

# Water Management Act 2000 No 92

[2000-92]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**
  - Sch 8.30 to this Act (not commenced)
  - [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)
  - [Natural Resources Commission Act 2003 No 102](#) (not commenced)
  - [Catchment Management Authorities Act 2003 No 104](#) (not commenced)

### Authorisation

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# Water Management Act 2000 No 92



New South Wales

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# Water Management Act 2000 No 92



New South Wales

An Act to provide for the protection, conservation and ecologically sustainable development of the water sources of the State, and for other purposes.

## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Water Management Act 2000*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed for the commencement of a single provision of Schedule 7 or 8 for the purpose of commencing the repeals or amendments effected by the provision on different days.

### 3 Objects

The objects of this Act are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations and, in particular:

- (a) to apply the principles of ecologically sustainable development, and
- (b) to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality, and
- (c) to recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including:
  - (i) benefits to the environment, and
  - (ii) benefits to urban communities, agriculture, fisheries, industry and recreation, and
  - (iii) benefits to culture and heritage, and
  - (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water,

- (d) to recognise the role of the community, as a partner with government, in resolving issues relating to the management of water sources,
- (e) to provide for the orderly, efficient and equitable sharing of water from water sources,
- (f) to integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna,
- (g) to encourage the sharing of responsibility for the sustainable and efficient use of water between the Government and water users,
- (h) to encourage best practice in the management and use of water.

#### **4 Interpretation**

- (1) Words and expressions that are defined in the Dictionary at the end of this Act have the meanings set out in that Dictionary.
- (2) Notes in the text of this Act do not form part of this Act.

## **Chapter 2 Water management planning**

### **Part 1 General**

#### **Division 1 Water management principles**

##### **5 Water management principles**

- (1) The principles set out in this section are the water management principles of this Act.
- (2) Generally:
  - (a) water sources, floodplains and dependent ecosystems (including groundwater and wetlands) should be protected and restored and, where possible, land should not be degraded, and
  - (b) habitats, animals and plants that benefit from water or are potentially affected by managed activities should be protected and (in the case of habitats) restored, and
  - (c) the water quality of all water sources should be protected and, wherever possible, enhanced, and
  - (d) the cumulative impacts of water management licences and approvals and other activities on water sources and their dependent ecosystems, should be considered and minimised, and
  - (e) geographical and other features of indigenous significance should be protected, and

- (f) geographical and other features of major cultural, heritage or spiritual significance should be protected, and
  - (g) the social and economic benefits to the community should be maximised, and
  - (h) the principles of adaptive management should be applied, which should be responsive to monitoring and improvements in understanding of ecological water requirements.
- (3) In relation to water sharing:
- (a) sharing of water from a water source must protect the water source and its dependent ecosystems, and
  - (b) sharing of water from a water source must protect basic landholder rights, and
  - (c) sharing or extraction of water under any other right must not prejudice the principles set out in paragraphs (a) and (b).
- (4) In relation to water use:
- (a) water use should avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land should be rehabilitated, and
  - (b) water use should be consistent with the maintenance of productivity of land in the long term and should maximise the social and economic benefits to the community, and
  - (c) the impacts of water use on other water users should be avoided or minimised.
- (5) In relation to drainage management:
- (a) drainage activities should avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land should be rehabilitated, and
  - (b) the impacts of drainage activities on other water users should be avoided or minimised.
- (6) In relation to floodplain management:
- (a) floodplain management must avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land must be rehabilitated, and



(b) the impacts of flood works on other water users should be avoided or minimised, and

(c) the existing and future risk to human life and property arising from occupation of floodplains must be minimised.

(7) In relation to controlled activities:

(a) the carrying out of controlled activities must avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land must be rehabilitated, and

(b) the impacts of the carrying out of controlled activities on other water users must be avoided or minimised.

(8) In relation to aquifer interference activities:

(a) the carrying out of aquifer interference activities must avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land must be rehabilitated, and

(b) the impacts of the carrying out of aquifer interference activities on other water users must be avoided or minimised.

## **Division 2 State Water Management Outcomes Plan and water source classification**

### **6 State Water Management Outcomes Plan**

(1) The Governor may, by order published in the Gazette, establish a State Water Management Outcomes Plan for the development, conservation, management and control of the State's water resources in furtherance of the objects of this Act.

(2) The objects of a State Water Management Outcomes Plan are as follows:

(a) to set the over-arching policy context, targets and strategic outcomes for the management of the State's water sources, having regard to:

(i) relevant environmental, social and economic considerations, and

(ii) the results of any relevant monitoring programs,

(b) to promote the water management principles established by this Act,

(c) to give effect to any government policy statement in relation to salinity strategies.

(3) The State Water Management Outcomes Plan must be consistent with:

- (a) government obligations arising under any inter-governmental agreement to which the government is a party, such as the Murray-Darling Basin Agreement referred to in the *Murray-Darling Basin Act 1992*, and
  - (b) government obligations arising in connection with any international agreement to which the government of the Commonwealth is a party, and
  - (c) government policy, including government policy in relation to the environmental objectives for water quality and river flow.
- (4) For the purposes of this section, **government policy** includes such matters as are declared by the regulations to be government policy.
- (5) The regulations may make provision for or with respect to the public consultation procedures to be complied with in relation to the establishment or amendment of a State Water Management Outcomes Plan.
- (6) A State Water Management Outcomes Plan has effect for the period of 5 years commencing on the date on which it is published in the Gazette.

## **7 Classification of water sources**

- (1) The Minister may, by order published in the Gazette, classify water sources for the purposes of this Act.
- (2) Such an order may only be made with the concurrence of the Minister for the Environment.
- (3) Water sources are to be classified as follows:
- (a) as to the extent to which they are at risk (that is, the extent to which harm to the water source or its dependent ecosystems is likely to occur),
  - (b) as to the extent to which they are subject to stress (that is, the extent to which harm to the water source or its dependent ecosystems has occurred or is occurring),
  - (c) as to the extent of their conservation value (that is, the extent to which their intrinsic value merits protection from risk and stress).
- (4) It is the intention of Parliament that, within 12 months after the date of assent to this Act:
- (a) the water sources of the State be classified in accordance with this section, and
  - (b) bulk access regimes be established for such of those water sources as are classified high risk, high stress or high conservation value.
- (5) A bulk access regime referred to in subsection (4) (b) is to be established by means of

a Minister's plan made, in the case of a water source that is within a water management area for which a management committee has been established, in consultation with that committee.

- (6) A bulk access regime referred to in subsection (4) (b) has effect for 10 years from the date on which it is established, but may be varied under section 45 as if it had been established by a management plan, in which case section 87 applies accordingly.
- (7) The regulations may prescribe rules in accordance with which water sources are to be classified for the purposes of this Act.

## **8 Classes of environmental water**

- (1) The following classes of environmental water are recognised for the purposes of this Act:
  - (a) water that is committed for fundamental ecosystem health at all times, and may not be taken or used for other purposes (***environmental health water***),
  - (b) water that is committed for specified environmental purposes at specified times or in specified circumstances, but may, at other times and in other circumstances, be taken and used for other purposes (***supplementary environmental water***),
  - (c) water that, pursuant to an access licence, is committed for specified environmental purposes, either generally or at specified times or in specified circumstances (***adaptive environmental water***).
- (2) Rules for the identification, establishment and maintenance of each class of environmental water (***environmental water rules***) are to be established for all of the water sources in the State, by means of a management plan, as soon as practicable after the commencement of this Act.

## **Division 3 General**

### **9 Act to be administered in accordance with water management principles and State Water Management Outcomes Plan**

- (1) It is the duty of all persons exercising functions under this Act:
  - (a) to take all reasonable steps to do so in accordance with, and so as to promote, the water management principles of this Act, and
  - (b) as between the principles for water sharing set out in section 5 (3), to give priority to those principles in the order in which they are set out in that subsection.
- (2) It is the duty of all persons involved in the administration of this Act to exercise their functions under this Act in a manner that gives effect to the State Water Management Outcomes Plan.

## **10 Review of work and activities of Department**

- (1) The Minister is to ensure that the work and activities of the Department are reviewed at intervals of not more than 5 years for the purpose of determining whether they have been effective in giving effect to the water management principles of this Act and the State Water Management Outcomes Plan.
- (2) The results of each review under this section are to be included in the relevant annual report for the Department under the *Annual Reports (Departments) Act 1985*.

## **Part 2 Management committees**

### **11 Constitution of water management areas**

- (1) The Minister may, by order published in the Gazette, constitute any land as a water management area.
- (2) An order under this section must name the area and fix its boundaries.

### **12 Establishment of management committees**

- (1) The Minister may, by order published in the Gazette:
  - (a) establish a management committee to carry out a specific task in relation to water management in a water management area, and
  - (b) set terms of reference in accordance with which the committee is to carry out that task.
- (2) The task for which a management committee is appointed may relate to any aspect of water management, including (without limitation) water sharing, water source protection, floodplain management and drainage management.
- (3) At any time the Minister may, by order published in the Gazette, abolish a management committee, and may do so whether or not it has completed the task for which it was established.
- (4) Nothing in this section prevents the establishment of two or more committees for the same water management area so long as they do not have overlapping functions.

### **13 Membership of committee**

- (1) A management committee consists of at least 12, but not more than 20, members appointed by the Minister, of whom:
  - (a) at least two are to be persons appointed to represent the interests of environmental protection groups, and
  - (b) at least two are to be persons appointed to represent the interests of water user

groups, and

- (c) at least two are to be persons appointed to represent the interests of local councils, and
  - (d) at least one is to be a person appointed to represent the interests of catchment management boards and trusts, and
  - (e) at least two are to be Aboriginal persons appointed to represent the interests of Aboriginal persons, and
  - (f) at least one is to be a member of staff of the Department, and
  - (g) at least one is to be a person nominated by the Minister for the Environment, and
  - (h) such other persons as are appointed to represent such interests as the Minister considers require representation, and
  - (i) one is to be a person (not being a member of staff of the Department) who is appointed as an independent chairperson for the committee.
- (2) The regulations may make provision with respect to qualifications for appointment as a member of a management committee.
  - (3) The members appointed as referred to in subsection (1) (a)–(e) should, as far as practicable, be persons who reside within the water management area for which the management committee is being constituted.
  - (4) Schedule 6 has effect with respect to the constitution and procedure of a management committee.

#### **14 Functions of management committees**

- (1) The principal function of a management committee is to carry out the task for which it is appointed.
- (2) The task for which a committee is appointed may include any one or more of the following:
  - (a) to prepare a draft management plan for the water management area,
  - (b) to review a management plan that is in force for the water management area,
  - (c) to investigate such matters affecting the management of the water management area as the Minister refers to it for investigation,
  - (d) to report to the Minister on such matters affecting the management of the water management area as the Minister refers to it for report,

(e) to advise the Minister on such matters affecting the management of the water management area as the Minister refers to it for advice.

(3) It is the duty of a management committee to exercise its functions consistently with the principles of ecologically sustainable development.

## **Part 3 Management plans**

### **Division 1 Preliminary**

#### **15 Preparation of draft management plan**

- (1) The Minister may, by the order by which a management committee is established or by a subsequent order in writing:
  - (a) direct the committee to prepare a draft management plan, and review any related implementation program, on any aspect of water management, including (but not limited to):
    - (i) water sharing, and
    - (ii) water source protection, and
    - (iii) drainage management, and
    - (iv) floodplain management, and
  - (b) set terms of reference in accordance with which such a plan is to be prepared.
- (2) A management committee to which such an order is given is to prepare a draft management plan in accordance with the terms of reference specified in the order.
- (3) If the management committee fails to prepare a draft management plan in accordance with its terms of reference, the Minister may do so instead.
- (4) This Part applies to a management plan prepared by the Minister in the same way as it applies to a management plan prepared by a management committee.

#### **16 Management plans to be consistent with other instruments**

- (1) A management plan must be consistent with:
  - (a) the State Water Management Outcomes Plan, and
  - (b) any State environmental planning policy under the *Environmental Planning and Assessment Act 1979*, and
  - (c) any protection of the environment policy under the *Protection of the Environment Operations Act 1997*, and

(d) any regulation under the *Sydney Water Catchment Management Act 1998* or the *Googong Dam Catchment Area Act 1975*, and

(e) government policy, including government policy in relation to the environmental objectives for water quality and river flow.

(2) For the purposes of this section, **government policy** includes such matters as are declared by the regulations to be government policy.

### **17 Provisions applicable to all management plans**

A management plan for a water management area may contain the following kinds of provisions:

(a) provisions with respect to the preservation and enhancement of the quality of water in the water sources in the area,

(b) provisions with respect to the kinds of monitoring and reporting requirements that should be imposed as conditions of approvals having effect within the area,

(c) provisions with respect to the conditions to which access licences and approvals having effect within the area are to be subject (**mandatory conditions**),

(d) provisions indicating the circumstances in which, the matters in respect of which and the extent to which the management plan may be amended by the Minister during the period for which it is in force,

(e) provisions with respect to such other matters as may be authorised by the regulations.

### **18 Matters for consideration**

(1) In formulating a draft management plan, the management committee must have due regard to the socio-economic impacts of the proposals considered for inclusion in the draft plan.

(2) Due regard may also be had, in the formulation of the plan's proposals, to the effect within each water management area or water source to which the plan applies of activities occurring, or likely to occur, outside each such area or water source.

## **Division 2 Water sharing**

### **19 Application of Division**

(1) This Division applies to the provisions of a management plan to the extent to which they deal with water sharing.

(2) The water sharing provisions of a management plan may apply to the whole or any part of a water management area, or to the whole or any part of one or more water

sources within a water management area.

## **20 Core provisions**

- (1) The water sharing provisions of a management plan for a water management area or water source must deal with the following matters:
  - (a) the establishment of environmental water rules for the area or water source in relation to each of the classes of environmental water referred to in section 8 (1),
  - (b) the identification of requirements for water within the area, or from the water source, to satisfy basic landholder rights,
  - (c) the identification of requirements for water for extraction under access licences,
  - (d) the establishment of access licence dealing rules for the area or water source,
  - (e) the establishment of a bulk access regime for the extraction of water under access licences, having regard to the rules referred to in paragraphs (a) and (d) and the requirements referred to in paragraphs (b) and (c).
- (2) The bulk access regime referred to in subsection (1) (e):
  - (a) must recognise and be consistent with any limits to the availability of water that are set (whether by the relevant management plan or otherwise) in relation to the water sources to which the regime relates, and
  - (b) must establish rules according to which access licences are to be granted and managed and available water determinations to be made, and
  - (c) must recognise the effect of climatic variability on the availability of water, and
  - (d) may establish rules with respect to the priorities according to which water allocations are to be adjusted as a consequence of any reduction in the availability of water, and
  - (e) may contain provisions with respect to the conditions that must (as mandatory conditions) be imposed on access licences under section 66 (1), including conditions providing for the variation, from time to time, of the share and extraction components of access licences, and
  - (f) must be consistent with the water management principles.
- (3) The rules referred to in subsection (2) (d) must comply with the priorities established under section 58.
- (4) The access licence dealing rules established under subsection (1) (d):
  - (a) must comply with the access licence dealing principles, and



- (b) subject to those principles, may regulate or prohibit any dealing under Division 4 of Part 2 of Chapter 3.

## **21 Additional provisions**

The water sharing planning provisions of a management plan for a water management area or water source may also deal with the following matters:

- (a) the rates, times and circumstances under which water may be taken from any water source in the area, or the quantity of water that may be taken from any water source in the area or delivered through the area,
- (b) the kinds of water supply works that may be constructed and used in the area,
- (c) the operation of water accounts for the area or water source, such as the carrying over of credits from one accounting period to the next, and the maximum credit that may be allowed to accumulate in any account,
- (d) water sharing measures for the protection and enhancement of the quality of water in the water sources in the area or for the restoration or rehabilitation of water sources or their dependent ecosystems,
- (e) measures to give effect to the water management principles and the objects of this Act,
- (f) such other matters as are prescribed by the regulations.

## **Division 3 Water use**

### **22 Application of Division**

- (1) This Division applies to the provisions of a management plan to the extent to which they deal with water use.
- (2) The water use provisions of a management plan may apply to the whole or any part of a water management area.

### **23 Core provisions**

The water use provisions of a management plan for a water management area must deal with the following matters:

- (a) the identification of existing and potential water use practices and related activities,
- (b) the identification of those uses and activities which have adverse impacts, including cumulative impact, on water sources or their dependent ecosystems or on other water users,
- (c) the identification of the occurrence of land degradation, including soil erosion,

compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity within the area and any impacts on water sources.

## **24 Additional provisions**

The water use provisions of a management plan for a water management area may also deal with the following matters:

- (a) best practice for water conservation, water efficiency and total water cycle management,
- (b) prevention of off-site impacts of water use,
- (c) requirements for the restoration or rehabilitation of land or water sources or their dependent ecosystems,
- (d) protection of the habitats or pathways of animals and plants,
- (e) the preservation and enhancement of the quality of water of the water sources in the area affected by water use and related practices,
- (f) structural or operational modifications for existing works,
- (g) other measures to give effect to the water management principles and the objects of this Act,
- (h) such other matters as are prescribed by the regulations.

## **Division 4 Drainage management**

### **25 Application of Division**

- (1) This Division applies to the provisions of a management plan to the extent to which they deal with drainage management.
- (2) The drainage management provisions of a management plan may apply to the whole or any part of a water management area.

### **26 Core provisions**

The drainage management provisions of a management plan for a water management area must deal with the following matters:

- (a) the identification of the existing and natural hydrological regimes in the area,
- (b) the identification of existing drainage works in the area and the way they are managed,
- (c) the ecological impacts and impacts on water quality, including cumulative impacts, of

the drainage works in the area.

## **27 Additional provisions**

The drainage management provisions of a management plan for a water management area may also deal with the following matters:

- (a) proposals for the construction of new drainage works,
- (b) the modification or removal of existing drainage works,
- (c) restoration or rehabilitation of land, habitats, water sources or their dependent ecosystems,
- (d) the preservation and enhancement of the quality of water of the water sources in the area affected by drainage management,
- (e) other measures to give effect to the water management principles and the objects of this Act,
- (f) such other matters as are prescribed by the regulations.

## **Division 5 Floodplain management**

### **28 Application of Division**

- (1) This Division applies to the provisions of a management plan to the extent to which they deal with floodplain management.
- (2) The floodplain management provisions of a management plan may apply to the whole or any part of a water management area.

### **29 Core provisions**

The floodplain management provisions of a management plan for a water management area must deal with the following matters:

- (a) identification of the existing and natural flooding regimes in the area, in terms of the frequency, duration, nature and extent of flooding,
- (b) the identification of the ecological benefits of flooding in the area, with particular regard to wetlands and other floodplain ecosystems and groundwater recharge,
- (c) the identification of existing flood works in the area and the way they are managed, their benefits in terms of the protection they give to life and property, and their ecological impacts, including cumulative impacts,
- (d) the risk to life and property from the effects of flooding.

### **30 Additional provisions**

The floodplain management provisions of a management plan for a water management area may also deal with the following matters:

- (a) proposals for the construction of new flood works,
- (b) the modification or removal of existing flood works,
- (c) restoration or rehabilitation of land, water sources or their dependent ecosystems, in particular in relation to the following:
  - (i) the passage, flow and distribution of floodwater,
  - (ii) existing dominant floodways and exits from floodways,
  - (iii) rates of flow, floodwater levels and duration of inundation,
  - (iv) downstream water flows,
  - (v) natural flood regimes, including spatial and temporal variability,
- (d) the control of activities that may affect or be affected by the frequency, duration, nature or extent of flooding within the water management area,
- (e) the preservation and enhancement of the quality of water in the water sources in the area during and after flooding,
- (f) other measures to give effect to the water management principles and the objects of this Act,
- (g) such other matters as are prescribed by the regulations.

## **Division 6 Controlled activities and aquifer interference activities**

### **31 Application of Division**

- (1) This Division applies to the provisions of a management plan to the extent to which they deal with controlled activities and aquifer interference activities.
- (2) The controlled activity and aquifer interference activity provisions of a management plan may apply to the whole or any part of a water management area.

### **32 Core provisions**

The controlled activity and aquifer interference activity planning provisions of a management plan for a water management area must deal with the following matters:

- (a) identification of the nature of any controlled activities or aquifer interference causing impacts, including cumulative impacts, on water sources or their dependent

ecosystems, and the extent of those impacts,

- (b) specification of controlled activities or aquifer interferences which are to require controlled activity approvals or aquifer interference approvals in the area.

### **33 Additional provisions**

The controlled activity and aquifer interference activity provisions of a management plan for a water management area may also deal with the following matters:

- (a) the undertaking of work for the purpose of restoring or rehabilitating a water source or its dependent ecosystems,
- (b) protecting, restoring or rehabilitating the habitats or pathways of animals and plants,
- (c) specific controls on activities causing unacceptable impacts,
- (d) the preservation and enhancement of the quality of water in the water sources in the area affected by controlled activities or aquifer interference,
- (e) other measures to give effect to the water management principles and the objects of this Act,
- (f) such other matters as are prescribed by the regulations.

## **Division 7 Environmental protection**

### **34 Environmental protection provisions**

- (1) A management plan for a water management area, or any part of a water management area, may contain the following provisions (***environmental protection provisions***) in respect of any aspect of water management:
  - (a) provisions identifying zones in which development should be controlled in order to minimise any harm to water sources in the area or to minimise any threat to the floodplain management provisions of the plan,
  - (b) provisions identifying development that should be controlled in any such zone,
  - (c) provisions identifying the manner in which any such development should be controlled in any such zone,
  - (d) provisions to which State agencies and local authorities (including local councils) should be subject when taking action and making decisions concerning any such development,
  - (e) provisions requiring development consent to the carrying out of any such development,

- (f) provisions requiring the Minister's concurrence to the granting of any such development consent,
  - (g) provisions requiring the establishment of action plans to encourage the abandonment of existing uses that cause harm to water sources, and to encourage the carrying out of remedial measures to minimise or alleviate any harm already caused to water sources by the continuance of existing uses.
- (2) In this section, **control**, **development**, **development consent** and **existing use** have the same meanings as they have in the [Environmental Planning and Assessment Act 1979](#).

## **Division 8 Procedures for making management plans**

### **35 Format of management plan**

- (1) A management plan must include the following components:
- (a) a vision statement,
  - (b) objectives consistent with the vision statement,
  - (c) strategies for reaching those objectives,
  - (d) performance indicators to measure the success of those strategies.
- (2) In the case of a water management area for which an equivalent management plan is already in force, the draft management plan may be in the form of:
- (a) an amendment to the existing management plan, or
  - (b) a new plan to replace the existing management plan.
- (3) Subject to subsections (1) and (2), the format of a management plan is to be as determined by the Minister.

### **36 Notification of certain persons and bodies**

- (1) In preparing a draft management plan, the following information must be notified to each person or body referred to in subsection (2):
- (a) the general aims and objectives of the draft plan,
  - (b) a description of the water management area to which the draft plan is intended to apply,
  - (c) such other matters as the Minister thinks fit.
- (2) The persons and bodies to be notified are as follows:

- (a) each local council within whose area the water management area is located,
  - (b) each catchment management committee and catchment management trust within whose area of operations the water management area is located,
  - (c) each holder of an access licence or approval in respect of land within the water management area,
  - (d) such other persons or bodies as the Minister may determine in relation to the plan.
- (3) Failure to notify a person or body referred to in subsection (2) does not affect the validity of a management plan.
- (4) A person to whom information is notified under this section may make written submissions to the Minister in relation to the preparation of the draft management plan within 28 days (or such longer period as may be determined by the Minister) after the information is notified.

### **37 Reference of draft management plan to Minister**

- (1) After a draft management plan has been prepared, including a draft management plan that has been referred back to it under this section, the management committee must submit the plan to the Minister.
- (2) If the Minister is of the opinion that the draft plan does not comply with the requirements of this Part, the Minister is to refer the draft plan back to the management committee for further consideration.
- (3) This section does not apply to a draft management plan prepared by the Minister.

### **38 Public exhibition of draft management plan**

- (1) Once the Minister is satisfied that a draft management plan is suitable for public exhibition, the Minister:
- (a) must give public notice of the draft plan, and
  - (b) must exhibit the draft plan (together with such other information as is appropriate or necessary to enable the draft plan and its implications to be understood) at the places, on the dates and during the times set out in the notice.
- (2) The public notice referred to in subsection (1) (a):
- (a) must specify the places at which, the dates on which, and the times during which, the draft plan may be inspected by the public, and
  - (b) must specify a period of at least 40 days during which submissions may be made to the Minister in relation to the plan (the **submission period**), and

(c) must be published in a daily newspaper circulating throughout New South Wales and in a local newspaper.

- (3) In the case of a draft management plan containing environmental protection provisions, the Minister must consult with the Minister for Urban Affairs and Planning before making a decision as to whether the plan is suitable for public exhibition.

### **39 Submissions on draft management plan**

- (1) During the submission period, any person may make written submissions to the Minister on the draft management plan.
- (2) The Minister must send a copy of each such submission to the management committee by which the plan was prepared.
- (3) Subsection (2) does not apply to a draft management plan prepared by the Minister.

### **40 Resubmission of draft management plan to Minister**

- (1) As soon as practicable after completing its consideration of any submissions received by it, the management committee must resubmit the draft management plan to the Minister together with the committee's comments on the submissions.
- (2) Before making any alterations to the draft management plan, the Minister must consult with the management committee.
- (3) This section does not apply to a draft management plan prepared by the Minister.

### **41 Making of management plan**

- (1) After complying with the requirements of this Part, the Minister:
- (a) may make a management plan in accordance with the draft plan, as finally submitted to the Minister, or
  - (b) may make a management plan in accordance with the draft plan, as finally submitted to the Minister, but with such alterations as the Minister thinks fit, or
  - (c) may cause the draft management plan to be re-exhibited (with such alterations as the Minister thinks fit) and resubmitted in accordance with this Part, or
  - (d) may decide not to proceed with the draft management plan.
- (2) Before making a management plan, the Minister must obtain the concurrence of the Minister for the Environment to the making of the plan.
- (3) A management plan commences on the date on which it is published in the Gazette or on such later date as may be specified in the plan.



#### **42 Amendment and repeal of management plans**

- (1) A management plan may be amended by a subsequent management plan made in accordance with this Part.
- (2) A management plan may also be amended by the Minister, by notice published in the Gazette, but only in such circumstances, in relation to such matters and to such extent as the plan so provides.
- (3) The amendment of a management plan under subsection (2) takes effect on the date of publication of the relevant notice or a later date specified in the notice.

#### **43 Duration of management plans**

- (1) Subject to this section, a management plan has effect for 10 years from the date on which it is made.
- (2) Within the fifth year after it was made, the Minister is to review each management plan for the purpose of ascertaining whether its provisions remain adequate and appropriate for ensuring the effective implementation of the water management principles.
- (3) Such a review is to be conducted in consultation with the Minister for the Environment.

#### **44 Periodic auditing of management plans**

- (1) The Minister is to ensure that a management plan is audited, at intervals of not more than 5 years, for the purpose of ascertaining whether its provisions are being given effect to.
- (2) An audit under this section is to be carried out by an audit panel appointed by the Minister in consultation with the Water Management Committee where one exists.
- (3) In setting terms of reference for the preparation of a management plan to replace an existing management plan, the Minister must have regard to the results of the most recent audit conducted under this section in relation to the existing management plan.

### **Division 9 Amendment of management plans by Minister**

#### **45 Amendment of bulk access regimes established by management plans**

- (1) At any time while a management plan is in force, the Minister may, by order published in the Gazette, vary the bulk access regime established by the plan if satisfied that it is in the public interest to do so.
- (2) Such an order may not be made in relation to a water management area for which a management committee for water sharing is constituted unless the Minister has

consulted with the committee in relation to the proposed variation of the bulk access regime.

## **Division 10 Regional environmental plans**

### **46 Regional environmental plans to be made**

- (1) On making a management plan containing environmental protection provisions, the Minister must cause a copy of the plan to be given to the Minister for Urban Affairs and Planning.
- (2) As soon as practicable (and, in any case, within 6 months) after receiving such a plan, the Minister for Urban Affairs and Planning must ensure that provisions are included in a regional environmental plan:
  - (a) to give effect to the environmental protection provisions of the plan, and
  - (b) to ensure that the regional environmental plan prevails over any local environmental plan made before or after the regional environmental plan to the extent of any inconsistency.
- (3) A regional environmental plan made pursuant to this section is taken to be made with respect to matters of significance for environmental planning for the region or part of the region to which it applies.
- (4) Section 41 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of a regional environmental plan made pursuant to this section.
- (5) In this section, **local environmental plan**, **region** and **regional environmental plan** have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

## **Division 11 Miscellaneous**

### **47 Validity of management plans**

The validity of a management plan may not be called into question in any legal proceedings other than those commenced in the Land and Environment Court within 3 months after the date of its publication in the Gazette.

### **48 Effect of management plans on exercise of Minister's functions**

When exercising functions under this Act, the Minister must take all reasonable steps to give effect to the provisions of any management plan and, in particular, to ensure that any environmental water rules established by the plan are observed.

### **49 Consideration of management plans by public authorities**

- (1) When exercising its functions, a public authority must have regard to the provisions of

any management plan to the extent to which they apply to the public authority.

- (2) For the purposes of this section, a management plan may be expressed so as to apply:
  - (a) to a specified public authority, to a specified class of public authorities or to public authorities generally, and
  - (b) to a specified function, to a specified class of functions or to functions generally.
- (3) This section neither restricts a public authority's statutory discretions nor authorises a public authority to do anything inconsistent with its statutory or other legal obligations.

## **Part 4 Minister's plans**

### **50 Minister's plan**

- (1) The Minister may, by order published in the Gazette, make a plan (a **Minister's plan**):
  - (a) for any part of the State that is not within a water management area, or
  - (b) for any water management area or water source, or part of a water management area or water source, for which a management plan is not in force, or
  - (c) for any water management area or water source, or part of a water management area or water source, for which a management plan is in force, but only so as to deal with matters not dealt with by the management plan.
- (1A) A Minister's plan may be made for more than one water management area or water source or for parts of more than one water management area or water source.
- (2) A Minister's plan must in general terms deal with any matters that a management plan is required to deal with, and may also deal with any other matters that a management plan is authorised to deal with, other than matters that are already dealt with by a management plan.
- (3) Before making a plan that establishes environmental water rules, the Minister must obtain the concurrence of the Minister for the Environment to the establishment of those rules.
- (4) Except to the extent to which this Act otherwise provides, a Minister's plan has the same effect as a management plan.
- (5) The Minister must cause each Minister's plan to be periodically reviewed at intervals of not more than 5 years.

## **Part 5 Implementation programs**

### **51 Implementation programs**

- (1) The Minister may, by order in writing, establish a program for implementing a management plan or Minister's plan (an **implementation program**).
- (2) Before establishing the first implementation program for a management plan, the Minister must consult with the management committee by which the plan was prepared.
- (3) An implementation program must set out the means by which the Minister intends that the objectives of the relevant management plan or Minister's plan are to be achieved.
- (4) On establishing an implementation program, the Minister must ensure that:
  - (a) notice of that fact is published (in a local newspaper and in such other manner as the Minister considers appropriate) to persons in the area to which the program relates, and
  - (b) copies of the program (as currently in force) are made available for inspection during normal office hours, free of charge, at suitable locations within the area.
- (5) The Minister is to ensure that the implementation program is reviewed each year for the purpose of determining whether the implementation program is effective in implementing the management plan or Minister's plan to which it relates.
- (6) The results of each review under this section are to be included in the annual report for the Department under the [Annual Reports \(Departments\) Act 1985](#).

## **Chapter 3 Water management implementation**

### **Part 1 Basic landholder rights**

#### **Division 1 Domestic and stock rights**

##### **52 Domestic and stock rights**

- (1) An owner or occupier of a landholding is entitled, without the need for an access licence, water supply work approval or water use approval:
  - (a) to take water from any river, estuary or lake to which the land has frontage or from any aquifer underlying the land, and
  - (b) to construct and use a water supply work for that purpose, and
  - (c) to use the water so taken for domestic consumption and stock watering, but not for any other purpose.

(2) Subsection (1) does not authorise a landholder to construct a dam or water bore without a water supply work approval.

(3) In this section:

**domestic consumption**, in relation to land, means consumption for normal household purposes in domestic premises situated on the land.

**stock watering**, in relation to land, means the watering of stock being raised on the land, but does not include the use of water in connection with intensive animal husbandry.

## Division 2 Harvestable rights

### 53 Harvestable rights

(1) An owner or occupier of a landholding within a harvestable rights area is entitled, without the need for any access licence, water supply work approval or water use approval:

(a) to construct and use a dam for the purpose of capturing and storing rainwater run-off, and

(b) to use water that has been captured and stored by a dam so constructed, in accordance with the harvestable rights order by which the area is constituted.

(2) A single dam may be used both for rainwater run-off that has been captured and other water that has been lawfully taken from a water source, but only if the harvestable rights order so provides.

(3) This section does not allow a landholder:

(a) to supply any other land with water that has been captured and stored under this section, or

(b) to construct or use a dam that obstructs the flow of a river, unless the river is declared by the relevant harvestable rights order to be a minor stream for the purposes of this Division.

### 54 Harvestable rights orders

(1) The Minister may, by order published in the Gazette, constitute any land as a harvestable rights area and may, by the same or a subsequent order so published, name the area and fix its boundaries.

(2) The order by which a harvestable rights area is constituted must specify the following:

(a) the proportion of the average rainwater run-off that may be captured by

landholders in the area (being no less than 10% of that average),

- (b) the procedures to be followed for calculating the average rainwater run-off for a landholding in the area.
- (3) The order may allow an existing dam to be used both for rainwater run-off that has been captured and other water that has been lawfully taken from a water source.
- (4) The order may also deal with the following matters:
  - (a) the types and locations of dams that may be used by a landholder to capture and store rainwater run-off,
  - (b) the means by which the maximum capacity of a dam that may be used by a landholder to capture and store rainwater run-off is to be calculated,
  - (c) the arrangements that may be made by landholders of adjoining land for the shared use of a single dam for the capture of rainwater run-off,
  - (d) such other matters as are necessary or convenient to give effect to the order.
- (5) For the purpose of calculating any matter under an order under this section, a reference in the order to an area of land is, in the case of land that is valued under the [Valuation of Land Act 1916](#), a reference to the area of a portion or parcel of land that is separately valued under that Act.
- (6) An order under this section may deal with any matter by reference to a map held in the head office of the Department.
- (7) Any map that is so referred to is to be available for public inspection, free of charge, during normal office hours at the head office of the Department and at the regional office for the area to which the relevant order relates.

## **Division 3 Native title rights**

### **55 Native title rights**

- (1) A native title holder is entitled, without the need for an access licence, water supply work approval or water use approval, to take and use water in the exercise of native title rights.
- (2) This section does not authorise a native title holder:
  - (a) to construct a dam or water bore without a water supply work approval, or
  - (b) to construct or use a water supply work otherwise than on land that he or she owns.
- (3) The maximum amount of water that can be taken or used by a native title holder in

any one year for domestic and traditional purposes is the amount prescribed by the regulations.

## Part 2 Access licences

### Division 1 Preliminary

#### 55A Application of Part

(1) This Part applies to:

- (a) each part of the State, and
- (b) each water source within that part of the State, and
- (c) each category or subcategory of access licence that relates to that part of the State and that water source,

that is declared by proclamation to be a part of the State, water source and category or subcategory of access licence to which this Part applies.

(2) Despite subsection (1), specified provisions of this Part may be declared by proclamation to apply to the whole of the State, and apply accordingly.

#### **Editorial note—**

See Gazette No 263 of 20.12.2002, p 10752 for proclamation applying section 71L to the whole of the State on and from 20 December 2002.

#### 56 Access licences

(1) An access licence entitles its holder:

- (a) to specified shares in the available water within a specified water management area or from a specified water source (the **share component**), and
- (b) to take water:
  - (i) at specified times, at specified rates or in specified circumstances, or in any combination of these, and
  - (ii) in specified areas or from specified locations,(the **extraction component**).

(2) Without limiting subsection (1) (a), the share component of an access licence may be expressed:

- (a) as a specified maximum volume over a specified period, or
- (b) as a specified proportion of the available water, or

(c) as a specified proportion of the storage capacity of a specified dam or other storage work and a specified proportion of the inflow to that dam or work.

(3) Shares in available water may be assigned generally or to specified categories of access licence.

(4) In the case of a local water utility licence, its share component is to be expressed as a specified volume per year.

(5), (6) (Repealed)

**Note—**

An access licence:

(a) does not confer a right on any person to use water for any particular purpose (that right is conferred by a water use approval), and

(b) does not confer a right on any person to construct or use a water supply work (that right is conferred by a water supply work approval).

## **57 Categories of licence**

There are the following categories of access licence:

(a) local water utility access licences,

(b) major utility access licences,

(c) domestic and stock access licences,

(d) regulated river (high security) access licences,

(e) regulated river (general security) access licences,

(f) supplementary water access licences,

(g) unregulated river access licences,

(h) aquifer access licences,

(i) estuarine water access licences,

(j) coastal water access licences,

(k) such other categories of access licence as may be prescribed by the regulations.

**Note—**

Local water utility access licences and major utility access licences will be held by local water utilities and major utilities, respectively. Those utilities (like anyone else) may also hold other categories of access licences.

However, an access licence does not become a local water utility access licence or major utility access licence merely because it is held by a local water utility or major utility.



## 58 Priorities between different categories of licence

- (1) For the purposes of this Act, the following priorities are to be observed in relation to access licences:
  - (a) local water utility access licences, major utility access licences and domestic and stock access licences have priority over all other access licences,
  - (b) regulated river (high security) access licences have priority over all other access licences (other than those referred to in paragraph (a)),
  - (c) access licences (other than those referred to in paragraphs (a), (b) and (d)) have priority between themselves as prescribed by the regulations,
  - (d) supplementary water access licences have priority below all other licences.
- (2) If one access licence (the **higher priority licence**) has priority over another access licence (the **lower priority licence**), then if the water allocations under them have to be diminished, the water allocations of the higher priority licence are to be diminished at a lesser rate than the water allocations of the lower priority licence.

## 59 Available water determinations

- (1) From time to time the Minister may, by order in writing, make a determination as to the availability of water for the various categories of access licence in relation to one or more specified water management areas or water sources (an **available water determination**).
- (2) The regulations may make provision for or with respect to the manner in which an available water determination is to be publicly notified.

## 60 Rules of distribution applicable to making of available water determinations

- (1) Except while an order under subsection (2) is in force, the following rules of distribution apply to the making of an available water determination:
  - (a) the rules of priority established by section 58,
  - (b) the provisions of any relevant bulk access regime,
  - (c) the provisions of any relevant management plan,
  - (d) the provisions of any relevant implementation program.
- (2) If satisfied that there is a severe water shortage, either generally or in relation to a particular water management area or water source or particular class of water management areas or water sources, the Minister may, by order published in the Gazette, suspend the operation of the rules of distribution referred to in subsection (1).

- (3) While an order under subsection (2) is in force, the following rules of distribution apply to the making of an available water determination:
- (a) first priority is to be given to:
    - (i) the needs of major utilities, local water utilities, irrigation corporations, private irrigation boards and private water trusts (in relation to domestic water supplies), and
    - (ii) the needs of persons exercising basic landholder rights,
  - (b) second priority is to be given to the needs of the environment,
  - (c) third priority is to be given to:
    - (i) the needs of major utilities and local water utilities (in relation to commercial water supplies), and
    - (ii) in the case of regulated rivers, the needs of persons holding regulated river (high security) access licences,
  - (d) fourth priority is to be given to:
    - (i) the needs of persons holding other categories of access licences, and
    - (ii) the needs of major utilities and local water utilities (otherwise than in relation to domestic and commercial water supplies).
- (4) Nothing in this section gives rise to a claim for compensation under section 87.

## **Division 2 Granting and renewal of access licences**

### **61 Applications for granting and renewal of access licences**

- (1) Subject to any embargo, any person may apply to the Minister for an access licence.
- (2) (Repealed)
- (3) In the case of an application under subsection (1) for an access licence:
- (a) for water in an area that is not within a water management area, or
  - (b) for water in a water management area for which there is no water sharing management plan in force,
- the Minister must cause the application to be advertised in accordance with the regulations.
- (4) Subsection (3) does not apply to an application for the renewal of an existing access licence.

(5) The Minister:

- (a) may require an applicant for an access licence to provide additional information within a specified time if of the opinion that additional information would be relevant to consideration of the application, and
- (b) may delay consideration of the application until the information is provided or, if the information is not provided within the time specified, may refuse to consider the application.

(6) The Minister may refuse to accept an application for an access licence if it appears to the Minister that the application is incomplete.

**62 Objections to granting of access licences**

(1) Any person may, in accordance with the regulations, object to the granting of an access licence:

- (a) for water in an area that is not within a water management area, or
- (b) for water in a water management area for which there is no water sharing management plan in force.

(2) The Minister must inform the applicant for the access licence of the grounds of any objection to the granting of the licence and must allow the applicant a specified time within which to make a written response to the Minister in relation to the objection.

(3) The Minister:

- (a) may require an objector or applicant to provide additional information within a specified time if of the opinion that additional information would be relevant to consideration of the objection or response, and
- (b) may delay consideration of the objection or response until the information is provided or, if the information is not provided within the time specified, may refuse to consider the objection or response.

(4) If there is a deficiency in an objection or response, the Minister may notify the objector or applicant accordingly and allow further time to enable the deficiency to be rectified.

(5) Before making a decision on an application for an access licence in respect of which any objection has been made, the Minister must endeavour to resolve the issues raised by the objection by means of consultation with the applicant and the objector, with a view to reaching agreement on the matters raised by the objection.

(6) For the purpose of reaching such an agreement, the Minister may propose that the matters raised by the objection be dealt with by way of mediation or neutral

evaluation involving an independent mediator or evaluator selected by agreement between the applicant, the objector and the Minister.

- (7) An application or objection may be dismissed by the Minister if the applicant or objector, as the case may be, fails to participate in any mediation or neutral evaluation proceedings referred to in subsection (6).

### **63 Determination of applications**

- (1) The Minister may determine an application for an access licence by granting or refusing to grant the licence.
- (2) An access licence is not to be granted unless the Minister is satisfied that:
- (a) the granting of an access licence, or an access licence of the category to which the application relates, is permitted by the relevant provisions of a management plan or Minister's plan, and
  - (b) adequate arrangements are in force to ensure that minimal harm will be done to any water source as a consequence of water being taken from the water source under the licence.
- (3) Despite subsection (1):
- (a) a local water utility access licence may only be granted to a local water utility, and
  - (b) a major utility access licence may only be granted to a major utility.
  - (c) (Repealed)
- (4) An access licence must specify:
- (a) in relation to its share component, the water management area or water source to which it relates, and
  - (b) in relation to its extraction component, the times, rates or circumstances in which, and the areas or locations from which, water may be taken under the licence.
- (5) An access licence may be issued with a zero share component or zero extraction component (or both) but, even if it is issued with a zero share component, must still specify the water management area or water source to which it relates.
- (6) Two or more co-holders of an access licence granted under this section are taken to hold the access licence:
- (a) as provided by the application for the access licence, or
  - (b) if the application makes no such provision, as tenants in common in equal shares.
- (7) An access licence is to be in such form as the Minister may determine.

- (8) In the case of an access licence that is a renewal of a former access licence, any interest that subsisted in the former access licence, as in force immediately before it was renewed, becomes an equivalent interest in the renewed access licence.
- (9) An application for the renewal of an access licence is not to be refused on the ground that fees due under the licence have not been paid unless the Minister has given written notice, to all persons in whose names any interests in the licence are registered in the General Register of Deeds, that the application will be refused unless arrangements satisfactory to the Minister have been made for the payment of those fees.
- (10) An access licence takes effect:
  - (a) at the end of the time permitted by section 368 (3) for making an appeal with respect to the decision to grant the licence, or
  - (b) if an appeal is made against the decision within that time, at the time the appeal is finally disposed of.

#### **64 Notice of decision**

- (1) After determining an application under this Division, the Minister must cause notice of the determination to be given to the applicant and, if the application relates to:
  - (a) an area that is not within a water management area, or
  - (b) a water management area for which there is no water sharing management plan in force,to each person who has made an objection in connection with the application.
- (2) The Minister must also cause notice of the granting of an access licence to be given, in accordance with the regulations, to the Registrar-General.
- (3) A notification under subsection (1) must be given within 7 days of the determination.

#### **65 Controlled allocation of access licences**

- (1) The Minister may, by order published in the Gazette:
  - (a) impose an embargo on applications for access licences for a specified water management area, and
  - (b) declare that access licences for that area are to be allocated by auction, tender or any other means specified in the order.
- (1A) Such an order may apply to the whole of a water management area or water source, or any specified part of a water management area or water source, and to access licences generally or to any specified category or subcategory of access licences.

- (2) While such an order is in force, access licences for the water management area to which the order relates are to be allocated in accordance with the terms of the order and not otherwise.

## Division 3 Conditions and duration of access licences

### 66 Conditions of access licence

- (1) An access licence is subject to:
- (a) such conditions as are from time to time required to be imposed on the access licence by the relevant management plan or Minister's plan (**mandatory conditions**), and
  - (b) such other conditions as the Minister may from time to time impose on the access licence, including conditions to give effect to any agreement between an applicant and objector under section 62 (5) and conditions relating to the protection of the environment (**discretionary conditions**).
- (2) A mandatory condition prevails over a discretionary condition to the extent of any inconsistency between them.

**Note—**

If a management plan or Minister's plan is replaced or amended during the term of an access licence, the mandatory conditions applying to the access licence may vary.

- (3) At the end of each 5-year period, the Minister is to vary each local water utility licence so as to reflect any variation in population, together with any variation in associated commercial activities, that has occurred during that period in the area in which domestic water is supplied under the licence.
- (3A) In subsection (3), **associated commercial activities** means activities within the following categories recognised in the *Australian and New Zealand Standard Industry Classification* (ANZSIC), 1993 edition (Australian Bureau of Statistics publication, Catalogue No 1292.0):
- (a) construction (category E),
  - (b) wholesale trade (category F),
  - (c) retail trade (category G),
  - (d) accommodation, cafes and restaurants (category H),
  - (e) communication services (category J),
  - (f) finance and insurance (category K),
  - (g) property and business services (category L),

- (h) government administration and defence (category M),
- (i) education (category N),
- (j) health and community services (category O),
- (k) cultural and recreational services (category P),
- (l) personal and other services (category Q).

(4) On the application of a local water utility, the Minister may at any time increase the utility's entitlement to water under a local water utility licence so as to reflect any rapid growth of population within the utility's area requiring an immediate increase in the availability of water for supply by that utility.

#### **67 Imposition of conditions after access licence is granted**

- (1) Discretionary conditions may not be imposed on an access licence after it has been granted unless the Minister:
- (a) has given written notice to the holder of the access licence that the Minister proposes to impose such conditions, and
  - (b) has given the holder of the access licence a reasonable opportunity to make submissions to the Minister with respect to the proposed conditions, and
  - (c) has taken any such submissions into consideration.
- (2) Subsection (1) does not apply to conditions imposed on an access licence at the request of the holder of the access licence, or to conditions imposed on an access licence in connection with a dealing under Division 4.
- (2A) Mandatory conditions are to be imposed on an access licence whenever it becomes necessary to do so in order to give effect to a relevant management plan.
- (3) The Minister must cause written notice of any conditions imposed on an access licence after the time it is granted to be served on the holder of the access licence.
- (4) A condition referred to in subsection (3) takes effect on the day on which the notice referred to in that subsection is served on the holder of the access licence or on such later day as may be specified in the notice in that regard.

#### **68 Revocation of conditions**

The Minister may at any time revoke any discretionary conditions to which an access licence is subject, whether or not on the application of the holder of the access licence.

#### **69 Duration of access licence**

- (1) An access licence (other than an access licence for a major utility) has effect:

- (a) for 15 years, except in the case of an access licence referred to in paragraph (b), or
  - (b) for 20 years, in the case of a local water utility access licence.
  - (c) (Repealed)
- (2) If the relevant application so requests, an access licence may be issued for a shorter period than that provided by subsection (1) in relation to the licence.
- (3) The holder of an access licence may, at any time within the 12 months before the access licence expires, apply to the Minister for renewal of the access licence.
- (4) If an application for renewal of an access licence is lodged before it expires, the term of the expiring licence is extended until:
- (a) the date of the final decision on the application, or
  - (b) such later date as the Minister may determine.

#### **70 Duration of access licences held by major utilities**

- (1) An access licence held by a major utility has effect for 20 years.
- (2) At the end of each 5 year period following the date on which an access licence is granted to a major utility, the major utility may apply to the Minister for an extension of the period of the licence for a further 5 years.
- (3) In determining whether or not to grant such an extension, the Minister must have regard to the latest review that has been conducted under section 282 in relation to that 5 year period.

### **Division 4 Dealings with access licences**

#### **71A Transfers of access licences**

- (1) Access licences may be transferred in accordance with this section.
- (2) The prospective transferor and transferee of an access licence may apply to the Minister for consent to the transfer and the Minister may grant, or refuse to grant, consent to the transfer.
- (3) Despite subsection (2):
- (a) consent to the transfer of a local water utility access licence may only be granted if the transferee is a local water utility, and
  - (b) consent to the transfer of a major utility access licence may only be granted if the transferee is a major water utility.



- (4) On completing a transfer to which consent has been given under this section, the parties to the transfer must cause notice of that fact to be given to the Minister.
- (5) The transfer takes effect when details of the transfer are entered on the register of access licences.
- (6) Two or more co-holders of an access licence that is transferred under this section are taken to hold the access licence:
  - (a) as provided by the notice of transfer referred to in subsection (4), or
  - (b) if the notice makes no such provision, as tenants in common in equal shares.

**71B Conversion of access licence to new category**

- (1) On the application of the holder of an access licence, the Minister may cancel the licence and issue a new access licence of a different category or subcategory.
- (2) Subsection (1) does not apply to a local water utility access licence or to a supplementary water access licence.
- (3) An access licence arising under this section may only be granted:
  - (a) subject to the mandatory conditions applicable to the category or subcategory of licence to which it belongs, and
  - (b) for a period no greater than the residue of the period for which the cancelled access licence would have had effect if it had not been cancelled.
- (4) An access licence arising under this section may only be granted in relation to the same water management area or water source as the cancelled access licence.
- (5) Any interests that subsisted in the cancelled access licence, as in force immediately before it was cancelled, become equivalent interests in the new access licence.
- (6) The Minister must cause notice of the granting of the new access licence to be given, in accordance with the regulations, to the Registrar-General.

**71C Subdivision and consolidation of access licences**

- (1) On the application of the holder of the access licence or access licences concerned, the Minister:
  - (a) may subdivide an access licence, by cancelling it and issuing two or more access licences in its place, or
  - (b) may consolidate two or more access licences that relate to the same water management area or water source and are of the same category or subcategory, by cancelling them and issuing a single access licence in their place.

- (2) Access licences arising from a subdivision referred to in subsection (1) (a) may only be granted:
  - (a) with combined share components and combined extraction components no greater than the corresponding components of the cancelled access licence, and
  - (b) subject to the same mandatory conditions as those to which the cancelled access licence was subject, and
  - (c) for a period no greater than the residue of the period for which the cancelled access licence would have had effect if it had not been cancelled.
- (3) Access licences arising from a consolidation referred to in subsection (1) (b) may only be granted:
  - (a) with combined share components and combined extraction components no greater than the sum of the corresponding components of the cancelled access licences, and
  - (b) subject to conditions consistent with those to which the cancelled access licences were subject, and
  - (c) for a period no greater than the residue of the period for which the earliest expiring of the cancelled access licences would have had effect if they had not been cancelled.
- (4) An access licence arising from a subdivision or consolidation may only be granted in relation to the same water management area or water source as the cancelled access licence or licences.
- (5) Any interests that subsisted in the cancelled access licences, as in force immediately before they were cancelled, become equivalent interests in the new access licences.
- (6) The Minister must cause notice of the granting of the new access licence to be given, in accordance with the regulations, to the Registrar-General.

**71D Assignment of rights under access licence**

- (1) Rights under an access licence may be assigned in accordance with this section.
- (2) The holders of two or more access licences of the same category with respect to the same water management area or water source may apply to the Minister for consent to:
  - (a) the reduction of the share or extraction component, or both, of one or some of the licences, and
  - (b) the increase, by a corresponding amount, of the share or extraction component, or both, of the others.

- (3) On completing an assignment to which consent has been given under this section, the parties to the assignment must cause notice of that fact to be given to the Minister.
- (4) The assignment takes effect when details of the assignment are entered on the register of access licences.
- (5) This section does not authorise the reduction of the share or extraction component, or both, of a local water utility access licence.
- (6) An access licence whose share or extraction component is varied under this section is to be made subject to the mandatory conditions applicable to an access licence with a share or extraction component as so varied.
- (7) An access licence is not cancelled merely because, as a result of an assignment under this section, it has a zero share component or zero extraction component (or both) for the time being.

**71E Amendment of share component of access licence**

- (1) On the application of the holder of an access licence, the Minister may cancel the licence and issue a new access licence with a share component specifying a different water management area or water source.
- (2) Subsection (1) does not apply to a local water utility access licence or supplementary water access licence.
- (3) An access licence arising under this section may only be granted:
  - (a) subject to the mandatory conditions applicable to an access licence of the same category or subcategory for the water management area or water source specified in its share component, and
  - (b) for a period no greater than the residue of the period for which the cancelled access licence would have had effect if it had not been cancelled.
- (4) Any interests that subsisted in the cancelled access licence, as in force immediately before it was cancelled, become equivalent interests in the new access licence.
- (5) The Minister must cause notice of the granting of the new access licence to be given, in accordance with the regulations, to the Registrar-General.

**71F Amendment of extraction component of access licence**

- (1) On the application of the holder of an access licence, the Minister may amend the extraction component of the licence so as:
  - (a) to vary the times, rates or circumstances specified in the licence with respect to the taking of water under the licence, or

(b) to vary the areas or locations specified in the licence as the areas or locations from which water may be taken under the licence.

- (2) The area or location arising from a variation referred to in subsection (1) (b) must relate to the same water management area or water source as that to which the original area or location related.
- (3) An access licence that is amended under this section is subject to the mandatory conditions applicable to the licence as so amended.

#### **71G Assignment of water allocations between access licences**

- (1) Water allocations may be assigned from one access licence to another in accordance with this section.
- (2) The holders of two or more access licences may apply to the Minister for consent to the assignment of water allocations between the water allocation accounts for their respective access licences.
- (3) Such an application may only be made with respect to water allocations currently credited to the access licence from which water allocations are to be assigned.
- (4) On completing an assignment to which consent has been given under this section, the parties to the assignment must cause notice of that fact to be given to the Minister.
- (5) The assignment takes effect when details of the assignment are entered in the relevant water allocation accounts.

#### **71H Interstate transfer of access licences**

- (1) The Minister may enter into an agreement with a Minister of any other State or Territory for the interstate transfer of access licences and their corresponding interstate equivalents.
- (2) On an application made pursuant to such an agreement, the Minister may grant or revoke an access licence to give effect to such a transfer.
- (3) In respect of each access licence arising under this section, the Minister:
  - (a) must impose on the licence such mandatory conditions as any relevant management plan may require to be imposed on the licence, and
  - (b) must cause notice of the new access licence to be given, in accordance with the regulations, to the Registrar-General.
- (4) The provisions of section 63 (4), (5), (6) and (7) apply to an access licence arising under this section in the same way as they apply to an access licence granted under section 63.

### **71I Interstate assignment of water allocations**

- (1) The Minister may enter into an agreement with a Minister of any other State or Territory for the interstate assignment of water allocations and their corresponding interstate equivalents.
- (2) On an application made pursuant to such an agreement, the Minister may credit water allocations to an access licence, or debit water allocations from an access licence, to give effect to such an assignment.
- (3) Such an application may only be made with respect to water allocations currently credited to the access licence from which water allocations are to be assigned.

### **71J Access licence may nominate water supply works**

On the application of the holder of an access licence, the Minister may amend the licence so as:

- (a) to nominate a specified water supply work, or group of water supply works, as a work or group of works by means of which water allocations under the licence may be taken, or
- (b) to withdraw any such nomination.

### **71K General**

- (1) An application under this Division is to be dealt with in accordance with:
  - (a) the water management principles, and
  - (b) the access licence dealing principles, and
  - (c) the access licence dealing rules established by any relevant management plan.
- (2) An application under this Division must not be granted unless:
  - (a) for all applications, each co-holder of the access licence or access licences concerned, and
  - (b) for all applications other than those under section 71G or 71I, each person in whose name there is registered in the General Register of Deeds, in relation to the access licence or access licences concerned, a security interest or an interest of a kind prescribed by the regulations,consent to the granting of the application.
- (3) In the case of an application under section 71E:
  - (a) the management plan for the water management area or water source to which the share component of the licence currently relates, and

(b) the management plan for the water management area or water source to which the share component of the licence is intended to relate if the application is granted,

are each relevant management plans.

- (4) Except to the extent to which the regulations so provide, Division 2 does not apply to or in respect of an application under this Division.
- (5) Subject to the regulations, notice of the Minister's determination of an application under this Division is to be given to the applicant or applicants as soon as practicable after the determination is made.

### **71L Access licence dealing principles**

The Minister may, by order published in the Gazette, establish access licence dealing principles:

- (a) to regulate or prohibit the kinds of access licence dealing rules that may be established by a management plan, and
- (b) subject to any such rules, to regulate or prohibit the kinds of dealings that may be effected under this Division, and
- (c) subject to any such rules, to establish conversion factors applicable to the share components of access licences in respect of which dealings are effected under this Division.

### **71-74 (Repealed)**

## **Division 5 Water return flows**

### **75 Water return flow rules**

- (1) The regulations may establish water return flow rules for the purposes of this Division.
- (2) Such a regulation may not be made except with the concurrence of the Minister for the Environment.

### **76 Water allocations may be credited**

- (1) Water allocations that have been used by the holder of an access licence may be regained in accordance with this section.
- (2) The holder of an access licence may apply to the Minister for used water allocations to be recredited to the licence.
- (3) An application under this section is to be dealt with in accordance with the water return flow rules.

## **Division 6 Surrender, suspension, cancellation and compulsory acquisition of access licences**

### **77 Surrender of access licences**

- (1) The holder of an access licence may surrender the licence at any time by notice in writing sent to the Minister.
- (2) In the case of an access licence in respect of which any third party interest is entered on the register of access licences, the notice of surrender must be accompanied by documentary evidence that the holder of that interest consents to the licence being surrendered.
- (3) The surrender takes effect on the date on which the notice is received by the Minister or such later date as is specified in the notice.

### **78 Suspension and cancellation of access licences**

- (1) The Minister may suspend or cancel an access licence on any one or more of the following grounds:
  - (a) that the holder of the licence has failed to comply with the conditions to which the licence is subject,
  - (b) that the holder of the licence has been convicted of an offence against this Act or the regulations,
  - (c) if any charges payable in respect of the licence have not been paid.
- (2) Instead of or in addition to suspending or cancelling an access licence, the Minister may order a major utility to pay to the Minister a civil penalty not exceeding \$500,000 and, in the case of a continuing offence, a further penalty not exceeding \$20,000 for each day for which the offence continues.
- (3) Action under this section may not be taken in relation to an access licence unless the Minister:
  - (a) has given written notice to the holder of the access licence that the Minister proposes to take such action, and
  - (b) has given the holder of the access licence a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and
  - (c) has taken any such submissions into consideration.
- (4) Action under this section may not be taken in relation to an access licence on the ground that fees due under the licence have not been paid unless the Minister has given written notice, to all persons in whose names any interests in the licence are

registered in the General Register of Deeds, that such action will be taken unless arrangements satisfactory to the Minister have been made for the payment of those fees.

## **79 Compulsory acquisition of access licences**

- (1) The Minister may, by notice in writing served on their holders, compulsorily acquire access licences if of the opinion that, in the special circumstances of the case, the public interest requires their compulsory acquisition.
- (2) A person from whom an access licence is compulsorily acquired under subsection (1) is entitled to compensation from the State for the market value of the licence as at the time it was compulsorily acquired.
- (3) The amount of compensation payable is to be determined by agreement between the Minister and the person entitled to compensation or, if agreement cannot be reached, is to be determined by the Valuer-General.
- (4) A person who is dissatisfied with the amount of compensation offered to the person under this section, or with any delay in the payment of compensation, may appeal to the Land and Environment Court.
- (5) The regulations may make provision for or with respect to the payment of compensation under this section.
- (6) Nothing in this section prevents the Ministerial Corporation from acquiring an access licence by way of transfer.
- (7) For the avoidance of doubt, it is declared that a reduction of the water entitlements and allocations under an access licence as a consequence of a variation in the mandatory conditions of the licence does not constitute the compulsory acquisition of an access licence or any part of an access licence.

## **Division 7 Embargoes on applications for access licences**

### **80 Temporary embargo**

- (1) The Minister may, by order published in the Gazette, declare an embargo on the making of applications for access licences with respect to any water management area.
  - (1A) Such an order may apply to the whole of a water management area or water source or to any specified part of a water management area or water source, and to access licences generally or to any specified category or subcategory of access licences.
- (2) An order under this section may relate to all applications, to applications of a specified kind or to all applications other than applications of a specified kind.



- (3) A copy of any order under this section is to be published in a local newspaper.
- (4) An order under this section takes effect on the date on which it is published in the Gazette and, unless sooner revoked, expires at the end of 2 years after that date.

### **81 Permanent embargo**

- (1) The Governor may, by proclamation published in the Gazette, declare an embargo on the making of applications for access licences with respect to any water management area.
  - (1A) Such a proclamation may apply to the whole of a water management area or water source or to any specified part of a water management area or water source, and to access licences generally or to any specified category or subcategory of access licences.
- (2) A proclamation under this section may relate to all applications, to applications of a specified kind or to all applications other than applications of a specified kind.
- (3) A copy of any proclamation under this section is to be published in a local newspaper.
- (4) A proclamation under this section takes effect on the date on which it is published in the Gazette and continues in force until it is revoked by a further proclamation so published.

### **82 Operation of embargo**

- (1) An embargo does not apply to:
  - (a) an application made before the embargo took effect, or
  - (b) an application to amend an application made before the embargo took effect (other than an application to amend an application for an access licence in such a manner as to increase the amount of water sought by the proposed access licence), or
  - (c) an application for the renewal of an access licence, or
  - (d) any application under Division 4, or
  - (e) any other application of a kind prescribed by the regulations.
- (2) An application to which an embargo relates is a nullity and is not revived merely because the embargo is subsequently revoked.
- (3) Subject to the terms of the order or proclamation by which it is declared, an embargo:
  - (a) in relation to a water source that is a regulated river, applies to all surface waters that may flow into the embargoed water source, including any unregulated

reaches of the river or its tributaries, and

- (b) in relation to a water source that is an unregulated river, applies to all surface waters that may flow into the embargoed water source, and
- (c) in relation to a groundwater system, applies to any aquifer that may be part of that groundwater system.

## **Division 8 Registers and accounts**

### **83 Registration of access licences**

- (1) The Minister is to cause a register of access licences to be kept.
- (2) Particulars of the following transactions are to be recorded in the register:
  - (a) the granting or renewal of an access licence, as referred to in section 63,
  - (b) the transfer of an access licence from one person to another, as referred to in section 71A,
  - (c) the conversion of an access licence from one category or subcategory to another, as referred to in section 71B,
  - (d) the subdivision of an access licence, and the consolidation of two or more access licences, as referred to in section 71C,
  - (e) the assignment of rights under an access licence, as referred to in section 71D,
  - (f) the amendment of the share component of an access licence, as referred to in section 71E,
  - (g) the amendment of the extraction component of an access licence, as referred to in section 71F,
  - (h) the assignment of water allocations between access licences, as referred to in section 71G,
  - (i) the granting of an access licence following an interstate transfer, as referred to in section 71H,
  - (j) the crediting or debiting of water allocations following an interstate assignment, as referred to in section 71I,
  - (k) the nomination of a water supply work or group of water supply works by an access licence or the withdrawal of such a nomination, as referred to in section 71J,
  - (l) the surrender of an access licence, as referred to in section 77,

- (m) the suspension or cancellation of an access licence, as referred to in section 78,
  - (n) the compulsory acquisition of an access licence, as referred to in section 79,
  - (o) such other transactions as are prescribed by the regulations.
- (3) Subject to subsection (2), the regulations may make provision for or with respect to the form in which the register is to be kept and the particulars that are to be recorded in the register.
- (4) The register must be made available for public inspection during normal business hours at such places as may be prescribed by the regulations.

### **83A Registration of interests in access licence in General Register of Deeds**

- (1) An access licence may become the subject of a security interest.
- (2) An interest in an access licence that is registered in the General Register of Deeds (a **registered interest**) has priority, for all purposes, over an interest that is not so registered (an **unregistered interest**).
- (3) An earlier registered interest in an access licence has priority, for all purposes, over a later registered interest.
- (4) Nothing in this section affects the priority between two or more unregistered interests in an access licence.
- (5) Subsections (2) and (3) 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 Chapters 2K and 5 of that Act.

#### **Note—**

Subsection (5) ensures that the priorities established by subsections (2) and (3) are not over-ridden by the provisions of the *Corporations Act 2001* with respect to the distribution of assets of a corporation that is being wound up under that Act.

- (6) Subject to subsections (2) and (3), registration in the General Register of Deeds of an instrument purporting to create, modify, transfer or extinguish an interest in an access licence gives the instrument no greater effect than it would have had if it had not been so registered.
- (7) For the purposes of this Act, a person is not taken to hold a legal or equitable interest in an access licence held by a corporation merely because the person is a shareholder in the corporation.

### **84 Register of available water determinations**

- (1) The Minister is to cause a register to be kept of each available water determination made under section 59.

- (2) The regulations may make provision for or with respect to the form in which such a register is to be kept and the particulars that are to be recorded in such a register.
- (3) The register must be made available for public inspection during normal business hours at such places as may be prescribed by the regulations.

#### **85 Water allocation accounts**

- (1) For each access licence, the Minister is to cause an account to be kept of:
  - (a) the water allocations that are acquired or accrued from time to time under the licence, and
  - (b) the water allocations that are taken or transferred from time to time under the licence, and
  - (c) the water allocations that are recredited to the licence from time to time under section 76.
- (1A) Water allocations are to be credited to an access licence in accordance with any relevant available water determination.
- (1B) Water allocations that have been carried over from one accounting period to the next may be withdrawn by the Minister, by reason of evaporation or dam spill, but only to the extent provided by the relevant management plan, as referred to in section 21 (c).
- (2) The regulations may make provision for or with respect to the form in which such an account is to be kept and the particulars that are to be recorded in such an account.

#### **86 Devolution of rights of holder of access licence**

A person on whom the rights of the holder of an access licence have devolved by operation of law may apply to the Minister to have that person's name recorded as the holder of the licence and, if the Minister is satisfied that those rights have so devolved, the Minister may so record the name of the applicant.

### **Division 9 Compensation when management plan bulk access regime varied**

#### **87 Compensation payable for reductions in water allocations arising from Minister's amendment of management plan**

- (1) A holder of an access licence (other than a supplementary water access licence) whose water allocations are reduced as a consequence of the variation of a bulk access regime may claim compensation for loss suffered by the holder as a consequence of that reduction.

- (2) Despite subsection (1), compensation may not be claimed if the variation of the bulk access regime results from:
  - (a) a management plan that has been made in relation to a water management area for which a bulk access regime has not been established by any other management plan, or
  - (b) a management plan that has been made on the basis of a draft management plan prepared by a management committee, and is in the form in which it was finally submitted to the Minister by the committee, as referred to in section 41 (1) (a), or
  - (c) a management plan that has been amended by the Minister in accordance with section 42 (2).
- (3) The regulations may make provision for or with respect to the manner and form in which such a claim is to be made.
- (4) The Minister may determine whether or not compensation should be paid and, if so, the amount of any such compensation and the manner and timing of any such payments.
- (5) The amount of any such compensation is to be determined on the advice of the Valuer-General.
- (6) In formulating advice for the Minister, the Valuer-General is to have regard to the market value of the water foregone to the claimant for compensation as a consequence of the variation of the bulk access regime.
- (7) A person who is dissatisfied with the amount of compensation offered to the person under this section, or with any delay in the payment of compensation, may appeal to the Land and Environment Court.
- (8) Payment of compensation under this section is to be made out of the Consolidated Fund which is, to the extent necessary, appropriated accordingly.

## **Division 10 Miscellaneous**

### **88 Regulations**

The regulations may make provision for or with respect to the following matters:

- (a) the procedures to be followed in relation to the making of applications under this Part,
- (b) the procedures to be followed in relation to the granting, renewal and transfer of access licences,
- (c) the procedures to be followed in relation to the transfer of water allocations under an access licence,

- (d) the procedures to be followed in relation to the recrediting of water allocations under an access licence.

## **Part 3 Approvals**

### **Division 1 Preliminary**

#### **88A Application of Part**

- (1) This Part applies to:
  - (a) each part of the State, and
  - (b) each type or kind of approval within that part of the State, that is declared by proclamation to be a part of the State, and type or kind of approval, to which this Part applies.
- (2) Despite subsection (1), specified provisions of this Part may be declared by proclamation to apply to the whole of the State, and apply accordingly.

#### **89 Water use approvals**

A water use approval confers a right on its holder to use water for a particular purpose at a particular location.

#### **90 Water management work approvals**

- (1) There are three kinds of water management work approvals, namely, water supply work approvals, drainage work approvals and flood work approvals.
- (2) A water supply work approval authorises its holder to construct and use a specified water supply work at a specified location.
- (3) A drainage work approval confers a right on its holder to construct and use a specified drainage work at a specified location.
- (4) A flood work approval confers a right on its holder to construct and use a specified flood work at a specified location.

#### **91 Activity approvals**

- (1) There are two kinds of activity approvals, namely, controlled activity approvals and aquifer interference approvals.
- (2) A controlled activity approval confers a right on its holder to carry out a specified controlled activity at a specified location in, on or under waterfront land.
- (3) An aquifer interference approval confers a right on its holder to carry out an aquifer interference activity at a specified location, or in a specified area, in the course of

carrying out specified activities.

**Note—**

Examples of where an aquifer interference approval may be needed include mining operations, road construction and any other large scale activity that involves excavation.

## **Division 2 Applications for approvals**

### **92 Applications for approvals**

- (1) Subject to any embargo, any person may apply for an approval.
- (2) An application for an approval must be made to the Minister in accordance with the regulations.
- (3) The regulations may require the application to be accompanied by a management program for the land to which the application relates.
- (4) An application may relate to more than one approval, whether of the same or of a different kind, unless the Minister requires a separate application to be made in relation to one or more of them.
- (5) The Minister:
  - (a) may require an applicant for an approval to provide additional information within a specified time if of the opinion that additional information would be relevant to consideration of the application, and
  - (b) may delay consideration of the application until the information is provided or, if the information is not provided within the time specified, may refuse to consider the application.
- (6) The Minister may refuse to accept an application for an approval if it appears to the Minister that the application is incomplete.
- (7) The regulations may require any application, or any specified class of applications, to be advertised.
- (8) Subsection (7) does not apply to an application for the renewal of an existing approval.

**Note—**

Approvals are listed in section 91 of the [Environmental Planning and Assessment Act 1979](#). Development that requires an approval is consequently integrated development for the purposes of that Act.

### **93 Objections to applications for approvals**

- (1) Any person may, in accordance with the regulations, object to the granting of an

approval that has been advertised pursuant to section 92.

- (2) The Minister must inform the applicant for an approval of the grounds of any objection to the granting of the approval and must allow the applicant a specified time within which to make a written response to the Minister in relation to the objection.
- (3) The Minister:
  - (a) may require an objector or applicant to provide additional information within a specified time if of the opinion that additional information would be relevant to consideration of the objection or response, and
  - (b) may delay consideration of the objection or response until the information is provided or, if the information is not provided within the time specified, may refuse to consider the objection or response.
- (4) If there is a deficiency in an objection or response, the Minister may notify the objector or applicant accordingly and allow further time to enable the deficiency to be rectified.
- (5) Before making a decision on an application for the approval in respect of which any objection has been made, the Minister must endeavour to resolve the issues raised by the objection by means of consultation with the applicant and the objector, with a view to reaching agreement on the matters raised by the objection.
- (6) For the purpose of reaching such an agreement, the Minister may propose that the matters raised by the objection be dealt with by way of mediation or neutral evaluation involving an independent mediator or evaluator appointed by agreement between the applicant, the objector and the Minister.
- (7) The costs of any such mediation or neutral evaluation are to be paid for by the Minister.
- (8) An application or objection may be dismissed by the Minister if the applicant or objector, as the case may be, fails to participate in any mediation or neutral evaluation proceedings referred to in subsection (6).

**94 Determination of applications affected by public inquiries under the [Environmental Planning and Assessment Act 1979](#)**

- (1) This section applies to any application for an approval in respect of which a Commission of Inquiry has given a section 120A notice to the Minister before the Minister makes a decision on the application.
- (2) The Minister:
  - (a) must refer to the Commission of Inquiry:



(i) the application (including any information furnished in relation to the application), and

(ii) any objection to the application (including any information furnished in relation to the objection),

whether the application or objection is made or lodged before or after the section 120A notice is received, and

(b) must defer making any decision on the application until it receives the Commission of Inquiry's section 119 report.

(3) In making a decision on the application, the Minister must have regard to the findings and recommendations contained in the Commission of Inquiry's section 119 report.

(4) In this section:

**Commission of Inquiry** means a Commission of Inquiry constituted under section 119 of the *Environmental Planning and Assessment Act 1979*.

**section 119 report** means a report referred to in section 119 (6) of the *Environmental Planning and Assessment Act 1979*.

**section 120A notice** means a notice referred to in section 120A (1) of the *Environmental Planning and Assessment Act 1979*.

## 95 Determination of applications

(1) After considering an application and all matters relevant to the application, the Minister is to determine the application:

(a) by granting the approval to which the application relates, or

(b) by refusing the application.

(2) A single approval may be granted in relation to more than one use, work or activity and in relation to more than one type or kind of use, work or activity.

(3) An approval may not be granted in contravention of the provisions of any relevant management plan.

(4) An approval is to be in such form as the Minister may determine.

(5) An approval takes effect:

(a) at the end of the time permitted by section 368 (3) for making an appeal with respect to the decision to grant the approval, or

(b) if an appeal is made against the decision within that time, at the time the appeal is finally disposed of.

## **96 Matters affecting consideration of applications**

In considering whether or not to grant an approval, the Minister must take into account:

- (a) such matters as are prescribed by the regulations, and
- (b) such other matters as the Minister considers to be relevant.

## **97 Grounds of refusal of certain applications**

- (1) A water use approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that minimal harm will be done to any water source, or its dependent ecosystems, as a consequence of the proposed use of water on the land in respect of which the approval is to be granted.
- (2) A water management work approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that minimal harm will be done to any water source, or its dependent ecosystems, as a consequence of the construction or use of the proposed water management work.
- (3) (Repealed)
- (4) A controlled activity approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that minimal harm will be done to any waterfront land as a consequence of the carrying out of the proposed controlled activity.
- (5) A water management work approval for a water management work that is, or is proposed to be, situated on land not owned by the applicant is not to be granted unless the Minister is satisfied:
  - (a) that the applicant is likely to become the owner of the land within a reasonable time, or
  - (b) that the land is subject to an easement that authorises the construction and use of such a work for the benefit of the applicant's land, or
  - (c) that the applicant is otherwise entitled (whether under this or any other Act or under an agreement applying to the land) to construct and use such a work.
- (6) An aquifer interference approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that minimal harm will be done to the aquifer, or its dependent ecosystems, as a consequence of its being interfered with in the course of the activities to which the approval relates.

## **98 Notice of decision**

After determining an application under this Division, the Minister must cause notice of the determination to be given to the applicant and, if the application relates to an approval

that has been advertised pursuant to section 92, to each person who has made an objection to the Minister in connection with the application.

### **99 Procedures in relation to integrated development**

- (1) In this section, **consent authority, development consent** and **integrated development** have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.
- (2) The provisions of this Act with respect to the advertising of an application for an approval do not apply if the application relates to integrated development.
- (3) If a consent authority grants development consent to integrated development, either as a consequence of having obtained the general terms of any approval proposed to be issued by the Minister or as a consequence of the Minister having failed to inform the consent authority as to whether or not an approval will be granted:
  - (a) no person has any right to lodge an objection under this Act to the granting of the approval, and
  - (b) no person has any right under this Act to appeal to the Land and Environment Court against the granting of the approval.
- (4) Subsection (3) (b) does not affect any right of appeal to which an objector may be entitled under section 98 of the *Environmental Planning and Assessment Act 1979*.

## **Division 3 Conditions and duration of approvals**

### **100 Conditions of approval generally**

- (1) An approval is subject to:
  - (a) such conditions as are from time to time required to be imposed on the approval by the relevant management plan or Minister's plan (**mandatory conditions**), and
  - (b) such other conditions as the Minister may from time to time impose on the approval, including conditions to give effect to any agreement between an applicant and objector under section 93 (5) and conditions relating to the protection of the environment (**discretionary conditions**).
- (2) A mandatory condition prevails over a discretionary condition to the extent of any inconsistency between them.

#### **Note—**

If a management plan or Minister's plan is replaced or amended during the term of an approval, the mandatory conditions applying to the approval may vary.

### **101 Conditions of approval for joint schemes**

- (1) This section applies to a water management work approval granted in relation to a joint scheme, that is, a scheme under which landholders of different parcels of land hold a single water management work approval for a water management work located on, passing through or otherwise benefiting or affecting those parcels.
- (2) A water management work approval for a water management work the subject of a joint scheme is subject to such conditions as the regulations require and to such other conditions as the landholders concerned agree.
- (3) A regulation referred to in subsection (2) may impose conditions, in relation to the rights and duties of the landholders concerned in the joint scheme, with respect to the following matters:
  - (a) the granting of access to the work,
  - (b) the operation of the work,
  - (c) the apportionment of water supplied by means of the work,
  - (d) the apportionment of the cost of constructing and maintaining the work,
  - (e) the apportionment of such other costs with respect to work as are prescribed by the regulations,
  - (f) the exclusion of land from the joint scheme.

### **102 Imposition of conditions after approval is granted**

- (1) Discretionary conditions may not be imposed on an approval after it has been granted unless the Minister:
  - (a) has given written notice to the holder of the approval that the Minister proposes to impose such conditions, and
  - (b) has given the holder of the approval a reasonable opportunity to make submissions to the Minister with respect to the proposed conditions, and
  - (c) has taken any such submissions into consideration.
- (2) Subsection (1) does not apply to conditions imposed on an approval at the request of the holder of the approval.
- (2A) Mandatory conditions are to be imposed on an approval whenever it becomes necessary to do so in order to give effect to a relevant management plan.
- (3) The Minister must cause written notice of any conditions imposed on an approval after the time it is granted to be served on the holder of the approval.

- (4) A condition referred to in subsection (3) takes effect on the day on which the notice referred to in that subsection is served on the holder of the approval or on such later day as may be specified in the notice in that regard.

### **103 Revocation of conditions**

The Minister may at any time revoke any discretionary conditions to which an approval is subject, whether or not on the application of the holder of the approval.

### **104 Duration of approval**

- (1) An approval (other than an approval for a major utility) has effect for such period as may be specified in the approval in that regard, being a period not exceeding:
- (a) 3 years, in the case of a controlled activity approval, or
  - (b) 10 years, in the case of a water use approval or aquifer interference approval, or
  - (c) 20 years, in the case of a water management work approval.
- (2) If an application for renewal of an approval is lodged before it expires, the term of the expiring approval is extended until:
- (a) the date of the final decision on the application, or
  - (b) a date fixed by the Minister for the approval,
- whichever is the later date.
- (3) If:
- (a) an approval expires without an application for its renewal being made, and
  - (b) an application for its renewal is subsequently made by the former holder of an approval and is accompanied by a statutory declaration of the reasons for the delay in making the application, and
  - (c) the reasons are accepted by the Minister,
- the term of the approval is taken to have been extended, and the application may be dealt with, as if the application had been made before the approval expired.

### **105 Duration of approvals held by major utilities**

- (1) An approval held by a major utility has effect for 20 years.
- (2) At the end of each 5 year period following the date on which an approval is granted to a major utility, the major utility may apply to the Minister for an extension of the period of the approval for a further 5 years.
- (3) In determining whether or not to grant such an extension, the Minister must have

regard to the latest review that has been conducted under section 282 in relation to that 5 year period.

#### **106 Land benefited by water use approval or water management work approval**

- (1) A water use approval or water management work approval is taken to be held by, and for the benefit of, each successive landholder for the time being of the land specified in the approval as the land benefited by the approval.
- (2) While the approval is in force, each such landholder:
  - (a) is under a duty to comply with the conditions to which the approval is subject, and
  - (b) is entitled to commence and maintain legal proceedings against any co-holder of the approval with respect to that co-holder's failure to comply with those conditions.
- (3) For the purposes of this section, a major utility, local water utility, irrigation corporation, private irrigation board, private drainage board or private water trust is taken to be a landholder of land in respect of which a water use approval or water management work approval held by it is in force.
- (4) This section does not apply in such circumstances as may be prescribed by the regulations.

### **Division 4 Amendment, surrender, suspension and cancellation of approvals**

#### **107 Amendment of water management work approval on application by holder of approval**

- (1) On the application of the holder of a water management work approval, the Minister may amend the approval:
  - (a) so as to allow an alteration or extension of the relevant water management work, or
  - (b) so as to allow the construction or use of an additional water management work on adjoining land occupied by the holder of the approval.
- (2) The Minister may treat an application under this section as an application for the grant, on surrender of the existing water management work approval, of a replacement approval conferring the same authority as would have been conferred by the existing approval had it been amended in accordance with the application.

#### **108 Surrender of approvals**

- (1) The holder of an approval may surrender the approval at any time by notice in writing

sent to the Minister.

- (2) The surrender takes effect on the date on which the notice is received by the Minister or such later date as is specified in the notice.

### **109 Suspension and cancellation of approvals**

- (1) The Minister may suspend or cancel an approval on any one or more of the following grounds:
  - (a) that the holder of the approval has failed to comply with the conditions to which the approval is subject,
  - (b) that the holder of the approval has been convicted of an offence against this Act or the regulations,
  - (c) that the holder of the approval has failed to make due payment with respect to any fee or charge that is payable under this Act in relation to the approval,
  - (d) in the case of an approval granted in relation to a water management work, the holder of the approval has failed to comply with any direction given to the holder under this Act in connection with the work,
  - (e) that the approval was granted as a result of false, misleading or materially inaccurate information supplied by or on behalf of the applicant.
- (2) Instead of or in addition to suspending or cancelling an approval, the Minister may order a major utility to pay to the Minister a civil penalty not exceeding \$500,000 and, in the case of a continuing offence, a further penalty not exceeding \$20,000 for each day for which the offence continues.
- (3) Action under this section may not be taken in relation to an approval unless the Minister:
  - (a) has given written notice to the holder of the approval that the Minister proposes to take such action, and
  - (b) has given the holder of the approval a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and
  - (c) has taken any such submissions into consideration.

## **Division 5 Embargoes on applications for approvals**

### **110 Temporary embargo**

- (1) The Minister may, by order published in the Gazette, declare an embargo on the making of applications for approvals with respect to any water management area.

- (1A) Such an order may apply to the whole of a water management area or to any specified part of a water management area, and to approvals generally or to any specified type or kind of approvals.
- (2) An order under this section may relate to all applications, to applications of a specified kind or to all applications other than applications of a specified kind.
- (3) A copy of any order under this section is to be published in a local newspaper.
- (4) An order under this section takes effect on the date on which it is published in the Gazette and, unless sooner revoked, expires at the end of 2 years after that date.

### **111 Permanent embargo**

- (1) The Governor may, by proclamation published in the Gazette, declare an embargo on the making of applications for approvals with respect to any water management area.
- (1A) Such a proclamation may apply to the whole of a water management area or to any specified part of a water management area, and to approvals generally or to any specified type or kind of approvals.
- (2) A proclamation under this section may relate to all applications, to applications of a specified kind or to all applications other than applications of a specified kind.
- (3) A copy of any proclamation under this section is to be published in a local newspaper.
- (4) A proclamation under this section takes effect on the date on which it is published in the Gazette and continues in force until it is revoked by a further proclamation so published.

### **112 Operation of embargo**

- (1) An embargo does not apply to:
  - (a) an application made before the embargo took effect, or
  - (b) an application to amend an application made before the embargo took effect, or
  - (c) an application for the renewal of an approval, or
  - (d) any other application of a kind prescribed by the regulations.
- (2) An application to which an embargo relates is a nullity and is not revived merely because the embargo is subsequently revoked.

## **Division 6 Registers**

### **113 Register of approvals**

- (1) The Minister is to cause a register to be kept of:



- (a) every application for an approval that is duly made under this Act, and
  - (b) every approval that is granted, renewed, transferred, surrendered, suspended or cancelled under this Act.
- (2) The regulations may make provision for or with respect to the form in which such a register is to be kept and the particulars that are to be recorded in such a register.
- (3) The register must be made available for public inspection during normal business hours at such places as may be prescribed by the regulations.

## **Part 4 Finance**

### **114 Minister may impose fees and charges**

The Minister may impose fees and charges for the purposes of this Act.

**Note—**

Under the *Independent Pricing and Regulatory Tribunal Act 1992*, any fees and charges imposed by the Minister under this section cannot exceed any relevant determination made by the Independent Pricing and Regulatory Tribunal.

### **115 Certificate as to charges outstanding**

- (1) The Minister may, in relation to any land, issue a certificate to the effect that, as at the date on which the certificate is issued:
- (a) a specified amount is payable in relation to the land pursuant to charges imposed under this Part, or
  - (b) no amount is so payable.
- (2) Such a certificate is conclusive proof, in favour of a purchaser in good faith and for value of the land to which it relates, that, as at the date on which it was issued, no amounts were payable in respect of the land other than such amounts as are specified in the certificate.

## **Chapter 4 Joint private works**

### **Part 1 Irrigation corporations**

#### **Division 1 Preliminary**

##### **116 Application of Part**

This Part applies to all irrigation corporations under the former *Irrigation Corporations Act 1994* that were in existence immediately before the repeal of that Act, but does not authorise the establishment of any new irrigation corporations.

## 117 Definitions

In this Part:

**area of operations** of an irrigation corporation means the area of land comprising the areas and districts specified in Schedule 1 in relation to the corporation, being areas and districts constituted under the former *Irrigation Act 1912* and Part 6 of the former *Water Act 1912*, including any land included in its area of operations under Division 4 but excluding any land excluded from its area of operations under Division 5 of this Part.

**irrigation corporation** means a corporation named in Schedule 1.

**operating licence** means an operating licence referred to in section 122.

## 118 Requirements for access licences and approvals

- (1) Nothing in this Part authorises an irrigation corporation to take water from a water source otherwise than in accordance with an access licence and water supply work approval held by the corporation.
- (2) Nothing in this Part authorises a landholder of land within an irrigation corporation's area of operations to use water otherwise than in accordance with a water use approval held by the corporation.

## Division 2 Irrigation corporations

### 119 Assets of irrigation corporations

- (1) An irrigation corporation is the owner of all water management works installed in or on land by the corporation (whether or not the land is owned by the corporation).
- (2) The provisions of Part 5 and section 88 of the *Irrigation Corporations Act 1994*, as in force immediately before their repeal, continue to apply for the purpose of enabling the Ministerial Corporation to transfer to an irrigation corporation any of its assets, rights and liabilities with respect to an irrigation scheme area with which the irrigation corporation was formerly connected.

### 120 Entry on to land

- (1) An irrigation corporation may, by authorised persons, enter land within its area of operations for any one or more of the following purposes:
  - (a) to install, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that the corporation considers are necessary or appropriate to any of its water management works or to construct new water management works and, for these purposes, to carry out any work on, below or above the surface of the land,
  - (b) to read a meter that:

- (i) measures water supplied by the corporation, or
    - (ii) monitors drainage for quantity or quality or both,
  - (c) to find the source of pollution of water within the area of operations of the corporation,
  - (d) to ascertain whether a water supply contract or other contract for the provision of services by the corporation is being breached,
  - (e) to rectify defective or improper work that has not been rectified by a customer in accordance with a notice served by the corporation on the customer under a water supply contract or other contract,
  - (f) to ascertain the character and condition of the land or any building on the land, or the condition and location of any pipe, sewer, drain, channel or fitting or other work used in connection with the land or building, so as to enable the corporation:
    - (i) to install, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect or improve its systems and services, or
    - (ii) to construct new water management works,in accordance with the obligations imposed on it by its operating licence,
  - (g) to carry out any investigation or inspection, take levels, drill test bore-holes, make surveys and marks, and fix pegs and stakes, for the purpose of determining the site of any proposed water management work.
- (2) An irrigation corporation must ensure that as little damage as possible is caused by the exercise of powers under this section and must repair any damage caused or pay compensation for the damage.
- (3) The powers of entry conferred by this section are not to be exercised for a purpose referred to in subsection (1) (a), (f) or (g) without prior notice to the occupier of the land.

### **121 Ceasing to be an irrigation corporation**

- (1) A corporation ceases to be an irrigation corporation if its particulars are removed from Schedule 1.
- (2) The Governor may remove an irrigation corporation's particulars from Schedule 1 by proclamation, but only:
  - (a) on application made by the irrigation corporation to the Minister, or
  - (b) if the irrigation corporation ceases to exist.

- (3) The Governor may by proclamation amend Schedule 1 so as to reflect a change in an irrigation corporation's name.
- (4) The regulations may make provision, not inconsistent with the *Corporations Act 2001* of the Commonwealth, for or with respect to any matters that are consequential on a corporation ceasing to be an irrigation corporation.

## **Division 3 Operating licences**

### **122 Authority conferred by operating licence**

The operating licence for an irrigation corporation authorises the corporation to carry on the business of supplying water provided to it by the Ministerial Corporation and to exercise its functions under this Part.

### **123 Terms and conditions of operating licence**

- (1) An operating licence is subject to the terms and conditions determined by the Governor.
- (2) Examples of terms and conditions that may be included are as follows:
  - (a) a requirement that the irrigation corporation will (in accordance with any applicable management program and the corporation's business plan) provide, construct, maintain, manage and operate:
    - (i) efficient, co-ordinated and commercially viable systems and services for supplying water from both surface and subsurface sources, and
    - (ii) surface and subsurface drainage networks that have sufficient capacity having regard to specified factors, including the amount of water supplied by the corporation to users,
  - (b) a requirement that the irrigation corporation must be the holder of all relevant licences or other authorities,
  - (c) a requirement that the irrigation corporation is to comply with the provisions of any applicable management program, either in all respects or in certain respects,
  - (d) a requirement that, in supplying water to its members, the irrigation corporation is to give priority to certain councils or other local water utilities for domestic water supply,
  - (e) a requirement as to how the irrigation corporation is to spend and otherwise deal with any money provided to it out of money appropriated from the Consolidated Fund or other public money.
- (3) An operating licence may be amended only in the manner specified in the operating

licence.

#### **124 Term of operating licence**

- (1) An operating licence has effect for the period specified in the licence in that regard, but may be renewed at the end of that period.
- (2) An operating licence may be renewed even if its term has expired.
- (3) The Governor may refuse an application for the renewal of an operating licence on such grounds as the Governor considers appropriate.

#### **125 Contravention of operating licence**

- (1) If, in the opinion of the Minister, an irrigation corporation contravenes an operating licence, the Governor may direct that one of the following is to apply:
  - (a) a letter of reprimand by the Minister is to be served on the irrigation corporation,
  - (b) the Minister is to cause a notice to be served on the irrigation corporation requiring it to rectify the contravention within a specified period.
- (2) If, in the opinion of the Minister, an irrigation corporation continues to contravene an operating licence after the issue of a letter under subsection (1) (a) or fails to rectify a contravention as required by a notice under subsection (1) (b), the Governor may do either or both of the following:
  - (a) the Governor may direct that the irrigation corporation is to pay a monetary penalty of an amount (not exceeding \$150,000) to be determined by the Governor,
  - (b) the Governor may cancel the operating licence.
- (3) The fact that the Governor has directed that action be taken under this section does not prevent the Governor directing that the same or other action under this section be taken if the contravention continues or a fresh contravention occurs.
- (4) An operating licence may make provision for advice to be furnished to the Minister in connection with the exercise of the Minister's functions under this section.
- (5) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Crown.

#### **126 Cancellation of operating licence**

- (1) An operating licence may be cancelled by the Governor, but only:
  - (a) if the irrigation corporation fails or ceases to hold a relevant licence or other authority, or

- (b) if the irrigation corporation is, in the opinion of the Minister, in material default in compliance with the operating licence, viewed in terms of the operation of the operating licence as a whole, or
  - (c) if the irrigation corporation is an externally-administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (d) if the irrigation corporation has been convicted of a criminal offence that is punishable by a fine of at least \$10,000 or, if the corporation were a natural person, imprisonment for 12 months or more, or
  - (e) in the circumstances set out in section 125 (2).
- (2) An operating licence may not be cancelled on the ground referred to in subsection (1) (a) if an appeal against a decision not to renew or to cancel the relevant licence or other authority has been made but not determined or withdrawn.
- (3) Subsection (1) (d) does not apply where the offence is unconnected with the functions of the irrigation corporation relating to the supply or drainage of water.

#### **127 Irrigation corporation may make arrangements with subsidiaries**

- (1) An irrigation corporation may arrange, whether by an agency agreement or in any other way (except by assignment), for a subsidiary of the irrigation corporation to exercise any or all of the irrigation corporation's functions under this Part or under an operating licence.
- (2) The Minister may treat any act or omission of the subsidiary of an irrigation corporation as an act or omission of the irrigation corporation for the purpose of determining:
- (a) whether the irrigation corporation has contravened its operating licence, or
  - (b) whether the licence should be suspended or cancelled,
- but only if the irrigation corporation has made arrangements for the exercise of functions by the subsidiary.
- (3) In this section, **subsidiary** means a corporation that is a subsidiary of a corporation as determined in accordance with the *Corporations Act 2001* of the Commonwealth or any other applicable law.

### **Division 4 Inclusion of land within irrigation corporation's area of operations**

#### **128 Applications to include land within area of operations**

- (1) An application for the inclusion of land within an irrigation corporation's area of

operations may be made to the Minister by means of a joint application made by the corporation and by the owner or owners of the land concerned.

- (2) The application must identify the land proposed to be included in the corporation's area of operations.
- (3) The procedures for making and advertising an application are to be as prescribed by the regulations.

### **129 Objections to inclusion of land within area of operations**

- (1) Any person may object to the inclusion of land within the proposed extension of an irrigation corporation's area of operations.
- (2) The procedures for making an objection are to be as prescribed by the regulations.

### **130 Determination of applications**

- (1) The Minister may determine an application for the inclusion of land within an irrigation corporation's area of operations:
  - (a) by recommending to the Governor that the land be included within the area, or
  - (b) by refusing the application.
- (2) A recommendation for the inclusion of land within an irrigation corporation's area of operations may not be made unless the inclusion of the land is agreed to by such number or proportion of the corporation's shareholders as may be prescribed by the regulations.

### **131 Governor may include land within area of operations**

On receiving a recommendation for the inclusion of land within an irrigation corporation's area of operations, the Governor may make a proclamation including the land in the area.

## **Division 5 Exclusion of land from irrigation corporation's area of operations**

### **132 Applications to exclude land from area of operations**

- (1) An application for the exclusion of land from an irrigation corporation's area of operations may be made to the Minister by means of a joint application made by the corporation and by the owner or owners of the land concerned.
- (2) The application must identify the land proposed to be excluded from the corporation's area of operations.
- (3) The procedures for making and advertising an application are to be as prescribed by the regulations.

### **133 Objections to exclusion of land from area of operations**

- (1) Any person may object to the proposed exclusion of land from an irrigation corporation's area of operations.
- (2) The procedures for making an objection are to be as prescribed by the regulations.

### **134 Determination of applications**

- (1) The Minister may determine an application for the exclusion of land from an irrigation corporation's area of operations:
  - (a) by recommending to the Governor that the land be excluded from the area, or
  - (b) by refusing the application.
- (2) A recommendation for the exclusion of land from an irrigation corporation's area of operations may not be made unless the exclusion of the land is agreed to by such number or proportion of the corporation's shareholders as may be prescribed by the regulations.

### **135 Governor may exclude land from area of operations**

On receiving a recommendation for the exclusion of land from an irrigation corporation's area of operations, the Governor may make a proclamation excluding the land from the area.

## **Division 6 Miscellaneous**

### **136 Successor in title liable for unpaid contract charges**

On a change of ownership of land, the new landholder of the land is liable to an irrigation corporation for the amount of any charges levied by the irrigation corporation in relation to the land and unpaid by the previous landholder as if the new landholder had entered into a contract with the irrigation corporation for the supply of the service or services to which the unpaid charges relate.

### **137 Indemnities**

- (1) A person does not have any right or claim to relief of any kind whatever in any legal or other proceeding against an irrigation corporation or officer or employee of an irrigation corporation in respect of any nuisance connected with or in any way arising out of:
  - (a) the design, construction, alteration, maintenance, non-maintenance, operation, repair, disrepair or non-repair of a water management work owned or controlled by the irrigation corporation, or
  - (b) the destruction or damage, or partial destruction or partial damage, by flood,



storm, tempest or otherwise of a water management work owned or controlled by the irrigation corporation, or

(c) the exercise, in respect of a water management work owned or controlled by the irrigation corporation, by the irrigation corporation of any function conferred or imposed on the irrigation corporation under this or any other Act.

(2) Section 733 of the *Local Government Act 1993* applies to and in respect of an irrigation corporation in the same way as it applies to and in respect of a council.

### **138 Register of licences, audits and management programs**

(1) The Ministerial Corporation must maintain at its head office a register containing copies of the following:

(a) operating licences,

(b) audit reports,

(c) applicable management programs,

(d) recommendations of the Minister to the Governor under this Part.

(2) The register must be made available for public inspection during normal business hours.

(3) Any person may obtain a copy of any information on the register on payment of the reasonable cost of providing the copy.

## **Part 2 Private irrigation districts**

### **Division 1 Preliminary**

#### **139 Application of Part**

This Part applies to all private districts under the former *Private Irrigation Districts Act 1973* that were in existence immediately before the repeal of that Act, and also authorises the establishment of further private irrigation districts.

#### **140 Definitions**

In this Part:

***irrigated holding*** means a holding in respect of which water is supplied by a private irrigation board for irrigation.

***new holding*** means each part of an original holding that, after subdivision, is separately owned.

***non-irrigated holding*** means a holding in respect of which water is supplied by a

private irrigation board for domestic and stock use only.

**original holding** means a holding in a private irrigation district, being a holding:

- (a) in existence at the date of constitution of that district, or
- (b) comprising lands added to that district under Division 2,

but does not include any holding, or any part of a holding, that has become a new holding or that has been excised from the private irrigation district under Division 2.

**private irrigation board**, in relation to a private irrigation district, means the board of management for that district elected under Division 3.

**private irrigation district** means a private water supply district or a private water supply and irrigation district constituted under Division 2.

#### **141 Requirements for access licences and approvals**

- (1) Nothing in this Part authorises a private irrigation board to take water otherwise than in accordance with an access licence and water supply work approval held by the board.
- (2) Nothing in this Part authorises a landholder of land within a private irrigation district to use water otherwise than in accordance with a water use approval held by the private irrigation board.

### **Division 2 Private irrigation districts**

#### **142 Petition**

- (1) Any persons who are landholders of lands that are being worked as 3 or more holdings may lodge with the Minister a petition for the constitution of those lands:
  - (a) as a private water supply district, or
  - (b) as a private water supply and irrigation district.
- (2) The petition:
  - (a) must contain the names, addresses and occupations of all of the petitioners and be signed by all of the petitioners, and
  - (b) must be accompanied by plans showing:
    - (i) the location of the lands proposed to be supplied with water, in relation to the river, estuary or lake from which water is proposed to be obtained, and
    - (ii) the lands on which a water supply work is proposed to be constructed or located in connection with the proposed water supply, and the site on those

lands of that proposed water supply work, and

(c) must be accompanied by:

- (i) particulars of the title of the lands within the proposed private irrigation district, and
- (ii) particulars of the area of land within the proposed private irrigation district owned by each petitioner, and
- (iii) an estimate of the quantity of water proposed to be taken annually for the purposes of the proposed private irrigation district, and
- (iv) particulars of any water use approval under which any lands within the proposed private irrigation district are, at the date of lodgment of the petition, authorised to be irrigated, and

(d) must contain the names, addresses and occupations of the landholders of the lands referred to in paragraph (b) (ii) and be accompanied by separate particulars of the title of those lands.

(3) The Minister may cause a notice containing particulars of the petition to be published in the Gazette and in a local newspaper.

(4) Such a notice may not be published unless:

- (a) the Minister is satisfied that the establishment of a private irrigation district in accordance with the petition would be of benefit to the landholders of land within the proposed private irrigation district, and
- (b) the Minister has had regard to the *Competition Principles Agreement*, and
- (c) the Premier has concurred in the publication of the notice.

(5) In this section, ***Competition Principles Agreement*** means the agreement of that name between the Commonwealth, the States and the Territories that was entered into, for and on behalf of New South Wales, on 11 April 1995.

### **143 Constitution of private irrigation districts**

(1) If a supplementary petition in relation to, or an objection to, a petition under section 142 is not duly lodged, the Governor may, by proclamation in the Gazette, constitute the lands described in the petition:

- (a) as a private water supply district, or
- (b) as a private water supply and irrigation district,

whichever was requested in the petition.

- (2) If a supplementary petition in relation to, or an objection to, a petition under section 142 is so lodged but the Minister recommends the granting of the petition (whether with respect to all of the lands described in the petition or some only of them), the Governor may, by proclamation in the Gazette, constitute the lands to which the recommendation relates:
  - (a) as a private water supply district, or
  - (b) as a private water supply and irrigation district,whichever was requested in the petition.
- (3) A proclamation under this section:
  - (a) must assign a name to the private irrigation district and a corporate name to the private irrigation board, and
  - (b) must define the boundaries of the private irrigation district, and
  - (c) must specify at which office of the Ministerial Corporation a plan of the private irrigation district is exhibited, and
  - (d) must fix a time and place for the first election of the members of the private irrigation board.

#### **144 Addition of lands to private irrigation districts**

- (1) A landholder of lands adjacent to or near a private irrigation district may lodge with the Minister a petition for the addition of those lands to the private irrigation district.
- (2) The petition:
  - (a) must specify the name, address and occupation of the petitioner and must be signed by the petitioner, and
  - (b) must be accompanied by plans showing:
    - (i) the location of the additional lands proposed to be supplied with water, in relation to the river, estuary or lake from which water is proposed to be obtained, and
    - (ii) the lands on which any additional water supply work is proposed to be constructed or located in connection with the proposed water supply, and the site on those lands of that proposed additional water supply work, and
  - (c) must be accompanied by:
    - (i) particulars of the title and the area of the additional lands, and
    - (ii) an estimate of the quantity of water proposed to be taken annually by the

petitioner for the purposes of those lands, and

(iii) particulars of any water use approval under which those lands are, at the date of lodgment of the petition, authorised to be irrigated, and

(d) if:

(i) the private irrigation district has been constituted as a private water supply and irrigation district, and

(ii) the petitioner seeks a supply of water for irrigation,

must be accompanied by a statement by the private irrigation board as to whether, and to what extent, the landholders within the private irrigation district have agreed to reduced allocations of water so as to permit an allocation of water being made to the additional lands, and

(e) must contain the names, addresses and occupations of the landholders of the lands referred to in paragraph (b) (ii) and be accompanied by separate particulars of the title of those lands.

(3) The Minister must consider any petition lodged under this section and may cause a notice containing particulars of the petition to be published in the Gazette and a local newspaper.

#### **145 Alteration of private irrigation district**

(1) If an objection to a petition under section 144 is not duly lodged or an objection is duly lodged but the Minister recommends the granting of the petition, the Governor may, by proclamation in the Gazette, redefine the boundaries of the private irrigation district to which the petition relates by adding to that district the lands referred to in the petition.

(2) If additional lands have been added to a private irrigation board's district under this section, the board:

(a) must, if an appropriate agreement has been made, redetermine the quantity of water to be allocated for domestic and stock use and for irrigation to each holding (including any holding in the additional lands) that is supplied or to be supplied with water for irrigation, and

(b) must, in respect of the holding in the additional lands, assess the rates and charges for water for the period or year, as the case may be, current at the date of the addition of those additional lands to the private irrigation district.

(3) The assessment of rates and charges referred to in subsection (2) (b) must be made on the basis of the rates and charges fixed in respect of that period or year, the rates and charges so assessed being proportionate to the portion of the period or year

during which those additional lands are added to the private irrigation district.

#### **146 Excision of lands from private irrigation districts**

- (1) A landholder of lands within a private irrigation district may make application to the Land and Environment Court, as prescribed by rules of court, for an order that the landholder's lands be excised from that district.
- (2) Notice, in the prescribed form, of the application must be given by the landholder to the private irrigation board on the lodging of the application in the Land and Environment Court.
- (3) A private irrigation board and all persons whose interests appear to the Land and Environment Court to be affected by the application may attend the hearing of, and be heard in support of, or in opposition to, the application.
- (4) The Land and Environment Court must hear and determine the application but must not grant the application unless it is satisfied that there are exceptional circumstances that warrant the granting of the application.
- (5) The decision of the Land and Environment Court is final and may:
  - (a) if the decision is in favour of the applicant, include an order that any water supply works that are situated on the excised lands are to be works of which the private irrigation board has the control, use and maintenance, and
  - (b) embody such terms and conditions as to the Court seem just.
- (6) If the decision of the Land and Environment Court is that the application be granted, the private irrigation district is, subject to this Part, taken to have been altered by excising therefrom the lands referred to in the application.
- (7) The excision of any lands from a private irrigation district under this section does not affect the liability of any person for any rates or charges levied or leviable in respect of those lands while they were in the private irrigation district.

#### **147 Supplementary petitions and objections**

- (1) Within a period of 28 days after the publication of the notice of a petition for the constitution of a private irrigation district:
  - (a) a person who is the landholder of lands that the person desires to be included in the district to which that notice relates may lodge with the Minister a supplementary petition for the inclusion in that district of lands owned by the person that are being worked as a separate property, or
  - (b) any person may lodge with the Minister an objection in writing to the petition referred to in the notice on the ground that the granting of that petition would

adversely affect the person's interests.

- (2) Within a period of 28 days after the publication of the notice of a petition for the addition of lands to a private irrigation district:
  - (a) the private irrigation board for the district to which that notice relates may lodge with the Minister an objection in writing to the petition referred to in the notice, or
  - (b) any person may lodge with the Minister an objection in writing to the granting of that petition on the ground that the granting of that petition would adversely affect the person's interests.
- (3) A person may not lodge an objection on the ground that the person's interests would, if the petition were granted, be adversely affected for reasons relating to the quantity of water available from the river, estuary or lake from which it is proposed to take water for the purposes of the proposed private irrigation district, and any objection lodged on that ground is not to be entertained.
- (4) A supplementary petition:
  - (a) must contain the name, address and occupation of the supplementary petitioner, and
  - (b) must be accompanied by plans showing:
    - (i) the location of the lands that the supplementary petitioner desires to be included in the proposed district, and
    - (ii) the lands on which any additional water supply work to be used for the taking of water for the use of the lands that the petitioner desires to be included in the proposed district is proposed to be constructed or is located and the site on those lands of that water supply work, and
  - (c) must be accompanied by particulars of the title and area of the lands referred to in paragraph (b) (i) and of any water use approval under which those lands are, at the date of lodgment of the supplementary petition, authorised to be irrigated, and
  - (d) must contain the names, addresses and occupations of the landholders of the lands referred to in paragraph (b) (ii) and be accompanied by separate particulars of the title of those lands.
- (5) An objection must be in writing and must state particulars of the grounds of objection.
- (6) If a supplementary petition or an objection has been lodged with the Minister, the Minister must, after consultation with the petitioner or objector, make a recommendation with respect to the petition or objection.

## **Division 3 Private irrigation boards**

### **148 Private irrigation boards**

- (1) For each private irrigation district there is to be a board of management.
- (2) Each board is a corporation under the corporate name assigned to it by the proclamation by which its private irrigation district is constituted.
- (3) A board is to consist of such number of members, being not less than 3 nor more than 10:
  - (a) in the case of the first board elected for a private irrigation district, as may be determined by the Minister, and
  - (b) in the case of any subsequent board elected for a private irrigation district, as may be determined before the election by the board for that private irrigation district.
- (4) The regulations may make provision for or with respect to:
  - (a) the conduct of elections for the members of a board, and
  - (b) other matters concerning the constitution and procedure of a board.

### **149 Election of members of private irrigation boards**

- (1) An election of the members of a private irrigation board must be held on the day and at the time fixed by the proclamation by which it is constituted and thereafter:
  - (a) if the third anniversary of the declaration of the poll for the previous election of members of that board is a Saturday, on that Saturday, or
  - (b) in any other case, on the Saturday following the third anniversary of the declaration of the poll for the previous election of members of that board.
- (2) A corporation that is a member of a private irrigation board must authorise an individual to represent it as a member of the board.
- (3) Subject to this Division, the members of a private irrigation board hold office until the date of the declaration of the poll for the next election.

### **150 Removal of members of private irrigation board from office and appointment of administrator**

- (1) The Governor may, by proclamation in the Gazette, remove all the members of a private irrigation board from office:
  - (a) if there are not sufficient members of the board to form a quorum, or



- (b) if, in the opinion of the Governor, the board has failed or neglected to make or levy rates or charges required by this Part, or otherwise to exercise its functions under this Part.
- (2) If there are insufficient members of a private irrigation board to form a quorum, the Governor, instead of removing the members from office, may, by proclamation in the Gazette, appoint persons (each being eligible for election) to fill the vacancies in the membership of the board and to hold office until elections are held to fill those vacancies.
- (3) If the Governor has removed the members of a private irrigation board from office, the Governor may, in the proclamation removing the members from office or in a subsequent proclamation in the Gazette, appoint an administrator for the board.
- (4) An administrator so appointed has and may exercise all of the functions of a private irrigation board and is entitled to be paid, out of the funds of the board, such remuneration as the Governor may determine.
- (5) If the members of a private irrigation board have been removed from office, the Minister may, and if the board's term of office has more than 12 months to run, must, by notice in the Gazette, order that an election of members be held on a day specified in the order.
- (6) The day so specified must be a day not more than 6 months after the date of removal of the members from office and not less than 4 weeks after the date on which the notification is published in the Gazette.
- (7) Any member elected at an election held under this section is to hold office until the time when the terms of office of the members of a private irrigation board who have been removed from office would but for their removal have expired and no longer, but is eligible for re-election if otherwise qualified.
- (8) On sufficient members of a private irrigation board, by election or appointment under this section, taking office to form a quorum, the functions of the administrator cease.
- (9) If the members of a private irrigation board have been removed from office because of the board's failure or neglect as referred to in subsection (1) (b), each of those members is ineligible for election at an election ordered under this section or, if no such election is ordered, at the next election of members of the board, unless the Minister is satisfied that the failure or neglect took place without the member's knowledge or consent and, by instrument in writing, declares that the member is eligible for election at any such election.

### **151 Abolition of private irrigation districts**

The Governor may, by proclamation published in the Gazette, abolish any private irrigation district for which a private irrigation board has not been elected.

## **152 Winding-up of private irrigation boards**

- (1) If the Governor:
  - (a) is of the opinion that a private irrigation board has ceased to function satisfactorily, or
  - (b) is satisfied that a private irrigation board has made a request to the Minister that it be wound up,the Governor may order that the board be wound up.
- (2) An order under subsection (1) must be published in the Gazette and must appoint a liquidator for the private irrigation board.
- (3) A winding up of a private irrigation board under this section commences on the publication of the order in the Gazette.
- (4) The regulations may make provision for or with respect to the winding up of a private irrigation board and for the disposal of any residual assets of the board.
- (5) If the Governor is satisfied that the winding up of a private irrigation board has been completed under this section, the Governor may, by proclamation published in the Gazette, abolish the board.

## **153 Employees**

- (1) Each private irrigation board may from time to time employ such persons as may be necessary to assist it in the exercise of its functions.
- (2) A person who has ceased to be a member of a private irrigation board is not eligible to be employed by the board until 6 months have elapsed after the person's so ceasing to be a member.
- (3) All employees of a private irrigation board are subject to the control and governance of the board and to the provisions of any by-laws made by the board in that behalf.
- (4) A private irrigation board may fix wages and conditions of employment of its employees if they are not fixed in accordance with the provisions of any other Act.

## **Division 4 Construction and taking over of works**

### **154 Authorised sites**

For the purposes of this Division, a site is an **authorised site** for a water supply work if:

- (a) it is the site shown on the plans that accompanied:
  - (i) the petition for the constitution of the district, or

(ii) any subsequent petition for the addition of lands to the district,

as the site of any work proposed to be constructed as a water supply work, or is that site as varied by the Minister as a consequence of any objection to the petition, or

- (b) it is the site on which the Governor has authorised the construction or taking over of a water supply work, or
- (c) it is the site of any works of which a private irrigation board has the control, use and maintenance under this Division.

### **155 Construction, maintenance and operation of water supply works**

- (1) A private irrigation board may construct, maintain and operate any water supply work that is located on an authorised site for that work.
- (2) A private irrigation board must not exercise its powers under this section in respect of any authorised site on which are situated any existing works unless it has taken over the control, use and maintenance of those works under this Division.
- (3) For the purpose of exercising its powers under this section, a private irrigation board may enter any authorised site (not being an authorised site situated on lands that belong to, or are under the care, control or management of a public authority) and take or remove, and use, any extractive material.

### **156 Private irrigation board may apply to take over water supply works**

- (1) A private irrigation board may apply to the Minister for authority to take over any water supply work that is located on an authorised site for that work.
- (2) The application:
- (a) must contain the names, addresses and occupations of the landholders of the lands on which the water supply work referred to in the application is or are proposed to be constructed or is or are located, and
- (b) must be accompanied by:
- (i) a plan showing those lands and the site on those lands of that water supply work, and
- (ii) particulars of the title of those lands.
- (3) The Minister must consider any such application, and may cause a notice containing particulars of the application to be published in the Gazette and in a local newspaper.

### **157 Objections to applications**

- (1) Within 28 days after the publication of the relevant notice, any person may lodge with

the Minister an objection in writing to the granting of the application referred to in the notice on the ground that the granting of the application would adversely affect the person's interests.

- (2) A person may not make an objection on the ground that the person's interests would, if the petition were granted, be adversely affected for reasons relating to the quantity of water available from the river, estuary or lake from which it is proposed to take water by means of the proposed water supply work, and any objection made on that ground is not to be entertained.
- (3) An objection must state particulars of the grounds of objection.
- (4) If an objection is lodged with the Minister, the Minister must, after consultation with the objector, make a recommendation with respect to the objection.

### **158 Governor may authorise construction or taking over of water supply work**

If an objection to an application is not duly lodged, or is duly lodged but the Minister recommends that the application be granted, the Governor may, by proclamation in the Gazette, authorise the construction or taking over of the water supply work on the site concerned.

### **159 Taking over works**

- (1) A private irrigation board may serve a notice in writing on the landholder of any lands on which is situated any water supply work on an authorised site informing the landholder that the board proposes to take over the work.
- (2) The control and management of the work specified in the notice vests in the private irrigation board on and from the day specified in the notice.
- (3) A private irrigation board must not serve such a notice after the expiration of 12 months after the constitution of the private irrigation district.
- (4) A private irrigation board must not serve such a notice on any person in respect of a work that belongs to, or is under the control or management of, a public authority.

### **160 Transfer of lands**

- (1) A private irrigation board, by notice in writing served, within 12 months after the constitution of the private irrigation district, on the landholder of any lands:
  - (a) that, immediately before the constitution of the private irrigation district, were vested in the landholder as a trustee of lands supplied with water under a single water supply work approval, and
  - (b) that on the constitution of the private irrigation district formed the whole or part of the private irrigation district,

may require the landholder to transfer the lands so vested to the board within such period as may be specified in the notice.

- (2) If a notice is served on a landholder under this section in respect of any land, the land is taken to be held by the landholder as a trustee for the private irrigation board by which the notice was served.

### **161 Power of entry**

- (1) A private irrigation board may, by its employees or agents, at any reasonable time enter any lands and thereon carry out any investigation or inspection, take levels, drill test bore-holes, make surveys and marks and fix pegs or stakes for the purpose of determining the site of any proposed water supply work.
- (2) A private irrigation board may, by its employees or agents, enter any lands on which is situated an authorised site for the purpose of constructing or maintaining water supply works.

## **Division 5 Compensation**

### **162 No compensation for surveys on land within private irrigation district**

- (1) A person is not entitled to compensation by reason of:
  - (a) any water supply works becoming works of which a private irrigation board has the control, use or maintenance, or
  - (b) the exercise by a private irrigation board of any of the powers of entry conferred on it by this Part on any lands within the private irrigation district of that board.
- (2) Subsection (1) (a) has effect subject to any terms and conditions embodied in a decision of the Land and Environment Court.

### **163 Compensation for surveys on lands outside private irrigation district**

Compensation is payable by a private irrigation board for all damage sustained by any person as a result of a board's exercise of its power to carry out surveys on lands outside its private irrigation district.

### **164 Compensation where private irrigation board constructs or takes over works**

- (1) Compensation assessed in accordance with this Division is payable if a private irrigation board exercises its powers to construct or take over any water supply works.
- (2) Compensation is not payable by a private irrigation board in respect of the repair, operation or maintenance of any water supply work except in relation to damage caused by negligence and except where, in repairing, operating or maintaining any such work or works, the board causes damage to any lands outside its private irrigation district.

- (3) If immediately before the control and management of any water supply work becomes vested in a private irrigation board under this Part there was in force a legally binding agreement or arrangement between the person who then had the control and management of the work and some other landholder of land in the board's private irrigation district (being an agreement or arrangement under which that other person was entitled to exercise any powers in relation to that work):
- (a) that agreement or arrangement is taken to be an agreement or arrangement between that board and that other person, and
  - (b) any compensation to which that other person may be entitled under this Division must be assessed, having regard to his or her obligations under that agreement or arrangement.

#### **165 Determination of amount of compensation**

If compensation is payable under this Division, the amount of compensation must be determined:

- (a) by agreement between the private irrigation board and the person entitled to claim compensation, or
- (b) if such an agreement has not been reached, by the Land and Environment Court in accordance with the provisions of this Division.

#### **166 Recovery of compensation**

Any amount payable to a claimant as compensation in accordance with this Division may be recovered from the private irrigation board as a debt in any court of competent jurisdiction.

### **Division 6 Rates and charges for water**

#### **167 Fixing of rates and charges**

- (1) As soon as practicable after 1 July in each year, a private irrigation board:
- (a) must fix a rate per hectare, for all holdings within its private irrigation district, so as to produce a total amount sufficient to meet the estimated liabilities of that board during that year and any outstanding liabilities of that board, and
  - (b) must fix a rate per hectare for water, or a charge for the quantity of water, to be supplied during that year for domestic and stock purposes to all holdings within the private irrigation district, and
  - (c) in the case of a board constituted for a private water supply and irrigation district:
    - (i) must determine the total quantity of water that it proposes to supply to all holdings for the purpose of irrigation during that year, and

- (ii) must fix the charges in respect of the quantities of water allocated under Division 7 for that purpose in respect of all holdings within the district.
- (2) The rates and charges referred to in subsection (1) (b) and (c) must be fixed so as to produce in the year for which they are fixed the amount estimated by the private irrigation board as being required in that year:
- (a) to defray the cost of constructing, maintaining and operating its water supply works, and
  - (b) to pay the interest on and repay the capital of any loans raised by the board, and
  - (c) to meet any outstanding liabilities of the board and the costs and expenses of administering the private irrigation district and of doing all such things as the board may lawfully do.

### **168 Special rates and special charges**

- (1) For the purpose of raising money:
- (a) for the fulfilment of any contract, or
  - (b) for the payment of any debt that may be due or become due by the board, or
  - (c) for any other purpose for which the board is authorised to exercise its functions,
- a private irrigation board may from time to time fix a special rate per hectare to be paid in respect of all holdings in its private irrigation district.
- (2) A private irrigation board may also fix special charges in respect of:
- (a) the quantities of water allocated for the purpose of irrigation, or
  - (b) the quantities of water determined for domestic and stock purposes,
- in respect of all holdings in its private irrigation district.

### **169 Assessment and levying of rates and charges**

- (1) Rates fixed by a private irrigation board must be assessed, and must be levied as prescribed, in respect of the area of each holding within its private irrigation district.
- (2) Charges fixed by a private irrigation board for a private water supply and irrigation district must be assessed, and must be levied as prescribed, in respect of:
- (a) the quantity of water allocated for irrigation by the board under Division 7, or
  - (b) the quantity of water determined by the board for domestic and stock purposes,
- in respect of each holding within the district.

### **170 Assessment of rates and charges**

- (1) As soon as practicable after fixing any rates and charges, a private irrigation board must assess and levy the rates and charges.
- (2) If a private irrigation board at any time finds it has made an error in the assessment of any rates or charges for water in respect of any holding or landholder, the board may re-assess the rates or charges in respect of the holding or landholder affected and if it does so:
  - (a) must refund any amounts overpaid, and
  - (b) may levy any additional amount found to be due.

### **171 Provision for determining areas of holdings**

For the purposes of fixing, assessing and levying rates under this Division, a holding that has an area equal to a number of hectares and a remaining fraction of a hectare is taken to have an area in hectares equal to one more than that number.

### **172 Liability for rates and charges for water**

- (1) All amounts due and payable under this Division in respect of rates or charges are payable to the private irrigation board by the landholder of the holding in respect of which they were levied, and must be paid whether water is or is not taken by the landholder.
- (2) Rates and charges are due and payable to and recoverable by a private irrigation board on the expiration of one month after service of notice of the rates or charges.
- (3) If more than one person is an owner of the land, the rates or charges may be levied on any one or more of those persons, and a private irrigation board may recover the rates or charges from any person on whom they are so levied, but nothing in this subsection entitles the board to recover more than the full amount of the rates or charges.
- (4) If the land is owned jointly by two or more landholders, they are jointly and severally liable to the private irrigation board for the rates or charges, but as between themselves they are each liable only for such part of the rates or charges as is proportionate to their interests in the land.
- (5) If any such landholder pays to the private irrigation board more than his or her proportionate part, the landholder may recover the excess from the other or others.
- (6) If any land in a holding reverts to the Crown during any year for which rates or charges are or are to be assessed, the person who immediately before the reversion was the landholder of the land is liable for payment of only that part of the rates or charges proportionate to the part of the year for which the land was held by the



person, and any excess payment by the person must be refunded to the person.

### **173 Charge on land**

- (1) Rates and charges under this Division, and any costs awarded to a private irrigation board by any court in proceedings for the recovery of any such rates and charges, are a charge on the land in respect of which the rates and charges have been levied.
- (2) A charge created by subsection (1) has no effect as against a purchaser in good faith for value who at the time of purchase made due inquiry but had no notice of the liability.
- (3) For the purposes of subsection (2), a purchaser is not taken to have made due inquiry unless the purchaser obtained a certificate from the private irrigation board as to the amount, if any, due in respect of rates, charges or costs.

### **174 Abandonment of rates**

Rates and charges may be abandoned or written off in accordance with the by-laws made by the private irrigation board but only on the certificate of the auditor of the board that the abandonment or writing off is in accordance with the by-laws and on the unanimous resolution of the board.

### **175 Assessment book**

- (1) Each private irrigation board must cause to be kept a book or record (in this Part referred to as the **assessment book**) in which must be recorded the following:
  - (a) the name, address and occupation of each landholder of land within the private irrigation district,
  - (b) particulars of the area of each parcel of land owned by each such landholder,
  - (c) particulars identifying the separate holdings within the private irrigation district,
  - (d) particulars of the total area of land owned by all landholders,
  - (e) in the case of a board for a private water supply and irrigation district:
    - (i) particulars of the quantity of water last allocated by the board to each irrigated holding within the district, and
    - (ii) particulars of the quantity of water last determined by the board for domestic and stock purposes in respect of each such holding,
  - (f) such particulars relating to the fixing, assessing and levying of rates and charges as may be prescribed.
- (2) A private irrigation board may from time to time rectify any errors or omissions in the

assessment book.

## **Division 7 Supply of water**

### **176 Determination of allocation**

As soon as practicable after it is elected, the first board for a private water supply and irrigation district must determine the quantity of water, if any, to be allocated for irrigation to each holding within the private irrigation district.

### **177 Supply of water**

At the times fixed by it, a private irrigation board:

- (a) must supply water for domestic and stock purposes (in such quantities as it may determine):
  - (i) to the boundary of each holding within its private irrigation district, and
  - (ii) to such other points as may be agreed on by the board and the landholder of the holding, and
- (b) in the case of a board for a private water supply and irrigation district, must supply water for irrigation (in the quantities allocated by it under this Division):
  - (i) to the boundary of each holding within its private irrigation district for which an allocation of water for irrigation has been made by the board, and
  - (ii) to such other points as may be agreed on by the board and the landholder of the holding.

### **178 Discontinuance or reduction of supply of water**

A private irrigation board may at any time refuse to deliver water to any holding or may discontinue any delivery of water to a holding:

- (a) in the case of a holding for which it has made an allocation of water for irrigation:
  - (i) if the land to be irrigated is not in its opinion properly prepared for irrigation or on which the ditches or channels to be used for the distribution of water within the holding are in the opinion of the board inadequate or in a bad state of repair, or
  - (ii) if the water is for the irrigation of grasses or pastures that are not sown grasses or improved pastures, or
- (b) if any rates or charges for water in respect of the holding are, and have been for a period of 2 months or more after the due date of payment, unpaid, or
- (c) if the landholder of the holding does not comply with any requirement specified in a notice given to the landholder under this Division, or

- (d) if the water is being used for a purpose that is not authorised by a water use approval.

**179 Circumstances in which private irrigation board not obliged to supply water**

- (1) Nothing in this Part requires a private irrigation board to supply water to any land or landholder if, by reason of drought, accident or otherwise, the board is of the opinion that it is impracticable to do so.
- (2) Unless the private irrigation board otherwise determines, any failure to deliver water to a holding does not relieve the landholder of the holding of any liability for payment of rates and charges, and rates and charges continue to be leviable in respect of the holding despite any such failure.

**180 Landholders may be required to provide distribution works**

A private irrigation board may, by notice in writing given to the landholder of any holding, require the landholder:

- (a) to provide on his or her holding:
- (i) water delivery systems of such a size and capacity as will enable water to be delivered to his or her land at not less than such rate of delivery as the board may stipulate in the notice, and
  - (ii) water storage works, in such locations and of such nature and extent as the board may stipulate in the notice, for the water to be supplied by it for domestic and stock purposes, and
- (b) to maintain, continuously and effectively, any water delivery systems referred to in paragraph (a) (i) so that water may be carried or passed at not less than the rate so stipulated.

**181 Sale of surplus water**

If the full quantity of water to be supplied under this Division has been supplied or, despite any sales made under this section, will be supplied, a private irrigation board may, subject to the conditions of any water supply work approval held by it, agree to sell by measure to the landholder of any holding water from the works of the private irrigation district subject to such terms and conditions as may be agreed to by the board and that landholder.

**Division 8 Effect of new subdivisions**

**182 Supply of water for domestic and stock purposes to new holdings resulting from subdivisions**

- (1) If a holding, whether an irrigated or non-irrigated holding, is subdivided, a new holding resulting from the subdivision is not entitled to a supply of water for domestic and

stock purposes from a private irrigation board's water supply works until a date determined by the board (not being a date earlier than the date on which the board became aware of the disposition of that new holding).

- (2) If rates for a period or year ending on 30 June, being the period or year during which the date specified by a private irrigation board under subsection (1) occurred, have not, before the date so specified, been levied in respect of the holding that was subdivided, the board must levy the rates for the whole of that period or year in respect of each of the new holdings that resulted from the subdivision, and that was disposed of.

### **183 Supply of water for irrigation purposes to a new holding resulting from a subdivision**

- (1) If an irrigated holding is subdivided and any new holdings are thereby created, the private irrigation board must, subject to subsection (2), allocate to such of the new holdings as the landholder of the subdivided holding nominates the whole of the quantity of water last allocated to the holding that was subdivided.
- (2) If the landholder nominates more than one new holding to which the quantity of water is to be allocated, the private irrigation board may allocate the water to those holdings in such proportions as it determines.
- (3) A private irrigation board may allocate to such of the new holdings as the board determines the quantity of water last allocated to the subdivided holding if:
  - (a) the landholder of the subdivided holding fails to make a nomination within the time specified by the board in a notice sent by post to the landholder at the landholder's last known address, or
  - (b) a holding nominated by the landholder does not contain land capable of being irrigated from the works of the private irrigation district or to which, in the opinion of the board, it is impracticable to convey water for irrigation from those works, or
  - (c) a holding nominated by the landholder is too small to justify an allocation of water, or
  - (d) the allocation of water in the manner nominated is otherwise detrimental to the administration of the private irrigation district concerned.
- (4) If a private irrigation board makes an allocation under subsection (3), it is to notify the landholder of the subdivided holding and the landholder of each new holding of the allocation.
- (5) An allocation of water to a new holding made under this section has effect on and from a date to be specified in the instrument by which the allocation is made (not being a date earlier than the date on which the private irrigation board became aware of the first disposition of any of the new holdings resulting from the subdivision).

- (6) The landholder of a new holding resulting from a subdivision referred to in subsection (1) is not entitled to an allocation of water by the private irrigation board for irrigation purposes otherwise than in accordance with this section.
- (7) If the charges for water have not been levied for the current year for the subdivided holding, the private irrigation board must levy the charges for the whole of that year in respect of the new holding to which the water previously allocated to the subdivided holding has been allocated in accordance with this section.

#### **184 Additional works required as a result of subdivision**

- (1) The person who, immediately before the disposition of a new holding resulting from a subdivision, was the landholder of the holding (the **previous landholder**) must construct at his or her own cost such works as are necessary to provide:
  - (a) means of conveying water to the new holding from the private irrigation board's water supply works and, if an allocation of water is made to the new holding for irrigation, means of measuring the water so supplied, and
  - (b) means of access from roads to any works of the private irrigation district or any works provided for the purposes of paragraph (a) if that access would not be available except by crossing a channel of the private irrigation district, and
  - (c) means of access across a channel of the private irrigation district to the new holding if that means of access is required by reason of the subdivision.
- (2) All works to be constructed under subsection (1):
  - (a) in respect of the supply of water to a new non-irrigated holding, must be constructed before the new holding is disposed of or within such period after the disposition of the new holding as the private irrigation board may in any particular case allow, and
  - (b) in respect of the supply of water to a new irrigated holding, must be constructed within such period as the private irrigation board may, by notice in writing, have notified to the landholder of the holding that was subdivided.
- (3) All works constructed or to be constructed under subsection (1) must be constructed in accordance with the approval in writing of the private irrigation board in respect of location, design, form, dimensions and construction.
- (4) At the request of the previous landholder, a private irrigation board may undertake, at the landholder's cost, the construction of any works required by this section.
- (5) A private irrigation board may construct such works as have not been constructed by the previous landholder, and any costs and expenses (including any compensation paid or payable by the board under Division 5 by reason of the construction of the works) are payable to the board either by the previous landholder or by the new

landholder, as the board may determine.

- (6) If any part of the costs and expenses referred to in subsection (5) is recovered by the private irrigation board from the new landholder, the new landholder may recover from the previous landholder the whole or that part of those costs or expenses, as the case may be.
- (7) On their completion, the control and management of any works constructed under this section is vested in the private irrigation board.

## **Division 9 Meetings of landholders**

### **185 General meeting**

- (1) The chairperson of a private irrigation board may, at any time, convene a general meeting of landholders of land within the board's private irrigation district.
- (2) A private irrigation board must, within 21 days after the receipt of a requisition signed by not less than one-fifth in number of the landholders of the holdings in the private irrigation district, convene a general meeting of those landholders.
- (3) Seven days' notice of every general meeting must be sent to every landholder at the address shown in the private irrigation board's assessment book informing the landholder of the time and place of the general meeting.

### **186 Voting rights**

- (1) A corporation may, by any person authorised by it in writing, attend general meetings and vote.
- (2) If there is more than one landholder of any holding, each landholder may attend general meetings but only one of them may vote.

## **Division 10 Finance**

### **187 Books of account**

Each private irrigation board must cause to be kept, in relation to its funds, proper books of account that must be audited as often as the board considers it advisable so to do, but at least once in every year, by a registered company auditor (within the meaning of the [Corporations Act 2001](#) of the Commonwealth).

### **188 Accounts to be rendered**

Each private irrigation board must as soon as practicable, and in any case before 31 October in each year, forward to the Minister a copy of the income and expenditure account, balance sheet and rate account as last audited, together with a copy of the certificate of audit relating to them.

### **189 Banking of money**

- (1) All money received by or on account of a private irrigation board must be paid into a bank or authorised deposit-taking institution chosen by the board.
- (2) Every payment of \$2.00 or more by or on behalf of a private irrigation board must be by cheque on the bank or authorised deposit-taking institution drawn and countersigned as prescribed by the regulations.
- (3) Payments of less than \$2.00 may be made out of a petty cash fund, replenished from time to time by cheque drawn and countersigned as prescribed by the regulations.

### **190 Temporary accommodation**

- (1) For the temporary accommodation of a private irrigation board it may obtain advances by way of overdraft of current account in any one or more banks or authorised deposit-taking institutions on the security of the income of the board.
- (2) The amount of any such overdraft must be limited to:
  - (a) one-half of the income of the private irrigation board as shown by the last audited accounts, or
  - (b) if there are no audited accounts, one-half of the income of the private irrigation board estimated by the board in respect of the year commencing on 1 July immediately preceding the date on which the overdraft is proposed to be obtained.
- (3) No greater amount may be borrowed under this section than the amount stated in a certificate of the auditor of the private irrigation board as being the sum that may be borrowed within the limits imposed by this section.

## **Division 11 Miscellaneous**

### **191 Delegation**

A private irrigation board may by instrument in writing delegate:

- (a) to any member of the board, or
- (b) to any employee of the board,

any of its functions, other than this power of delegation.

### **192 Assessment book admissible as evidence**

In any legal proceedings for the recovery of rates or charges:

- (a) a private irrigation board's assessment book, or

- (b) any document purporting to contain a copy of any part of a private irrigation board's assessment book that is certified as a true copy by the chairperson of the private irrigation board, or by a person authorised by the chairperson in that regard,

is admissible in evidence.

### **193 Service of notice of proceedings on a private irrigation board**

Any document required to be served on a private irrigation board may be served:

- (a) by leaving it with some person apparently employed by the board at the office of the board, or
- (b) by posting it to the board at its office.

### **194 Recovery of rates**

Any rates, charges or money due to a private irrigation board under this Part may be recovered as a debt in a court of competent jurisdiction.

### **195 Amendment of proclamations**

Any proclamation under this Part may be amended by a further proclamation for the purpose of correcting any error in the earlier proclamation.

### **196 By-laws**

- (1) A private irrigation board may, with the approval of the Governor, make by-laws not inconsistent with this Act or the regulations for or with respect to the following:
  - (a) the convening and holding of general meetings of landholders,
  - (b) the appointment by a landholder of a proxy for voting purposes,
  - (c) the supply of water for domestic and stock purposes or for irrigation,
  - (d) the provision of storages on holdings for water supplied from the water supply works of the board for domestic and stock purposes,
  - (e) the methods of measuring water supplied,
  - (f) the sale of water to landholders,
  - (g) regulating the use of the water supply works of the board,
  - (h) the prevention of waste of water,
  - (i) the fixing, assessing and levying of rates and charges for water,
  - (j) the class of case in which, and the circumstances in which, rates and charges may be abandoned or written off,



- (k) the accounts of the board,
  - (l) the collection and banking of money, and the signing and countersigning of cheques,
  - (m) the books and records of the board,
  - (n) the access of members of the board to documents and books of the board,
  - (o) fees for any service provided by the board,
  - (p) the form of any notice or other document to be prepared, issued or received in accordance with this Part or any regulations of the board,
  - (q) any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) A by-law may create an offence punishable by a penalty not exceeding 0.5 penalty units.

## **Part 3 Private drainage boards**

### **Division 1 Preliminary**

#### **197 Application of Part**

This Part applies to all drainage unions under the former *Drainage Act 1939* that were in existence immediately before the repeal of that Act, but does not authorise the establishment of any new drainage unions.

#### **198 Definitions**

In this Part:

**director** means director of a private drainage board.

**drain** includes a natural watercourse.

**drainage district** means the area in respect of which a drainage union is constituted, having boundaries as varied from time to time in accordance with this Part.

**private drainage board** means board of directors of a drainage union.

#### **199 Requirements for approvals**

Nothing in this Part authorises a private drainage board to construct or use a drainage work otherwise than in accordance with a drainage work approval held by the board.

## **Division 2 Private drainage boards**

### **200 Private drainage boards**

Each private drainage board is a corporation under the corporate name by which it was constituted.

### **201 Appointment and election of directors**

- (1) A private drainage board is to have not less than 3, and not more than 7, directors.
- (2) If any Crown lands are included in the private drainage board's district, one of the directors is to be appointed by the Minister (the **appointed director**).
- (3) The remaining directors (the **elected directors**) are to be elected by landholders within the drainage district.
- (4) The regulations may make provision for or with respect to:
  - (a) the conduct of elections for the elected directors of a private drainage board, and
  - (b) other matters concerning the constitution and procedure of a private drainage board.

### **202 Functions of private drainage boards**

- (1) A private drainage board has the following functions:
  - (a) to prepare, review and implement a management program for its drainage district,
  - (b) to maintain in a state of efficiency the drainage works under its charge, and renew such drainage works if necessary,
  - (c) to construct, alter, or extend any drainage works in accordance with any authority and consent given under this Part,
  - (d) to make, levy and collect rates,
  - (e) to appoint such officers and employees as may be required,
  - (f) to institute legal proceedings for the recovery of outstanding rates or other amounts,
  - (g) to keep the prescribed books and accounts,
  - (h) to manage the affairs of the drainage union,
  - (i) to do such acts as may be necessary or desirable for carrying out the purposes of this Part.

- (2) No drainage works affecting navigable waters (within the meaning of the *Protection of the Environment Operations Act 1997*) are to be commenced without the approval of the Governor.

### **203 Entry on lands**

- (1) A private drainage board or any person authorised by it may enter any land within or outside its drainage district:
  - (a) for the purpose of making inspections or surveys, and
  - (b) for the purpose of constructing, maintaining and effecting extensions and alterations to the drainage works, and
  - (c) for any other purpose in the exercise of its powers and duties.
- (2) The private drainage board must make full compensation for damage occasioned to any land in the exercise of its powers and duties under this Part.

### **204 Extension of drainage works**

A private drainage board is to carry out such extensions of drainage works as are authorised by a majority of votes cast at a general meeting at which a quorum is present.

### **205 Amendment of boundaries**

- (1) The boundaries of a drainage district may from time to time, on application by the private drainage board, be amended by the Governor.
- (2) Any such application must contain particulars of the lands proposed to be added to or excised from the drainage district, and that have or are capable of being increased in value or that have decreased in value respectively by reason of the operations of the private drainage board.
- (3) The Minister must cause notice of any such application to be published in a local newspaper.
- (4) The notice must:
  - (a) give particulars of the lands proposed to be added to or excised from the drainage district, and
  - (b) appoint a time (not being earlier than 8 weeks after the date of publication of the notice) and place at which objections may be lodged.
- (5) After expiration of the appointed time and on consideration of any objection lodged the Minister may recommend and the Governor may approve an application with such modification, if any, as the Minister, on investigation, may recommend.

- (6) The approval of the Governor, and particulars of the alterations made in the boundaries of the drainage district, must be notified by the Minister in the Gazette.
- (7) As from the date of publication of such notification, the boundaries of the drainage district are taken to be altered accordingly.

## **Division 3 Finance**

### **206 Rates**

- (1) A private drainage board may, in respect of each landholding within its area of operations, fix, assess and levy rates in order to provide funds to enable it to exercise its functions.
- (2) Rates levied by a private drainage board are payable by the persons, and at the times, prescribed by the regulations.
- (3) A private drainage board may impose a charge for a service provided by it otherwise than by means of a drainage management work.
- (4) A private drainage board is to keep the records prescribed by the regulations in connection with the rates fixed, assessed and levied by it.

### **207 Annual estimates**

For each year commencing 1 January, the private drainage board must cause an estimate to be made of the amount required for that year for the following purposes:

- (a) construction, maintenance, extension and alteration of drainage works,
- (b) payment to the Treasurer of any amounts due or becoming due,
- (c) repayment of loans, and payment of interest thereon,
- (d) defraying costs of administration,
- (e) meeting all other expenditure whatsoever in carrying out its powers, authorities, duties and functions,
- (f) the preparation and implementation of management programs.

### **208 Irregularities**

If for any reason any rate is not made within or by the time prescribed by or under this Part, or if any irregularity in making or levying any rate affects or may be considered to affect the validity of any rate, the Governor may extend the time for the making of the rate, and may authorise the doing by the private drainage board of such acts as may be necessary to cure the irregularity and to validate the rate.

### **209 Rate book**

- (1) Every rate must be entered in a rate book which must be in the prescribed form.
- (2) An alteration or amendment in the rate book may be made in respect of any rate by altering such of the particulars entered therein as may be prescribed.
- (3) An alteration or amendment in the rate-book has effect on adoption by the private drainage board as though made when the rate was made.
- (4) An alteration or amendment in the rate-book made in conformity with a resolution of the private drainage board must be made in the prescribed manner.

### **210 Due date**

Every rate becomes due and payable to and recoverable by the private drainage board on the expiration of one month after service of the rate notice.

### **211 Liability of owner**

Except where this Part otherwise expressly provides, every rate is to be paid to the private drainage board by the owner of the land in respect of which the rate is levied.

### **212 Liability of current owner**

- (1) If a private drainage board is for any reason unable to recover any amount owing by way of rates from the owner of any land, the private drainage board may serve on any tenant of that land a notice requiring that any rent then due or thereafter to become due by the tenant in respect of the land be paid by the tenant as it falls due to the board in liquidation of the amount owing.
- (2) In default of payment of rent, the private drainage board may recover from the tenant of the land the amount owing as a debt in any court of competent jurisdiction.
- (3) Any payment to the private drainage board under this section constitutes a valid discharge to the payer for such rent as against all other persons.
- (4) Nothing in this section applies to a person who is a tenant for or on behalf the Crown, as an officer or employee of the Crown or as an employee of a local council.

### **213 Lessees of land owned by the Crown**

- (1) If the land is owned by the Crown and is held by any person under a lease from the Crown, the rate must be paid to the private drainage board by the holder of the lease.
- (2) If the land is held under a lease from the Crown by two or more persons successively in the same year, the private drainage board may do any of the following:
  - (a) it may make such adjustment (if any) of the rate, whether paid or unpaid, as it

thinks proper between such persons,

- (b) it may recover from each of such persons that person's proportion of the rate as fixed by the adjustment,
- (c) it may make any refund in accordance with the adjustment,
- (d) it may write off any amount in respect of the interval between those persons' holdings.

## **Division 4 Effect of new subdivisions**

### **214 Connections to new holdings resulting from subdivisions**

- (1) If a holding is subdivided, a new holding resulting from the subdivision is not entitled to be connected to a private drainage board's drainage works until a date determined by the board (not being a date earlier than the date on which the board became aware of the disposition of that new holding).
- (2) If rates for a period or year ending on 30 June, being the period or year during which the date determined by the board under subsection (1) occurred, have not, before the date so determined, been levied in respect of the holding that was subdivided, the board must levy the rates for the whole of that period or year in respect of each of the new holdings that resulted from the subdivision, and that was disposed of.

### **215 Additional works required as a result of subdivision**

- (1) The person who, immediately before the disposition of a new holding resulting from a subdivision of land within a private drainage board's drainage district, was the landholder of the holding (the **previous landholder**) must construct at his or her own cost such works as are necessary to provide:
  - (a) means of conveying water to the board's drainage works from the new holding, and
  - (b) means of access from roads to any works of the board or any works provided for the purposes of paragraph (a) if that access would not be available except by crossing a channel of the drainage district, and
  - (c) means of access across a channel of the drainage district to the new holding if that means of access is required by reason of the subdivision.
- (2) All works to be constructed under subsection (1) must be constructed before the new holding is disposed of or within such period after the disposition of the new holding as the board may in any particular case allow.
- (3) All works constructed or to be constructed under subsection (1) must be constructed in accordance with the approval in writing of the board in respect of location, design,

form, dimensions and construction.

- (4) At the request of the previous landholder, the board may undertake, at the landholder's cost, the construction of any works required by this section.
- (5) The board may construct such works as have not been constructed by the previous landholder, and any costs and expenses are payable to the board either by the previous landholder or by the new landholder, as the board may determine.
- (6) If any part of the costs and expenses referred to in subsection (5) is recovered by the board from the new landholder, the new landholder may recover from the previous landholder the whole or that part of those costs or expenses, as the case may be.
- (7) On their completion, the control and management of any works constructed under this section is vested in the board.

## **Division 5 Miscellaneous**

### **216 Dissolution**

- (1) When all amounts due by the private drainage board of any drainage union have been repaid, the landholders (being not less than one-third in number of those within the drainage district) may present a petition to the Governor for the dissolution of the union.
- (2) The Governor may notify such petition in a local newspaper, and if no sufficient cause to the contrary is shown by other landholders within the drainage district, may proclaim that the union is dissolved.
- (3) The Governor may dissolve any union if its drainage works cease to be the subject of a drainage work approval.
- (4) The regulations may make provision for or with respect to the winding up of a private drainage board and for the disposal of any residual assets of the board.

### **217 Debts**

Any rate, charge, fee, or money due to a private drainage board under the provisions of this Part or of any regulation under this Part may be recovered as a debt or liquidated demand in any court of competent jurisdiction.

### **218 Accounts**

- (1) The accounts of a private drainage board must be audited once every year.
- (2) A private drainage board must each year publish in a local newspaper a statement of the receipts and payments or alternatively of the income and expenditure for the next preceding year, certified under the hands of the chairperson of the board or manager

and the auditor, or forward a copy of such statement to each landholder of land within the drainage district.

(3) The private drainage board must forward a copy of the statement to the Minister.

## 219 Regulations

The regulations may make provisions for or with respect to the following matters:

- (a) the appointment, payment and dismissal of officers and employees of a drainage board,
- (b) the making and levying of rates and the time within which rates must be made,
- (c) the keeping of accounts of private drainage boards,
- (d) the qualifications to be held by auditors appointed by a private drainage board.

## Part 4 Private water trusts

### Division 1 Preliminary

#### 220 Application of Part

This Part applies to all private water trusts under Part 3 of the former [Water Act 1912](#) that were in existence immediately before the repeal of that Part, but does not authorise the establishment of any new private water trusts.

#### 221 Definitions

In this Part:

**member**, in relation to a private water trust, means a member appointed or elected under section 223.

**private water trust** means a trust constituted under Part 3 of the former [Water Act 1912](#).

**ratepayer** means person paying rates in respect of land within a water supply district.

**water supply district** means the district in respect of which a private water trust is constituted.

#### 222 Requirements for access licences and approvals

- (1) Nothing in this Part authorises a private water trust to construct a water management work or take water otherwise than in accordance with an access licence and water supply work approval held by the trust.
- (2) Nothing in this Part authorises a landholder of land within a water supply district to



use water otherwise than in accordance with a water use approval held by the private water trust.

## **Division 2 Private water trusts**

### **223 Appointment and election of members**

- (1) For private water trusts with 3 members, 1 is to be appointed by the Minister, and 2 are to be elected.
- (2) For private trusts with 5 members, 2 are to be appointed by the Minister, and 3 are to be elected.
- (3) One of the members appointed by the Minister is to be appointed as chairperson.
- (4) The regulations may make provision for or with respect to:
  - (a) the conduct of elections for the elected members of a private water trust, and
  - (b) other matters concerning the constitution and procedure of a trust.

### **224 Alteration of water supply districts**

- (1) If two-thirds of the landholders of lands within any area sign and forward to the Minister a petition that such area be included in a water supply district, the Minister must, unless of the opinion that the petition should be refused, refer the petition to the members of the private water trust for the district.
- (2) On receipt from the members of notice that the proposed alteration has been approved by a special general meeting of the voters of the trust, of which at least 14 days' notice has been given in the prescribed manner, the Minister may, by notification in the Gazette, alter the boundaries of the district accordingly.

### **225 Removal of land from water supply district**

- (1) If any lands within a water supply district have not benefited from the water management works of the private water trust for a continuous period of 3 years or more and the landholder of such lands applies to the Minister for the lands to be excised from the water supply district, the Minister must refer the application to the members of the private water trust for the district.
- (2) The members must refer the question of the proposed excision of the lands from the water supply district to a special general meeting of the voters of the trust (of which at least 14 days' notice has been given in the prescribed manner) and must convey to the Minister the decision of the voters.
- (3) The members must also advise the Minister as to:
  - (a) the reasons why such lands have not so benefited or have ceased so to benefit,

and

(b) the practicability or otherwise of extending or improving the water management works of the trust so as to benefit the said lands, and

(c) the effect that the granting of the request would have on the general administration and finances of the trust.

(4) The Minister is then to decide whether or not the whole or any part of the lands referred to in the request are to be excised from the water supply district.

(5) The Minister may, by notification in the Gazette, excise such lands from the water supply district and on the publication of such notification the water supply district is taken to be altered accordingly.

## **226 Union of trusts**

On the joint application of members of any two adjoining water supply districts, duly approved by a majority of the voters of each district at separate special general meetings (of which at least 14 days' notice has been given in the prescribed manner), the Minister may, by notification in the Gazette, transfer any part of one water supply district to the other water supply district.

## **Division 3 Functions of members**

### **227 Duties of members**

The members of a private water trust have the function of maintaining and administering the trust's works.

### **228 Powers and duties of members**

(1) The members of a private water trust have and may exercise the following functions:

(a) to establish and maintain a management program for the water supply district,

(b) to maintain in a state of efficiency the water management works under their charge and renew such works if necessary,

(c) to fix and levy rates to provide for the maintenance, renewal and management of such water management works, and for interest, charges, and a sinking fund,

(d) to keep proper accounts of all money received and paid,

(e) to pay to the Treasury, at such times as may be fixed by the Minister, the interest and charges payable by them, and if necessary make due provision for a sinking fund,

(f) to appoint, with the approval of the Minister, such officers or employees as may be

required,

(g) to borrow money, but only as provided in this section.

- (2) A loan by way of limited overdraft may be obtained for the purpose of meeting necessary legitimate expenditure prior to the collection of rates or for the purpose of carrying out urgent works of renewal, or replacement, or other emergency, for which sufficient funds are not immediately available.
- (3) On application by the members of a private water trust the Minister may issue a certificate of limit of overdraft, in which must be named the purpose in respect of which the loan may be obtained and the limit of amount to be borrowed.
- (4) The sum to be stated in the certificate as the limit of the overdraft is in the discretion of the Minister, but must not exceed the estimated amount required for the purpose mentioned therein plus 10% of such amount.
- (5) The loan is subject to any conditions inserted by the Minister in the certificate, and the money borrowed is taken to be secured on the income of the trust and must be repaid within the time fixed in the certificate.
- (6) All sums received on account of a trust's sinking fund must be carried by the Treasurer to a special account, to be called "The Water Supply Loan Redemption Fund", and all other sums to the Consolidated Fund.
- (7) The members of a private water trust may on application by any ratepayer defer or suspend payment of rates by the ratepayer for such period or periods and on such terms and conditions as the Minister may approve.

## **229 Supply of water**

- (1) The members of a private water trust may for the more beneficial use or efficient distribution of the water supplied by the trust's water supply works:
  - (a) cease to supply water through any portion of the works in the water supply district or to any lands within such district, or
  - (b) deviate the course of a water supply work or otherwise alter in any way the works in the water supply district.
- (2) Before taking any such action, the members must obtain the written consent of any ratepayer:
  - (a) whose benefit from those works will be diminished by the action of the members, or
  - (b) the supply of water or means of supply of water to whose lands will be affected, and must also obtain the written approval of the Minister of the members' proposed

action.

- (3) The members of a private water trust may cut off or withhold the supply of water to any land:
- (a) if any meter used to measure such supply or any outlet is out of repair or, in the opinion of the members, unsatisfactory for the expeditious or effective supply of water to such land, or
  - (b) if, in the opinion of the members, such course is necessary owing to drought or any accident or other unavoidable cause, or
  - (c) if the landholder or person requiring a supply of water neglects to comply with the lawful requirements of the members as to the installation of outlets or meters or instruments for measuring the quantity of water, or
  - (d) if the landholder or person requiring a supply of water neglects to comply with any lawful requirements of the members to repair or alter water connections, outlets, channels, ditches, pipes, fittings or appliances connected to the water management works under the control of the members, or
  - (e) if the landholder of the land fails to take such steps as may be necessary to ensure compliance with any order or public notice of the members requiring consumers of water to economise its use in time of drought or scarcity of supply, or
  - (f) if any rates fixed and levied in respect of the land are, after the due date of payment, unpaid and approval to the supply of water to the land being cut off or withheld is given:
    - (i) if the trust was constituted by 3 members, by the chairperson of the trust and all the elected members, or
    - (ii) if the trust was constituted by 5 members, by the chairperson of the trust and a majority of the elected members.
- (4) If the Minister:
- (a) reduces or discontinues the supply of water to the members of a private water trust, or
  - (b) directs the members of a private water trust:
    - (i) to reduce the quantity of water being taken or diverted by them from any water source, or
    - (ii) to discontinue the taking or diverting of water from a water source,
- the members may reduce or cut off or withhold the supply of water to any land.

- (5) The cutting off or withholding or reduction of the supply of water by the members of a private water trust under this section does not affect the liability of the ratepayer in respect of the rates on the land the supply of water to which has been cut off, withheld or reduced.

### **230 Power of members to enter and inspect**

In the exercise of their functions, by themselves or their officers, the members of a private water trust may enter any land within the water supply district and make any inspection or survey they consider necessary, and effect repairs or alterations to any water management works, but in so doing must avoid, as far as practicable, causing any loss, injury or damage.

### **231 No compensation**

No compensation is payable in connection with a private water trust's exercise of its functions under this Part.

## **Division 4 Rating**

### **232 Rates**

- (1) For the purpose of providing money in connection with the exercise of their functions under this Part, the members of a private water trust may fix and levy rates on the lands within the water supply district as follows:
- (a) in connection with the supply of water for stock purposes:
- (i) a rate per hectare of the land benefited by the water management works must be fixed, or
  - (ii) if water is supplied down a natural channel, a rate per kilometre of the lands so benefited, measured according to the frontage to the channel, may be fixed,
- which rate may vary in proportion to the benefit received,
- (b) in connection with the supply of water for domestic purposes, a rate for each separate holding in the water supply district must be fixed, which rate may vary in proportion to the benefit received,
- (c) in connection with the construction and maintenance of flood works, a rate per hectare of the land benefited by the works must be fixed, which rate may vary:
- (i) according to the distance of the land from works for the prevention of floods or the control of flood waters, and
  - (ii) in proportion to the benefit received,

- (d) in connection with irrigation, a rate must be levied on the land within the water supply district:
  - (i) that is suitable for production under irrigation, and
  - (ii) that is accessible to the works of the trust by means of recognised methods of irrigation.
- (2) If land is liable for rates under subsection (1) (d), the members of a private water trust may, in fixing the rate, fix different amounts for different parts of the land, having regard to:
  - (a) the fact that any such part is or is not actually used for production under irrigation, or
  - (b) the type of production under irrigation for which any such part is used.
- (3) In any case for which this section does not provide, a rate per hectare of the land benefited, directly or indirectly, by the works must be fixed yearly, and must, as far as practicable, be in proportion to the benefit received.
- (4) In the case of a supply for more than one purpose, separate rates may be fixed, calculated on the basis set out for each such purpose.
- (5) All rates are a charge on the land in respect of which they are levied and are payable by the landholder.
- (6) Any landholder aggrieved by the amount of a rate may appeal to a Local Court, which must hear and determine the matter, and may confirm or vary such amount.
- (7) If in any such appeal the Local Court reduces the amount at which the appellant is rated, it must increase the other ratings of the trust in such amounts as it thinks just, if it considers such course necessary, in order to secure that the total amount to be received by the trust for rates is not to be diminished by the reduction.

### **233 Supplementary rating powers**

- (1) If the members of a private water trust are unable to meet the cost of administration or of an extension or improvement of the works under their control or other liability, they may in writing petition the Minister to approve an increase in the maximum rate that may be assessed by them, and must set out in such petition the reasons for their request.
- (2) The Minister must inform the members whether or not the Minister is prepared to grant their petition and, if so, must inform them of the maximum rate that the Minister is prepared to approve.
- (3) The members must submit the proposed increase in maximum rate that the Minister

is prepared to approve to a special general meeting of the voters of the trust (of which at least 14 days' notice has been given in the prescribed manner).

- (4) The members must report to the Minister whether an affirmative or negative vote has been carried at the meeting.
- (5) If an affirmative vote has been cast the Minister must grant the petition of the members by notification sent to them and published in the Gazette, and thereafter the members may assess rates to the maximum approved by the Minister.

### **234 Surplus water**

When a private water trust has any surplus water that is not required for the purpose for which the trust was constituted, the trust may sell the water, by measure or otherwise:

- (a) to any ratepayer for any other purpose, or
- (b) if no ratepayer requires it, to any other person.

### **235 Accounts**

- (1) The members of a private water trust must submit to the Minister once every year, and at such other times as the Minister may direct, an audited statement of the accounts of the trust.
- (2) The Minister may, if of opinion that the audited statement is defective or unsatisfactory, appoint an auditor to prepare a proper statement of accounts, at the cost of the trust.

## **Division 5 Effect of new subdivisions**

### **236 Supply of water to new holdings resulting from subdivisions**

- (1) If a holding is subdivided, a new holding resulting from the subdivision is not entitled to a supply of water from a private water trust's water supply works until a date determined by the trust (not being a date earlier than the date on which the board became aware of the disposition of that new holding).
- (2) If rates for a period or year ending on 30 June, being the period or year during which the date determined by the trust under subsection (1) occurred, have not, before the date so determined, been levied in respect of the holding that was subdivided, the trust must levy the rates for the whole of that period or year in respect of each of the new holdings that resulted from the subdivision, and that was disposed of.

### **237 Additional works required as a result of subdivision**

- (1) The person who, immediately before the disposition of a new holding resulting from a subdivision of land within a private water trust's water supply district, was the landholder of the holding (the **previous landholder**) must construct at his or her own

cost such works as are necessary to provide:

- (a) means of conveying water to the new holding from the trust's water supply works, and
  - (b) means of access from roads to any works of the trust or any works provided for the purposes of paragraph (a) if that access would not be available except by crossing a channel of the water supply district, and
  - (c) means of access across a channel of the water supply district to the new holding if that means of access is required by reason of the subdivision.
- (2) All works to be constructed under subsection (1) must be constructed before the new holding is disposed of or within such period after the disposition of the new holding as the trust may in any particular case allow.
- (3) All works constructed or to be constructed under subsection (1) must be constructed in accordance with the approval in writing of the trust in respect of location, design, form, dimensions and construction.
- (4) At the request of the previous landholder, the trust may undertake, at the landholder's cost, the construction of any works required by this section.
- (5) The trust may construct such works as have not been constructed by the previous landholder, and any costs and expenses are payable to the trust either by the previous landholder or by the new landholder, as the trust may determine.
- (6) If any part of the costs and expenses referred to in subsection (5) is recovered by the trust from the new landholder, the new landholder may recover from the previous landholder the whole or that part of those costs or expenses, as the case may be.
- (7) On their completion, the control and management of any works constructed under this section is vested in the trust.

## **Division 6 Miscellaneous**

### **238 Minister may remove members and Governor may dissolve trust**

- (1) In the event of any delay in the election of members of a private water trust or in the event of any default by members of a private water trust in the discharge of their duties under this Part or of the ratepayers failing to elect members, or the required number of members, the Minister may, by notification in the Gazette:
- (a) remove a member or members from office, and direct the election of another member or other members, or
  - (b) remove a member or members (if any) and assume all of the functions of the members, and may appoint a manager of the affairs of the trust.



- (2) The Minister may at any time direct the election of members of a private water trust, and on such election all of the functions of the members are revested in the members.
- (3) The Governor may, if in the Governor's opinion sufficient reason exists, dissolve a trust, and may extinguish any liability of such trust to the Crown.
- (4) The regulations may make provision for or with respect to the winding up of a private water trust and for the disposal of any residual assets of the trust.

### **239 Regulations**

The regulations may make provision for or with respect to the following matters:

- (a) the election of members of a private water trust and the making and revision of the rolls of voters, and the mode of voting,
- (b) the intervals within which meetings of members of a private water trust must be held,
- (c) the procedure at such meetings,
- (d) the appointment, payment, and dismissal of officers and employees of a private water trust,
- (e) the fixing and notifying of rates,
- (f) the hearing of appeals,
- (g) prescribing the method or methods to be adopted to determine the quantity of water for which payment is to be made by the trust,
- (h) the keeping of the accounts of private water trusts,
- (i) regulating the payment to the Crown of interest and charges by private water trusts,
- (j) regulating special meetings of voters of a private water trust in pursuance of this Part.

## **Chapter 5 Public works**

### **Part 1 Fish River water supply scheme**

#### **Division 1 Preliminary**

##### **240 Definitions**

In this Part:

***Fish River water supply scheme*** means the concrete dam on Fish River at Oberon, together with:

- (a) its associated gravitation main, concrete reservoirs and reticulation systems, and

- (b) the pumping station at Oberon, and
- (c) all incidental and connected works, and
- (d) all additions, amplifications, improvements and extensions to that scheme.

**special area** means an area of land declared under Division 3 to be a special area.

#### **241 Fish River water supply scheme controlled by the Minister**

The Fish River water supply scheme is to be controlled and administered by the Minister.

#### **242 Minister may repair works**

For the purpose of supplying any person with water under this Part, the Minister may at all times use and repair any works forming part of the Fish River water supply scheme even if a local council is charged with the care and management of those works.

### **Division 2 Supply of water**

#### **243 Minister may supply water**

- (1) The Minister may supply water from the Fish River water supply scheme to any person who enters into a contract with the Minister to accept a supply of water.
- (2) Any such contract may contain such terms and conditions as the Minister thinks fit.
- (3) The Minister may from time to time, by order published in the Gazette:
  - (a) fix the price per kilolitre to be paid by any person for water supplied by the Minister in any year, and
  - (b) fix the minimum amount to be paid by any person in any one year irrespective of the quantity of water supplied.

#### **244 Council not to supply outside area without consent**

Except with the consent of the Minister, a local council that is supplied with water from the Fish River water supply scheme must not supply water to any premises situated outside the area of the council.

#### **245 No compensation for failure of supply**

The Minister is at all times entitled to discontinue the supply to a local council or other person whenever the Minister considers it necessary in the interests of public health or for the purpose of ensuring a proper supply.

## Division 3 Special areas

### 246 Special areas

- (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land described in the order to be a special area in relation to the Fish River water supply scheme.
- (2) The Minister may recommend an order only if of the opinion that the exercise of the State's water rights could be adversely affected unless the order is made.

### 247 Crown land in special areas

- (1) Action may not be taken under the *Crown Lands Act 1989* in respect of land within a special area unless:
  - (a) the Minister has given approval in writing, and
  - (b) any conditions to which the approval is subject are complied with.
- (2) The Minister may, in a special area, exercise the functions of a trustee appointed under Part 5 of the *Crown Lands Act 1989* without being appointed as such.

### 248 Exercise of certain functions in special areas

- (1) A public agency may not, in relation to land within a special area, exercise functions other than functions under this Part unless notice is first given, as prescribed by the regulations, to the Minister.
- (2) On receipt of such a notice, the Minister may make such representations to the public agency as the Minister thinks fit.
- (3) A public agency may not exercise functions contrary to any such representations made by the Minister unless:
  - (a) at least 14 days' notice has been given to the Minister of the functions intended to be exercised, and
  - (b) that period has expired without the matter being referred as a dispute for determination under this Act.
- (4) In this section, **public agency** means:
  - (a) the Governor, or
  - (b) a Minister of the Crown, or
  - (c) a statutory body.

## **Division 4 Finance**

### **249 Accounts to be kept in Special Deposits Account**

There is to be established in the Special Deposits Account an account to be called the "Fish River Water Supply Account".

### **250 Allocation of money**

- (1) Within the Fish River Water Supply Account is to be kept an account to be called the "Fish River Water Supply Working Account", in this Part referred to as the **Working Account**.
- (2) There must be credited to the Working Account all revenue received by the Minister in pursuance of this Part and such amounts as may from time to time be appropriated by Parliament for the purpose.
- (3) There may be paid out of the Working Account such amounts as are necessary to pay for:
  - (a) the costs of administering the Fish River water supply scheme, and
  - (b) the costs of operating and maintaining the works forming part of the Fish River water supply scheme, and
  - (c) the costs of replacing, augmenting and extending the works forming part of the Fish River water supply scheme.

### **251 Payments by Treasurer**

- (1) When in any year the revenue received by the Minister is insufficient to meet the charges payable to the Working Account under this Division, the Treasurer may, out of money provided by Parliament, pay to the Working Account the amount of such deficiency.
- (2) Any money paid to the Working Account must, after payment of the charges payable to the Working Account under this Division, be repaid to the Treasurer out of any balance remaining in the Working Account with interest at such rate and at such times and by such instalments as the Treasurer may determine.

## **Division 5 Miscellaneous**

### **252 Regulations**

- (1) The regulations may make provision for or with respect to special areas.
- (2) A regulation made for or with respect to a special area prevails to the extent of any inconsistency with a statutory instrument made under another Act, including an environmental planning instrument made under the *Environmental Planning and*

*Assessment Act 1979.*

## **Part 2 Hunter Valley flood mitigation works**

### **Division 1 Preliminary**

#### **253 Application of Part**

This Part applies to and in respect of land in the Hunter Valley.

#### **254 Definitions**

In this Part:

**Hunter Catchment Management Trust** means the Hunter Catchment Management Trust established by section 20 of the *Catchment Management Act 1989*.

**Hunter River** includes all tributaries that, directly or indirectly, flow into the Hunter River, and includes the estuary of the Hunter River and all arms and branches of that estuary.

**Hunter Valley** means the catchment area of the Hunter River, and includes the land shown on the plan marked "DWR PLA No 20/2551" deposited in the head office of the Department, and also includes such other land as is declared by the regulations to form part of the Hunter Valley.

**levee bank** means a levee bank designed or intended for the purpose of or that could or might have the effect of excluding or partially excluding the waters of the Hunter River or waters overflowing from the Hunter River from any land.

**protective works** means works for the protection of any works vested in or otherwise under the control of a public authority:

- (a) against flooding by waters overflowing from the Hunter River, or
- (b) against the effects of any such flooding, or
- (c) against the effects of river bank erosion.

**tree** includes sapling and shrub.

### **Division 2 Powers of Minister**

#### **255 Restriction on use of lands adjacent to levee banks**

- (1) If a levee bank has been constructed adjacent to the Hunter River, the Minister may, by notice in writing to:
  - (a) the landholder of the land on which the levee bank has been constructed, or
  - (b) the landholder of any land adjacent to the levee bank, or

(c) the landholder of the whole or any part of the land lying between the levee bank and the Hunter River,

impose such conditions and restrictions on the use of such levee bank or land as the Minister considers necessary or desirable to ensure the stability of the levee bank and in the interests of flood prevention or mitigation within the Hunter Valley generally.

- (2) The Minister may in the like manner revoke or vary any notice given in pursuance of this section.
- (3) If any landholder to whom such a notice has been given contravenes any condition or restriction imposed by the notice, the Minister:
- (a) may authorise any person to enter the land to which such notice relates, and to take such remedial measures on that land as the Minister considers necessary, and
  - (b) may recover any cost incurred in so doing from the landholder in any court of competent jurisdiction as a debt due and owing to the Crown.
- (4) If under this section conditions or restrictions on the use of any levee bank or land are imposed by the Minister, the landholder of the levee bank or land is entitled to claim and be paid compensation for any loss sustained by reason of those conditions or restrictions.

## **256 Construction of fences, structures and flood works**

- (1) A person must not:
- (a) construct any building, fence or structure in, on, or adjacent to, a levee bank, or
  - (b) construct a flood work on a floodplain,
- except with the consent of the Minister.
- Maximum penalty: 2,500 penalty units (in the case of a corporation) or 1,200 penalty units (in any other case).
- (2) The Minister's consent may be given unconditionally or subject to conditions.
- (3) An authorised officer:
- (a) may enter any lands on which any building, fence or flood work has been constructed otherwise than in accordance with the Minister's consent, and
  - (b) may take such measures as are necessary to demolish or remove the building, fence or flood work or to render the flood work ineffective.
- (4) The costs incurred by an authorised officer under this section are recoverable from

the landholder as a debt in a court of competent jurisdiction.

- (5) The Minister may, by notice published in the Gazette, exclude any lands from a floodplain.
- (6) In this section, **floodplain** means any lands declared to be within the floodplain of the Hunter River by a proclamation in force under section 16 of the former *Hunter Valley Flood Mitigation Act 1956*, other than lands excluded from the floodplain by a notice published under this section.

## **Division 3 Finance**

### **257 Accounts to be kept in Special Deposits Account**

There is to be established in the Special Deposits Account an account to be called the "Hunter Valley Flood Mitigation Account".

### **258 Allocation of money**

- (1) Within the Hunter Valley Flood Mitigation Account is to be kept an account to be called the "Hunter Valley Flood Mitigation Working Account", in this Part referred to as the **Working Account**.
- (2) Any amount paid to the Minister by the Hunter Catchment Management Trust is to be paid into the Working Account, from which account may be made, in such manner as the Treasurer determines, any payments that the Minister is required to make under or for the purposes of this Part.

### **259 Cost of works generally**

- (1) This section applies to all flood works that are constructed or maintained by the Minister, other than those for which the Hunter Catchment Management Trust is liable to make contribution under some other provision of this Division.
- (2) The Hunter Catchment Management Trust is liable to contribute one-quarter of the cost to the Minister of constructing and maintaining any flood work to which this section applies.

### **260 Cost of works to protect towns and villages**

- (1) This section applies to all flood works constructed or maintained by the Minister for the purpose of protecting a town or village from flooding, being works that have been constructed at the request or with the concurrence of the local council within whose area the town or village is situated.
- (2) Of the cost to the Minister of constructing and maintaining any flood work to which this section applies:
  - (a) the local council is liable to contribute such percentage (not exceeding 12%) as

the Minister may determine, and

- (b) the Hunter Catchment Management Trust is liable to contribute one-quarter of the balance.

### **261 Cost of protective works**

- (1) Of the cost to the Minister of constructing and maintaining any protective works:
  - (a) the public authority whose works are protected by the protective works is liable to contribute such percentage as the Minister may determine, and
  - (b) the Hunter Catchment Management Trust is liable to contribute one-quarter of the balance.
- (2) The Minister may pay to any public authority that constructs or maintains any protective works such amount as the Minister considers appropriate towards the cost to the public authority of so doing.
- (3) The Hunter Catchment Management Trust is liable to pay to the Minister one-quarter of any amount paid to a public authority under subsection (2).

### **262 Annual contribution to works program by Hunter Catchment Management Trust**

- (1) The Hunter Catchment Management Trust is liable to pay to the Minister in each financial year:
  - (a) one-quarter of the estimated cost of constructing any flood works that the Minister proposes to construct during that financial year, and
  - (b) one-quarter of the estimated cost of maintaining any flood works that the Minister proposes to maintain during that financial year.
- (2) The following amounts are to be deducted from the estimated costs for the purpose of calculating the Hunter Catchment Management Trust's liability under this section:
  - (a) any contribution to those costs for which a local council will be liable under this Division,
  - (b) any amount that the Trust has paid to the Minister under this section during the previous financial year but that remained unexpended at the end of that year.
- (3) Any estimates are to be made by the Minister whose decision is final.

### **263 Consultation with Hunter Catchment Management Trust as to works program**

- (1) Before the beginning of each financial year or as soon as practicable thereafter, the Minister must submit to the Hunter Catchment Management Trust a program of the flood works that the Minister proposes to construct or maintain during that year.



- (2) Such a program must be consistent with any management plan that applies to the land on which the works or proposed works are situated.
- (3) Such a program must be accompanied by a statement setting out the following particulars:
  - (a) the estimated cost of constructing any work,
  - (b) the estimated annual cost of maintaining any work,
  - (c) the amount for which the Hunter Catchment Management Trust will be liable,
  - (d) such other particulars as may be prescribed by the regulations.

#### **264 Consultation with local council as to works program**

- (1) This section applies to all flood works constructed or maintained by the Minister for the purpose of protecting a town or village from flooding, being works that have been constructed at the request or with the concurrence of the local council within whose area the town or village is situated.
- (2) Before the beginning of each financial year or as soon as practicable thereafter, the Minister must submit to the local council concerned a program of the flood works that the Minister proposes to construct or maintain during that year.
- (3) Such a program must be consistent with any management plan that applies to the land on which the works or proposed works are situated.
- (4) Such a program must be accompanied by a statement setting out the following particulars:
  - (a) the estimated cost of constructing any work,
  - (b) the estimated annual cost of maintaining any work,
  - (c) the percentage that the Minister has determined that the council should contribute to the cost of the construction and maintenance of the work,
  - (d) the amount for which the council will be liable,
  - (e) such other particulars as may be prescribed by the regulations.
- (5) Any estimates are to be made by the Minister whose decision is final.
- (6) When the work has been completed, the Minister must notify the local council of the actual cost of the work.
- (7) If the amount paid by the local council in respect of the work is more than the amount for which the council is liable, the Minister must repay to the council the amount of such excess.

- (8) If the amount paid by the local council in respect of the work is less than the amount for which the council is liable, the council must pay to the Minister the amount of the shortfall.
- (9) Any amount paid to the Minister by a local council under this section is to be paid into the Hunter Valley Flood Mitigation Working Account.

#### **265 Payment of contribution towards maintenance by a local council**

- (1) A local council that is liable to contribute to the cost of maintenance of any flood work must pay to the Minister in each financial year the same percentage of the estimated cost of maintenance as the council is liable to contribute to the actual cost of maintenance of that work.
- (2) In calculating the local council's liability under this subsection in respect of any financial year there is to be deducted any amount that the council has paid to the Minister in respect of any flood work during any previous financial year and that remained unexpended at the end of the immediately preceding financial year.
- (3) Any estimate is to be made by the Minister whose decision is final.

#### **266 Consultation with local council as to maintenance program**

- (1) Before the beginning of each financial year, the Minister must furnish the local council with a statement setting out the following particulars:
  - (a) the amount that the council will be liable to pay under this Division for that financial year,
  - (b) such other particulars as may be prescribed by the regulations.
- (2) The local council must pay to the Minister the amount referred to in subsection (1) (a).
- (3) Any such amount is to be paid into the Hunter Valley Flood Mitigation Working Account.

#### **267 Urgent maintenance works**

- (1) If in the opinion of the Minister it becomes necessary to carry out urgent maintenance on any flood work, the Minister may carry out the maintenance, despite maintenance not having been included in any program of works or any statement furnished to a local council.
- (2) When the maintenance has been completed, the Minister must determine the total amount paid in respect of such maintenance and notify any local council affected by the work and the Hunter Catchment Management Trust of the respective amounts that they are required to contribute in accordance with this Division.
- (3) Any money paid to the Minister under this section is to be paid into the Hunter Valley

Flood Mitigation Working Account.

**268 Payments to be duly made**

Any amount that is payable to the Minister under this Division:

- (a) by the Hunter Catchment Management Trust, or
- (b) by a local council, or
- (c) by any other public authority,

is payable at such times, and in such instalments, as the Minister may determine.

**Division 4 Miscellaneous**

**269 Works to protect public and local government works to be approved by Minister**

- (1) A public authority must not construct any protective works unless the Minister has approved of the site, nature, dimensions and design of the works.
- (2) In giving approval, the Minister may require such amendment of the site, nature, dimensions or design of the protective works as the Minister considers necessary, and the public authority must comply with that requirement accordingly.
- (3) The Minister may by notice in writing require the public authority by which any protective works have been constructed to take specified measures for the proper upkeep, preservation and maintenance of the protective works.
- (4) The public authority must comply with the requirements specified in the notice in such manner and within such time as is so specified.
- (5) If a public authority fails to comply with the terms of the notice, the Minister:
  - (a) may authorise any person to enter the land on which the protective works are located and carry out the measures specified in such notice, and
  - (b) may recover any cost incurred in so doing from the public authority in any court of competent jurisdiction as a debt due to the Crown.

**270 Major floodgates to be maintained and operated by local councils**

- (1) If in the opinion of the Minister any floodgate operates for the protection of lands other than lands owned by one landholder or a small localised group of landholders, the Minister may by notice in writing to the local council declare the floodgate to be a major floodgate.
- (2) It is the duty of the local council:
  - (a) to keep any major floodgate at all times in a good and proper state of repair and

working order, and

(b) to maintain and operate it in accordance with any directions that may from time to time be given by the Minister.

(3) If the local council fails to perform that duty, the Minister:

(a) may authorise any person to enter the land on which the major floodgate is located and to take such measures as to the maintenance, operation or repair of the floodgate as the Minister considers necessary, and

(b) may recover any cost incurred in so doing from the council in any court of competent jurisdiction as a debt due to the Crown.

### **271 Maintenance of minor floodgates**

(1) In this section, **minor floodgate** means any floodgate that is not a major floodgate.

(2) It is the duty of each landholder for the protection of whose land a minor floodgate operates to keep the floodgate at all times in a good and proper state of repair and working order.

(3) If any such landholder fails to perform that duty, the Minister may by notice in writing direct the landholder to take such measures as to the maintenance, operation or repair of the floodgate as may be specified in the notice.

(4) If any landholder fails to comply with the terms of the notice, the Minister:

(a) may authorise any person to enter the land on which the minor floodgate is located and to take such measures as to the maintenance, operation or repair of the floodgate as the Minister considers necessary, and

(b) may recover any cost incurred in so doing from the landholder in any court of competent jurisdiction as a debt due to the Crown.

(5) In the case of multiple landholders, the liability imposed on them under this section is joint and several but, as between themselves, each is liable only for such share of the liability as bears the same proportion to the total liability as the area of the person's land for the protection of which the floodgate operates bears to the total area of land for the protection of which the floodgate operates.

(6) If any landholder pays to the Minister more than the person's share of the total liability the landholder may recover the excess by way of contribution from the others.

### **272 Application of [Public Works Act 1912](#)**

Sections 91–95 of the [Public Works Act 1912](#) do not apply to any works constructed under this Part.

### **273 Evidence of cost of works**

If the Minister is empowered to recover any cost incurred in carrying out any work or measure, a certificate by the Minister of the amount of such cost is evidence of that cost.

## **Part 3 Lowbidgee flood control and irrigation works**

### **274 Application**

This Part applies to and in respect of the Lowbidgee flood control and irrigation district, as constituted under Part 7 of the former *Water Act 1912* immediately before the repeal of that Part.

### **275 Definitions**

In this Part:

***flood irrigation*** means the irrigation of lands by flooding with water diverted by gravitation or overflowing from a river or lake.

***Lowbidgee district*** means the Lowbidgee flood control and irrigation district, as constituted under Part 7 of the former *Water Act 1912* immediately before the repeal of that Part.

***Lowbidgee works*** mean the works situated on the Murrumbidgee river, being works constructed, operated and maintained by the Minister for the purpose of providing flood control and flood irrigation to land within the Lowbidgee district.

### **276 Supply of water**

- (1) The Minister is authorised to operate the Lowbidgee works for the purpose of providing flood control and flood irrigation to land within the Lowbidgee district.
- (2) The control of works within the Lowbidgee district, the arrangements for distribution of water for flood irrigation, and the order of supply or diversion of water for flood irrigation are entirely under the control of the Minister.
- (3) In the exercise of any function under this Part, the Minister is not under any restraint nor is compensation payable to any person as a consequence of the flooding of the person's land.
- (4) Nothing in this Part requires the Minister to provide flood irrigation to any land or person in the Lowbidgee district.

### **277 Fixing of rates**

- (1) The Minister must, in respect of each year commencing 1 July, fix the rate per hectare to be paid in respect of the lands within the Lowbidgee district:

- (a) for which provision for flood control and irrigation is made by the Lowbidgee works, or
  - (b) for which provision for flood control and irrigation is made by the Lowbidgee works and by works of the landholder,
- and must in respect of each holding assess the total amount of such rate.

(2) The rate so fixed and assessed must be levied and paid as prescribed.

### **278 Rates**

- (1) Rates for a particular holding commence to be payable on a date to be determined by the Minister, being a date that is not earlier than the date on which:
  - (a) provision for flood control or irrigation, as the case may be, in respect of that holding is made by the Lowbidgee works, or
  - (b) provision for flood control and irrigation is made by the Lowbidgee works and by works of the landholder.
- (2) If any land within the Lowbidgee district reverts to the Crown during any year in which rates are payable:
  - (a) the landholder, as regards that land, is liable only for payment of such part of the rates as are proportionate to the portion of the year for which the land was held by the landholder, and
  - (b) any excess payment by the landholder must be refunded to the landholder.
- (3) In the event of the Minister at any time finding an error in the assessment of a rate in respect of any holding or landholder through lack of knowledge of the name of the landholder, or the area or extent of the holding, or miscalculation, the Minister may at any time re-assess the rate in respect of any holding or landholder affected.

### **279 Benefit to be taken into account**

- (1) The rates in the Lowbidgee district may be determined or varied having regard to the benefit which, in the opinion of the Minister, is derived by the landholder of the land:
  - (a) in respect of which works for flood control and irrigation have been provided, or
  - (b) in respect of which provision for flood control and irrigation has been made by the Lowbidgee works and by works of the landholder.
- (2) The Minister may exempt from rating the lands which, without the provision of works for flood control and irrigation, would not be flooded at times of maximum floods.
- (3) The determination of the Minister as to whether and to what extent any lands would

be so flooded is final.

## **280 Regulations**

The regulations may make provision for or with respect to the following matters:

- (a) the prevention of pollution of water conserved or distributed in the Lowbidgee works constructed or used under this Part, or flowing in rivers or within lakes affected by the Lowbidgee works constructed or used under this Part,
- (b) the prevention of injury to such the Lowbidgee works or any works used in connection with those works,
- (c) the diversion of water from rivers and lakes for flood irrigation and for the control of works provided for regulating flood irrigation,
- (d) the fixing, assessing and levying of rates,
- (e) the prevention of the waste of water,
- (f) the forms of notices to be given under this Part and the manner of and periods for giving such notices.

## **Chapter 6 Public utilities**

### **Part 1 Major utilities**

#### **281 Major utilities**

- (1) This Part applies to each body referred to in Schedule 2 (referred to as a **major utility**).
- (2) The Governor may by proclamation amend Schedule 2 so as:
  - (a) to add the corporate name of any body that is to become a major utility for the purposes of this Part, or
  - (b) to vary the name of any major utility as a consequence of any change in its corporate name, or
  - (c) to omit the corporate name of any body.

#### **282 Review of activities of major utilities**

- (1) The activities of a major utility under this Act:
  - (a) may be reviewed at any time, and
  - (b) must be reviewed:
    - (i) before the end of the 6 month period following the date on which its first

approval was granted under section 95, and

(ii) before the end of each 5 year period following the date on which its current approval was granted.

(2) For the purpose of conducting such a review, the Minister must cause notice to be published:

(a) in the Gazette, and

(b) in a newspaper circulating throughout New South Wales,

inviting written submissions from interested persons in relation to the activities of the major utility during the period under review.

## Part 2 Water supply authorities

### Division 1 Preliminary

#### 283 Definitions

In this Part:

**area of operations** of a water supply authority means the area of operations prescribed by the regulations in relation to that authority.

**authorised person** means an employee or other person acting on behalf of a water supply authority.

**charging year**, in relation to a water supply authority, means:

(a) the period of 12 months declared by an order in force under Division 6 to be the charging year for the water supply authority, or

(b) if the charging year is changed under that Division by a further order, the period between the end of one charging year and the beginning of the next.

**development area** means an area of land declared by an order in force under Division 6 to be a development area.

**drainage area** means an area of land declared by an order in force under Division 6 to be a drainage area.

**drainage service** means that part of drainage pipework up to its point of connection to a water supply authority's drainage system.

**drainage service pipe** means a pipe connecting a drainage service to a water supply authority's drainage system, and includes the plumbing fittings connected to the pipe.

**floodplain** means an area of land declared by an order in force under Division 6 to be a



floodplain.

**meter** includes any measuring device.

**plumbing fitting** includes any pipe, apparatus or fixture used for plumbing work.

**plumbing work** means work comprising or affecting:

- (a) a water supply service pipe or its connection (whether directly or indirectly) with a water supply authority's water supply system, or
- (b) a sewerage service pipe or its connection (whether directly or indirectly) with a water supply authority's sewerage system, or
- (c) a drainage service pipe or its connection (whether directly or indirectly) with a water supply authority's drainage system.

**river management area** means an area of land declared by an order in force under Division 6 to be a river management area.

**service charge** means any of the following:

- (a) a water service charge,
- (b) a sewerage service charge,
- (c) a drainage service charge,
- (d) a loan service charge,
- (e) a developmental works service charge,
- (f) a flood mitigation service charge,
- (g) a river management service charge, or
- (h) a special industry service charge,

that may be levied under Division 6.

**sewage work** means a work (such as a pump, pipe or channel) that is constructed or used for the purpose of removing sewage or other waste matter from land, including a reticulated system of such works, and includes:

- (a) all associated pipes, valves, pumps and other equipment, and
- (b) all sewage treatment or sewage processing plants and their outfalls and drainage beds,

but does not include any work declared by the regulations not to be a sewage work.

**sewerage service** means that part of sewerage pipework, including all sanitary fixtures, up to its point of connection to a water supply authority's sewerage system.

**sewerage service pipe** means a pipe connecting a sewerage service to a water supply authority's sewerage system, and includes the plumbing fittings connected to the pipe.

**special area** means an area of land declared under Division 4 to be a special area.

**special industry** means an industry declared by an order in force under Division 6 to be a special industry.

**water management work** means a water supply work, drainage work, sewage work or flood work, and includes a work in the nature of a water supply work (being a work that receives water from a water supply work under the control or management of a water supply authority).

**water supply service** means that part of water supply pipework from its point of connection to a water supply authority's water supply system up to and including its outlet valves.

**water supply service pipe** means a pipe connecting a water supply service to a water supply authority's water supply system, and includes the plumbing fittings connected to the pipe.

**water supply work** includes any work that receives water from a water supply work under the control or management of a water supply authority.

## **284 Requirements for access licences and approvals**

Nothing in this Part authorises a water supply authority to take water otherwise than in accordance with an access licence and water supply work approval held by the authority.

## **Division 2 Water supply authorities**

### **285 Water supply authorities**

- (1) The corporations listed in Schedule 3 are water supply authorities.
- (2) A corporation listed in Part 1 of Schedule 3 is, for the purposes of any Act, a statutory body representing the Crown.

### **286 Constitution of water supply authorities**

- (1) The Governor may, by proclamation published in the Gazette:
  - (a) name a water supply authority proposed to be constituted under this section, and
  - (b) specify the number of members, the qualification for each member and whether or not the member is a full-time member or a part-time member, and

- (c) amend Schedule 3 by adding the name of the water supply authority to Part 1 of that Schedule.
- (2) The members are to be appointed by the Governor and, on their appointment, the water supply authority is constituted as a corporation.
- (3) The corporate name for the water supply authority is the name of the water supply authority stated in the proclamation.
- (4) On a change of area of operations or functions for a water supply authority listed in Part 1 of Schedule 3, the Governor may, by proclamation published in the Gazette, do either or both of the following:
  - (a) change the number of part-time members of the water supply authority,
  - (b) change the qualifications for part-time members of the water supply authority.
- (5) A change referred to in subsection (4) does not affect the identity of the water supply authority.

**287 Statutory body may be water supply authority**

- (1) The Governor may, by proclamation published in the Gazette with the consent of the Minister administering the Act by or under which a statutory body is constituted, amend Schedule 3 by adding the name of the statutory body to Part 2 of that Schedule.
- (2) On the addition of the name of a statutory body to Part 2 of Schedule 3, it becomes a water supply authority but still has its other functions.

**288 Provisions relating to constitution and procedure of water supply authorities**

- (1) Part 1 of Schedule 5 has effect with respect to the members of the water supply authorities listed in Part 1 of Schedule 3.
- (2) Part 2 of Schedule 5 has effect with respect to the Australian Inland Energy Water Infrastructure.
- (3) Part 3 of Schedule 5 has effect with respect to the Cobar Water Board.
- (4) Parts 2 and 3 of Schedule 5 do not affect the operation of the other provisions of this Part in relation to the water supply authorities to which those Parts relate.

**289 Area of operations**

- (1) The area of operations of a water supply authority is such as may be prescribed by the regulations for the water supply authority.
- (2) If a regulation so provides, a water supply authority has, and may exercise, in its area

of operations or a specified part of its area of operations:

- (a) only such of the functions of a water supply authority as are specified in the regulation, or
  - (b) all functions of a water supply authority other than functions specified in the regulation.
- (3) A regulation made for the purposes of subsection (2) may make provision for or with respect to:
- (a) matters affecting revenue, assets, rights, liabilities and employees of a water supply authority, and
  - (b) procedures to be adopted for the purposes of paragraph (a).
- (4) Within the area of operations of a water supply authority, a function under this Part may be exercised only by the water supply authority unless:
- (a) the function is exercisable by the Minister, or
  - (b) the function is exercised by a catchment management trust under the *Catchment Management Act 1989*, or
  - (c) with the consent of the Minister, the function is exercised by another Minister, by the delegate of another Minister or by a statutory body, or
  - (d) this Part provides otherwise.
- (5) With the consent of the Minister, a water supply authority may exercise a function outside its area of operations.
- (6) Until a regulation is made for the purposes of subsection (1), the area of operations of a water supply authority is the same as it was immediately before the commencement of this Part.

## **290 Employees**

A water supply authority may employ such persons as are necessary to enable it to exercise its functions.

## **291 Delegation**

A water supply authority may delegate to a person the exercise of any of its functions, other than this power of delegation.

## **Division 3 Functions of water supply authorities**

### **292 Functions of water supply authority**

- (1) A water supply authority has the following functions:
  - (a) subject to the Minister's approval, to construct, maintain and operate water management works and other associated works,
  - (b) to conduct research, collect information and develop technology in relation to water management,
  - (c) to do anything for the purpose of enabling the objects of this Act to be attained.
- (2) A water supply authority may exercise its functions within and beyond its area of operations.
- (3) It is the duty of a water supply authority to exercise its functions consistently with the principles of ecologically sustainable development.

### **293 Exercise of functions by a water supply authority**

- (1) A water supply authority:
  - (a) has and may exercise the functions conferred or imposed on it by or under this or any other Act, and
  - (b) in the exercise of its functions (except in relation to the contents of a report or recommendation made by it) is subject to the control and direction of the Minister.
- (1A) Subsection (1) (b) does not apply to a water supply authority listed in Part 3 of Schedule 3.
- (2) If a function conferred or imposed on a water supply authority by this Part is inconsistent with a function conferred or imposed on the water supply authority by or under another Act, this Part prevails.

### **294 Commercial operations**

- (1) With the approval of the Governor, a water supply authority may enter into commercial operations with respect to:
  - (a) any services developed in connection with the exercise of its functions, or
  - (b) any products or by-products (including intellectual property) resulting from the exercise of its functions, or
  - (c) such other matters as may be prescribed by the regulations.
- (2) With the approval of the Governor, a water supply authority may form, or join in

forming, a company, partnership or trust for the purpose of exercising its functions under this Part.

### **295 Assistance to statutory body**

A water supply authority may, at the request of a statutory body and with the consent of the Minister, exercise any of the functions of the statutory body in a part of its area of operations in respect of which the statutory body may exercise different functions, even if, but for the request, the water supply authority would not have exercised the function.

### **296 Entry on land to read meters or carry out works**

- (1) A water supply authority may, by its employees and agents:
  - (a) enter and occupy land and there exercise any of its functions, including the carrying out of any work on, below or above the surface of the land, and
  - (b) divert water from, or alter the course of, a stream, and
  - (c) impound or take water on, in or under the surface of any land.
- (2) The power conferred by this section is sufficient authority for an employee or agent to enter and occupy land or any part of a building (except an enclosed part occupied as a separate dwelling) in the exercise of a water supply authority's functions during daylight for the purpose of:
  - (a) reading a meter, or
  - (b) ascertaining whether trade waste is present or is being (or has recently been) discharged to a work of the authority, or
  - (c) making a valuation,unless the employee or agent is refused access by the lawful occupier of the land.
- (3) A water supply authority may, in accordance with the regulations, attach a ventilating shaft, pipe or tube for a sewer to the wall of a building.
- (4) A water supply authority may remove or use anything dug up or obtained in the exercise of its powers under this section.
- (5) A water supply authority:
  - (a) must do as little damage as practicable in exercising its powers under this section, and
  - (b) must compensate all persons who suffer damage by the exercise of the powers, in relation to the land entered.

- (6) Compensation may be made by reinstatement or repair, by construction of works or by payment.
- (7) If a water supply authority provides a sewer, compensation is required only if:
  - (a) the sewer causes injury to, or interference with, a building or other structure, or
  - (b) a manhole or main ventilator is constructed on the land.
- (8) A claim for compensation:
  - (a) is ineffective unless made in writing not later than 6 months after the damage was suffered, and
  - (b) in the absence of agreement on the compensation, must be dealt with as if it were a claim for compensation for the acquisition of land for public purposes under the [Public Works Act 1912](#).

### **297 Entry on land for inspections**

- (1) A water supply authority may at any time, by its employees or agents, enter any land (except an enclosed part occupied as a separate dwelling) for the purpose of finding out:
  - (a) the character and condition of the land or building, or
  - (b) the condition or location of any water management work used in connection with the land or building, or
  - (c) whether any use, consumption, waste, misuse or undue consumption of water supplied by a water supply authority is occurring, or
  - (d) whether any offence against this Act has been, or is being, committed.
- (2) A water supply authority must not exercise the powers conferred by subsection (1) unless:
  - (a) reasonable written notice of its intention to do so has first been given to the landholder of the land, building or dwelling-house, or
  - (b) it authorises the entry after forming the opinion that the giving of the notice would cause undue delay.
- (3) Reasonable force may be used to enter land, or a building other than a dwelling-house, under this section.
- (4) If the powers of entry under this section are exercised:
  - (a) without notice being given, or

(b) by force,

the water supply authority must, without delay, notify such persons as it considers appropriate of the action taken.

- (5) The water supply authority may, by notice in writing given to the landholder of the land or building, require all defective or improper work discovered on an inspection to be repaired, altered or removed within 24 hours or such longer period as is stated in the notice.
- (6) If a notice under subsection (5) is not complied with, the water supply authority may, by its employees or authorised persons, enter the land, building or dwelling-house and repair, alter or remove the defective or improper work.
- (7) If a notice is given under subsection (5):
- (a) the costs and expenses of the entry and inspection by the water supply authority, and
  - (b) if the notice is not complied with, the costs and expenses of the water supply authority in acting under subsection (6),
- are recoverable from the landholder as a service charge.
- (8) If, on an inspection under this section:
- (a) no defective or improper work is discovered, and
  - (b) no waste, misuse or undue consumption of water supplied by the water supply authority is occurring, and
  - (c) no offence against this Act is discovered,
- the water supply authority must make good any damage or disturbance caused by it for the purposes of the inspection.
- (9) In exercising its powers under this section, a water supply authority must do as little damage as practicable.

### **298 Power to break up roads**

- (1) A water supply authority may, on giving reasonable notice to persons likely to be affected, open and break up:
- (a) the soil and pavement of a public road or public reserve, and
  - (b) any sewer, drain or tunnel in or under a public road or public reserve,
- for the purpose of exercising its functions.



- (2) The statutory body having the control and management of a public road or public reserve may, as prescribed by the regulations, require a water supply authority to comply with conditions in exercising its powers under subsection (1), including conditions for restoration of the surface and removal of rubbish.
- (3) If a public road or public reserve is damaged by a leakage from, or a bursting of, a water supply authority's water main or sewer main, the statutory body having the control and management of the public road or public reserve may require the water supply authority to make good the damage without delay.
- (4) If a water supply authority fails:
  - (a) to comply with a condition in force under subsection (2), or
  - (b) to comply with a requirement under subsection (3),the statutory body affected by the failure may remedy it and recover the cost of doing so as a debt owed to the statutory body by the water supply authority.

#### **299 Altering position of conduits**

- (1) If:
  - (a) a water supply authority, in order to exercise its functions, needs an alteration to be made in the position of a conduit owned by another person, and
  - (b) the alteration would not permanently damage the conduit or adversely affect its operation,the water supply authority may serve on the person a written notice that complies with subsection (2).
- (2) A notice must:
  - (a) specify the alteration needed, and
  - (b) require the alteration to be made within a reasonable time stated in the notice, and
  - (c) include an undertaking by the water supply authority to pay the reasonable cost of the alteration.
- (3) If the alteration is not made as required by the notice, the water supply authority may make the alteration in such a manner as not to damage the conduit permanently or adversely affect its operation on completion of the alteration.
- (4) In this section, **conduit** means anything that is in or under a public road (or any other land on which no building or other structure is located) and is used for the conveyance of a substance, energy or signals.

### **300 Obstruction of works**

- (1) If a person places a structure or other thing in or near a water supply authority's water management work in such a manner as to interfere with the work, the water supply authority may:
  - (a) demolish and remove the structure or other thing, and
  - (b) repair the work, and
  - (c) recover the cost of doing so as a debt owing to the water supply authority by the person who placed the structure or other thing there.
- (2) A water supply authority may apply for and obtain an injunction to prevent a structure or other thing being placed as referred to in subsection (1).

### **301 Finding source of pollution of water supply**

- (1) If water supplied by a water supply authority is being polluted, the water supply authority may, after giving reasonable notice to persons likely to be affected by its action, dig up the ground and try to find the source of the pollution.
- (2) If it is found that a person given notice under this section is not responsible for the pollution, the water supply authority must bear the expenses of:
  - (a) the digging, examination, repair and reinstatement of the broken ground, and
  - (b) the repair of any damage caused by the water supply authority to the property of the person.
- (3) A water supply authority may recover the expenses incurred by it as a debt due to the water supply authority by any person responsible for the pollution.

## **Division 4 Special areas**

### **302 Special areas**

- (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land described in the order to be a special area for a water supply authority.
- (2) The Minister may recommend an order only if of the opinion that the exercise of the State's water rights could be adversely affected unless the order is made.

### **303 Crown land in special areas**

- (1) Action may not be taken under the [Crown Lands Act 1989](#) in respect of land within a special area for a water supply authority unless:
  - (a) a water supply authority has given its approval in writing, and

(b) any conditions to which the approval is subject are complied with.

(2) A water supply authority may, in a special area, exercise the functions of a trustee appointed under Part 5 of the *Crown Lands Act 1989* without being appointed as such.

### **304 Exercise of certain functions in special areas**

(1) A public agency may not, in relation to land within a special area for a water supply authority, exercise functions other than functions under this Part unless notice is first given, as prescribed by the regulations, to the water supply authority.

(2) On receipt of such a notice, the water supply authority may make such representations to the public agency as it thinks fit.

(3) A public agency may not exercise functions contrary to any such representations made by a water supply authority unless:

(a) at least 14 days' notice has been given to the water supply authority of the functions intended to be exercised, and

(b) that period has expired without the matter being referred to the Minister as a dispute for determination.

(4) In this section, **public agency** means:

(a) the Governor, or

(b) a Minister of the Crown, or

(c) a statutory body.

## **Division 5 Developer contributions to the construction of works**

### **305 Application for certificate of compliance**

(1) A person may apply to a water supply authority for a certificate of compliance for development carried out, or proposed to be carried out, within the water supply authority's area.

(2) An application must be accompanied by such information as the regulations may prescribe.

### **306 Authority may impose certain requirements before granting certificate of compliance**

(1) This section applies to such kinds of development as are prescribed by the regulations for the purposes of this section.

(2) As a precondition to granting a certificate of compliance for development, a water supply authority may, by notice in writing served on the applicant, require the applicant to do either or both of the following:

- (a) to pay a specified amount to the water supply authority by way of contribution towards the cost of such water management works as are specified in the notice, being existing works or projected works, or both,
  - (b) to construct water management works to serve the development.
- (3) In calculating an amount for the purposes of subsection (2) (a):
- (a) the value of existing water management works and the estimated cost of projected water management works may be taken into consideration, and
  - (b) the amount of any government subsidy or similar payment is not to be deducted from the relevant value or cost of the water management works, and
  - (c) consideration is to be given to any guidelines issued for the time being for the purposes of this section by the Minister.
- (4) If a water supply authority imposes a requirement under this section on the Crown, the Crown may request the Minister for Urban Affairs and Planning to determine whether such a requirement should be imposed and, if so, in what terms.
- (5) The determination made by the Minister for Urban Affairs and Planning in response to such a request is final and is taken to be the determination of the water supply authority.
- (6) Any water management works constructed in compliance with a requirement under this section are the property of the water supply authority.

### **307 Granting of certificates of compliance**

- (1) A water supply authority must grant a certificate of compliance for development:
- (a) within 60 days after an application for the granting of such a certificate is made, or
  - (b) if, within that period, the water supply authority imposes a requirement on the applicant under this Division, as soon as it is satisfied that the requirement has been complied with.
- (2) A water supply authority may be satisfied that a requirement under this Division has been complied with if the applicant lodges with the water supply authority such security for compliance with the requirement as the water supply authority may approve.
- (3) If a water supply authority fails or refuses to give a compliance certificate within the period of 60 days after an application is duly made in that regard, the applicant may appeal to the Land and Environment Court, within 12 months after the expiration of that period, against the failure or refusal.

## **Division 6 Finance**

### **308 Orders for purpose of service charges**

- (1) The Governor may, by order published in the Gazette, declare any land described in the order to be a development area for the purposes of this Part.
- (2) The Minister may, by order published in the Gazette, declare any land described in the order to be a drainage area, floodplain or river management area for the purposes of this Part.
- (3) The Minister may, by order published in the Gazette, declare any industry specified in the order to be a special industry for the purposes of this Part.
- (4) The Minister may, by order published in the Gazette, declare a period of 12 months to be the charging year for a water supply authority.

### **309 Connections**

- (1) On a water supply authority's water main or a sewer main becoming available for connection, the water supply authority may:
  - (a) publish in the Gazette notice of its availability, and
  - (b) give such other notices as may be prescribed.
- (2) A landholder of land to which a notice under subsection (1) (a) relates becomes liable:
  - (a) in the case of a water main, to payment of water service charges after the expiration of 21 days from publication of the notice, or
  - (b) in the case of a sewer main, to payment of sewerage service charges after the expiration of 21 days from publication of the notice.
- (3) If a landholder does not make a connection to the water supply authority's water main or sewer main before becoming liable under subsection (2), the water supply authority may make the connection at the expense of the landholder.
- (4) Any amount due to a water supply authority for a connection made under subsection (3) is a charge on the land connected and may be recovered as a debt owed to the water supply authority by the landholder of the land.
- (5) If a landholder of land fails:
  - (a) to connect the land to a water supply authority's water main or sewer main before becoming liable under subsection (2), or
  - (b) to do any work that by this Part is required to be done by the landholder,the occupier of the land may make the connection or do the work and, in accordance

with subsection (6), recover the cost from the landholder.

- (6) An amount (including interest) recoverable under subsection (5) by an occupier from a landholder may be recovered:
  - (a) by deducting it from any rent from time to time payable to the landholder by the occupier, or
  - (b) as a debt owed to the occupier by the landholder.
- (7) Any person desiring to connect premises with a water supply authority's water main or sewer main may (subject to such conditions as may be imposed by law) open up the surface and soil of any road or way, public or private, or any footpath or public reserve to the extent required to make the connection.

### **310 Authority may levy service charges and impose fees and other charges**

- (1) A water supply authority may, in accordance with this Part, levy the following service charges on land within its area of operations:
  - (a) water service charges,
  - (b) sewerage service charges,
  - (c) drainage service charges,
  - (d) loan service charges,
  - (e) developmental works service charges,
  - (f) flood mitigation service charges,
  - (g) river management service charges,
  - (h) special industry service charges.
- (2) A water supply authority may, in accordance with the regulations, impose fees and charges for any service or thing supplied or provided by it in the exercise of its functions under this Part.
- (3) Without limiting subsection (2), a water supply authority may impose fees and charges with respect to discharges into its sewerage system.

### **311 Land in respect of which a water supply authority may levy service charges**

- (1) A water supply authority may only levy water service charges on land:
  - (a) to which water is supplied, or
  - (b) to which, in the opinion of the water supply authority, it is reasonably practicable

for water to be supplied,

from one of the water supply authority's water mains.

- (2) A water supply authority may only levy sewerage service charges on land:
  - (a) from which sewage is discharged, or
  - (b) from which, in the opinion of the water supply authority, it is reasonably practicable for sewage to be discharged,into one of the water supply authority's sewer mains.
- (3) A water supply authority may only levy drainage service charges on land that is within a drainage area.
- (4) A water supply authority may only levy developmental works service charges on land within a development area.
- (5) A water supply authority may only levy flood mitigation service charges on land within a floodplain.
- (6) A water supply authority may only levy river management service charges on land within a river management area.
- (7) A water supply authority may only levy special industry service charges on land on which a special industry is conducted.

### **312 Certain land exempt from service charges**

- (1) A water supply authority may not levy service charges in respect of the lands described in Schedule 4.
- (2) Subsection (1) does not apply to the following land:
  - (a) land that is within a public reserve or park that is the subject of a lease, licence or other authority under which a person carries on a trade or business,
  - (b) land that is vested in the Crown or a public body leased to any person for private purposes,
  - (c) land that is used or occupied by the Crown in connection with an undertaking declared by the Governor by proclamation published in the Gazette to be an industrial undertaking for the purposes of this section.

### **313 Classification of lands**

- (1) The regulations must specify the factor or factors according to which a water supply authority may classify land for the purpose of levying service charges.

- (2) Without limiting the generality of subsection (1), the regulations may specify that a water supply authority may classify land according to any one or more of the following factors:
  - (a) the purpose for which the land is actually being used,
  - (b) the intensity with which the land is being used for that purpose,
  - (c) the purposes for which the land is capable of being used,
  - (d) the nature and extent of the water or sewerage services connected to the land.
- (3) For the purposes of subsection (2) (c), land is not capable of being used for a purpose if the use of the land for that purpose would be in contravention of:
  - (a) the *Environmental Planning and Assessment Act 1979*, or
  - (b) any environmental planning instrument in force under that Act, or
  - (c) any other Act or law relating to the use of land.

### **314 Basis of levying service charges**

The regulations must specify the basis or bases according to which a water supply authority may levy service charges.

### **315 Determinations by water supply authority**

- (1) Not later than 1 month before the beginning of each charging year a water supply authority must, in accordance with the regulations, determine the following matters for that charging year:
  - (a) the amount of money that it proposes to raise by way of service charges levied on land within its area of operations,
  - (b) the factor or factors according to which land within its area of operations is to be classified for the purposes of levying service charges,
  - (c) the basis or bases according to which service charges are to be levied,
  - (d) the rate at which service charges are to be levied on, or the maximum or minimum service charges that are to be applicable to, land within its area of operations.
- (2) In making a determination under this section, a water supply authority may have regard to the following:
  - (a) its estimation of the degree of benefit that accrues to land in respect of each service for which a charge is to be levied,



- (b) its estimation of the degree to which each service is or may be used in relation to land in respect of which a charge is to be levied,
  - (c) its estimation of the cost involved in the construction, maintenance and operation of each service for which a charge is to be levied,
  - (d) such other matters as it considers relevant to the levying of charges for each such service.
- (3) A determination under this section:
- (a) is required to be approved by the Minister and does not have effect unless it is so approved, and
  - (b) must be published in the Gazette before the commencement of the charging year to which it relates, and
  - (c) takes effect on the commencement of the charging year to which it relates.
- (4) A determination does not fail merely because it is not published in the Gazette before the commencement of the charging year to which it relates but, in that event, no person is liable for payment of the service charges to which the determination relates until the determination is published in the Gazette.
- (5) A service charge determined under this section is levied on publication of the determination in the Gazette.
- (6) If, for any reason:
- (a) a determination under this section is not made before the charging year to which it relates, or
  - (b) there is any irregularity or alleged irregularity in the making of any such determination,
- the Governor may extend the time for making the determination (whether or not that time has expired) and may authorise the water supply authority concerned to do anything necessary to cure any irregularity and to make a valid determination.

### **316 Assessment of service charges**

- (1) A water supply authority:
- (a) must classify each parcel of land within its area of operations in respect of which a service charge is to be levied, and
  - (b) must assess the service charges payable for each such parcel of land,
- in accordance with its determination under this Division.

- (2) After it makes an assessment under this section, a water supply authority must, in accordance with the regulations, cause a notice to be served on the landholder of each parcel of land in respect of which a service charge has been levied.
- (3) Such a notice must include information as to the following:
  - (a) the factor or factors according to which the parcel of land has been classified for the purposes of the levying of service charges,
  - (b) the basis or bases according to which service charges have been levied in respect of the parcel of land,
  - (c) if service charges have been levied on the basis of the value of the parcel of land, the value of the parcel on which those service charges have been levied,
  - (d) the rate at which service charges have been levied on, or the maximum or minimum service charges that are applicable to, the parcel of land,
  - (e) the amounts payable in respect of each service charge that has been levied in respect of the parcel of land.
- (4) On service of such a notice, the landholder of the land to which the notice relates becomes liable for payment of the service charges specified in the notice.

### **317 Re-assessment of service charges**

- (1) This section applies to any land in respect of which a service charge has been levied on the basis of the value of the land.
- (2) If a water supply authority becomes aware that the value (as calculated in accordance with this Division) of any parcel of land in respect of which it has levied a service charge for any charging year differs from the value (as so calculated) as at the date on which the service charge was originally assessed, the water supply authority may re-assess the service charge on the basis of the different value.
- (3) A service charge may only be re-assessed as from the date from which the revised calculation of the value of the land has effect.
- (4) After it makes a re-assessment under this section, a water supply authority must, in accordance with the regulations, cause a notice to be served on the landholder of the parcel of land in respect of which the re-assessment has been made.
- (5) Such a notice must specify:
  - (a) the revised calculation of the value of the land, and
  - (b) the date from which the revised calculation of the value of the land has effect, and
  - (c) the revised assessment of the amounts payable in respect of each service charge

that has been levied on that land.

- (6) On service of such a notice, the service charges for which the landholder of the land to which the notice relates is liable are varied in accordance with the terms of the notice.

## **Division 7 Miscellaneous**

### **318 Acquisition and divesting of land**

- (1) A water supply authority may acquire land (or an interest in land) for the purposes of this Part by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be for an authorised work and the water supply authority is, in relation to that authorised work, taken to be the Constructing Authority.
- (3) Part 3 of the *Public Works Act 1912* does not apply in respect of works constructed under this Part.
- (4) With the consent of the local council concerned, the Governor may, by proclamation published in the Gazette, vest in a local council the estate or interest of a water supply authority in any land on which is situated a work of the water supply authority (whether wholly or partly completed).

### **319 Compensation for interference or damage**

- (1) If:
  - (a) a person does, or causes to be done, any work that interferes with, or damages, any property of a water supply authority, and
  - (b) there was reasonable cause to believe that the interference or damage would result from the doing of the work,the person is liable to compensate the water supply authority for the interference or damage.
- (2) A water supply authority is not entitled to compensation both under this section and another provision of this Part for the same interference or damage.

### **320 Efficiency review**

- (1) The Minister may appoint a person to investigate and review the efficiency of a water supply authority in exercising its functions.
- (2) A water supply authority must bear the costs of an investigation and review under this section that is requested by it.

- (3) This section does not apply to a water supply authority listed in Part 3 of Schedule 3.

### **321 Appointment of administrator**

- (1) If a water supply authority refuses or fails to comply with a direction or requirement given or made by the Minister in relation to this Part, the Minister may, by order published in the Gazette:
- (a) in the case of a water supply authority listed in Part 1 of Schedule 3, appoint an administrator to exercise all the functions, or specified functions, of the water supply authority, or
  - (b) in the case of a statutory body listed in Part 2 of Schedule 3, with the consent of the Minister administering the Act by which the statutory body is constituted, appoint an administrator to exercise all the functions, or specified functions, of the water supply authority under this Part.
- (2) An administrator has, during his or her term of office and to the exclusion of the water supply authority, the functions the administrator was appointed to exercise.
- (3) Regulations may be made for or with respect to:
- (a) the accommodation (if any) to be provided at the offices of a water supply authority for the administrator and his or her assistants, and
  - (b) requiring the employees of a water supply authority to assist, and to refrain from obstructing, the administrator in the exercise of his or her functions.
- (4) This section does not apply to a water supply authority listed in Part 3 of Schedule 3.

### **322 Regulations**

- (1) The regulations may make provision for or with respect to the following matters:
- (a) fees and charges, including charges for the supply of water,
  - (b) the imposition of water use restrictions,
  - (c) (Repealed)
  - (d) the carrying out of plumbing work,
  - (e) the planning and management of water supply, sewerage and drainage systems,
  - (f) the design and construction of water supply, sewerage and drainage systems,
  - (g) the establishment and enforcement of customer service standards,
  - (h) the regulation and prohibition of discharges into sewerage and drainage systems,

- (i) the waiver, reduction and deferral of fees, service charges and other charges,
  - (j) the control and management of special areas.
- (2) A regulation made for or with respect to a special area prevails to the extent of any inconsistency with a statutory instrument made under another Act, including an environmental planning instrument made under the *Environmental Planning and Assessment Act 1979*.

## **Chapter 7 Enforcement**

### **Part 1 Directions to landholders and other persons**

#### **323 Temporary water restrictions**

- (1) If satisfied that it is necessary to do so in the public interest (such as to cope with a water shortage or threat to public health or safety), the Minister may, by order in writing, direct that, for a specified period, the taking of water from a specified water source is totally prohibited or is restricted as specified in the order.
- (2) As soon as practicable after making such an order in respect of a water source, the Minister:
  - (a) must cause notice of the order to be broadcast by a television or radio station transmitting to the part or parts of the State within which the water source is situated, and
  - (b) must cause a copy of the order to be published in the Gazette and in one or more local newspapers circulating within the part or parts of the State within which the water source is situated.
- (3) An order under this section takes effect when it is first broadcast in accordance with subsection (2) (a), or at such later time as may be specified in the order and, unless sooner revoked, expires at the end of 7 days after it is so broadcast.
- (4) Nothing in this section gives rise to a claim for compensation under section 87.

#### **324 Directions concerning the production of information**

- (1) The Minister may, by order in writing served on any person:
  - (a) who is the landholder of any land on which a water management work is situated, or
  - (b) who is involved in the construction or use of a water management work,direct the person to furnish the Minister with specified information in relation to the construction, use or ownership of that work.

- (2) The Minister may, by order in writing served on any person:
- (a) who is the landholder of any land on or from which water from a water source is being taken or used, or
  - (b) who is involved in the taking or using of water from a water source,
- direct the person to furnish the Minister with specified information in relation to the taking or using of that water.
- (3) The Minister may, by order in writing served on a person who is carrying out a controlled activity in, on or under waterfront land, direct the person to furnish the Minister with specified information in relation to that activity.
- (4) The Minister may, by order in writing served on a person who is carrying out an aquifer interference activity, direct the person to furnish the Minister with specified information in relation to that activity.
- (5) A person is not excused from giving information on the ground that the information may tend to incriminate the person.
- (6) Information obtained from a person under this section is not admissible against the person in criminal proceedings, other than proceedings for an offence under this Act with respect to the furnishing of false or misleading information.

### **325 Directions concerning waste of water**

The Minister may, by order in writing served on a landholder, direct the landholder to take specified measures to ensure that:

- (a) water used under the authority of a water use approval applying to the land is beneficially used, and is not wasted or improperly used, or
- (b) water taken by means of a water supply work situated on the land is beneficially used, and is not wasted or improperly used.

### **326 Directions to protect water sources**

The Minister may, by order in writing served on a landholder, direct the landholder to take specified measures to ensure that:

- (a) the use of a water supply work situated on the land does not impair any water source, or
- (b) the use of a drainage work situated on the land does not impair any water source into which water is discharged by the work, or
- (c) the use of a flood work situated on the land does not impair any water source into or from which water is diverted by the work, or

- (d) the carrying out of a controlled activity on the land does not impair any water source in the vicinity of the work, or
- (e) the carrying out of an aquifer interference activity does not impair any aquifer.

**327 Directions to stop work where unlawful activity occurring**

(1) The Minister may, by order in writing served on:

(a) a landholder on whose land is situated a water management work:

(i) that is being constructed or used, or is about to be constructed or used, in contravention of the provisions of this Act, or

(ii) that is being constructed or used in a manner that threatens to impair a water source, or

(b) any person having the control and management of such a work,

direct the landholder or person to take specified measures to prevent its construction or use.

(2) The Minister may, by order in writing served on any person:

(a) who is carrying out a controlled activity or aquifer interference activity in contravention of the provisions of this Act, or

(b) who is carrying out a controlled activity or aquifer interference activity in a manner that threatens to impair a water source,

direct the person to cease carrying out that activity.

**328 Directions to holders of basic landholder rights**

The Minister may, by order in writing served on:

(a) a landholder on whose land is situated a water supply work:

(i) that is being used to take water from a water source pursuant to the landholder's domestic and stock rights, or

(ii) that is being used to capture rainwater run-off pursuant to the landholder's harvestable rights, or

(b) any person having the control and management of such a work,

direct the landholder or person to take specified measures to protect the environment, to preserve basic landholder rights or to overcome a threat to public health.

### **329 Temporary stop work order**

The Minister may, by order in writing served on:

- (a) any landholder on whose land is situated a water supply work or drainage work, or
- (b) any person having the control or management of such a work, or
- (c) any person by whom a controlled activity is being carried out,

direct the landholder or person to cease using the work, or to cease the activity, in any circumstances in which the Minister considers that the public interest requires such a direction to be given.

### **330 Directions concerning unusable water management works**

(1) The Minister may, by order in writing served on:

- (a) a landholder on whose land is situated a water management work whose construction or use is not authorised by this Act, or
- (b) any person having the control or management of that work,

direct the landholder or person to take specified measures to remove or modify it or render it inoperable.

(2) Such a direction may be given even if the water management work is not being used or is not capable of being used.

### **331 Directions concerning damage caused by straying stock**

The Minister may, by order in writing served on any landholder, direct the landholder to take specified measures:

- (a) to prevent stock from straying from the landholder's land into or onto a water management work that is owned by, or is under the control or management of, the Ministerial Corporation, or
- (b) to repair any damage caused to any such water management work as a consequence of stock having strayed from the landholder's land.

### **332 Measures that may be specified in directions**

(1) The measures that may be specified in a direction under this Part are as follows:

- (a) measures to clean, maintain, alter, reconstruct or add to a water management work or otherwise render it effective,
- (b) measures to demolish, remove, dismantle or block a water management work or otherwise render it ineffective,



- (c) measures to replace any material that has been taken from waterfront land or to remove any material that has been deposited in, on or under waterfront land,
  - (d) measures to restore or enhance the condition of any water source that has been harmed by:
    - (i) the use, misuse, lack of use or lack of maintenance of a water management work, or
    - (ii) the carrying out of a controlled activity or aquifer interference activity,
  - (e) measures to repair any damage caused by:
    - (i) the use, misuse, lack of use or lack of maintenance of a water management work, or
    - (ii) the carrying out of a controlled activity or aquifer interference activity,  
including any damage caused to any specified land, structure or vegetation, or to the environment,
  - (f) measures to ensure that any specified land, structure or vegetation, or the environment, will not be harmed by:
    - (i) the use, misuse, lack of use or lack of maintenance of a water management work, or
    - (ii) the carrying out of a controlled activity or aquifer interference activity,
  - (g) measures to correct or restore any alteration caused by:
    - (i) the use, misuse, lack of use or lack of maintenance of a water management work, or
    - (ii) the carrying out of a controlled activity or aquifer interference activity,  
to the flow of water in, to or from, or the quantity of water contained in, any specified water source,
  - (h) any ancillary measures that the Minister considers to be necessary or expedient.
- (2) A direction under this Part may specify the manner in which, and the time within which, any such measures are to be taken.

### **333 Prior notice of direction not required**

The Minister is not required to notify any person who may be affected by a direction under this Part before giving the direction.

### **334 Remedial measures may be taken by Minister**

- (1) If a person fails to take the measures specified in a direction under this Part, the Minister may authorise any other person to take those measures.
- (2) The amount of any costs and expenses incurred by the authorised person as a result of the taking of those measures is recoverable in a court of competent jurisdiction as a debt due to the Ministerial Corporation from the person on whom the direction was served.

### **335 Land and Environment Court may grant injunctions**

On the application of the Minister, the Land and Environment Court may grant an injunction directing a landholder to comply with a direction under this Part.

### **336 Restraint of breaches of this Act**

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations.
- (2) Any such proceedings may be brought whether or not proceedings have been instituted for an offence against this Act or the regulations.
- (3) Any such proceedings may be brought whether or not any right of the person has been or may be infringed by or as a consequence of the breach.
- (4) Any such proceedings may be brought by a person on the person's own behalf or on behalf of another person (with their consent), or of a body corporate or unincorporate (with the consent of its committee or other controlling body), having like or common interests in those proceedings.
- (5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (6) If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by the order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.
- (7) In this section, **breach** includes a threatened or apprehended breach.

### **336A Application of Part to certain works**

Directions may be given under this Part with respect to a water supply work or water management work within the meaning of Part 2 of Chapter 6 in the same way as they may be given with respect to any other water supply work or water management work.

## Part 2 Powers of entry

### 337 Powers of entry generally

- (1) An authorised officer may enter any premises:
  - (a) for the purpose of carrying out on those premises any work that by this Act the authorised officer is authorised to carry out on those premises, or
  - (b) for the purpose of inspecting any water management works situated on the premises, or
  - (c) for the purpose of monitoring the use of water on the premises, or
  - (d) for the purpose of monitoring any controlled activity or aquifer interference activity occurring on the premises, or
  - (e) for the purpose of carrying out any surveys for the purposes of this Act, or
  - (f) for the purpose of taking measurements of any matter, or for reading any meter, for the purposes of this Act, or
  - (g) for the purpose of investigating any alleged contravention of this Act or the regulations.
- (2) Reasonable force may be used for the purpose of effecting entry.
- (3) At all times while on premises under the power conferred by this section, an authorised officer must carry, and produce on demand, evidence of his or her authority to be on the premises.
- (4) This section does not apply to any part of premises that are used exclusively for residential purposes.

### 338 Search warrants

- (1) An authorised officer may apply to an authorised justice for the issue of a search warrant if the authorised officer believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened at any premises.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a named authorised officer to enter the premises and to exercise any of the authorised officer's functions under this Part.
- (3) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.
- (4) In this section, **authorised justice** has the same meaning as it has in the [Search](#)

*Warrants Act 1985.*

**339 Powers exercisable following lawful entry to land**

- (1) While on any premises lawfully entered, an authorised officer may do anything that the authorised officer considers necessary to be done for the purposes of this Act, including:
  - (a) inspecting any water management works situated on the premises, and
  - (b) observing any controlled activities being carried out on the premises, and
  - (c) measuring or sampling any water in any water management works or water source situated on the premises.
- (2) An authorised officer may disassemble a water management work for the purpose of inspecting it but, in that event, must ensure that it is properly reassembled immediately after the inspection is completed.
- (3) While on any premises lawfully entered, a person authorised by the Minister to take measures on the Minister's behalf for the purpose of giving effect to a direction under this Act may do anything that the person considers necessary to be done for that purpose.

**340 Duty of care**

- (1) In exercising a power under this Part, a person must do as little damage as possible.
- (2) The Ministerial Corporation must compensate all interested parties for any damage caused by a person's exercise of a power to enter premises for the purposes of this Part (but not for any damage caused by a person's exercise of any other power) unless the occupier of the premises obstructed or hindered the person in the exercise of the power of entry.

**Part 3 Offences**

**Division 1 Major offences**

**341 Unlawful taking of water**

- (1) A person must not take water from a water source otherwise than:
  - (a) in accordance with an access licence, and
  - (b) from a water allocation credited to that access licence, and
  - (c) by means of a water supply work nominated by that access licence as a work by means of which water allocations credited to the licence may be taken.

- (2) This section does not prevent a landholder from exercising a basic landholder right in accordance with this Act.
- (2A) This section does not prevent a person from taking water from a water source pursuant to an entitlement in force under the [Water Act 1912](#), where **entitlement** has the same meaning as it has in clause 9 of Schedule 9.
- (3) In this section, a reference to an access licence includes a reference to any licence of a similar nature (however described):
  - (a) that is granted under the law of another State or Territory, and
  - (b) that is declared by the regulations to have the same effect as an access licence for the purposes of this section.
- (4) A person is not guilty of an offence under this section as a consequence of having taken water in contravention of an available water determination if the person establishes that he or she took all reasonable steps to ascertain the terms of the determination but was unable to do so.

#### **342 Using water without a water use approval**

- (1) A person must not use water on land for any purpose:
  - (a) otherwise than in accordance with a water use approval that authorises the use of water on that land for the purpose for which the water is used, and
  - (b) if the access licence authorising the taking of the water specifies the purposes for which water taken under the licence may be used, unless the purpose for which the water is used is a purpose so specified.
- (2) This section does not prevent a person from exercising a basic landholder right in accordance with this Act.
- (2A) This section does not prevent a person from using water on land for any purpose pursuant to an entitlement in force under the [Water Act 1912](#), where **entitlement** has the same meaning as it has in clause 9 of Schedule 9.
- (3) This section does not apply to water that is supplied to a person by a major utility, local water utility or irrigation corporation or by a private irrigation board or private water trust holding a water use approval for the use concerned.

#### **343 Constructing or using water management work without a water management work approval**

- (1) A person must not:
  - (a) construct a water supply work otherwise than in accordance with a water supply work approval that authorises the construction of that work, or

- (a1) use a water supply work to take water:
    - (i) otherwise than in accordance with a water supply work approval that authorises the use of that work, and
    - (ii) if the access licence authorising the taking of the water specifies the purposes for which water taken under the licence may be used, unless the purpose for which the water is used is a purpose so specified, or
  - (b) construct or use a drainage work otherwise than in accordance with a drainage work approval, or
  - (c) construct or use a flood work in or in the vicinity of a river or lake, or within a floodplain, otherwise than in accordance with a flood work approval.
- (2) Subsection (1) (a) does not prevent a person from exercising a basic landholder right in accordance with this Act.
- (3) Subsection (1) (c) does not prevent a person from constructing or using a water supply work or drainage work in accordance with a water supply work approval or drainage work approval.
- (4) This section does not prevent a person from constructing or using a water supply work, drainage work or flood work pursuant to an entitlement in force under the [Water Act 1912](#), where **entitlement** has the same meaning as it has in clause 9 of Schedule 9.

#### **344 Unlawful carrying out of certain activities**

- (1) A person must not:
- (a) carry out a controlled activity in, on or under waterfront land otherwise than in accordance with a controlled activity approval, or
  - (b) carry out an aquifer interference activity, otherwise than in accordance with an aquifer interference approval.
- (2) Subsection (1) does not prevent a person from constructing and using a water management work in accordance with a water management work approval.
- (3) Subsection (1) does not prevent a person:
- (a) from carrying out a controlled activity in accordance with an aquifer interference approval, or
  - (a1) from carrying out an aquifer interference activity in accordance with a controlled activity approval, or
  - (b) from using a building or work that has been erected or carried out in accordance

with a controlled activity approval.

- (4) This section does not prevent a person:
- (a) from carrying out a controlled activity pursuant to a permit in force under the *Rivers and Foreshores Improvement Act 1948*, or
  - (b) from carrying out an aquifer interference activity pursuant to a licence in force under Part 5 of the *Water Act 1912*.

### **345 Contravention of certain directions**

A person on whom a direction under Part 1 is served must not fail to comply with the direction.

### **346 Destruction, damage and interference with certain works**

- (1) A person must not destroy, damage or interfere with:
- (a) any work that is owned by, or is under the control and management of, the Minister, the Ministerial Corporation, a water supply authority, an irrigation corporation, a private irrigation board, a private drainage board or a private water trust, or
  - (b) any meter (regardless of who owns it or has the control and management of it) that is used for measuring the quantity or quality of water in, or passing through, a water supply work or drainage work, or
  - (c) any mark, peg, stake or level fixed for the purposes of this Act.
- (2) A person must not deposit anything in any work that is owned by, or is under the control and management of, the Minister, the Ministerial Corporation, a water supply authority, an irrigation corporation, a private irrigation board, a private drainage board or a private water trust.
- (3) A person is not guilty of an offence against this section if the person establishes that the act giving rise to the alleged offence was done with lawful authority.

### **347 Taking water from public or private works**

- (1) A person must not take water from any water supply work that is owned by, or is under the control and management of, the Minister, the Ministerial Corporation, a water supply authority, an irrigation corporation, a private irrigation board, a private drainage board or a private water trust, except with the authority of the Minister, that corporation, board or trust.
- (2) A person is not guilty of an offence against this section if the person establishes that the act giving rise to the alleged offence was done with lawful authority.

- (3) In subsection (1), a reference to a water supply work, in relation to a water supply authority, is a reference to a water supply work within the meaning of Part 2 of Chapter 6.

### **348 Maximum penalty for offences under this Division**

A person who is guilty of an offence under this Division is liable, on conviction:

- (a) in the case of a corporation, to a penalty not exceeding 2,500 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1,200 penalty units for each day the offence continues, or
- (b) in the case of an individual, to a penalty not exceeding 1,200 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 600 penalty units for each day the offence continues.

## **Division 2 Other offences**

### **349 Unlicensed bore drilling**

A person must not construct a water bore of any kind otherwise than in accordance with a bore driller's licence that is held by that person and that authorises the person to construct water bores of that kind.

Maximum penalty: 200 penalty units.

### **350 Exposure of underground pipes**

A person must not, by opening any ground, expose any pipe or other work of a water supply authority:

- (a) without lawful excuse, or
- (b) without having given the water supply authority at least 2 days' written notice of intention to open the ground.

Maximum penalty: 100 penalty units in the case of a corporation or 20 penalty units in any other case.

### **351 Unlicensed plumbing work**

A person must not do any kind of plumbing work (within the meaning of Part 2 of Chapter 6) unless the person:

- (a) holds an endorsed 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 such a licence or certificate, or



- (c) holds a registration 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: 100 penalty units.

### **352 Obstruction**

- (1) A person must not obstruct or hinder an authorised officer in the exercise of the authorised officer's functions under this Act.

Maximum penalty: 20 penalty units.

- (2) A person must not obstruct or hinder an authorised person within the meaning of section 120 in the exercise of the authorised person's functions under that section.

Maximum penalty: 20 penalty units.

### **353 False or misleading information**

A person must not, in or in connection with any application under this Act or the regulations, make a statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

## **Part 4 Recovery of rates and charges**

### **354 Definition**

In this Part, **charging authority** means the Minister, an irrigation corporation, a private irrigation board, a private drainage board, a private water trust or a water supply authority.

### **355 Certain rates and charges to be a charge on land**

- (1) A rate or charge imposed on the owner of any land is a charge on the land to which the charge relates.
- (2) A charge imposed for a service or thing supplied or provided in connection with a specific parcel of land is a charge on the land.

### **356 Interest on rates and charges**

A charging authority may charge interest on overdue rates and charges at a rate not exceeding the rate of interest payable for the time being on an unpaid judgment of the Supreme Court.

### **357 Recovery of rates, charges and other money**

- (1) Any rate or charge or other money due to a charging authority under this Act may be recovered in any court of competent jurisdiction as if it were a debt due to the charging authority.
- (2) An unsatisfied judgment or order of any court for the recovery of any rate or charge from any person is not a bar to its recovery from any other person who is liable under this Act for its payment.

### **358 Joint owners**

- (1) If land is owned or held jointly by two or more persons, such persons are jointly and severally liable to the charging authority for the rate, but as between themselves each are only be liable for such part of the rate as is proportionate to his or her interest in the land.
- (2) If any of such persons pays to the charging authority more than his or her proportionate part, he or she may recover the excess by way of contribution from the others.

### **359 Sale of land for unpaid rates and charges**

- (1) This section applies to rates and charges imposed under this Act by the Minister or by a water supply authority.
- (2) The provisions of Division 5 of Part 2 of Chapter 17 of the [Local Government Act 1993](#) apply to land in respect of which a rate or charge (being a rate or charge that is, by virtue of this Part, a charge on land) remains unpaid in the same way as they apply to land in respect of which rates and charges under that Act remain unpaid.
- (3) For the purpose of applying the provisions of Division 5 of Part 2 of Chapter 17 of the [Local Government Act 1993](#) to land in respect of which a rate or charge remains unpaid:
  - (a) a reference in those provisions to a council is to be read as a reference to the Minister or to a water supply authority, as the case requires, and
  - (b) a reference to a general manager or public officer is to be read as a reference to the Director-General or to the principal officer of a water supply authority, as the case requires, and
  - (c) a reference to a member of staff of a council is to be read as a reference to a member of staff of the Department or to an employee of a water supply authority, as the case requires, and
  - (d) a reference to a rating authority is to be read as including a reference to a council.

### **360 Certificate as to amount due**

- (1) A charging authority must, on written application being made to it and payment of the fee determined by it, issue to the applicant a certificate:
  - (a) containing particulars of any amounts payable to the authority in respect of a parcel of separately assessed land, or
  - (b) to the effect that there are no such amounts.
- (2) An application for a certificate must:
  - (a) specify the name and address of the applicant, and
  - (b) identify the land to which the application relates.
- (3) Such a certificate is conclusive proof, in favour of a purchaser in good faith and for value of the land to which the certificate relates that, at the date of its issue, no amounts were payable to the charging authority in respect of that land other than such amounts as are specified in the certificate.

### **361 Liability where an estate or interest is transferred**

- (1) A person who disposes of his or her estate or interest in any land in respect of which any rates or charges have been or may be levied remains liable for rates or charges to the same extent as if the person had not disposed of his or her estate or interest in the land, if the rates or charges are levied either:
  - (a) before the person disposed of his or her estate or interest in the land, or
  - (b) before the person has given to the charging authority the prescribed notice of disposal.
- (2) If any person who disposes of land to another person pays any amount to the charging authority in respect of rates or charges levied after the land disposed of but before the prescribed notice is given to the authority, the person by whom the amount was paid may recover the amount from the person to whom the land was disposed.
- (3) As between an owner of land and any other person from or to whom the owner derives or disposes of his or her estate or interest in the land, rates or charges under this Act are to be considered as accruing from day to day and are apportionable accordingly.

### **362 Liability where a person becomes entitled to an estate or interest**

- (1) An owner of land is liable for all arrears of rates and charges owing by any previous owner of the land, despite the fact that the new owner acquired the land after the rates or charges were levied.

- (2) If any person who becomes an owner of land pays to the charging authority any rates or charges in respect of that land that were levied before the person became the owner, the person may recover from the previous owner such part of the rates or charges as was levied in respect of the period during which the previous owner was the owner of the land.

## **Part 5 Legal proceedings and appeals**

### **Division 1 Legal proceedings**

#### **363 Offences by corporations**

- (1) If a corporation commits an offence against this Act or the regulations:
- (a) each person who is a director of the corporation, and
  - (b) each person who is concerned in the management of the corporation,
- is taken to have committed the same offence if the person knowingly authorised or permitted the act or omission constituting the offence.
- (2) A person may be proceeded against and convicted under this section whether or not the corporation has been proceeded against or convicted.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation.

#### **364 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily:
- (a) by a Local Court constituted by a Magistrate sitting alone, or
  - (b) by the Land and Environment Court in its summary jurisdiction.
- (2) Proceedings for an offence against this Act may be commenced:
- (a) in the case of an offence prescribed by the regulations, within (but not later than) 3 years after the date of the alleged commission of the offence, and
  - (b) in the case of any other offence, within (but not later than) 12 months after the date of the alleged commission of the offence.

#### **Note—**

Subsection (2) overrides section 56 of the *Justices Act 1902* in relation to offences against this Act, but not in relation to offences against the regulations. By operation of that section, proceedings for an offence against the regulations may not be commenced more than 6 months after the date on which the offence was allegedly committed.

- (3) The maximum monetary penalty that may be imposed by a Local Court in proceedings for an offence against this Act or the regulations is:
  - (a) 100 penalty units for an offence committed by a corporation, or
  - (b) 50 penalty units in any other case,or the maximum monetary penalty specified in respect of the offence, whichever is the lesser.
- (4) The maximum penalty that may be imposed by the Land and Environment Court in proceedings for an offence against this Act or the regulations is the maximum penalty specified in respect of the offence.

### **365 Penalty notices for certain offences**

- (1) In this section:

**penalty notice** means a notice to the effect that, if the person served with the notice does not wish to have an alleged offence dealt with by a court, the person may pay, in accordance with the notice, the penalty specified in the notice.

**penalty notice offence** means an offence against this Act or the regulations that is declared by the regulations to be a penalty notice offence.

- (2) An authorised officer may serve a penalty notice on a person who appears to the authorised officer to have committed a penalty notice offence.
- (3) The amount of the penalty to be specified in a penalty notice is the amount prescribed by the regulations for the alleged offence, being an amount not exceeding the maximum penalty which could be imposed for the offence by a court.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of the penalty prescribed by the regulations for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment of a penalty under this section is not to be regarded as an admission of liability for the purposes of, nor is in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The Ministerial Corporation may withdraw a penalty notice at any time within 28 days after the date on which it was served and, in that event:
  - (a) the amount payable under the notice ceases to be payable, and
  - (b) any amount that has been paid under the notice is repayable to the person by whom it was paid, and

(c) further proceedings for the offence in respect of which the notice was served may be taken against any person (including the person on whom the notice was served) as if the notice had never been served.

(8) This section does not limit the operation of any other provision of this or any other Act or law in relation to proceedings that may be taken in respect of offences.

### **366 Legal proceedings do not affect, and are unaffected by, other action under this Act**

The prosecution of a person for an offence against this Act or the regulations, or the issue of a penalty notice in respect of such an offence, does not affect, and is unaffected by, any other action taken under this Act in relation to the act or omission giving rise to the offence.

### **367 Evidentiary certificates**

(1) A certificate that is issued by the Ministerial Corporation and that states that, on a date or during a period specified in the certificate:

(a) a specified person was or was not the holder of a specified access licence or specified approval, or

(b) specified land was or was not the subject of a specified approval, or

(c) a specified water management work was or was not the subject of a specified water management work approval, or

(d) the conditions of a specified access licence or approval were or were not as so specified, or

(e) the terms of an available water determination were or were not as so specified, is admissible in any legal proceedings and is evidence of the fact or facts so stated.

(2) In proceedings for an offence against this Act or the regulations:

(a) evidence that a water management work was constructed or used on specified land is evidence that the work was constructed or used by the person who was the landholder of the land at the time the work was constructed or used, and

(b) evidence that water was taken from a water source by means of a water supply work situated on specified land is evidence that the water was taken from the water source by the person who was the landholder of the land at the time the water was taken, and

(c) evidence that water was discharged into a water source by means of a drainage work situated on specified land is evidence that the water was discharged into the water source by the person who was the landholder of the land at the time the water was discharged, and

- (d) evidence that water was used on specified land is evidence that the water was used by the person who was the landholder of the land at the time the water was used.

## **Division 2 Appeals**

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

- (1) An appeal lies to the Land and Environment Court against any of the following decisions made by the Minister:
  - (a) a decision refusing to grant an access licence,
  - (b) a decision granting a designated access licence, if the appellant was an objector to the granting of the licence,
  - (c) a decision imposing a discretionary condition on an access licence,
  - (d) a decision fixing the term of an access licence,
  - (e) a decision refusing consent to the transfer of an access licence,
  - (f) a decision suspending or cancelling an access licence,
  - (g) a decision refusing to grant an approval, other than a decision refusing to accept an application for an approval,
  - (h) a decision granting a designated approval, if the appellant was an objector to the granting of the approval,
  - (i) a decision imposing a discretionary condition on an approval,
  - (j) a decision fixing the term of an approval,
  - (k) a decision refusing to amend an approval in accordance with an application made by its holder,
  - (l) a decision suspending or cancelling an approval,
  - (m) a decision ordering a major utility to pay a civil penalty to the Minister,
  - (n) a decision to give a direction to a person under Part 1,
  - (o) a decision as to a person's entitlement to compensation for damage arising from the exercise of a power of entry under Part 2.
- (2) Despite subsection (1):
  - (a) no appeal lies against any decision made by the Minister on an application to which an objection has been made if:

- (i) in the case of the applicant, the Minister has dismissed the application as a consequence of the applicant having failed to participate in mediation or neutral evaluation proceedings, or
  - (ii) in the case of the objector, the Minister has dismissed the objection as a consequence of the objector having failed to participate in mediation or neutral evaluation proceedings, and
- (b) no appeal lies against any decision made by the Minister pursuant to a report from a Commission of Inquiry under section 119 of the *Environmental Planning and Assessment Act 1979*.
- (3) An appeal is to be made in accordance with rules of court, but may not be made more than 28 days after the date on which the decision was made.
- (4) In addition to the appellant and the Minister:
- (a) the parties to an appeal made by an applicant for a designated access licence or designated approval against a decision refusing to grant the licence or approval include any objector to the granting of the licence or approval who, in accordance with rules of court, gives notice to the Land and Environment Court of the objector's wish to become a party to the appeal, and
  - (b) the parties to an appeal made by an objector to the granting of a designated access licence or designated approval against a decision granting the licence or approval include the applicant for the licence or approval.
- (5) The lodging of an appeal does not operate to stay action on the decision appealed against, except to the extent that the Land and Environment Court otherwise directs.
- (6) In this section:

**designated access licence** means an access licence to which a person has a right of objection under section 62.

**designated approval** means an approval to which a person has a right of objection under section 93.

## Chapter 8 Administration

### Part 1 Water Advisory Council

#### 369 Establishment of Water Advisory Council

- (1) There is to be a Water Advisory Council.
- (2) The Water Advisory Council is to have at least 13, but not more than 20, members appointed by the Minister, of whom:



- (a) at least two are to be persons appointed to represent the interests of environmental protection groups, and
  - (b) at least two are to be persons appointed to represent the interests of water user groups, and
  - (c) at least two are to be persons appointed to represent the interests of local councils, and
  - (d) at least one is to be a person having such technical qualifications in connection with environmental protection as the Minister considers appropriate for the functions to be exercised by the Council, and
  - (e) at least one is to be a person having such qualifications in ecology as the Minister considers appropriate for the functions to be exercised by the Council, and
  - (f) at least two are to be persons appointed to represent the interests of catchment management boards and trusts, and
  - (g) at least two are to be Aboriginal persons appointed to represent the interests of Aboriginal persons, and
  - (h) one is to be a person appointed as an independent chairperson for the Council.
- (3) The regulations may make provision with respect to qualifications for appointment as a member of the Water Advisory Council.
- (4) Schedule 6 has effect with respect to the constitution and procedure of the Water Advisory Council.

### **370 Functions of Water Advisory Council**

- (1) The principal functions of the Water Advisory Council are as follows:
- (a) to review such draft management plans and implementation programs as the Minister refers to it for review,
  - (b) to investigate matters affecting the management of the water sources throughout the State, including such matters as the Minister refers to it for investigation,
  - (c) to report to the Minister on matters affecting the management of the water sources throughout the State, including such matters as the Minister refers to it for report,
  - (d) to advise the Minister on matters affecting the management of the water sources throughout the State, including such matters as the Minister refers to it for advice.
- (2) The Water Advisory Council has such other functions as are conferred or imposed on it by or under this or any other Act or law.

- (3) For the purpose of exercising its functions, the Water Advisory Council may consult with, and receive submissions from, other persons and bodies.
- (4) It is the duty of the Water Advisory Council to exercise its functions consistently with the principles of ecologically sustainable development.

## **Part 2 Water Administration Ministerial Corporation**

### **371 Constitution of Water Administration Ministerial Corporation**

- (1) There is constituted by this Act a corporation with the corporate name "Water Administration Ministerial Corporation".
- (2) The affairs of the Ministerial Corporation are to be managed by the Minister.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Ministerial Corporation by the Minister, or with the authority of the Minister, is taken to have been done by the Ministerial Corporation.
- (4) The Ministerial Corporation is, for the purposes of any Act, a statutory body representing the Crown.

### **372 Functions of Ministerial Corporation**

- (1) The Ministerial Corporation has the following functions:
  - (a) to construct, maintain and operate water management works,
  - (b) to conduct research, collect information and develop technology in relation to water management,
  - (c) to acquire rights to water, whether within or beyond New South Wales,
  - (d) to do anything for the purpose of enabling the objects of this Act to be attained.
- (1A) The Ministerial Corporation has such other functions as are conferred or imposed on it by or under this or any other Act or law.
- (2) The Ministerial Corporation may exercise its functions within and beyond New South Wales.
- (3) The Ministerial Corporation may exercise any of its functions, and may otherwise act, in the name of the Department.
- (4) It is the duty of the Ministerial Corporation to exercise its functions consistently with the principles of ecologically sustainable development.
- (5) It is the duty of the Ministerial Corporation to exercise its function of issuing a Snowy water licence under Part 5 of the *Snowy Hydro Corporatisation Act 1997* consistently

with the terms of the *Snowy Water Inquiry Outcomes Implementation Deed*.

- (6) In subsection (5), ***Snowy Water Inquiry Outcomes Implementation Deed*** means the deed under that title that was entered into on behalf of the Commonwealth, New South Wales and Victoria on 3 June 2002, as that deed is amended from time to time in accordance with its terms.

### **373 Commercial operations**

- (1) With the approval of the Governor, the Ministerial Corporation may enter into commercial operations with respect to:
- (a) any services developed in connection with the exercise of its functions, and
  - (b) any products or by-products (including intellectual property) resulting from the exercise of its functions, and
  - (c) such other matters as may be prescribed by the regulations.
- (2) With the approval of the Governor, the Ministerial Corporation may form, or join in forming, a company, partnership or trust for the purpose of exercising its functions under this Act.

### **374 Application of [Public Works Act 1912](#)**

- (1) For the purposes of the [Public Works Act 1912](#), any works carried out by the Ministerial Corporation under this Act are taken to be authorised works and the Ministerial Corporation is taken to be the Constructing Authority for those works.
- (2) Part 3 of the [Public Works Act 1912](#) does not apply to or in respect of any works constructed by the Ministerial Corporation under this Act.

### **375 Acquisition of land**

- (1) The Ministerial Corporation may acquire land for the purposes of this Act by agreement, or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) The acquisition of land by the Ministerial Corporation for the purpose of its transfer to an irrigation corporation or private irrigation board is taken to be for the purposes of this Act if the purpose of the transfer is to enable the irrigation corporation or private irrigation board to exercise its functions under this Act.
- (3) For the purposes of the [Public Works Act 1912](#), any such acquisition is taken to be for an authorised work, and the Ministerial Corporation is, in relation to that work, taken to be the Constructing Authority.

### **376 Staff of Ministerial Corporation**

The Ministerial Corporation may arrange for the use of the services of any staff or facilities of any government department or public authority.

### **377 Delegation of functions**

The Ministerial Corporation may delegate to any person the exercise of any of its functions, other than this power of delegation.

## **Part 3 Water investment trust**

### **378 Definitions**

In this Part:

**Board of Trustees** means the Board of Trustees referred to in section 379 (4).

**Fund** means the Water Investment Trust Fund established by section 384.

**Trust** means the Water Investment Trust constituted by section 379.

### **379 Constitution of Trust**

- (1) There is constituted by this Act a body corporate with the corporate name of the Water Investment Trust.
- (2) The Trust has such functions as are conferred or imposed on it by or under this or any other Act or law.
- (3) The Trust is, for the purposes of any Act, a statutory body representing the Crown.
- (4) The affairs of the Trust are to be managed by a Board of Trustees.
- (5) Subject to this section, the constitution and procedure of the Board of Trustees are to be as prescribed by the regulations.

### **380 Objects of Trust**

The objects of the Trust are to promote, organise, carry out and fund projects, in both the public and private sectors, for:

- (a) the restoration and rehabilitation of water sources and their dependant ecosystems, and
- (b) the construction of works for the more efficient delivery, use and recycling of water, and
- (c) the conduct of water industry adjustment, business restructuring and industry training, and

- (d) the conduct of research, and the development of technology, in relation to the matters referred to in paragraphs (a), (b) and (c),

in order to maximise the environmental, social and economic benefits of the State's water sources for present and future generations.

### **381 Functions of Trust**

The Trust may, for the purpose of promoting its objects:

- (a) make grants or loans (either conditionally or subject to conditions) for projects of the kind described in section 380, and
- (b) supervise the expenditure of money so granted, and
- (c) establish works programs, and associated budgets, for projects to be carried out or funded by the Trust, and
- (d) engage in such other activities relating to its objects as the Minister may approve.

### **382 Staff of Trust**

- (1) The Trust may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department or public authority.
- (2) For the purposes of this Act, a person whose services are made use of under this section is an officer of the Trust.

### **383 Delegation**

The Trust may delegate to a member of the Board of Trustees, or to an officer of the Trust, the exercise of any of its functions, other than this power of delegation.

### **384 Water Investment Trust Fund**

- (1) There is to be established in the Special Deposits Account a Water Investment Trust Fund into which are to be paid:
  - (a) such money as may be raised by way of water investment contributions pursuant to this Part, and
  - (b) such money as may be appropriated by Parliament for payment into the Fund, and
  - (c) the proceeds of investment of money in the Fund, and
  - (d) any gift or bequest of money to the Trust, and
  - (e) such other money as is required or permitted to be paid into the Fund.
- (2) Money in the Trust Fund may be used:

- (a) for the purpose of enabling the Trust to exercise its functions, and
- (b) to cover the costs incurred by the Trust in administering this Part.

### **385 Investments**

The Trust is to invest money in the Trust Fund:

- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Trust to invest money, in any manner approved by the Treasurer.

### **386 Investment levies on water users**

- (1) The regulations may make provision for or with respect to the fixing, assessing and levying of water investment contributions from persons who hold access licences.
- (2) Water investment contributions are to be fixed in relation to specified works programs established by the Trust, and so as to yield receipts no greater in total than the amounts budgeted by the Trust in relation to the works program so specified.
- (3) For the purposes of section 78 (1) (c), a water investment contribution payable by the holder of a licence is taken to be a charge payable in respect of the licence.
- (4) Part 4 of Chapter 7 applies to and in respect of a water investment contribution levied under this section in the same way as it applies to and in respect of a rate or charge referred to in that Part and, for that purpose, the Trust is taken to be a charging authority.

## **Part 4 General administration**

### **387 Expert advisory panels**

- (1) The Minister may appoint expert advisory panels for the purpose of this Act.
- (2) An expert advisory panel is to consist of such persons as, in the opinion of the Minister, have the qualifications and expertise appropriate to the matters proposed to be referred to it.
- (3) An expert advisory panel has the function of investigating, and reporting to the Minister on, such of the following matters as are referred to it for investigation and report:
  - (a) any State Water Management Outcomes Plan to be established under section 6,
  - (b) the terms of reference to be set by the Minister under section 15 for the preparation of a draft management plan,

- (c) the adequacy and appropriateness of the provisions of a draft management plan submitted to the Minister under section 37 or 40,
- (d) the effectiveness, in relation to the furthering of the water sharing principles, of any bulk access regime established by a management plan to be made by the Minister under section 41,
- (e) any management plan in respect of which a review is being carried out under section 43,
- (f) any implementation program to be established under section 51.

### **388 Committees**

The Minister may establish advisory and other committees for the purposes of this Act.

### **389 Delegation**

- (1) The Minister may delegate to any person any of the Minister's functions under this Act, other than this power of delegation.
- (2) Despite subsection (1), the Director-General may sub-delegate to any person any such function that has been delegated to the Director-General, but only if the terms of the delegation authorise the Director-General to sub-delegate that function.

### **390 Authorised officers**

The Minister may appoint authorised officers, either for the purposes of this Act generally or for the purposes of any specified provisions of this Act.

### **391 Resolution of disputes between public authorities**

- (1) Any dispute arising between two or more public authorities as to the exercise of their functions under this Act is to be resolved:
  - (a) by agreement between the Ministers responsible for them, or
  - (b) if the dispute is between Ministers, by the Premier.
- (2) Each public authority must comply with any directions arising out of the resolution of the dispute under this section.

## **Chapter 9 Miscellaneous**

### **392 State's water rights**

- (1) For the purposes of this Act, the rights to the control, use and flow of:
  - (a) all water in rivers, lakes and aquifers, and

(b) all water conserved by any works that are under the control or management of the Minister, and

(c) all water occurring naturally on or below the surface of the ground,

are the ***State's water rights***.

(2) The State's water rights are vested in the Crown, except to the extent to which they are divested from the Crown by or under this or any other Act.

(3) The State's water rights prevail over any authority conferred by or under any other Act or law, except to the extent to which this or any other Act expressly so provides.

(4) The State's water rights are not to be exercised in contravention of:

(a) the powers conferred by section 15 of the *Fire Brigades Act 1989* and section 26 of the *Rural Fires Act 1997* on an officer in charge at a fire or hazardous material incident, or

(b) the rights and obligations of the Snowy Hydro Company under a Snowy water licence within the meaning of the *Snowy Hydro Corporatisation Act 1997*, or

(c) the rights conferred by the *Rural Lands Protection Act 1989* with respect to the watering of stock at stock watering places within the meaning of that Act.

### **393 Abolition of common law riparian rights**

Any right that the owner of riparian land would, but for this section, have at common law with respect to the flow of any river, estuary or lake through or past the land, or to the taking or using of water from any such river, estuary or lake, is hereby abolished.

### **394 Service of documents**

(1) A document may be served on a person:

(a) personally, or

(b) by leaving it at, or by sending it by post to, the person's residential address or, in the case of a corporation, the address of the corporation's registered office, or

(c) if it is impracticable for the document to be served on a landholder of land in the manner referred to in paragraph (a) or (b), by affixing the document in a conspicuous position on the land.

(2) In the case of land that is owned or occupied by more than one person or of an approval that is held by more than one person, service of a document on any one of them, or on any person duly appointed by them for the purpose of accepting service of documents, is taken to be service on all of them.



(3) This section does not limit any other manner in which a document may be served.

### **395 Unpaid fees and charges**

Any fee or charge imposed by the Minister under this Act that remains unpaid is recoverable in any court of competent jurisdiction as a debt due to the Crown.

### **396 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its capacities.

### **397 Exclusion of personal liability**

(1) An act or omission of:

- (a) the Minister or the Director-General, or
- (b) a prescribed authority, or a member of a prescribed authority, or
- (c) a member of staff of the Department or of a prescribed authority, or
- (d) a person acting under the direction of a person referred to in paragraph (a), (b) or (c),

does not subject the Minister, Director-General, member of staff or person so acting personally to any action, liability, claim or demand if the act or omission was done, or omitted to be done, in good faith for the purpose of executing this Act.

(2) In this section, **prescribed authority** means:

- (a) the Ministerial Corporation, or
- (b) the Water Advisory Council, or
- (c) the Water Investment Trust, or the Board of Trustees of the Water Investment Trust, or
- (d) a management committee, or
- (e) a water supply authority, or
- (f) a private irrigation board, or
- (g) a private drainage board, or
- (h) a private water trust.

### **398 Exclusion of Crown liability**

(1) Neither the Crown nor any other person is subject to any action, liability, claim or

demand arising:

- (a) from the unavailability of water, or
- (b) from any failure in the quantity or quality of water,

as a consequence of anything done or omitted to be done in good faith by the Minister, by a prescribed authority or by any person acting on behalf of the Minister or a prescribed authority, in the exercise any functions under this Act.

(2) Neither the Crown nor any other person is subject to any action, liability, claim or demand arising as a consequence of:

- (a) the use in good faith of any water management work, or
- (b) the release in good faith of water from any water management work,

by the Minister, by a prescribed authority or by any person acting on behalf of the Minister or a prescribed authority, in the exercise of any functions under this Act.

(3) In this section, **prescribed authority** means:

- (a) the Ministerial Corporation, or
- (b) a water supply authority.

### **399 Annual report of Department**

The annual report prepared for the Department under the [Annual Reports \(Departments\) Act 1985](#) is to include a report on the Minister's work and activities under this Act for the period to which that report relates, and may also include the annual report prepared for the Ministerial Corporation under the [Annual Reports \(Statutory Bodies\) Act 1984](#).

### **400 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:

- (a) the forms to be used in connection with the administration of this Act, and
- (b) the fees and charges to be imposed in connection with the administration of this Act, and the circumstances under which fees and charges may be waived, reduced and remitted, and
- (c) the requirement for security deposits, the circumstances in which security deposits are to be forfeited and the application of money arising from the forfeiture of security deposits, and

- (d) the regulation and control of bore drilling and the licensing of bore drillers, and
  - (e) the information to be provided to the Minister by the holder of any approval under this Act, including the circumstances in which any such information must be verified by statutory declaration.
- (2) A regulation may make provision for or with respect to the exemption of any person, matter or thing from the operation of this Act or any specified provision of this Act, either unconditionally or subject to conditions.
  - (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.
  - (4) A regulation may apply, adopt or incorporate any publication as in force from time to time.

#### **401 Repeals**

The Acts listed in Schedule 7 are repealed.

#### **402 Amendment of other Acts**

Each Act listed in Schedule 8 is amended as set out in that Schedule.

#### **403 Savings, transitional and other provisions**

Schedule 9 has effect.

#### **404 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **Schedule 1 Irrigation corporations**

(Section 117)

***Coleambally Irrigation Limited***, in respect of the former Coleambally Irrigation Area.

***Jemalong Irrigation Limited***, in respect of:

- (a) the former Jemalong Domestic and Stock Water Supply and Irrigation District, and
- (b) the former Wyldes Plains Domestic and Stock Water Supply and Irrigation District.

**Western Murray Irrigation Limited**, in respect of:

- (a) the former Buronga Irrigation Area, and
- (b) the former Coomealla Irrigation Area, and
- (c) the former Curlwaa Irrigation Area.

**Murray Irrigation Limited**, in respect of:

- (a) the former Tullakool Irrigation Area, and
- (b) the former Berriquin Provisional Domestic and Stock Water Supply and Irrigation District, and
- (c) the former Denimein Provisional Domestic and Stock Water Supply and Irrigation District, and
- (d) the former Deniboota Provisional Domestic and Stock Water Supply and Irrigation District, and
- (e) the former Wakool Domestic and Stock Water Supply and Irrigation District.

**Murrumbidgee Irrigation Limited**, in respect of:

- (a) the former Yanco No 1 Irrigation Area, and
- (b) the former Mirrool No 1 Irrigation Area, and
- (c) the former Benerembah Domestic and Stock Water Supply and Irrigation District, and
- (d) the former Tabbita Domestic and Stock Water Supply and Irrigation District, and
- (e) the former Wah Wah Domestic and Stock Water Supply and Irrigation District.

## **Schedule 2 Major utilities**

(Section 281)

Delta Electricity  
Eraring Energy  
Hunter Water Corporation  
Macquarie Generation  
Sydney Catchment Authority  
Sydney Water Corporation

## **Schedule 3 Water supply authorities**

(Section 285)

### **Part 1 Bodies established by this Act**

Benerembah Irrigation District Environment Protection Trust  
Cobar Water Board  
Upper Parramatta River Catchment Trust

## Part 2 Statutory bodies established by other Acts

Gosford City Council  
Sydney Olympic Park Authority  
Wyong Council

## Part 3 State owned corporations

Australian Inland Energy Water Infrastructure

## Schedule 4 Land exempt from water supply authority service charges

(Section 312)

- (1)** Land that is vested in the Crown, or in a public body, or in trustees, and is used for a public cemetery.
- (2)** Land that is vested in the Crown, or in a public body, or in trustees, and is used for a common.
- (3)** Land that is vested in the Crown, or in a public body, or in trustees, and is used for a public reserve or park.
- (4)** Land that belongs to any public hospital, public benevolent institution or public charity, and is used or occupied by the hospital, institution or charity for its purposes.
- (5)** Land that is used or occupied solely for the purposes of, or connected with, a baby health centre, day nursery, kindergarten or amenities for the aged not conducted for private gain.
- (6)** Land that is vested in an area health service constituted under the [Health Services Act 1997](#) and is used or occupied by the area health service for its purposes.
- (7)** Land that is vested in the Crown, or in a public body, or in trustees, and is used solely for the purposes of a free public library.
- (8)** Land owned by the Crown that (except in the case of land leased to a caretaker at a nominal rental) is not leased by the Crown to any person for private purposes.
- (9)** Land that belongs to a religious body and that is occupied and used in connection with:
  - (a) any church or other building used or occupied for public worship, or
  - (b) any building used or occupied solely as the residence of a minister of religion in connection with any such church or building, or
  - (c) any building used or occupied for the purposes of religious teaching or training, or
  - (d) any building used or occupied solely as the residence of the official head or the assistant official head, or both, of any religious body in the State or in any diocese in the State.
- (10)** Land that is a public place within the meaning of the [Local Government Act 1993](#).
- (11)** Land that:

- (a) is unoccupied, and
  - (b) is not supplied with water from any water-pipe of a water supply authority and is not connected to any sewer of a water supply authority, and
  - (c) has been determined, by the council of the local government area in which the land is situated, to be unsuitable for the erection of a building because of flooding or landslip.
- (12)** Land that is unoccupied and that is below highwater mark of any tidal water.
- (13)** Land that belongs to and that is occupied and used in connection with any registered non-government school under the *Education Act 1990*, including:
- (a) any playground that belongs to and is used in connection with any such school, and
  - (b) any building that is occupied as a residence by any caretaker, employee or teacher of any such school and that belongs to and is used in connection with the school.
- (14)** Land that comprises any sports ground, garden or children's playground provided by a council under the *Local Government Act 1993*.
- (15)** Land that is vested in the University of Newcastle, or in a college of the University, and is used or occupied by the University or college solely for its purposes.
- (16)** Land that is vested in:
- (a) the New South Wales Aboriginal Land Council, or
  - (b) a Regional Aboriginal Land Council, or
  - (c) a Local Aboriginal Land Council,
- constituted under the *Aboriginal Land Rights Act 1983*, being land that is declared under Division 5 of Part 2 of that Act to be exempt from the payment of rates under this Schedule.
- (17)** Land that:
- (a) is vested in the mines rescue company, within the meaning of the *Coal Industry Act 2001*, and
  - (b) is used for the purposes of a mine rescue station controlled by that company.

## **Schedule 5 Constitution and procedure of water supply authorities**

(Section 288)

### **Part 1 Provisions relating to the members of a water supply authority**

#### **1 Employment of full-time member**

The employment of a full-time member of a water supply authority is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.

## 2 Elected member

(1) In this clause:

***elected member***, in the case of a water supply authority of which one or more of the members is appointed after being elected by employees of the water supply authority, means a member so elected.

(2) Regulations may be made for or with respect to the election of a person to hold office as an elected member.

(3) The Electoral Commissioner for New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner, is to be the returning officer for an election, and has and may exercise the functions conferred or imposed on the returning officer by the regulations made under this clause in relation to the election.

(4) Employees of a water supply authority are entitled to vote at an election in accordance with the regulations made under this clause.

(5) A person's nomination as a candidate for election as elected member is invalid if:

(a) the nomination is not made by at least 2 persons who are employees of the water supply authority, or

(b) the person is not, at the time of nomination, an employee of the water supply authority, or

(c) the person is not, at the time of nomination, a member of an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996* or an association of employees registered as an organisation under the *Workplace Relations Act 1996* of the Commonwealth, being such an organisation or association that is prescribed by the regulations for the purposes of this paragraph as being an organisation or association representing employees of the water supply authority, or

(d) the instrument of nomination is not accompanied by a statutory declaration to the effect that the person is, at the time of nomination, such a member, and the returning officer is entitled to rely on the information contained in the statutory declaration.

(6) A person may be, at the same time, both the elected member and an employee of the water supply authority.

(7) Nothing in any law, rule, direction or other requirement that:

(a) is applicable to the elected member in his or her capacity as an employee of the water supply authority, and

(b) would not be so applicable if the elected member were not such an employee, operates so as to prevent or restrict the exercise by the elected member of any of the functions of an elected member.

(8) If no person is nominated at an election, or if for any other reason an election fails, the Governor may appoint a person eligible for election to be a part-time member, and the person, on being appointed, is taken to be a person elected in the manner prescribed by the regulations made under this clause.

(9) If a vacancy occurs in the office of elected member otherwise than by reason of the expiration of the period for which an elected member was appointed:

(a) the Governor may appoint a person eligible for election to hold, subject to this Schedule, the office of elected member for a term commencing on the date of appointment or a later date specified in the relevant instrument of appointment and ending on the commencement of the term of office of the next elected member, and

(b) any such person, on being so appointed, is taken to be a person elected in the manner prescribed by the regulations made under this clause.

### **3 Chairperson of a water supply authority**

(1) One of the members, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, is to be appointed as chairperson of a water supply authority.

(2) The Governor may remove a member from the office of chairperson.

(3) A person who is a member and chairperson is taken to have vacated office as chairperson if the person:

(a) is removed from that office by the Governor under subclause (2), or

(b) resigns that office by instrument in writing addressed to the Minister, or

(c) ceases to be a member.

(4) The Minister may appoint a member to act in the office of chairperson during a vacancy in the office or during the illness or absence of the chairperson and the person, while so acting, has and may exercise all the functions of the chairperson and is taken to be the chairperson.

(5) This clause does not apply to the Broken Hill Water Board or the Cobar Water Board constituted as provided by Parts 2 and 3 of this Schedule.



#### **4 Acting members**

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during a vacancy in the office or during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.
- (2) The Minister may remove any person from any office to which the person was appointed under this clause.
- (3) A person while acting in the office of a part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

#### **5 Terms of office**

Subject to this Part, a member is to hold office:

- (a) in the case of a part-time member other than an elected member—for such period not exceeding 5 years, or
- (b) in the case of an elected member—for such period not exceeding 5 years but not less than 3 years,

as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

#### **6 Remuneration**

A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **7 Casual vacancies**

- (1) A member (other than a full-time member) is taken to have vacated office if the member:
  - (a) dies, resigns or is removed from office, or
  - (b) absents himself or herself from 4 consecutive meetings of the water supply authority of which reasonable notice has been given to the member personally or in the ordinary course of post, unless:
    - (i) the water supply authority has granted the member leave to be absent from those meetings, or
    - (ii) within 4 weeks after the last of those meetings, the member is excused by the water supply authority for having been absent from those meetings, or

- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (d) becomes a mentally incapacitated person, or
- (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (f) being an elected member, ceases to be an employee of the water supply authority for which he or she is an elected member.

(2) The Governor may remove a part-time member from office.

(3) If the office of any member becomes vacant, a person is, subject to this Part, to be appointed to fill the vacancy.

## **8 Disclosure of pecuniary interests**

(1) A member who has a direct or indirect pecuniary interest:

(a) in a matter that is being considered, or is about to be considered, at a meeting of the water supply authority, or

(b) in a thing being done or about to be done by the water supply authority,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the water supply authority.

(2) A disclosure by a member at a meeting of the water supply authority that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or a specified person,

is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person that may arise after the date of the disclosure.

(3) The water supply authority must cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book must be open at all reasonable hours to the inspection of any person on payment of such

fee as may be determined by the water supply authority from time to time.

- (4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subclause (1) or (2), the member must not, unless the Minister otherwise determines:
  - (a) be present during any deliberation of the water supply authority, or take part in any decision of the water supply authority, with respect to that matter, or
  - (b) exercise any functions under this Act with respect to that thing,as the case requires.
- (5) A contravention of this clause does not invalidate any decision of the water supply authority or the exercise of any function under this Act.
- (6) A reference in this clause to a meeting of the water supply authority includes a reference to a meeting of a committee of the water supply authority.

## 9 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member (other than a full-time member) and the office of such a member is not, for the purposes of any Act, an office or place of profit under the Crown.
- (2) If by or under any other Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,that provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Part as a part-time member.

## Part 2 Broken Hill Water Board

### 10-12 (Repealed)

### 13 Definitions

- (1) In this Part:

**Corporation** means Australian Inland Energy Water Infrastructure.

**council** means the Council of the City of Broken Hill.

**financial year** means the financial year for the Corporation.

**mining company** means a company for the time being prescribed as a mining company for the purposes of this Part.

- (2) Until the regulations otherwise provide, the following companies are mining companies for those purposes:

Pasminco Australia Limited

Minerals Mining and Metallurgy Limited

- (3) If a company ceases to be a mining company for the purposes of this Part, it remains responsible for any undischarged liability to which it was subject under this Part while it was a mining company.

#### **14 Exemption from service charges**

- (1) Land at Broken Hill that is held by a mining company under a lease from the Crown, and is used for mining or incidental purposes, is not subject to a water service charge.
- (2) Land referred to in subclause (1) is not subject to a sewerage service charge because of the construction of any sewerage works.

#### **15 Supply of water to mining companies**

- (1) The Corporation must supply each mining company, at places as near as possible to the mines or works of the company, with the water required by the company to carry on its business.
- (2) Subclause (1) has effect only in so far as is permitted by:
- (a) the capacity of the works of the Corporation, and
  - (b) the requirements of the landholders of land and of other persons using water for domestic purposes.

#### **16 Mining companies to take water**

- (1) A mining company is to draw from the Corporation all the water that it requires for the purposes of its business and that the Corporation is able to supply.
- (2) Subclause (1) does not prevent a mining company from drawing water from:
- (a) supplies conserved in its own tanks and dams, or
  - (b) sources other than Stephens Creek, by means lawfully used by it on and after 21 December 1915 and before 1 January 1939.

## **17 Water charges**

- (1) The charge for water supplied by the Corporation to a mining company is to be:
  - (a) 11 cents per kilolitre unless it is water referred to in paragraph (b), or
  - (b) 5.5 cents per kilolitre if it is used only for a dwelling or plantation or any other purpose determined by the Corporation to be a social purpose.
- (2) A determination by the Corporation of the proportion of water supplied by it to a mining company that is water referred to in subclause (1) (b) is binding on the company.
- (3) The charge imposed by subclause (1) is taken to be a charge imposed by the Corporation for water supplied to the land referred to in clause 14.
- (4) No liability for a service charge arises in relation to land that:
  - (a) adjoins the rising main between Menindee and the pumping station at Stephens Creek, and
  - (b) is part of a holding under the [Western Lands Act 1901](#) or a part of land held under freehold title,unless the whole of the holding or freehold land of which it forms part is within the area of operations of the Corporation.

## **18 Additional payments to Water Fund**

- (1) If, after excluding income received from the mining companies for water supplied to them during a financial year, there is a deficiency for that year in the Water Fund of the Corporation:
  - (a) the Treasurer, out of money to be provided by Parliament, may pay to the Corporation towards the deficiency thirteen fifty-ninths of its amount, and
  - (b) each mining company must, on demand, pay to the Corporation the prescribed contribution for the company.
- (2) The prescribed contribution for a mining company towards the deficiency for a financial year is the amount ascertained by:
  - (a) calculating the amount that bears to forty-six fifty-ninths of the deficiency the same proportion as is borne by the amount payable by the company under clause 17 in that year to the total amount so payable by all the mining companies, and
  - (b) deducting from the amount so calculated the amount paid by the company under clause 17 in that year.
- (3) The amount payable by a mining company under this clause is taken to be a charge

imposed by the Corporation for water supplied by the Corporation.

### **19 Estimated deficit and advance payments**

- (1) If estimates prepared by the Corporation before the commencement of a financial year disclose the possibility of a deficit for that year in the Water Fund of the Corporation:
  - (a) the Corporation is to provide the Treasurer and each mining company with particulars of the estimates and the possible deficit, and
  - (b) the Treasurer and each mining company must, in that year, make payments to the Corporation as required by subclause (2).
- (2) Towards discharging the respective liabilities of the Treasurer and each mining company for a financial year:
  - (a) the Treasurer must pay to the Corporation out of money to be provided by Parliament the amount estimated by the Treasurer to be sufficient to discharge the liability of the Treasurer, and
  - (b) each mining company must pay to the Corporation the amount estimated by the Corporation to be sufficient to discharge the liability of the mining company, by equal instalments on 1 January, 1 April, 1 July and 1 October in that year.
- (3) On the auditing of the Corporation's accounts for a financial year, the Corporation must pay to, or receive from, the Treasurer and each mining company an amount in adjustment of any difference between the estimated and actual liabilities under clause 18 for that financial year.

### **20 Sewerage charges**

- (1) Each mining company must, in respect of each financial year of the Corporation, pay to the Corporation an amount that bears to \$6,400 the same proportion as the amount payable by the company to the council for ordinary rates bears to the total amount payable by all the mining companies to the council for ordinary rates for that year.
- (2) The amount payable by a mining company under subclause (1) is taken to be a charge imposed by the Corporation for sewerage services for that year in respect of the land referred to in clause 14.
- (3) If, in a financial year of the Corporation, there is a deficiency in its Sewerage Fund, the Treasurer, out of money to be provided by Parliament, may pay to the Corporation for application towards the deficiency:
  - (a) the amount of the deficiency, or
  - (b) \$6,000,

whichever is the lesser amount.

- (4) Money at credit in the Australian Inland Energy Water Infrastructure Administration Account in the Special Deposits Account at the Treasury is, at the request of the Corporation, to be paid to the Corporation for the renewal or replacement of capital assets.

## **21 Default by mining company**

If the Corporation:

- (a) has obtained judgment against a mining company for an amount payable under this Part, and
- (b) the judgment remains unsatisfied even though the Corporation has taken all reasonable steps to enforce it,

the Corporation may recover the unpaid amount from each company not in default rateably in proportion to each amount paid by it under this Part.

## **Part 3 Cobar Water Board**

### **22 Members of the Cobar Water Board**

- (1) The Cobar Water Board is to consist of 5 part-time members appointed by the Governor.
- (2) Of the members:
  - (a) one is to be a member of the Public Service who, in and by the instrument by which the member is appointed, is to be appointed as President of the Board, and
  - (b) one is to be selected by the Minister from a panel of 2 persons nominated jointly by:
    - (i) Peak Gold Mines Pty Limited, and
    - (ii) such other mining companies as the Minister determines, and
  - (c) one is to be selected by the Minister from a panel of 2 persons nominated jointly by:
    - (i) Pasminco Australia Limited, and
    - (ii) such other mining companies as the Minister determines, and
  - (d) 2 are to be nominated by the Cobar Shire Council.
- (3) If a nomination under subclause (2) (b), (c) or (d) is not made within a time notified by the Minister, a person nominated by the Minister is to be appointed.

### **23 Vacation of office by President**

The President ceases to be a member of the Cobar Water Board if he or she ceases to be a member of the Public Service.

### **24 Meetings of the Board**

- (1) The President, if present, is to preside at a meeting of the Cobar Water Board.
- (2) In the absence of the President from a meeting of the Board, a member elected from those present is to preside at the meeting.

## **Schedule 6 Water Advisory Council and management committees**

(Sections 13 and 369)

### **Part 1 Constitution**

#### **1 Application of Schedule**

This Schedule applies to the Water Advisory Council and all management committees.

#### **2 Acting chairperson**

- (1) The Minister may, from time to time, appoint a person to act in the office of chairperson during the illness or absence of a chairperson, and the person, while so acting, has all the functions of the chairperson and is taken to be the chairperson.
- (2) The Minister may, at any time, remove a person from an office to which the person has been appointed under this clause.
- (3) For the purposes of this clause, a vacancy in the office of chairperson is taken to be an absence from office of the chairperson.

#### **3 Term of office**

Subject to this Schedule:

- (a) a member of the Water Advisory Council holds office for 3 years, but is eligible (if otherwise qualified) for re-appointment, and
- (b) a member of a management committee holds office during the term for which the committee is established.

#### **4 Remuneration**

A member of the Water Advisory Council or a management committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.



## **5 Vacancy in office of appointed member**

- (1) The office of a member of the Water Advisory Council or a management committee becomes vacant if the member:
  - (a) dies, resigns or is removed from office, or
  - (b) absents himself or herself from 4 consecutive meetings of the Council or committee of which reasonable notice has been given to the member personally or in the ordinary course of post, unless:
    - (i) the Council or committee has granted the member leave to be absent from those meetings, or
    - (ii) within 4 weeks after the last of those meetings, the member is excused by the Council or committee for having been absent from those meetings, or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (d) becomes a mentally incapacitated person, or
  - (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member of the Water Advisory Council or a management committee from office at any time.

## **6 Filling of vacancy in office of member**

If the office of a member of the Water Advisory Council or a management committee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Disclosure of pecuniary interests**

- (1) A member of the Water Advisory Council or a management committee who has a direct or indirect pecuniary interest:
  - (a) in a matter that is being considered, or is about to be considered, at a meeting of the Council or committee, or
  - (b) in a thing being done or about to be done by the Council or committee,must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council or committee.
- (2) A disclosure at such a meeting that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person that may arise after the date of the disclosure.

- (3) The Water Advisory Council or management committee must cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book must be open at all reasonable hours to the inspection, free of charge, of any person.
- (4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subclause (1) or (2), the member must not, unless the Minister otherwise determines:
  - (a) be present during any deliberation, or take part in any decision, of the Water Advisory Council or management committee with respect to that matter, or
  - (b) exercise any functions under this Act with respect to that thing,as the case requires.
- (5) Subclause (4) does not apply to a member whose interest consists merely of the fact that the member is the holder of an access licence or approval.
- (6) A contravention of this clause does not invalidate any decision of the Water Advisory Council or management committee or the exercise of any function under this Act.
- (7) A reference in this clause to a meeting of the Water Advisory Council or a management committee includes a reference to a meeting of any of its committees.

## **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member of the Water Advisory Council or a management committee and the office of such a member is not, for the purposes of any Act, an office or place of profit under the Crown.
- (2) If by or under any other Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that

office,

that provision does not operate to disqualify the person from holding that office and also the office of a member of the Water Advisory Council or a management committee, or from accepting and retaining any remuneration payable to the person under this Part as such a member.

## **Part 2 Procedure**

### **9 General procedure**

Except as otherwise provided by this Act or the regulations:

- (a) meetings of the Water Advisory Council or a management committee are to be held at such times and places as are fixed by the chairperson, and
- (b) the procedure for the convening of meetings and for the conduct of business at those meetings is to be as determined by the chairperson.

### **10 Quorum**

A majority of the members of the Water Advisory Council or a management committee constitute a quorum.

### **11 Presiding members**

The chairperson (or, in the absence of the chairperson, a member appointed by the members then present) is to preside at a meeting of the Water Advisory Council or a management committee.

### **12 Decisions**

- (1) At any meeting of the Water Advisory Council or a management committee, all members present are to strive for consensus in reaching decisions.
- (2) However, a decision by the Water Advisory Council or a management committee has effect if it is supported by a majority of the votes cast at a meeting at which a quorum is present.
- (3) Despite subclause (2), any of the following decisions of a management committee, that is:
  - (a) any decision to submit a draft management plan to the Minister under section 37 or 40, and
  - (b) any decision that is required to be unanimous by the terms of the order by which the committee is established,

does not have effect unless it is unanimous, that is, unless it is supported by all of the

votes cast at a meeting at which a quorum is present.

### **13 Record of proceedings**

- (1) The presiding member at a meeting of the Water Advisory Council or a management committee must cause a record of the proceedings at the meeting to be made.
- (2) Records made for the purposes of this clause may be destroyed after the expiry of the period prescribed by the regulations.

### **14 Authentication of documents**

Any document requiring authentication by the Water Advisory Council or a management committee is sufficiently authenticated if it is signed by:

- (a) the member who presided at the meeting that dealt with the proceedings with respect to which the document was prepared, or
- (b) in the absence of that member, any other member who was present at that meeting.

### **15 First meeting**

The first meeting of a management committee is to be called by the Minister in such manner as the Minister considers appropriate.

## **Schedule 7 Repeals**

(Section 401)

[Balranald Irrigation Act 1902 No 78](#)

[Crown Lands Amendment Act 1932 No 69](#)

[Drainage Act 1939 No 29](#)

[Fish River Water Supply Administration Act 1945 No 16](#)

[Glennies Creek Dam Act 1979 No 126](#)

[Hunter Valley Flood Mitigation Act 1956 No 10](#)

[Irrigation Act 1912 No 73](#)

[Irrigation \(Amendment\) Act 1916 No 22](#)

[Irrigation \(Amendment\) Act 1941 No 54](#)

[Irrigation \(Amendment\) Act 1973 No 3](#)

[Irrigation \(Amendment\) Act 1979 No 160](#)

[Irrigation and Water \(Amendment\) Act 1943 No 2](#)

[Irrigation Corporations Act 1994 No 41](#)

[Irrigation, Water and Rivers and Foreshores Improvement \(Amendment\) Act 1955 No 12](#)

[Miscellaneous Acts \(Water Administration\) Amendment Act 1986 No 205](#)

[Private Irrigation Districts Act 1973 No 47](#)

[Rivers and Foreshores Improvement Act 1948 No 20](#)

[Water Act 1912 No 44](#)

[Water \(Amendment\) Act 1936 No 31](#)

[Water \(Amendment\) Act 1940 No 57](#)

[Water \(Amendment\) Act 1976 No 33](#)

*Water (Amendment) Act 1979 No 159*  
*Water (Soil Conservation) Amendment Act 1986 No 143*  
*Water Administration Act 1986 No 195*  
*Water Administration (Transfer of Functions) Act 1986 No 204*  
*Water Supply Authorities Act 1987 No 140*

## **Schedule 8 Amendment of other Acts**

(Section 402)

### **8.1 Catchment Management Act 1989 No 235**

#### **[1] Section 6 Responsible Minister**

Omit “*Water Administration Act 1986*” wherever occurring.

Insert instead “*Water Management Act 2000*”.

#### **[2] Section 9 Membership of Co-ordinating Committee**

Omit “*Water Administration Act 1986*” from section 9 (1) (g).

Insert instead “*Water Management Act 2000*”.

#### **[3] Section 38 Definitions**

Omit “*Water Supply Authorities Act 1987*” from the definition of **owner**.

Insert instead “*Water Management Act 2000*”.

### **8.2 Chipping Norton Lake Authority Act 1977 No 38**

#### **Section 25 Application of Rivers and Foreshores Improvement Act 1948**

Omit the section.

### **8.3 Contaminated Land Management Act 1997 No 140**

#### **Section 18 Details of investigation order**

Omit “*Water Act 1912*” from section 18 (3) (c).

Insert instead “*Water Management Act 2000*”.

### **8.4 Criminal Procedure Act 1986 No 209**

#### **Schedule 1 Indictable offences triable summarily**

Omit item 25 of Table 1.

## 8.5 Crown Lands Act 1989 No 6

### Section 172 Land with boundaries to lakes, roads etc

Omit “[Water Act 1912](#)” from section 172 (9).

Insert instead “[Water Management Act 2000](#)”.

## 8.6 Crown Lands (Continued Tenures) Act 1989 No 7

### Section 3 Definitions

Omit “[Water Administration Act 1986](#)” from the definition of **Water Administration Ministerial Corporation** in section 3 (1).

Insert instead “[Water Management Act 2000](#)”.

## 8.7 Dams Safety Act 1978 No 96

### Section 8 Members

Omit “[Water Administration Act 1986](#)” from section 8 (2) (c).

Insert instead “[Water Management Act 2000](#)”.

## 8.8 Environmental Planning and Assessment Act 1979 No 203

### [1] Section 91 What is “integrated development”?

Omit the matter relating to the [Rivers and Foreshores Improvement Act 1948](#) and the [Water Act 1912](#) from the list of approvals appearing at the end of section 91 (1).

Insert in alphabetical order:

<a href="#">Water Management Act 2000</a>	ss 89, 90, 91	water use approval, water management work approval or activity approval under Part 3 of Chapter 3
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### [2] Section 120A Additional procedural requirements where water approval is involved

Omit “Water Administration Ministerial Corporation” wherever occurring.

Insert instead “Minister for Land and Water Conservation”.

### [3] Section 120A (1)

Omit “involves a work that may require a water licence or a work that may require a water approval”.

Insert instead “may involve the need for an approval under the *Water Management Act 2000*”.

**[4] Section 120A (3)**

Omit “for a water licence or for a water approval”.

Insert instead “for an approval”.

**[5] Section 120A (4) and (5)**

Omit the subsections. Insert instead:

- (4) The Commission of Inquiry must defer concluding its inquiry for sufficient time to enable:
  - (a) the applicant or proponent to apply for an approval, and
  - (b) any objectors to object to the granting of an approval, under the *Water Management Act 2000*.
- (5) As soon as practicable after the applicant’s or proponent’s application for an approval is referred to it under section 94 of the *Water Management Act 2000*, the Commission of Inquiry must give at least 28 days’ notice, by advertisement published in the Gazette and in such newspapers as it thinks necessary, of its intention to hold a public hearing in connection with the application concerned and of the time and place at which the hearing is to be held.

**[6] Section 120A (7) (a)**

Omit “for a water licence or for a water approval”.

Insert instead “for an approval”.

**[7] Section 120A (7) (b)**

Omit the paragraph. Insert instead:

- (b) any objection to the granting of an approval that has been referred to it under section 94 of the *Water Management Act 2000*.

**[8] Section 120A (8) (a)**

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

**[9] Section 120A (8) (b)**

Omit “licence or”.

**[10] Section 120A (11)**

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

**[11] Section 120A (12)**

Omit the subsection.

## **8.9 Environmental Planning and Assessment Regulation 2000**

### **Clause 49 Who can make a development application?**

Insert after clause 49 (3):

- (4) In this clause, **public authority** includes an irrigation corporation within the meaning of the *Water Management Act 2000* that the Minister administering that Act has, by order in writing, declared to have the status of a public authority for the purposes of this clause in relation to development of a kind specified in the order.

## **8.10 Essential Services Act 1988 No 41**

### **Section 4 Essential services**

Insert after section 4 (2):

- (2A) To avoid doubt, the regulation of bulk water supply by the Water Administration Ministerial Corporation in the exercise of its rights to the control, use and flow of water is capable of being declared to be an essential service for the purposes of this Act.

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

### **[1] Section 16 Works to be approved**

Omit “No work to which Part 2, 5 or 8 of the *Water Act 1912* extends”.

Insert instead “No work that is a water management work within the meaning of the *Water Management Act 2000*”.

### **[2] Section 16**

Omit “licence, permit, authority or”.

### **[3] Section 16A Loan to Board**

Omit the definition of **Board**. Insert instead:



**Board** means a private irrigation board within the meaning of the *Water Management Act 2000*.

**[4] Section 16A (5)**

Omit “group licence issued under Division 4A of Part 2 of the *Water Act 1912*”.

Insert instead “water supply work approval under the *Water Management Act 2000*”.

## **8.12 Hunter Water Act 1991 No 53**

**[1] Section 3 Definitions**

Omit “*Water Administration Act 1986*” from the definition of **Water Administration Ministerial Corporation** in section 3 (2).

Insert instead “*Water Management Act 2000*”.

**[2] Section 4C Role of certain Ministers**

Omit “*Water Administration Act 1986*” from section 4C (1) (b).

Insert instead “*Water Management Act 2000*”.

**[3] Section 16 Area covered by operating licence**

Omit “referred to in section 11 (2) of the *Water Administration Act 1986*” from section 16 (2) (b).

Insert instead “within the meaning of the *Water Management Act 2000*”.

**[4] Section 16 (2) (c)**

Omit the paragraph. Insert instead:

(c) a water supply authority within the meaning of the *Water Management Act 2000*,

**[5] Section 53 Special areas**

Omit “powers conferred on the Water Administration Ministerial Corporation by section 12 of the *Water Administration Act 1986* in relation to the use, flow and control of water” from section 53 (2).

Insert instead “State’s water rights under the *Water Management Act 2000*”.

## **8.13 Independent Pricing and Regulatory Tribunal Act 1992 No 39**

**[1] Section 4 Government monopoly services**

Insert after section 4 (5):

- (6) To avoid doubt, the services for which fees and charges are payable under Chapter 3 of the *Water Management Act 2000* are capable of being declared to be government monopoly services provided by the Water Administration Ministerial Corporation.

**[2] Schedule 1 Government agencies for which Tribunal has standing reference**

Omit "*Water Supply Authorities Act 1987*".

Insert instead "*Water Management Act 2000*".

**[3] Schedule 1**

Omit the following:

Administrator of the South-west Tablelands Water Supply

Administrator of the Fish River Water Supply

**8.14 Land and Environment Court Act 1979 No 204**

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

Omit section 17 (cb), (cc) and (da).

Insert after section 17 (b):

(c) appeals under section 368 of the *Water Management Act 2000*,

**[2] Section 18 Class 2—local government and miscellaneous appeals and applications**

Omit section 18 (a2). Insert instead:

(a2) appeals under section 307 of the *Water Management Act 2000*,

**[3] Section 19 Class 3—land tenure, valuation, rating and compensation matters**

Omit section 19 (e1).

**[4] Section 20 Class 4—environmental planning and protection and development contract civil enforcement**

Omit section 20 (1) (cj) and (df).

**[5] Section 20 (3) (a)**

Omit "*Rivers and Foreshores Improvement Act 1948*".

**[6] Section 21 Class 5—environmental planning and protection summary enforcement**

Omit section 21 (ga) and (hb). Insert instead:

(ga) proceedings under section 364 of the *Water Management Act 2000*.

**8.15**

(Repealed)

**8.16 Local Government Act 1993 No 30**

**[1] Section 56 Application of Division**

Omit the section. Insert instead:

**56 Application of Division**

- (1) The provisions of this Division relating to water supply and sewerage (but not stormwater drainage) do not apply to:
  - (a) land within the area of operations of the Sydney Water Board under the *Sydney Water Act 1994*, or
  - (b) land within the area of operations of the Hunter Water Board under the *Hunter Water Act 1991*.
- (2) The provisions of this Division (sections 57, 58 and 59 excepted) relating to water supply and sewerage (but not stormwater drainage) do not apply to land within the area of operations of a water supply authority constituted under the *Water Management Act 2000*.

**[2] Section 64 Construction of works for developers**

Omit the section. Insert instead:

**64 Construction of works for developers**

Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000* applies to a council exercising functions under this Division in the same way as it applies to a water supply authority exercising functions under that Act.

**[3] Section 68 What activities, generally, require the approval of the council?**

Omit section 68 (2) and (3). Insert instead:

- (2) This section does not apply to the carrying out of an activity specified in Part B of the following Table:
- (a) on land within the area of operations of the Sydney Water Board under the *Sydney Water Act 1994*, or
  - (b) on land within the area of operations of the Hunter Water Board under the *Hunter Water Act 1991*.
- (3) This section does not apply to the carrying out of an activity specified in item 1, 2, 3, 4 or 6 of Part B of the following Table on land within the area of operations of a water supply authority constituted under the *Water Management Act 2000*.

**[4] Section 124 Orders**

Omit “a licence granted under Part 2 of the *Water Act 1912*” from item 11 of the Table to the section.

Insert instead “a water management work approval granted under the *Water Management Act 2000*”.

**[5] Dictionary**

Omit the definition of **water supply authority**. Insert instead:

**water supply authority** has the same meaning as it has in the *Water Management Act 2000*.

## **8.17 Murray-Darling Basin Act 1992 No 65**

**[1] Section 4 Definitions**

Omit “*Water Administration Act 1986*” from the definition of **relevant water authority** in section 4 (1).

Insert instead “*Water Management Act 2000*”.

**[2] Section 21 Powers, liabilities and immunities under Water Management Act 2000 and other Acts**

Omit “*Water Administration Act 1986*”.

Insert instead “*Water Management Act 2000*”.

**[3] Section 23 Actions against relevant water authority**

Omit “Section 19 (Exclusion of liability) of the *Water Administration Act 1986*”.

Insert instead “Section 398 of the *Water Management Act 2000*”.

## 8.18 National Parks and Wildlife Act 1974 No 80

### [1] Section 5 Definitions

Omit “*Irrigation Act 1912*” from section 5 (2) (b).

Insert instead “*Water Management Act 2000*”.

### [2] Section 47J Provisions relating to mining

Omit “*Irrigation Act 1912*” from section 47J (7) (b).

Insert instead “*Water Management Act 2000*”.

### [3] Section 47J (7) (c)

Omit “*Irrigation Corporations Act 1994*”.

Insert instead “*Water Management Act 2000*”.

## 8.19 Native Vegetation Conservation Act 1997 No 133

### Section 12 Clearing excluded from operation of Act

Omit section 12 (o) and (p). Insert instead:

- (o) any clearing carried out in accordance with an approval under the *Water Management Act 2000*.

## 8.20 New South Wales—Queensland Border Rivers Act 1947 No 10

### [1] Section 4 Definitions

Omit “*Water Administration Act 1986*” from the definition of **Ministerial Corporation**.

Insert instead “*Water Management Act 2000*”.

### [2] Section 24 Water Management Act 2000 to be read subject to the Agreement

Omit “*Water Act 1912*, as amended by subsequent Acts,”.

Insert instead “*Water Management Act 2000*”.

## 8.21 Plantations and Reafforestation Act 1999 No 97

### [1] Section 19 Related regulatory approvals for authorised plantations

Omit “licences under the *Water Act 1912*” from the note to section 19 (1).

Insert instead “licences and approvals under the *Water Management Act 2000*”.

**[2] Section 52**

Omit the section. Insert instead:

**52 Plantation operations not subject to certain provisions of the [Water Management Act 2000](#)**

- (1) A controlled activity approval is not required under the [Water Management Act 2000](#) for plantation operations on an authorised plantation.
- (2) A direction cannot be given under Part 1 of Chapter 7 of that Act so as to prevent or interfere with the carrying out of plantation operations on an authorised plantation.

**8.22 Roads Act 1993 No 33**

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

Omit “a private body established under the [Water Act 1912](#), the [Drainage Act 1939](#) or the [Private Irrigation Districts Act 1973](#) or the [Irrigation Corporations Act 1994](#)”.

Insert instead “an irrigation corporation, a private irrigation board, a private drainage board or a private water trust (within the meaning of the [Water Management Act 2000](#))”.

**[2] Dictionary**

Omit “, the [Irrigation Act 1912](#)” from the definition of **Crown Lands Acts**.

**8.23 Rural Assistance Act 1989 No 97**

**Section 3 Definitions**

Omit paragraph (a) of the definition of **Crown Lands Acts** in section 3 (1).

Insert instead:

- (a) the Crown Lands Acts within the meaning of the [Crown Lands Act 1989](#), or

**8.24 Snowy Hydro Corporatisation Act 1997 No 99**

**[1] Section 20 Water inquiry to be held**

Omit “[Water Administration Act 1986](#)” from section 20 (6).

Insert instead “[Water Management Act 2000](#)”.

**[2] Section 23 Rights and obligations under licence**

Omit “and to section 7 of the *Water Act 1912* (Rights of occupiers of riparian land)” from section 23 (4).

Insert instead “and to Part 1 of Chapter 3 of the *Water Management Act 2000* (Basic landholder rights)”.

**[3] Section 32 Local water extraction**

Omit “*Water Act 1912* a right to take and use water” from section 32 (1).

Insert instead “*Water Management Act 2000* an access licence, water use approval or water supply work approval”.

## **8.25 Soil Conservation Act 1938 No 10**

**[1] Section 14 Carrying out of works by Minister or Commissioner**

Omit “a licence or permit issued pursuant to Part 2 of the *Water Act 1912*” from section 14 (3).

Insert instead “an approval under the *Water Management Act 2000*”.

**[2] Section 14 (3)**

Omit “any such licence or permit”.

Insert instead “any such approval”.

**[3] Section 14 (3)**

Omit “Part 2 of the *Water Act 1912* relating to licences or permits”.

Insert instead “the *Water Management Act 2000* relating to approvals”.

**[4] Section 23A Catchment committees**

Omit the section.

**[5] Section 23C Functions of catchment committee**

Omit the section.

## **8.26 Subordinate Legislation Act 1989 No 146**

### **Schedule 4 Excluded instruments**

Omit item 11. Insert instead:

**11** By-laws under Part 2 of Chapter 4 of the *Water Management Act 2000*.

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

### **[1] Section 3 Definitions**

Omit "*Water Administration Act 1986*" from the definition of **Water Administration Ministerial Corporation** in section 3 (2).

Insert instead "*Water Management Act 2000*".

### **[2] Section 6 Role of certain Ministers**

Omit "*Water Administration Act 1986*" from section 6 (1) (b).

Insert instead "*Water Management Act 2000*".

### **[3] Section 10 Area of operations**

Omit "referred to in section 11 (2) of the *Water Administration Act 1986*" from section 10 (3) (c).

Insert instead "within the meaning of the *Water Management Act 2000*".

### **[4] Section 10 (3) (d)**

Omit the paragraph. Insert instead:

(d) a water supply authority within the meaning of the *Water Management Act 2000*,

### **[5] Section 12 Grant of operating licences**

Omit section 12 (3)-(6).

### **[6] Section 30 Sydney Water Corporation Licence Regulator**

Omit "*Water Administration Act 1986*" from section 30 (4) (e).

Insert instead "*Water Management Act 2000*".

### **[7] Section 90 Activities outside area of operations**

Omit the section.

### **[8] Section 91 Contracting out**

Omit section 91 (2)-(6).



## 8.28 Sydney Water Catchment Management Act 1998 No 171

### [1] Section 3 Definitions

Omit the definition of **water supply authority**. Insert instead:

**water supply authority** has the same meaning as it has in the *Water Management Act 2000*.

### [2] Section 25 Grant of operating licence

Omit section 25 (2)–(5).

## 8.29 Valuation of Land Act 1916 No 2

### [1] Section 4 Definitions

Omit the definition of **Water right** from section 4 (1).

### [2] Section 6A Land value

Omit section 6A (3).

### [3]–[6] (Repealed)

### [7] Section 58F Land rating factors—certain classes of lease from the Crown

Omit section 58F (1) (f).

### [8] Section 60A Determination of values at request of council

Omit section 60A (1) (b).

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

Insert at the end of clause 1 (1):

*Water Management Act 2000*

### [10] Schedule 2, Part 3

Insert after Part 2:

## Part 3 Provisions consequent on enactment of **Water**

## Management Act 2000

### 3 Water rights

- (1) Section 6A (3), as in force immediately before the commencement of clause 9 of Schedule 9 to the *Water Management Act 2000*, continues to apply as if an access licence arising under subclause (1) (a) of that clause were a water right in relation to:
- (a) the land specified in the entitlement from which the access licence arose as the land to which that entitlement related immediately before that commencement, or
  - (b) if the access licence is transferred or amended so as to specify some other land as the land to which the access licence relates, that other land.
- (2) This clause ceases to apply on the commencement of Schedule 8.29 [2] to the *Water Management Act 2000*.

### 8.30 Water Management Act 2000

#### [1] Chapter 5, Part 1 Fish River water supply scheme

Omit the Part.

#### [2] Chapter 5, Part 2 Hunter Valley flood mitigation works

Omit the Part.

#### [3] Chapter 5, Part 3 Lowbidgee flood control and irrigation works

Omit the Part.

#### [4] Schedule 3 Water supply authorities

Omit "Benerembah Irrigation District Environment Protection Trust" from Part 1 of Schedule 3.

#### [5] Schedule 3 Water supply authorities

Omit "Upper Parramatta River Catchment Trust" from Part 1 of Schedule 3.

## Schedule 9 Savings, transitional and other provisions

(Section 403)

### Part 1 Preliminary

#### 1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act

[Water Management Amendment Act 2002](#)

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.
- (4) If the regulations so provide, such a provision has effect despite any other provision of this Schedule.

### Part 2 Provisions consequent on enactment of this Act

#### Division 1 General

##### 2 Definitions

In this Part:

***amended legislation*** means any Act amended by Schedule 8, as so amended.

***appointed day***, in its application to any act, matter, thing or circumstance arising under clause 3 or under Division 2 or 3, means:

- (a) in relation to a provision of the [Water Act 1912](#) or the [Rivers and Foreshores Improvement Act 1948](#), the day on which that provision ceases to have effect in relation to that act, matter, thing or circumstance, and
- (b) in relation to a provision of this Act, the day on which that provision comes into effect

in relation to that act, matter, thing or circumstance.

**Note—**

Pursuant to sections 55A and 88A of this Act, and complementary provisions in the 1912 Act and 1948 Act, the provisions of Parts 2 and 3 of Chapter 3 of this Act may come into operation, and the provisions of the 1912 Act and 1948 Act may cease to have effect, at different times for different purposes.

**appointed day**, in its application to any act, matter, thing or circumstance arising under this Part (except clause 3 and Divisions 2 and 3), means:

- (a) in relation to a provision of the old legislation that has been repealed or amended by this Act, the day on which the repeal or amendment commences, or
- (b) in relation to a new provision inserted into the amended legislation by this Act, the day on which the new provision commences.

**old legislation** means:

- (a) any Act repealed by Schedule 7, as in force immediately before its repeal, and
- (b) any Act amended by Schedule 8, as in force immediately before its amendment.

### **3 Existing water management works**

- (1) Nothing in this Act requires a person to hold an approval:
  - (a) to complete the construction of a water management work whose construction was lawfully commenced before the appointed day, or
  - (b) to use a water management work whose construction was lawfully commenced before the appointed day, whether or not its construction was completed before the appointed day.
- (2) Subclause (1) does not prevent a direction from being given and enforced under Chapter 7 in relation to a water management work referred to in that subclause.
- (3) This clause does not apply to a water management work that, immediately before the appointed day, was the subject of an entitlement referred to in clause 9, or a permit referred to in clause 15.
- (4) This clause ceases to have effect on a day to be appointed by proclamation.

### **4 Delegations**

Any delegation that was in force immediately before the appointed day under a provision of the old legislation for which there is a corresponding provision in the amended legislation is taken to be a delegation in force under the corresponding provision of the amended legislation.

## 5 Construction of references to Water Administration Ministerial Corporation

Subject to this Schedule and the regulations, in any Act or instrument, a reference to the Water Administration Ministerial Corporation (however described), in relation to a function that under the old legislation was exercisable by the Ministerial Corporation but under this Act is exercisable by the Minister, extends to the Minister.

## 6 Construction of other references

Subject to this Schedule and the regulations, in any Act or instrument:

- (a) a reference to a provision of the old legislation for which there is a corresponding provision in the amended legislation extends to the corresponding provision of the amended legislation, and
- (b) a reference to any act, matter or thing referred to in a provision of the old legislation for which there is a corresponding provision in the amended legislation extends to the corresponding act, matter or thing referred to in the corresponding provision of the amended legislation.

## 7 General saving

Subject to this Schedule and the regulations:

- (a) anything begun before the appointed day under a provision of the old legislation for which there is a corresponding provision in the amended legislation may be continued and completed under the old legislation as if this Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the old legislation for which there is a corresponding provision in the amended legislation (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of the amended legislation.

## Division 2 **Water Act 1912**

### 8 Definition

In this Division, **the 1912 Act** means the [Water Act 1912](#), as in force immediately before the appointed day.

### 9 Entitlements

- (1) An entitlement that, immediately before the appointed day, was in force under the 1912 Act:
  - (a) to the extent to which it entitles any person or body to take a specified quantity of water, is taken to have expired and been replaced by an access licence held by that person or body for the quantity of water so specified (subject to such of the conditions of the entitlement as are applicable to an access licence), and

- (b) to the extent to which it entitles any person or body to use a specified water management work, is taken to have expired and been replaced by a water management work approval held by that person or body in respect of that work (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and
- (c) is taken to have expired and been replaced by a water use approval entitling that person or body to use water on the land to which the entitlement relates (subject to such of the conditions of the entitlement as are applicable to an approval of that kind):
  - (i) except as provided by subparagraph (ii), for any purpose, or
  - (ii) if the conditions of the entitlement restrict the use of water to specified purposes, for the purposes so specified.
- (2) Subclause (1) (a) does not apply to an entitlement comprising a licence under Part 5 of the 1912 Act (other than a licence for water from the Great Artesian Basin) that is subject to a condition restricting its use to stock or domestic, or stock and domestic, purposes.
- (3) Subclause (1) (a) does not apply to an entitlement that, immediately before the appointed day, was held by a local water utility.
- (4) The reference in subclause (1) (a) to the conditions of an entitlement include a reference to any water allocation determined in respect of that entitlement under a volumetric water allocations scheme in force under Division 4B of Part 2 of the 1912 Act.
- (4A) Two or more co-holders of an access licence arising under this clause are taken to hold the access licence:
  - (a) as notified by them by instrument in writing lodged with the Minister before the appointed day, or
  - (b) if no such instrument is lodged before the appointed day, as tenants in common in equal shares.
- (4B) An access licence arising under this clause is to include any mandatory conditions that are required by any relevant management plan to be imposed on the licence.
- (4C) The Minister is to cause notice of the terms of any access licence or approval arising under this clause to be given to the holder of that approval.
- (4D) An access licence or approval arising under this clause is to be in such form as the Minister may determine.
- (5) In the case of a licence under section 13A or an authority under section 20CA of the

1912 Act, the holder of the corresponding water management work approval referred to in subclause (1) (b) may continue to exercise the rights conferred by section 13A (7) or 20CA (8) of that Act, as the case requires, while that approval (including the first renewal of that approval) remains in force.

**Note—**

After that approval expires, the continued exercise of those rights will need to be supported by an easement, whether negotiated by agreement between the respective landholders or imposed by means of an order under section 88K of the [Conveyancing Act 1919](#).

- (6) An access licence arising under subclause (1) (a), a water management work approval arising under subclause (1) (b) and a water use approval arising under subclause (1) (c) each have effect for:
- (a) except as provided by paragraph (b):
    - (i) 2 years from the appointed day, or
    - (ii) for the balance of the period for which the entitlement from which it arises would (but for this Act) have remained in force,whichever is the longer, or
  - (b) in the case of an access licence or approval arising from an entitlement for an indefinite period, 10 years.
- (7) In this clause, **entitlement** means:
- (a) a licence, permit, authority, irrigation corporation licence or group licence referred to in Part 2 of the 1912 Act, or
  - (b) a right to take and use water referred to in section 38B of the 1912 Act, or
  - (c) a licence referred to in Part 5 of the 1912 Act, or
  - (d) an approval referred to in Part 8 of the 1912 Act, or
  - (e) a water management licence under Part 9 of the 1912 Act, or
  - (f) any arrangement for the supply of water to the Inverell Shire Council by the Ministerial Corporation, or
  - (g) any other right, interest, privilege, permission or authority that is declared by the regulations to be an entitlement for the purposes of this clause.

**9A Registration of interests in replacement access licences**

- (1) To the extent to which, immediately before the appointed day, a person had an interest in an entitlement, that person is taken to have an equivalent interest in the access licence arising from the entitlement under clause 9.

- (2) If the interest in the entitlement included a mortgage of land under the provisions of the *Real Property Act 1900*, the equivalent interest in the access licence is taken to include a power of sale with respect to the licence.
- (3) Subject to the regulations, the *Real Property Act 1900* applies to the exercise of a power of sale with respect to an access licence pursuant to subclause (2) in the same way as it applies to the exercise of a power of sale with respect to land under the provisions of that Act.
- (4) If such an interest is registered in the General Register of Deeds within 12 months after the appointed day:
  - (a) it ranks, with respect to any other such interest, in the same priority as it previously ranked under section 184G of the *Conveyancing Act 1919* or section 36 of the *Real Property Act 1900*, or under Part 2K.3 of the *Corporations Act 2001* of the Commonwealth, as the case may be, and
  - (b) it ranks before any interest in the licence that arises after the appointed day, regardless of when that other interest is registered.
- (5) The Registrar-General must cause notice of the effect of subclause (4) to be recorded in the index of registers kept under section 198 of the *Conveyancing Act 1919* in connection with each entry in the index that relates to an access licence.
- (6) The regulations may make provision with respect to the procedures to be followed in connection with the registration of interests referred to in subclause (4).

#### **9B Conversion of volumetric shares to proportional shares**

- (1) This clause applies to any access licence that arises from an entitlement, as referred to in clause 9 (a ***replacement access licence***).
- (2) The Minister, by order in writing, may at any time, do either or both of the following:
  - (a) convert the share components of access licences from a volumetric basis (as referred to in section 56 (2) (a)) to a proportional basis (as referred to in section 56 (2) (b) or (c)),
  - (b) apply uniform extraction components to access licences, but having regard to the existing conditions of those licences,for access licences generally, or for access licences of a specified category or subcategory, with respect to one or more water sources.
- (3) The Minister must cause notice of the order to be given, in accordance with the regulations, to the holder of each access licence affected by the order and to the Registrar-General.



- (4) No compensation is payable in relation to an order made by the Minister under this section.

### **9C Off-allocation water**

Without limiting clause 1, the regulations may provide that the following persons or classes of persons are taken to hold supplementary water access licences:

- (a) specified persons or classes of persons who, immediately before the appointed day, held entitlements to which a direction under section 20AA of the 1912 Act had related at any time during the previous 5 years, and
- (b) specified persons or classes of persons who, immediately before the appointed day, held additional licences referred to in section 18 (2) of the 1912 Act.

### **10 Local water utility licences**

- (1) On the appointed day, the Minister must grant an access licence to any local water utility that, immediately before the appointed day, held an entitlement in relation to a water supply work.
- (2) The share component of such an access licence is to be expressed as a specified volume per year.
- (3) Subject to subclauses (4) and (5), the specified volume in relation to an access licence may be any of the following:
  - (a) the quantity of water specified in the relevant entitlements held by the local water utility immediately before the appointed day,
  - (b) a quantity of water calculated by reference to the nature and extent of the area to which the licence relates:
    - (i) having regard to population levels, geographical location and current water usages, and
    - (ii) assuming that reasonable demand management strategies are implemented in that area,
  - (c) a quantity of water calculated on the basis of the current yield of the water management works under the control or management of the local water utility by which the licence is taken to be held.
- (4) The yield referred to in subclause (3) (c) is to be determined with regard to historical stream flow data, and with regard to drought management strategies and demand management practices established by the local water utility concerned.
- (5) In the case of an access licence whose specified volume is greater than the quantity of water currently taken and used under the entitlement referred to in subclause (1),

the Minister may at any time impose a condition on the access licence to the effect that water in excess of that quantity is not to be taken or used except with the consent of the Minister.

- (6) Such a condition is not to be imposed unless the Minister is satisfied that the imposition of such a condition is necessary in the public interest.

### **11 Rates and charges**

Any rates and charges fixed under Part 3 or 7 of the 1912 Act are taken to have been fixed under Part 3 of Chapter 5 of this Act.

### **12 Floodplains**

Subject to the regulations, any land that, immediately before the appointed day, was designated as a floodplain under Part 8 of the 1912 Act is taken to be a floodplain for the purposes of this Act.

### **13 Floodplain management plans**

A floodplain management plan adopted under section 166A of the 1912 Act is taken to be a Minister's plan made under this Act in relation to floodplain management.

### **13A Regulations**

Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the following regulations:

- (a) the *Water (Part 2—General) Regulation 1997*,
- (b) the *Water (Part 5—Bore Licences) Regulation 1995*,
- (c) the *Water (Part 5—Drillers' Licences) Regulation 1995*,
- (d) the *Water (Part 8—General) Regulation 1995*.

## **Division 3 Rivers and Foreshores Improvement Act 1948**

### **14 Definition**

In this Division, **the 1948 Act** means the *Rivers and Foreshores Improvement Act 1948*, as in force immediately before the appointed day.

### **15 Permits**

- (1) A permit that, immediately before the appointed day, was in force under Part 3A of the 1948 Act is taken to have expired and been replaced by a controlled activity approval entitling its holder to carry out the activity specified in the permit on the land to which the permit relates, and is taken to be subject to the same conditions as it was subject under that Act.

- (2) A controlled activity approval arising under subclause (1) has effect for the balance of the term for which it was granted.

## **Division 4 Water Administration Act 1986**

### **16 Definition**

In this Division, **the 1986 Act** means the *Water Administration Act 1986*, as in force immediately before the appointed day.

### **17 Continuation of Ministerial Corporation**

The Water Administration Ministerial Corporation constituted by Part 2 of Chapter 8 of this Act is a continuation of, and the same legal entity as, the Water Administration Ministerial Corporation constituted by the 1986 Act.

### **18 Continued operation of section 19**

Section 19 of the 1986 Act continues to apply to acts, matters and things that arose before the appointed day.

## **Division 5 Water Supply Authorities Act 1987**

### **19 Definition**

In this Division, **the 1987 Act** means the *Water Supply Authorities Act 1987*, as in force immediately before the appointed day.

### **20 Continuation of water supply authorities**

- (1) Each water supply authority constituted by Part 2 of Chapter 6 of this Act is a continuation of, and the same legal entity as, the water supply authority of the same name constituted by the 1987 Act.
- (2) Subject to the regulations, the area of operations of a water supply authority constituted by Part 2 of Chapter 6 of this Act is the same as the area of operations for the corresponding water supply authority constituted by the 1987 Act.
- (3) Subject to this Act, the members of a water supply authority constituted by the 1987 Act continue to hold office as members of the corresponding water supply authority constituted by Part 2 of Chapter 6 of this Act for the residue of their respective terms of office under the 1987 Act.

### **21 Special areas**

A special area for a water supply authority constituted by the 1987 Act is taken to be a special area for the corresponding water supply authority constituted by Part 2 of Chapter 6 of this Act.

## 22 Certificates of compliance

A certificate of compliance granted by a water supply authority under the 1987 Act is taken to be a certificate of compliance issued by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.

## 23 Service charges

- (1) An order declaring a development area, charging year, drainage area, floodplain, river management area or special industry under section 28 of the 1987 Act is taken to be the corresponding order under Part 2 of Chapter 6 of this Act.
- (2) Service charges levied by a water supply authority under the 1987 Act are taken to be service charges levied by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.
- (3) Determinations made by a water supply authority under section 34 of the 1987 Act are taken to be determinations made by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.
- (4) Assessments made by a water supply authority under section 35 or 36 of the 1987 Act are taken to be assessments made by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.
- (5) A certificate issued by a water supply authority under section 41 of the 1987 Act is taken to be a certificate issued by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.

## 24 Penalty notices

A penalty notice issued by an authorised employee of a water supply authority under section 51 of the 1987 Act is taken to have been issued by an authorised employee or agent of the corresponding water supply authority under Part 2 of Chapter 6 of this Act, and may be enforced accordingly.

## 25 Regulations

Any regulations in force under the 1987 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

## Division 6 Fish River Water Supply Administration Act 1945

### 26 Definition

In this Division, **the 1945 Act** means the *Fish River Water Supply Administration Act 1945*, as in force immediately before the appointed day.

## 27 Contributions by councils

Any amount payable by a council under Part 4 of the 1945 Act is taken to be payable under Part 1 of Chapter 5 of this Act.

## 28 Regulations

Any regulations in force under the 1945 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

## Division 7 Hunter Valley Flood Mitigation Act 1956

### 29 Definition

In this Division, **the 1956 Act** means the *Hunter Valley Flood Mitigation Act 1956*, as in force immediately before the appointed day.

### 30 Permissions

Any permission in force under section 12 of the 1956 Act immediately before the appointed day, and any approval in force under section 16 of the 1956 Act immediately before the appointed day, are taken to be consents in force under Part 2 of Chapter 5 of this Act.

### 31 Control and management of works

Any work that, immediately before the appointed day, was under the control and management of the Ministerial Corporation under the 1956 Act is taken to be under the control and management of the Ministerial Corporation under Part 2 of Chapter 5 of this Act.

### 32 Finance

Any amount for which the Hunter Catchment Management Trust or a local council was liable under the 1956 Act immediately before the appointed day is taken to be an amount for which the Trust or council is liable under Part 2 of Chapter 5 of this Act.

### 33 Regulations

Any regulations in force under the 1956 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

## Division 8 Irrigation Corporations Act 1994

### 34 Definition

In this Division, **the 1994 Act** means the *Irrigation Corporations Act 1994*, as in force immediately before the appointed day.

### **35 Operating licences**

Any operating licence granted to an irrigation corporation under the 1994 Act is taken to be an operating licence under Part 1 of Chapter 4 of this Act.

### **36 Continuation of indemnity**

Section 75 of the 1994 Act continues to apply to matters arising under that Act before the appointed day as if this Act had not been enacted.

### **37 Regulations**

Any regulations in force under the 1994 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

## **Division 9 Private Irrigation Districts Act 1973**

### **38 Definition**

In this Division, **the 1973 Act** means the *Private Irrigation Districts Act 1973*, as in force immediately before the appointed day.

### **39 Private districts**

- (1) A provisional private domestic and stock water supply district constituted under the 1973 Act is taken to be a private domestic and stock water supply district constituted under Part 2 of Chapter 4 of this Act.
- (2) A private domestic and stock water supply district constituted under the 1973 Act is taken to be a private domestic and stock water supply district constituted under Part 2 of Chapter 4 of this Act.
- (3) A provisional private domestic and stock water supply and irrigation district constituted under the 1973 Act is taken to be a private domestic and stock water supply and irrigation district constituted under Part 2 of Chapter 4 of this Act.
- (4) A private domestic and stock water supply and irrigation district constituted under the 1973 Act is taken to be a private domestic and stock water supply and irrigation district constituted under Part 2 of Chapter 4 of this Act.

### **40 Boards of management**

- (1) The Board of management of a provisional private district or private district under the 1973 Act is taken to be a private irrigation board under Part 2 of Chapter 4 of this Act.
- (2) Subject to this Act, the members of a Board of management of a provisional private district or private district constituted under the 1973 Act continue to hold office as members of the corresponding private irrigation board under this Act for the residue of their respective terms of office under the 1973 Act.

#### **41 Control and management of works**

Any work that, immediately before the appointed day, was under the control and management of the Board of management of a provisional private district or private district under the 1973 Act is taken to be under the control and management of the corresponding private irrigation board under Part 2 of Chapter 4 of this Act.

#### **42 Rates and charges**

- (1) Any rates and charges fixed by the Board of management of a provisional private district or private district under the 1973 Act before the appointed day are taken to have been fixed by the corresponding private irrigation board under Part 2 of Chapter 4 of this Act.
- (2) A certificate issued by the Board of management of a provisional private district or private district under the 1973 Act before the appointed day is taken to be a certificate issued by the corresponding private irrigation board under Part 2 of Chapter 4 of this Act.

#### **43 Water allocations**

Any determination made by the Board of management of a provisional private district or private district under the 1973 Act before the appointed day is taken to be a determination made by the corresponding private irrigation board under Part 2 of Chapter 4 of this Act.

#### **44 By-laws**

Any by-laws made the Board of management of a provisional private district or private district under the 1973 Act before the appointed day are taken to be by-laws made by the corresponding private irrigation board under Part 2 of Chapter 4 of this Act, and may be amended and repealed accordingly.

#### **45 Regulations**

Any regulations in force under the 1973 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

### **Division 10 Drainage Act 1939**

#### **46 Definition**

In this Division, **the 1939 Act** means the *Drainage Act 1939*, as in force immediately before the appointed day.

#### **47 Rates**

Any rate levied under Division 2 of Part 5 of the 1939 Act before the appointed day is taken to be a rate levied under Division 3 of Part 3 of Chapter 4 of this Act.

## 48 Regulations

Any regulations in force under the 1939 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

## Division 11

### 49, 50 (Repealed)

## Division 12 Transfer of assets, rights and liabilities

### 51 Definitions

In this Part:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**liabilities** means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

**rights** means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

**transfer order** means an order made by the Minister under clause 52.

**transferee** means the person to whom any staff, assets, rights or liabilities are transferred by a transfer order.

**transferor** means the person from whom any staff, assets, rights or liabilities are transferred by a transfer order.

### 52 Transfer orders

- (1) The Minister may, by order in writing, transfer to any public authority (including any water supply authority) any assets, rights or liabilities (but not any staff) of the Minister or the Ministerial Corporation with respect to the Fish River water supply scheme referred to in Part 1 of Chapter 5.
- (2) The Minister may, by order in writing, transfer to any public authority any staff, assets, rights or liabilities of the Minister or the Ministerial Corporation with respect to the Hunter Valley flood mitigation works referred to in Part 2 of Chapter 5.
- (3) The Minister may, by order in writing, transfer to any private irrigation board any assets, rights or liabilities (but not any staff) of the Minister or the Ministerial Corporation with respect to the Lowbidgee flood control and irrigation works referred to in Part 3 of Chapter 5.



- (4) The Minister may, by order in writing, transfer to any public authority, irrigation corporation or private irrigation board any assets, rights or liabilities (but not any staff) of the Benerembah Irrigation District Environment Protection Trust referred to in Part 1 of Schedule 3.
- (5) The Minister may, by order in writing, transfer to any public authority any assets, rights or liabilities (but not any staff) of the Upper Parramatta River Catchment Trust referred to in Part 1 of Schedule 3.

### **53 Transfer of staff**

Any person who, by virtue of a transfer order, becomes a member of staff of a transferee is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person not become a member of staff of the transferee but remained a member of staff of the transferor.

### **54 Transfer of assets, rights and liabilities**

- (1) When any assets, rights or liabilities are transferred by a transfer order, the following provisions have effect:
  - (a) the assets of the transferor are, by operation of this clause, vested in the transferee,
  - (b) the rights and liabilities of the transferor become, by operation of this clause, the rights and liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights and liabilities of the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities of the transferor before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which it has any effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to the assets, rights or liabilities) taken to include a reference to the transferee.
- (2) The operation of this clause is not to be regarded:
  - (a) as a breach of confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or

(c) as giving rise to any remedy by a party to an instrument, or causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or

(d) as an event of default under any contract or other instrument.

(3) No attornment to the transferee by a lessee from the transferor is required.

(4) A transfer is subject to the terms and conditions of the transfer order by which it is effected.

(5) No compensation is payable to any person in connection with a transfer under this Division except to the extent (if any) to which the transfer order giving rise to the transfer so provides.

(6) Subclause (5) does not affect the rights of any member of staff referred to in clause 53.

#### **55 Date of vesting**

A transfer takes effect on the date specified in the transfer order by which it is effected.

#### **56 Consideration for vesting**

The Minister may, by order in writing, specify the consideration on which a transfer is made and the value or values at which the assets, rights or liabilities are transferred.

#### **57 Payment of duty**

Duty under the *Duties Act 1997* is not chargeable for or in respect of anything certified by the Minister as having been done in consequence of the operation of this clause (for example, the transfer or conveyance of an interest in land).

#### **58 Confirmation of vesting**

(1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities under this Division.

(2) A notice under this clause is conclusive evidence of the transfer to which it relates.

### **Part 3 Provisions consequent on enactment of [Water Management Amendment Act 2002](#)**

#### **59 Definitions**

In this Part:

***the 2002 amending Act*** means the [Water Management Amendment Act 2002](#).

## 60 Guidelines under section 306 (3) (c)

Any guidelines in force under section 306 (3) (c) immediately before its amendment by the 2002 amending Act are taken to be guidelines issued by the Minister for the purposes of that paragraph as amended by that Act.

## Dictionary

(Section 4)

**access licence** means an access licence referred to in section 56, and includes a renewal of an access licence.

**access licence dealing principles** means principles established under section 71L.

**access licence dealing rules** means the rules established by the water sharing provisions of a management plan, as referred to in section 20 (1) (d).

**activity approval** means a controlled activity approval or an aquifer interference approval.

**approval** means a water use approval, a water management work approval or an activity approval, and includes a renewal of an approval.

**aquifer** means a geological structure or formation, or an artificial landfill, that is permeated with water or is capable of being permeated with water.

**aquifer interference activity** means:

- (a) the penetration of an aquifer, or
- (b) the interference with water in an aquifer, or
- (c) the obstruction of the flow of water in an aquifer.

**aquifer interference approval** means an approval referred to in section 91 (3).

**authorised officer**, in relation to a provision of this Act, means a person authorised by the Minister to exercise the functions conferred on an authorised officer by that provision, whether generally or in a particular case.

**available water**, in relation to a water management area or water source, means the water that is available in that area or water source in accordance with an available water determination that is in force in respect of that area or water source.

**available water determination** means a determination referred to in section 59.

**basic landholder rights** means domestic and stock rights, harvestable rights or native title rights.

**bulk access regime** means a bulk access regime established by a management plan, as referred to in section 20 (1) (e), or by a Minister's plan, and includes a bulk access regime as varied by the Minister under section 45.

**coastal waters of the State** has the same meaning as it has in Part 10 of the [Interpretation Act](#)

1987.

**construct** a work includes install, maintain, repair, alter or extend the work.

**controlled activity** means:

- (a) the erection of a building or the carrying out of a work (within the meaning of the *Environmental Planning and Assessment Act 1979*), or
- (b) the removal of material (whether or not extractive material) or vegetation from land, whether by way of excavation or otherwise, or
- (c) the deposition of material (whether or not extractive material) on land, whether by way of landfill operations or otherwise, or
- (d) the carrying out of any other activity that affects the quantity or flow of water in a water source.

**controlled activity approval** means an approval referred to in section 91 (2).

**Crown land** has the same meaning as it has in the *Crown Lands Act 1989*.

**Department** means the Department of Land and Water Conservation.

**development** and **carry out development** have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

**development consent** has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

**Director-General** means the Director-General of the Department.

**domestic and stock rights** means the rights conferred on a landholder by section 52.

**drainage work** means a work (such as a pump, pipe or channel) that is constructed or used for the purpose of draining water from land, including a reticulated system of such works, and includes all associated pipes, sluices, sluiceways, valves and equipment, but does not include:

- (a) any sewage work (within the meaning of Part 2 of Chapter 6), or
- (b) any work declared by the regulations not to be a drainage work.

**drainage work approval** means an approval referred to in section 90 (3).

**environment** includes all aspects of the surroundings of human beings, whether affecting them as individuals or in their social groupings.

**environmental water rules** means environmental water rules referred to in section 8 (2).

**estuary** means:

- (a) any part of a river whose level is periodically or intermittently affected by coastal tides, or
- (b) any lake or other partially enclosed body of water that is periodically or intermittently open to the sea, or

(c) anything declared by the regulations to be an estuary,

but does not include anything declared by the regulations not to be an estuary.

**exercise** a function includes perform a duty.

**extractive material** means earth, sand, gravel, rock, mud, clay or any other such substance.

**flood work** means a work (such as a barrage, causeway, cutting or embankment):

(a) that is situated:

(i) in or in the vicinity of a river, estuary or lake, or

(ii) within a floodplain, and

(b) that is of such a size or configuration that, regardless of the purpose for which it is constructed or used, it is likely to have an effect on:

(i) the flow of water to or from a river, estuary or lake, or

(ii) the distribution or flow of floodwater in times of flood,

and includes all associated pipes, valves and equipment, but does not include any work declared by the regulations not to be a flood work.

**flood work approval** means an approval referred to in section 90 (4).

**floodplain** means land declared by the regulations to be a floodplain.

**function** includes a power, authority and duty.

**General Register of Deeds** means the General Register of Deeds maintained under Part 23 of the [Conveyancing Act 1919](#).

**harvestable rights** mean the rights conferred on a landholder by a harvestable rights order.

**harvestable rights area** means an area of land that is constituted as a harvestable rights area by a harvestable rights order.

**harvestable rights order** means an order in force under section 54.

**implementation program** means a program referred to in section 51.

**irrigation corporation** means an irrigation corporation referred to in Part 1 of Chapter 4.

**lake** includes:

(a) a wetland, a lagoon, a saltmarsh and any collection of still water, whether perennial or intermittent and whether natural or artificial, and

(b) any water declared by the regulations to be a lake,

whether or not it also forms part of a river or estuary, but does not include any water declared by the regulations not to be a lake.

**land** includes any water source, and also includes the land on or in which any water source is situated.

**landholder**, in relation to land, means:

- (a) the owner of the land or (if the owner is not in occupation of the land) the lawful occupier of the land, or
- (b) the local council, in the case of land that comprises:
  - (i) a public road vested in, or under the control or management of, the local council, or
  - (ii) the site of a work that is, or is proposed to be, constructed for the local council.

**landholding** means a holding that is owned or occupied by a person (either alone or together with some other person with whom he or she has an association of a kind prescribed by the regulations), being a holding that comprises:

- (a) a parcel of land that is separately valued under the [Valuation of Land Act 1916](#), or
- (b) two or more such parcels that together form a single area of land (ignoring any division that arises merely because the land is transected by a road or river).

**local council** means the council of a local government area.

**local newspaper**, in relation to any area or locality, means a newspaper circulating within that area or locality.

**local water utility** means:

- (a) a water supply authority, or
- (b) a council or county council exercising water supply functions under Division 2 of Part 3 of Chapter 6 of the [Local Government Act 1993](#).

**major utility** means a person or body referred to in Schedule 2.

**management committee** means a committee referred to in section 12.

**management plan** means a plan referred to in section 15 and, in relation to any land that is not within a water management area, or is within a water management area for which there is no relevant management plan, includes a Minister's plan.

**Ministerial Corporation** means the Water Administration Ministerial Corporation constituted by section 371.

**Minister's plan** means a plan referred to in section 50.

**native title holder**, in relation to any waters, means a person who holds native title rights in relation to those waters pursuant to a determination under the [Native Title Act 1993](#) of the Commonwealth.

**native title rights** means non-exclusive rights to take and use water for personal, domestic and non-commercial communal purposes (including the purposes of drinking, food preparation, washing, manufacturing traditional artefacts, watering domestic gardens, hunting, fishing and gathering and

recreation, cultural and ceremonial purposes).

**owner** of land means the only person who, or each person who jointly or severally, at law or in equity:

- (a) is entitled to the land for an estate of freehold in possession, or
- (b) is a person to whom the Crown has contracted to sell the land under the [Crown Lands Act 1989](#), or
- (c) is entitled to receive, or receives, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise,

and, in relation to land of the Crown other than land for which there is an owner under paragraph (b) or (c), means the Crown.

**principles of ecologically sustainable development** means the principles of ecologically sustainable development described in section 6 (2) of the [Protection of the Environment Administration Act 1991](#).

**private drainage board** means a private drainage board referred to in Part 3 of Chapter 4.

**private irrigation board** means a private irrigation board referred to in Part 2 of Chapter 4.

**private water trust** means a private water trust referred to in Part 4 of Chapter 4.

**public authority** means:

- (a) a Minister of the Crown, or
- (b) a Government Department or Administrative Office, or
- (c) a statutory body representing the Crown, or
- (d) a statutory State owned corporation (or any of its subsidiaries) within the meaning of the [State Owned Corporations Act 1989](#), or
- (e) a council or county council within the meaning of the [Local Government Act 1993](#),

but does not include any person or body declared by the regulations not to be a public authority.

**regulated river** means a river that is declared by the Minister, by order published in the Gazette, to be a regulated river.

**Editorial note—**

For orders pursuant to this definition see Gazettes No 264 of 27.12.2002, p 11119, No 45 of 14.2.2003, p 1664, No 49 of 21.2.2003, pp 2504, 2506, 2508 and No 52 of 26.2.2003, pp 3135, 3140.

**river** includes:

- (a) any watercourse, whether perennial or intermittent and whether comprising a natural channel or a natural channel artificially improved, and
- (b) any tributary, branch or other watercourse into or from which a watercourse referred to in paragraph (a) flows, and

(c) anything declared by the regulations to be a river,

whether or not it also forms part of a lake or estuary, but does not include anything declared by the regulations not to be a river.

**security interest**, in relation to an access licence, means an interest in the licence, or a power with respect to the licence, that, in the instrument from which it arises, is expressed to secure the payment of a debt or the performance of some other obligation under a contract or other legally enforceable arrangement.

**State's water rights** means the rights referred to in section 392 (1).

**statutory body** means a corporation that is incorporated by or under an Act, other than:

- (a) a company within the meaning of the *Corporations Act 2001* of the Commonwealth, and
- (b) a society within the meaning of the *Co-operative Housing and Starr-Bowkett Societies Act 1998* or a co-operative within the meaning of the *Co-operatives Act 1992*, or
- (c) an incorporated association within the meaning of the *Associations Incorporation Act 1984*.

**unregulated river** means a river that is not a regulated river.

**use** a water management work means:

- (a) in relation to a water supply work:
  - (i) to operate the work for any purpose referred to in paragraph (a), (b) or (c) of the definition of **water supply work**, or
  - (ii) to allow the work to operate for that purpose, or
- (b) in relation to a drainage work:
  - (i) to operate the work for the purpose of draining water from land, or
  - (ii) to allow the work to operate for that purpose, or
- (c) in relation to a flood work:
  - (i) to operate the work for the purpose of influencing the flow of floodwater in the vicinity of the land on which the work is situated, or
  - (ii) to allow the work to operate for that purpose.

**Water Advisory Council** means the Water Advisory Council established by section 369.

**water allocation** means the water to which the holder of an access licence is entitled from time to time under the licence, as recorded in the account for the licence referred to in section 85 (1).

**water bore** means a bore that is used:

- (a) for the purpose of finding an aquifer, or
- (b) for the purpose of testing the production capacity or water quality of an aquifer, or



(c) for the purpose of taking water from, or discharging anything into, an aquifer, or

(d) for any other purpose prescribed by the regulations,

being a bore that has been artificially created, widened, lengthened or modified by means of drilling, boring, augering, digging or jetting.

**water management area** means an area of land that is constituted as a water management area by an order in force under section 11.

**water management principles** means water management principles referred to in section 5.

**water management work** means a water supply work, a drainage work or a flood work.

**water management work approval** means a water supply work approval, a drainage work approval or a flood work approval.

**water return flow rules** means rules established under section 75 for the regaining of water allocations under an access licence.

**water source** means the whole or any part of:

(a) one or more rivers, lakes or estuaries, or

(b) one or more places where water occurs naturally on or below the surface of the ground,

and includes the coastal waters of the State.

**water supply authority** means a water supply authority referred to in Schedule 3.

**water supply work** means:

(a) a work (such as a water pump or water bore) that is constructed or used for the purpose of taking water from a water source, or

(b) a work (such as a tank or dam) that is constructed or used for the purpose of:

(i) capturing or storing rainwater run-off, or

(ii) storing water taken from a water source, or

(c) a work (such as a water pipe or irrigation channel) that is constructed or used for the purpose of conveying water to the point at which it is to be used, or

(d) any work (such as a bank or levee) that has the effect of diverting away from a water source any overflow from the water source, or

(e) any work (such as a weir) that has the effect of impounding water in a water source,

including a reticulated system of such works, and includes all associated pipes, sluices, valves and equipment, but does not include:

(f) any work (other than a water supply work under the control or management of the Sydney Water Corporation, the Hunter Water Corporation or a local water utility) that receives water from a water

supply work under the control or management of the Sydney Water Corporation, the Hunter Water Corporation or a local water utility, or

(g) any work declared by the regulations not to be a water supply work.

**water supply work approval** means an approval referred to in section 90 (2).

**water use approval** means an approval referred to in section 89.

**waterfront land** means:

- (a) the bed of any river, together with any land lying between the bed of the river and a line drawn parallel to, and the prescribed distance inland of, the highest bank of the river, or
- (a1) the bed of any lake, together with any land lying between the bed of the lake and a line drawn parallel to, and the prescribed distance inland of, the shore of the lake, or
- (a2) the bed of any estuary, together with any land lying between the bed of the estuary and a line drawn parallel to, and the prescribed distance inland of, the mean high water mark of the estuary, or
- (b) if the regulations so provide, the bed of the coastal waters of the State, and any land lying between the shoreline of the coastal waters and a line drawn parallel to, and the prescribed distance inland of, the mean high water mark of the coastal waters,

where the prescribed distance is 40 metres or (if the regulations prescribe a lesser distance, either generally or in relation to a particular location or class of locations) that lesser distance. Land that falls into 2 or more of the categories referred to in paragraphs (a), (a1) and (a2) may be waterfront land by virtue of any of the paragraphs relevant to that land.