area of operations of Sydney Water Corporation or Hunter Water Corporation	<i>Local Government Act 1993</i>	its local government area under its Act
Hawkesbury City Council	<i>Local Government Act 1993</i>	its local government area under its Act
water supply authority within the meaning of the <i>Water Management Act 2000</i> , other than an authority listed above	the Act under which the authority was established	its area of operations under the <i>Water Management Act 2000</i> , section 289

**record** means a document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in another way or by another means.

**recycled water** means water obtained from the processing of sewage or stormwater or both.

**registered operator**, for water industry infrastructure, means the holder of an operator licence who is registered as the registered operator for the water industry infrastructure.

**registered retailer**, for water industry infrastructure, means the holder of a retailer licence who is registered as the registered retailer for the water industry infrastructure.



**regulated scheme** means the following—

- (a) water industry infrastructure that is a category A scheme within the meaning of section 5(1)(a), other than water industry infrastructure excluded by the regulations,
- (b) water industry infrastructure to which Part 2 applies that is prescribed by the regulations for the purposes of this definition.

**regulated scheme licence**—see section 46AA.

**regulatory authority** means the following—

- (a) the Minister,
- (b) IPART.

**related corporation** of a corporation that is an applicant for or holds an approval or licence means a related corporation of the corporation within the meaning of the *Corporations Act 2001* of the Commonwealth that would have or has a direct or indirect interest in, or influence on, the carrying out of activities under the approval or licence.

**retailer licence** means a retailer licence granted by the Minister under Part 2.

**scheme** means the water industry infrastructure authorised to be constructed under a scheme approval.

**scheme approval** means a scheme approval granted by IPART under Part 2.

**sell** includes supply on a commercial basis or a not-for-profit or cost-recovery only basis.

**sewage** means material collected from internal household and other building drains, and includes faecal waste and urine from toilets and water from showers, baths, laundries and kitchens.

**sewerage service** includes a service of connecting premises to infrastructure for the treatment, storage, conveyance or reticulation of sewage.

**small business purposes** means the purpose of operating a business that employs less than 20 employees, but not a business of a class excluded by the regulations.

**small retail customer** means a person who owns or occupies small retail customer premises and receives or is proposed to receive, directly or indirectly, water or sewerage services.

**small retail customer premises** means—

- (a) premises, including each separate premises within community land scheme, company title scheme or strata scheme, that are used or proposed to be used for residential purposes or small business purposes, or
- (b) premises of a class declared by the regulations to be small retail customer premises,

but does not include premises of a class declared by the regulations not to be small retail customer premises.

**standard contract charges**—see section 46AA.

**stormwater**—

- (a) includes water of a kind prescribed by the regulations, and
- (b) does not include water of a kind excluded from this definition by the regulations.

**technical expert** means a person appointed as a technical expert under regulations made under section 55A.

*transfer date* of a declared failure means the transfer date fixed under section 56(2)(e).

*utility's Act*—see *public water utility*.

*water* includes drinking water or recycled water.

*water service* means a service of supplying water, including a service of connecting premises to infrastructure for supplying water.

**[105] Dictionary, definition of “disqualified corporation”, paragraph (a)**

Omit “, pursuant to a declaration under section 16 (1)(e), has been declared to be”.

Insert instead “, as a result of disciplinary action under this Act, is”.

**[106] Dictionary, definition of “disqualified individual”, paragraph (b)**

Omit “, pursuant to a declaration under section 16 (1)(f),”.

Insert instead “, as a result of disciplinary action under this Act,”.

**[107] Dictionary, definition of “inspector”**

Omit “section 74”. Insert instead “section 84B”.

**[108] Dictionary, definition of “service provider”**

Omit “licensed network operator”. Insert instead “registered operator”.

**[109] Dictionary, definitions of “sewer main”, “stormwater drain” and “water main”**

Omit “a network operator’s” wherever occurring.

**[110] Whole Act**

Omit each term or expression set out in Column 1 below wherever occurring in the Act except where otherwise amended by this Schedule and in the Act, Schedule 4.

Insert instead the term or expression set out opposite in Column 2—

<b>Column 1</b>	<b>Column 2</b>
network operator	registered operator
network operators	registered operators
retail supplier	retailer
retail supplier’s	retailer
retail suppliers	retailers
water supply or sewerage purposes	water or sewerage service purposes
water supply or sewerage service	water or sewerage service

## Schedule 2 Consequential amendments to other legislation

### 2.1 Conveyancing (Sale of Land) Regulation 2017

#### Clause 3 Definitions

Omit clause 3(1), definition of *recognised sewerage authority*, paragraph (c).

Insert instead—

- (c) a licensed operator within the meaning of the *Water Industry Competition Act 2006*.

### 2.2 Energy and Utilities Administration Act 1987 No 103

#### Section 3 Definitions

Omit section 3(1), definition of *State water agency*, paragraph (c). Insert instead—

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

### 2.3 Environmental Planning and Assessment Regulation 2000

#### Schedule 4 Planning certificates

Insert at the end of the Schedule, with appropriate clause numbering—

##### Water or sewerage services

If water or sewerage services are, or are to be, provided to the land under the *Water Industry Competition Act 2006*, a statement to that effect.

**Note.** A public water utility may not be the provider of some or all of the services to the land. If a water or sewerage service is provided to the land by a licensee under the *Water Industry Competition Act 2006*, a contract for the service will be deemed to have been entered into between the licensee and the owner of the land. A register relating to approvals and licences necessary for the provision of water or sewerage services under the *Water Industry Competition Act 2006* is maintained by the Independent Pricing and Regulatory Tribunal and provides information about the areas serviced, or to be serviced, under that Act. Purchasers should check the register to understand who will service the property. Outstanding charges for water or sewerage services provided under the *Water Industry Competition Act 2006* become the responsibility of the purchaser.

### 2.4 Fluoridation of Public Water Supplies Act 1957 No 58

#### Section 6A Directions

Omit “licensed retail supplier” from section 6A(2A).

Insert instead “registered operator”.

### 2.5 Hunter Water Act 1991 No 53

#### [1] Section 36 Owner of land taken to have entered into customer contract

Omit “licensed retail supplier” from section 36(3).

Insert instead “registered operator or registered retailer”.

#### [2] Section 36(4)

Omit the subsection.

## 2.6 Independent Commission Against Corruption Act 1988 No 35

### Section 3 Definitions

Insert after section 3(1), definition of *public official*, paragraph (k1)—

- (k2) an auditor within the meaning of the *Water Industry Competition Act 2006*,

## 2.7 Land and Environment Court Act 1979 No 204

### [1] Section 17 Class 1—environmental planning and protection appeals

Insert after section 17(1)—

- (m) appeals under the *Water Industry Competition Act 2006*, section 11A.

### [2] Section 21 Class 5—environmental planning and protection summary enforcement

Insert before section 21(i)—

- (hh) proceedings for an offence under the *Water Industry Competition Act 2006*,

## 2.8 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

### Schedule 2 Search warrants under other Acts

Omit “*Water Industry Competition Act 2006*, section 80”.

Insert instead “*Water Industry Competition Act 2006*, sections 65H and 84K”.

## 2.9 Local Government Act 1993 No 30

### [1] Section 56 Application of Division

Insert after section 56(2)—

- (3) Despite subsection (1), the provisions of this Division relating to sewerage, but not water supply, do apply to land within the City of Hawkesbury area prescribed by the regulation for the purposes of this section.

### [2] Section 124 Orders

Omit items 23 and 24 from the Table. Insert instead—

23	To connect premises to a water supply by a specified date	The premises are situated within 225 metres of a water pipe	Owner or occupier of land
24	To connect premises with a sewerage system by a specified date	The premises are situated within 75 metres of a sewer	Owner or occupier of premises

### [3] Section 553A Special rates and charges not payable in relation to land provided with private water supply or sewerage

Omit “during the term of any contract in that regard entered into between the owner of the land and a licensed retail supplier” from section 553A(1).

Insert instead “by means of a scheme, during the period the scheme is being operated,”.

**[4] Section 553A(2)**

Omit the subsection.

## **2.10 Local Government (General) Regulation 2005**

### **Clause 48 Activities for which approval is not required**

Omit clause 48(g). Insert instead—

(g) **Activities authorised by approval or licence under Water Industry Competition Act 2006**

An activity referred to in the Act, section 68, the Table, Part B or C if it is carried out under the authority of an approval or licence in force under the *Water Industry Competition Act 2006*.

## **2.11 Plumbing and Drainage Act 2011 No 59**

### **Section 3 Definitions**

Omit “licensed network operator” from section 3(1), definition of *network utility operator*, paragraph (c).

Insert instead “registered operator”.

## **2.12 Public Health Act 2010 No 127**

### **Section 5 Definitions**

Omit section 5(1), definition of *supplier of drinking water*, paragraph (f). Insert instead—

(f) a licensed operator or licensed retailer within the meaning of the *Water Industry Competition Act 2006*,

## **2.13 State Environmental Planning Policy (Infrastructure) 2007**

**[1] Clause 106 Development permitted with or without consent**

Omit “network operator’s licence” from clause 106(1)(b).

Insert instead “scheme approval”.

**[2] Clause 106(6)**

Omit the subclause. Insert instead—

(6) In this clause, *scheme approval* and *water industry infrastructure* have the same meanings as in the *Water Industry Competition Act 2006*.

## **2.14 Sydney Water Act 1994 No 88**

**[1] Section 55 Owner of land taken to have entered into customer contract**

Omit “licensed retail supplier” from section 55(3A).

Insert instead “registered operator or registered retailer”.

**[2] Section 55(3B)**

Omit the subsection.

## **2.15 Water Management Act 2000 No 92**

### **Dictionary**

Omit definition of *local water utility*, paragraph (c). Insert instead—

- (c) a registered operator within the meaning of the *Water Industry Competition Act 2006*.

## **2.16 Water Management (General) Regulation 2018**

### **Clause 43 Network operators and pipeline licensees**

Omit clause 43(2), definition of *network operator*. Insert instead—

*network operator* means the following—

- (a) a network operator that is licensed or authorised under the *Gas Supply Act 1996* or *Electricity Supply Act 1995*,
- (b) a registered operator within the meaning of the *Water Industry Competition Act 2006*.

## **2.17 Water NSW Act 2014 No 74**

### **[1] Section 7(1)(d) and Schedule 2, clause 12(2)(c)**

Omit “licensed network operators or licensed retail suppliers” wherever occurring.

Insert instead “licensed operators and licensed retailers”.

### **[2] Schedule 2 Savings, transitional and other provisions**

Omit clause 25.