

Water Act 1912 No 44

[1912-44]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[State Water Corporation Act 2004 No 40](#) (not commenced)
- **Proposed repeal**
The Act is to be repealed on the whole commencement of Sch 7, to the extent that it applies to this Act, to the [Water Management Act 2000 No 92](#).

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Water Act 1912 No 44



New South Wales

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Water Act 1912 No 44



New South Wales

An Act to consolidate the Acts relating to Water Rights, Water and Drainage, Drainage Promotion, and Artesian Wells.

Part 1 Preliminary

Division 1 General

1 Name of Act

This Act may be cited as the *Water Act 1912*.

2 Repeal

The Acts in Schedule 1 mentioned are, to the extent therein expressed, hereby repealed.

3 Savings

- (1) Any board constituted under the provisions of any Act hereby repealed, and being in existence at the time of the passing of this Act, shall be deemed to have been constituted under the provisions of this Act.
- (2) All persons appointed, employed, or elected under the provisions of any Act hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed, employed, or elected under the provisions of this Act.
- (3) All proclamations, regulations, and by-laws made under the provisions of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made under the provisions of this Act.
- (4) All licences granted under the provisions of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been granted under the provisions of this Act.
- (5) All fees, rates, charges, and expenses payable, and all penalties incurred, under the provisions of any Act hereby repealed, shall be deemed to be payable and to have been incurred respectively under the corresponding provisions of this Act.
- (6) Any matter or thing duly done under the authority of any Act hereby repealed shall be

deemed to have been duly done under the authority of this Act.

4 Definitions

In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

Crown lands has the meaning given to that expression in the [Crown Lands Consolidation Act 1913](#).

environment includes any one or more of the following:

- (a) land, air and water,
- (b) any organic or inorganic matter and any living organism,
- (c) human-made or modified structures and areas,
- (d) interacting natural ecosystems that include components referred to in paragraphs (a) and (b).

exercise a function includes perform a duty.

function includes a power, authority or duty.

Justice means justice of the peace.

Land district means land district proclaimed under the [Crown Lands Consolidation Act 1913](#).

Local land board, in applying a provision in which the expression occurs, means:

- (a) the local land board constituted under the [Crown Lands Act 1989](#) for the land in relation to which the provision applies, or
- (b) if the land in relation to which the provision applies is land for which there are 2 or more local land boards, such one of those boards as the Ministerial Corporation may nominate.

Ministerial Corporation means the Water Administration Ministerial Corporation constituted by the [Water Administration Act 1986](#).

Prescribed means prescribed by any Part of this Act in which the expression occurs, or by any regulations under that Part.

Western Division has the meaning given to that expression in the [Crown Lands Consolidation Act 1913](#).

4A Inquiries and appeals—requirement to take certain matters into account

- (1) A judicial body is required, in carrying out any of its inquiry or appeal functions under this Act and in making any determination or recommendation with respect to any such inquiry or appeal, to take into account, and to have due regard to, the following matters:
- (a) any relevant policy that concerns the subject-matter of the inquiry or appeal and that is brought to the attention of the judicial body,
 - (b) any State-wide water resource management objectives that are brought to the attention of the judicial body,
 - (c) any relevant inter-government agreement, treaty or arrangement relating to the management, preservation or sharing of the State's water resources that is brought to the attention of the judicial body,
 - (d) the state of water resources, and the state of the environment generally, at a local, regional and State-wide level as brought to the attention of the judicial body,
 - (e) the impact that the judicial body's determination or recommendation could or might have:
 - (i) on the allocation of water resources at a local, regional and State-wide level, and
 - (ii) on other persons who are entitled to take and use water (apart from those to whom the inquiry or appeal relates), and
 - (iii) on the state of water resources, and on the state of the environment generally, at a local, regional and State-wide level, and
 - (iv) in relation to the management, protection and enhancement of the State's water resources.

- (2) In this section:

judicial body means the Land and Environment Court, a local land board or a Magistrate.

relevant policy means any governmental policy relating to the management, protection and enhancement of the State's water resources.

- (3) The Minister may certify, in writing, that a particular policy is, or was, a relevant policy in relation to a particular matter. The certificate is evidence of the relevant policy concerned.

4B-4F (Repealed)

4G Proceedings for offences

- (1) In this section, **the Court** means the Land and Environment Court.
- (2) Proceedings for an offence under this Act or the regulations made thereunder (not being an offence made punishable on indictment) may be taken before a Local Court, or before the Court in its summary jurisdiction.
- (3) If proceedings referred to in subsection (2) in respect of an offence are brought in a Local Court, the maximum monetary penalty that the court may impose in respect of the offence is, notwithstanding any other provisions of this Act:
 - (a) where the offence was committed by a corporation—50 penalty units (including any daily penalty), or
 - (b) where the offence was committed by any other person—40 penalty units (including any daily penalty),or the maximum monetary penalty provided by this Act or the regulations made thereunder in respect of the offence, whichever is the lesser.
- (4) If proceedings referred to in subsection (2) in respect of an offence are brought in the Court in its summary jurisdiction, the Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations made thereunder in respect of the offence.
- (5) Proceedings referred to in subsection (2) in the Court in its summary jurisdiction in respect of an offence may be commenced not later than 6 months after the offence was alleged to have been committed.
- (6) Division 3 of Part 2 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 21.

4H Savings and transitional provisions

Schedule 2 has effect.

Division 2 Relationship with [Environmental Planning and Assessment Act 1979](#)—integrated development

4I Application of Division 2

This Division prevails to the extent of any inconsistency between this Division and any other provision of this Act.

4J Definitions

In this Division:

consent authority has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

development consent has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

integrated development has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

4K Notice of applications

- (1) This section applies to the advertising or giving of notice of an application under section 11 (1) (and that subsection as applied by section 13A (3)), section 18G, section 20A (1) (and that subsection as applied by section 20CA (2) or section 20K (2)), section 113 (2) or section 169.
- (2) The advertising or giving of notice under a provision to which this section applies is not to be given of an application in respect of integrated development of which public notice has been given under the *Environmental Planning and Assessment Act 1979*.

4L Objectors rights of appeal

- (1) This section applies if, in relation to integrated development:
 - (a) a consent authority has obtained the general terms of:
 - (i) a licence proposed to be issued under section 10 in relation to the development, or
 - (ii) a licence proposed to be issued under section 13A in relation to the development, or
 - (iii) a permit proposed to be granted under section 18F in relation to the development, or
 - (iv) an authority proposed to be issued under section 20B in relation to the development, or
 - (v) an authority proposed to be issued under section 20CA in relation to the development, or
 - (vi) a group licence proposed to be issued under section 20L in relation to the development, or
 - (vii) a licence proposed to be granted under section 116 in relation to the development, or
 - (viii) an approval proposed to be granted under Part 8 in relation to the development, or

(b) the Ministerial Corporation fails to inform a consent authority, in accordance with the regulations under the *Environmental Planning and Assessment Act 1979*, whether or not it will grant or issue a licence, permit, authority, group licence or approval referred to in paragraph (a) or of the general terms of such a licence, permit, authority, group licence or approval,

and the consent authority, after obtaining those general terms or after the failure to be informed, has granted development consent to the integrated development.

(2) If this section applies:

(a) a person has no right to make or lodge an objection under section 11 (2) or (2A) (or those subsections as applied by section 13A (3)), section 20A (1A) or (1B) (or those subsections as applied by section 20CA (2) or section 20K (2)) or section 170 (1), and

(b) a public inquiry must not be directed to be held, or held or caused to be held, under section 11 (5), section 13A (4), section 20A (2), section 20CA (4) or section 114, and

(c) a person has no right of appeal to the Land and Environment Court under section 11 (6), section 13A (4), section 20CA (4) or section 171AA (2),

in respect of any matter relating to the licence, permit, authority, group licence or approval concerned.

(3) Subsection (2) (c) does not affect a right of appeal to which an objector may be entitled under section 98 of the *Environmental Planning and Assessment Act 1979*.

(4) In this section:

person includes an applicant, occupier of land, local occupier, owner of land, Board of Management, authority, statutory authority and Ministerial Corporation.

4M Regulations

The Governor may make regulations not inconsistent with this Division prescribing all matters that by this Division are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying this Division into effect.

Part 2 Water rights and works

Division 1 Interpretation

5 Definitions

(1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires:

Authority means an authority issued under Division 4 to construct and use a joint water supply scheme.

Declared local area means an area declared by the Ministerial Corporation under subsection (4) to be a declared local area.

Drainage includes the draining of flood or other waters of a river or lake by means of any work, and **drainage work** includes a work constructed or used for the above purposes.

existing work means a work declared by the Ministerial Corporation under subsection (5) to be an existing work for the purposes of this Part.

Group licence means a group licence issued under Division 4A.

Group licence occupiers, in relation to a group licence, means all of the occupiers of lands to which water is supplied by means of a work in respect of which the group licence is held.

irrigation corporation licence means an irrigation corporation water management works licence granted under the [Irrigation Corporations Act 1994](#).

Joint water supply scheme means any work to which this Part extends which:

- (a) is used or proposed to be used for the purposes of supplying water to the lands of two or more occupiers who are jointly utilising the work or who propose to utilise the work jointly (whether any of those occupiers has occupation of the site of the work or not),
- (b) is used or proposed to be used for the purpose of supplying water for irrigating the land or lands of any occupier or occupiers other than the land or lands of the occupier or occupiers of the site of the work, or
- (c) is used or proposed to be used (otherwise than pursuant to a licence granted before the commencement of the [Water, Crown Lands and Other Acts \(Amendment\) Act 1970](#)) for the purpose of supplying water for irrigating a holding (not being a riparian holding) or part thereof, where that water is, or is to be, conveyed wholly or partly by a work that is used or proposed to be used by any occupier or occupiers (not being the occupier or occupiers of the site of the work) for the purpose of conveying that water in accordance with a right conferred by this Part or pursuant to a licence, authority or permit.

Lake includes a lagoon, swamp, or other collection of still water, whether permanent or temporary, not being water contained in an artificial work.

Licence means a licence issued under Division 3.

Licensee means the holder of a licence.

Licensed work means a work in respect of which a licence is held under this Part.

Local occupier, in relation to an application made under this Part, means an occupier of land which is wholly or partly situated within the same declared local area as the land on which the work the subject of the application is or is proposed to be situated, but does not include a statutory authority, statutory instrumentality or government department of any State other than the State of New South Wales or a Minister of the Crown for any State other than the State of New South Wales.

Occupier, in relation to land, means:

- (a) the holder of any tenure of the land or, if it is shown that some other person is in actual occupation of the land, that other person,
- (b) where the land is a public road within the meaning of the [Roads Act 1993](#)—the council under that Act of the area in which the land is situated, or
- (c) where the land is the site of a work to which this Part extends and the work is proposed to be, or is being, constructed on behalf of such a council or is under the care and management of such a council—that council.

Permit means a permit issued under Division 3B.

River includes:

- (a) a stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream,
- (b) an affluent, confluent, branch or other stream of water into or from which a stream referred to in paragraph (a) flows, and
- (c) anything declared by the Ministerial Corporation by order published in the Gazette to be a river,

but does not include anything declared by the Ministerial Corporation by order published in the Gazette as not being a river and, unless the regulations otherwise provide, does not include those waters of a tidal river that at any time are not capable of being used for irrigation or for watering stock.

Statutory authority means a statutory authority, statutory instrumentality or government department of the State of New South Wales and includes a Minister of the Crown for the State of New South Wales.

Water supply includes a supply for the carrying on of any industrial operation.

Work includes any dam, lock, reservoir, weir, regulator, flume, race, channel (whether an artificial channel or a natural channel artificially improved), any cutting, well,

excavation, tunnel, pipe, sewer, and any machinery and appliances.

Work to which this Part extends means a work:

- (a) which is connected with, or which affects the quantity or use of water in, a river or lake,
- (a1) which impounds water and is within an area declared by the Ministerial Corporation by order published in the Gazette to be an area within which a work impounding water is a work to which this Part extends, whether or not it is a work referred to in paragraphs (a), (b) and (c),
- (b) which affects the quantity of water flowing in, to or from, or contained in, any such river or lake, or
- (c) in or through which flows, or is contained or used, water taken from any such river or lake,

being a work which is used, or is to be used:

- (d) for water conservation, irrigation, water supply or drainage, or
- (e) (Repealed)
- (f) for changing the course of a river, or preventing the course of a river from changing,

and includes an existing work or any other work (or class of work) declared by the Ministerial Corporation by order published in the Gazette to be a work to which this Part extends, but does not include:

- (g) a work declared under subsection (3) to be a work for urban drainage, or
- (h) a work (or class of work) declared by the Ministerial Corporation by order published in the Gazette as being a work to which this Part does not extend.

- (2) A reference in this Part to the holders of an authority shall be construed as a reference to the occupiers of the whole of the lands supplied with water obtained by means of a joint water supply scheme in respect of which an authority is in force and, where the supply work or conveying work that is the subject of the scheme is installed or constructed on other land, shall be construed as including a reference to the occupier of that other land, and a reference to a holder of an authority shall be construed as a reference to any one of those holders.
- (3) The Ministerial Corporation may, by notice published in the Gazette, declare any work, being a dam, an excavation, a channel (whether an artificial channel or a natural channel artificially improved), a cutting, a tunnel or a pipe, which is constructed in, or forms part of, a river referred to in the definition in subsection (1) of **Work to which**

this Part extends to be a work for urban drainage and may, by a similar notice, revoke or amend that notice.

- (4) The Ministerial Corporation may, by order published in the Gazette:
- (a) declare any area to be a declared local area,
 - (b) vary or revoke, whether as to the whole or any part, any such order, or
 - (c) amend the boundaries of any declared local area.
- (5) The Ministerial Corporation may, by order published in the Gazette, declare any work that:
- (a) is used, or is capable of being used, for the purposes of water supply or water conservation, and
 - (b) was constructed before 1 January 1999, and
 - (c) was not, as at that date, a work in respect of which a licence, permit, authority or group licence was in force,
- to be an existing work for the purposes of this Part.
- (6) An order under subsection (5):
- (a) takes effect on the day it is published in the Gazette or such later date as may be specified in the order, and
 - (b) may declare a work to be an existing work by reference to a specified class or classes of work, to a specified area, or to specified rivers or lakes or sections of rivers or lakes (or to any combination of those matters), and
 - (c) may make provision for such transitional arrangements as are necessary in relation to the implementation of the order.

Division 2 Rights of the Crown and of riparian proprietors

6, 7 (Repealed)

8 Rights of Crown in respect of works

Where the Ministerial Corporation is, by its officers, servants, or agents, in occupation of a work to which this Part extends, the Ministerial Corporation shall, subject to the provisions of this Part, have the quiet enjoyment and sole and exclusive use of the said work and the water contained therein or conserved or obtained thereby as against all persons whomsoever, and shall be entitled to make such charges for the supply or use of the said water as may be prescribed.

9 Rights of occupiers of work to which this Part extends

The right of the occupier of the site of any work to which this Part extends:

- (a) to construct or use the work for the purpose of water conservation, irrigation, or water supply, or drainage, or the prevention of flooding of land by water, or of changing the course of a river, or
- (b) to take, use, or dispose of the water contained therein, conserved, or obtained thereby,

shall be subject to the provisions of this Part.

Division 3 Licences

10 Application for licences

- (1) Any occupier of land whereon any work to which this Part extends (not being a joint water supply scheme) is constructed or used, or is proposed to be constructed or used, for the purpose of:

- (a) water conservation, irrigation, water supply, or drainage, or
- (b) (Repealed)
- (c) changing the course of a river,

may apply to the Ministerial Corporation in the form prescribed for a licence to construct and use the said work, and to take and use for the purposes specified in the application the water, if any, conserved or obtained thereby, and to dispose of such water for the use of occupiers of land for any purpose.

- (1A) An application for a licence may be made under subsection (1) by a person who proposes to construct or use any such work as is referred to in that subsection subject to the person obtaining the right to occupy the site of the work, and for all purposes of or relating to such application such person shall be deemed to be an occupier:

Provided that a licence shall not be issued upon any application made under the authority of this subsection unless and until the applicant has obtained the right to occupy the site of the work.

- (2) Except in the case of an application for a licence in respect of an existing work, the application shall be accompanied by the prescribed deposit as security for the cost of investigation and inquiry in connection with the application, and such deposit may be applied by the Ministerial Corporation in payment or part payment of the licence fee payable by the applicant.

In the event of the applicant withdrawing or abandoning the application, such deposit or any part thereof may in the discretion of the Ministerial Corporation be retained by

it.

- (3) An application for a licence for a work constructed or used or proposed to be constructed or used for the purpose of irrigation or water supply shall be accompanied by:
- (a) particulars as to the means (by gravitation pumping or otherwise) by which water is to be taken from the river or lake,
 - (b) particulars of the maximum rate at which water may be taken from the river or lake,
 - (c) particulars of the estimated quantity of water proposed to be taken annually,
 - (d) particulars of the purpose or purposes for which the water is to be used, and
 - (e) if the work is for the purpose of irrigation, particulars of the area and location of the land proposed to be irrigated, the class or classes of crops proposed to be grown thereon, the works proposed to be provided for the distribution of the water to the land to be irrigated and the work proposed to be undertaken in the preparation of such land for irrigation.

11 Notification of application for licence

- (1) On application being made for a licence under section 10, the Ministerial Corporation shall cause to be advertised once in the Gazette and once in a newspaper published and circulating in the district where the work is or is proposed to be situated, a notice containing particulars of the application.
- (1A) Subsection (1) does not require the Ministerial Corporation to cause to be advertised a notice containing particulars of an application unless it is satisfied that the applicant occupies, or will obtain the right to occupy, the site of the work.
- (2) Where, at the time the application is made, the work is, or is proposed to be, situated within a declared local area, any:
- (a) local occupier, or
 - (b) statutory authority,
- whose interests may be affected by the granting of the application may, within 28 days after the date of the publication of the later of the advertisements referred to in subsection (1), lodge with the Ministerial Corporation an objection thereto.
- (2A) Where, at the time the application is made, the work is not, or is not proposed to be, situated within a declared local area, any person whose interests may be affected by the granting of the application may, within 28 days after the date of the publication of the later of the advertisements referred to in subsection (1), lodge with the Ministerial

Corporation an objection thereto.

(2B) An objection referred to in subsection (2) or (2A) shall be in writing and shall specify the grounds of objection.

(2C) If, after the application is advertised:

(a) the applicant amends the application as advertised, and

(b) in the opinion of the Ministerial Corporation the changes warrant the advertising of the application as amended,

the Ministerial Corporation shall advertise the amended application in the manner referred to in subsection (1) and:

(c) the provisions of this section shall apply to the amended application as if it were a new application, and

(d) the application as originally made shall be deemed to be withdrawn.

(3)

(a) After the expiry of a period of twenty-eight days after the date of the publication of the later of such advertisements, the Ministerial Corporation shall decide whether the application should be granted or refused.

(b) Where the decision of the Ministerial Corporation is that the application should be granted the Ministerial Corporation shall give the applicant notice of the period, terms, limitations and conditions proposed to be applied to the licence.

(4) In any case where the decision of the Ministerial Corporation is that the application should be refused, the applicant shall be notified in writing of such decision and may, within ninety days from the date of such notification, appeal to the Land and Environment Court against such decision.

The appeal shall be made as prescribed by rules of court of the Land and Environment Court and be accompanied by a fee of ten dollars as security for the costs of the appeal. Notice of appeal in the prescribed form shall be given by the appellant to the Ministerial Corporation upon the lodging of the appeal in the Land and Environment Court.

Where the appeal is upheld the Land and Environment Court shall specify the period, terms, limitations and conditions (if any) to be applied to the licence.

The decision of the Land and Environment Court upon any such appeal shall be final.

(5) In any case where the decision of the Ministerial Corporation is that the application should be granted but an objection has been lodged pursuant to subsection (2) or (2A), or the applicant is dissatisfied with the decision of the Ministerial Corporation as

to the period, terms, limitations and conditions proposed to be applied to the licence and has lodged with the Ministerial Corporation an objection thereto in writing within twenty-eight days after notice has been given to the applicant in accordance with subsection (3), the Ministerial Corporation shall direct the local land board or a Magistrate to hold a public inquiry as to the desirability of granting the application or as to the period, terms, limitations and conditions proposed to be applied to the licence, as the case may be.

The holding of the inquiry shall be notified once in the Gazette and once in a newspaper published and circulating in the district where the work is or is proposed to be situated.

The Ministerial Corporation and:

(a) where, at the time the application is made, the work is, or is proposed to be, situated within a declared local area, any:

(i) local occupier, or

(ii) statutory authority,

whose interests may be affected by any matter the subject of the inquiry, or

(b) where, at the time the application is made, the work is not, or is not proposed to be, situated within a declared local area, any person whose interests may be affected by any matter the subject of the inquiry,

shall be permitted to be heard at the inquiry, in support of, or in opposition to, the matter.

The local land board or Magistrate, as the case may be, holding any inquiry under this subsection shall announce its or his or her decision in open court, and shall thereupon report in writing upon the inquiry to the Ministerial Corporation.

Where the inquiry is as to the desirability of granting the application and the report of the local land board or Magistrate as the case may be is in favour of the granting of the application the report shall embody the period, terms, limitations and conditions to be applied to the licence.

Where the inquiry is as to the period, terms, limitations and conditions proposed to be applied to the licence the report shall specify the period, terms, limitations and conditions to be applied to the licence.

(6) Where an inquiry is held under subsection (5), the Ministerial Corporation or the applicant or any person or authority so interested as aforesaid may, within twenty-eight days from the announcement of the decision as provided for in the said subsection, appeal to the Land and Environment Court against the decision of the local land board or Magistrate. the decision of the Court shall be final.

The appeal shall be made as prescribed by rules of court of the Land and Environment Court and be accompanied by a fee of ten dollars as security for the costs of the appeal. Notice of appeal in the prescribed form shall be given by the appellant to the Ministerial Corporation upon the lodging of the appeal in the Land and Environment Court.

- (7) This section is subject to section 11A.
- (8) Subsections (1)–(3) (a) do not apply to an application for a licence in respect of an existing work.

11A Determination of applications affected by public inquiries under the [Environmental Planning and Assessment Act 1979](#)

- (1) This section applies to any application under section 10 (other than an application in respect of an existing work) that concerns a work in respect of which a Commission of Inquiry has given a section 120A notice to the Ministerial Corporation before the Ministerial Corporation makes its decision on the application under section 11 (3).
- (2) The Ministerial Corporation:
 - (a) must refer to the Commission of Inquiry:
 - (i) the application (including any accompanying particulars referred to in section 10 (3)), and
 - (ii) any objection to the granting of a licence that is duly lodged in connection with the application,

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 under section 11 (3) until it receives the Commission of Inquiry's section 119 report.
- (3) In making its decision on the application under section 11 (3), the Ministerial Corporation must have regard to the findings and recommendations contained in the Commission of Inquiry's section 119 report.
- (4) The Ministerial Corporation's decision under section 11 (3) on the application is final, and the provisions of section 11 (4), (5) and (6) do not have effect in relation to that decision.
- (5) This section extends to applications made before the commencement of this section.
- (6) 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*.

12 Licence

(1)

- (a) The Ministerial Corporation shall, where its decision is that an application for a licence should be granted and no objection has been lodged under section 11, issue a licence to the applicant in the prescribed form for such period and subject to such terms, limitations and conditions (if any) as may be determined by the Ministerial Corporation.
- (b) The Ministerial Corporation shall, in compliance with any decision of the local land board or Magistrate upon an inquiry held under section 11 (5) or of the Land and Environment Court upon appeal favouring the granting of an application for a licence or as to the period, terms, limitations and conditions to be applied to a licence, issue a licence to the applicant in the prescribed form for the period and subject to the terms, limitations and conditions set out in the decision of the local land board or Magistrate or the Land and Environment Court, as the case may be.

(2) Notwithstanding the provisions of subsection (1):

- (a) no licence shall be issued pending any appeal, and
- (b) except in the case of an initial licence in respect of an existing work, a licence shall be issued only upon payment of a fee calculated in the manner and according to the scale prescribed by regulations under this Part, and
- (c) the Ministerial Corporation may, before granting a licence, require such alterations to be made to or in connection with the work, or to the plans and specifications of the work, as may be decided by the Ministerial Corporation where no inquiry is held by the local land board or Magistrate, or as may be set out in the decision of the local land board or Magistrate or the Land and Environment Court as the case may be.

(2A) If an applicant fails to pay to the Ministerial Corporation within the time prescribed the fee payable upon the issue of the licence the Ministerial Corporation may at any time thereafter reject the application.

Where an application is rejected under this subsection the deposit accompanying such application or any part of such deposit may, in the discretion of the Ministerial Corporation, be retained by it.

(3) Except in the case of a licence granted to a Department of the State, Rail Corporation

New South Wales, the Board of Fire Commissioners of New South Wales, or to a county council, or any board or joint committee in respect of works of water supply affecting more than one of such councils jointly, a council within the meaning of the *Local Government Act 1993*, or such other statutory body as may be prescribed, no licence shall be granted for a period that, except in such circumstances as may be prescribed, exceeds 10 years.

13 Application by two or more occupiers

If two or more occupiers desire to construct or use any work to which this Part extends, they may apply for a licence in the manner prescribed for a single occupier, and such application will be dealt with as the application of a single occupier.

13A Application for licence by person who does not occupy land on which works are to be constructed

(1A) This section does not apply to or in respect of an existing work.

(1) Any occupier of land who desires to construct and use a work to which this Part extends (hereinafter in this section referred to as the **supply work**) for the purpose of domestic water supply, stock water supply or irrigation but does not occupy:

- (a) the land on which the occupier desires to construct the supply work, or
- (b) the whole of the land on which the occupier desires to construct works (hereinafter in this section referred to as the **conveying works**) to convey the water from the supply work to the land on which the occupier desires to use the water,

and who cannot obtain occupation of the land required for the supply work or conveying works may apply to the Ministerial Corporation in the form prescribed for a licence to construct the supply work and to take and use for the purpose or purposes specified in the application the water, if any, obtained thereby.

(2) The application shall be accompanied by:

- (a) the prescribed deposit as security for the cost of investigation and inquiry in connection with the application, and such deposit may be applied by the Ministerial Corporation in payment or part payment of the licence fee payable by the applicant. In the event of the applicant withdrawing or abandoning the application, such deposit or any part thereof may in the discretion of the Ministerial Corporation be retained by it,
- (b) the particulars set out in section 10 (3),
- (c) plans showing:
 - (i) the location of the lands to be supplied with water in relation to the river or

lake from which the water supply is to be obtained, and

- (ii) the lands on which the supply work is proposed to be constructed, including the location of that work and the lands on which the conveying works are proposed to be constructed, including the location of those works,
 - (d) particulars of the supply work and the conveying works including all pipes, channels, regulators, flumes and other structures proposed to be constructed and used, and
 - (e) particulars of the extent of the areas of lands, not occupied by the applicant, which are proposed to be used for the construction of the supply work and the conveying works (hereinafter in this section referred to as the intervening lands) and the names and addresses of the owners and occupiers of those lands.
- (3) The provisions of section 11 (1), (2), (2A), (2B), (2C), (3) (a) and (4) shall mutatis mutandis apply to an application under this section and to any appeal against the decision of the Ministerial Corporation that the application should be refused.

Upon any such appeal the owners and occupiers of the intervening lands shall be permitted to attend and be heard in support of, or in opposition to, the granting of the application.

- (4) In any case where the decision of the Ministerial Corporation is that the application should be granted the Ministerial Corporation shall direct the local land board or a Magistrate to hold a public inquiry as to the desirability of granting the application.

The Ministerial Corporation shall notify the owners and occupiers of the intervening lands of the application and of the reference thereof to the local land board or the Magistrate.

The holding of the inquiry shall be notified once in the Gazette and once in a newspaper published and circulating in the district where the supply work is or is proposed to be situated.

The Ministerial Corporation, the owners and occupiers of the intervening lands and:

- (a) where, at the time the application is made, the supply or conveying works are, or are proposed to be, situated within a declared local area, any:
 - (i) local occupier, or
 - (ii) statutory authority,whose interests may be affected by the granting of the application, or
- (b) where, at the time the application is made, the supply or conveying works are not, or are not proposed to be, situated within a declared local area, any person whose

interests may be affected by the granting of the application, shall be permitted to attend at the inquiry and be heard in support of, or in opposition to, the granting of the application.

The local land board or Magistrate, as the case may be, holding the inquiry shall announce its or his or her decision in open court and shall thereupon report in writing upon the inquiry to the Ministerial Corporation.

Where the decision of the local land board or Magistrate is in favour of the granting of the application the local land board or Magistrate, as the case may be, shall also make recommendations to the Ministerial Corporation with respect to the terms, limitations and conditions which should be applied to the licence including the occupancy and use by the licensee of the intervening lands, the payments (if any) to be made in respect of such occupancy and use, and the construction, use and maintenance of the supply work and conveying works.

On receipt of the report of the local land board or Magistrate the Ministerial Corporation, shall determine the terms, limitations and conditions to be applied to the licence.

The decision of the local land board or Magistrate as to the desirability or otherwise of granting the application shall be notified by the Ministerial Corporation to the applicant and to the owners and occupiers of the intervening lands and to any person who attended at the inquiry by the local land board or Magistrate and was heard in support of or in opposition to the granting of the application. Where such decision is in favour of the granting of the application the Ministerial Corporation shall in such notification include the terms, limitations and conditions to be applied to the licence.

The applicant or any owner or occupier of the intervening lands or any person who attended at the inquiry and was heard as aforesaid may, within twenty-eight days after the posting to the applicant, owner or occupier of the Ministerial Corporation's notification, appeal to the Land and Environment Court against the decision of the local land board or Magistrate or the determination of the Ministerial Corporation of the terms, limitations and conditions to be applied to the licence.

The decision of the Court shall be final.

The appeal shall be made as prescribed by rules of court of the Land and Environment Court and be accompanied by a fee of ten dollars as security for the costs of the appeal. Notice of appeal in the prescribed form shall be given by the appellant to the Ministerial Corporation upon the lodging of the appeal in the Land and Environment Court.

- (5) An application for a licence under this section shall not be granted unless the local land board, Magistrate, Land and Environment Court or Ministerial Corporation, as the

case may be, is satisfied that:

- (a) it is not reasonably practicable for the applicant to obtain or make provision for a supply of water on the land on which the applicant desires to use the water adequate for the purpose or purposes specified in such application otherwise than in pursuance of a licence granted under this section, and
 - (b) the land on which it is desired to use the water is reasonably fitted for such purpose or purposes, and
 - (c) the interests of riparian occupiers will not be unreasonably affected by the granting of such application.
- (6) The Ministerial Corporation shall in compliance with any decision of the local land board or Magistrate upon an inquiry held under subsection (4) or of the Land and Environment Court upon appeal favouring the granting of an application for a licence issue a licence to the applicant in the prescribed form for the period set out in the decision of the local land board or Magistrate or the Land and Environment Court, as the case may be, and subject to the terms, limitations and conditions determined by the Ministerial Corporation or set out in the decision of the Land and Environment Court, as the case may be.

No licence shall be issued under this subsection pending any appeal.

A licence under this section shall be issued only upon payment of a fee calculated in the manner and according to the scale prescribed by regulations under this Act.

If the applicant fails to pay to the Ministerial Corporation within the time prescribed the fee payable upon the issue of the licence, the Ministerial Corporation may at any time thereafter reject the application.

Where an application is rejected under this subsection the deposit accompanying such application or any part of such deposit may, in the discretion of the Ministerial Corporation, be retained by it.

- (7) Upon the issue of a licence under this section the licensee may, during the currency of the licence, enter, occupy and use, subject to the terms, limitations and conditions applied to the licence, the intervening lands set out in the licence for the purpose of constructing, using and maintaining the supply work and the conveying works.

In the event of the licence lapsing or being cancelled, the licensee's right thereunder to enter, occupy and use the intervening lands shall, subject to the provisions of subsection (9), terminate.

- (8) In the event of the licensee failing to comply with any of the terms, limitations or conditions of the licence relating to entry upon, occupancy or use of the intervening lands, the Ministerial Corporation shall, on being satisfied as to such failure, cancel the

licence.

- (8A) For the purpose of subsections (7) and (8) **licensee** includes servants and agents of the licensee.
- (9) For the purposes of sections 21B and 22 any person who was, immediately before the lapse or cancellation of the licence, the holder of a licence issued under this section shall be deemed to be the occupier of the intervening lands set out in such licence.

13AA Amended licences

- (1) The holder of a licence who wishes to reduce the area authorised to be irrigated under the licence, the capacity of the work or the quantity of water which may be taken and used under the licence may apply to the Ministerial Corporation for an amended licence.
- (2) An application made under subsection (1) shall specify the proposed reduced area to be irrigated, the proposed reduced capacity of the work or the proposed reduced quantity of water to be taken and used.
- (3) On receipt of an application made under subsection (1), the Ministerial Corporation shall, without requiring payment of any fee, issue to the applicant, in substitution for the applicant's existing licence, an amended licence for the unexpired portion of the period for which, and subject to the same terms, limitations and conditions as those subject to which, that existing licence was issued, except that the amended licence shall be in respect of the reduced area, the reduced capacity of the work or, as the case may be, the reduced quantity of water specified in the application.

13B Ministerial Corporation may prescribe maximum areas etc for which water may be appropriated for irrigation

- (1) In respect of any river, including tributaries thereto and effluents therefrom, or any section of a river, including tributaries thereto and effluents therefrom, or any lake, the Ministerial Corporation may from time to time prescribe:
- (a) the maximum area of land within the holding of any occupier for the irrigation of which water may be taken under a licence,
 - (b) the maximum area of any class of crops or plantings within the holding of any occupier for which water may be taken under a licence,
 - (c) the maximum quantity of water per hectare of any class of crops or plantings which may be taken for irrigation under a licence during any period of twelve months commencing on the first day of July.
- (2) Where a prescription has been made under the provisions of subsection (1) a licence shall not be granted in respect of any work, for the taking of water from the river, or section of the river, or lake covered by the prescription, for:

(a) the irrigation of a greater area of land or a greater area of any class of crops or plantings, or

(b) the taking of a greater quantity of water,

than that prescribed.

- (3) The Ministerial Corporation may, when renewing a licence, under which an area of land or of any class of crops or plantings could be irrigated in excess of the maximum area prescribed under the provisions of subsection (1), or under which a quantity of water per hectare of any class of crops or plantings may be taken in excess of the maximum quantity prescribed under the provisions of subsection (1), renew the licence for the irrigation of that maximum area or quantity of water only, or renew the licence subject to a condition that the area of land or of any class of crops or plantings which could be irrigated under the licence shall be progressively reduced to the said maximum area within a period not exceeding five years.

13C Ministerial Corporation may refuse to grant certain applications for licences

- (1) The Ministerial Corporation may refuse to grant any application for a licence for the purpose of irrigating grasses or pastures other than sown grasses or improved pastures.
- (2) The Ministerial Corporation may refuse to grant any application for a licence if it is not satisfied with the proposals for the construction of the works in regard to nature, class or form, or with the work proposed to be undertaken by any applicant in the preparation of the land for irrigation.
- (3) Notwithstanding any provision contained in this Part a decision of the Ministerial Corporation to refuse an application under the provisions of subsection (1) or subsection (2) shall be final and shall not be subject to appeal.
- (4) The Ministerial Corporation may when renewing a licence, under which water has been used for the purpose of irrigating grasses or pastures other than sown grasses or improved pastures, renew the licence subject to a condition that the irrigation of such grasses or pastures shall be discontinued either forthwith or progressively within a specified period not exceeding five years.
- (5) The Ministerial Corporation may, when renewing a licence in respect of a work used for the purpose of irrigation and such work is, in the opinion of the Ministerial Corporation, of such nature, class or form, as to cause undue wastage of water by the filling of depressions, lakes or swamps, or the design of the work, or the failure of the holder of the licence to maintain the work or any part of it in good order and condition warrants the Ministerial Corporation so doing, renew the licence subject to a condition that the work shall be altered in design or form or repaired to the satisfaction of the Ministerial Corporation, or that additional works shall be provided within a specified

period not exceeding two years.

In any case where the alterations, repairs or additions are, in the opinion of the Ministerial Corporation, so extensive as to warrant such action, the Ministerial Corporation may grant an extension of time for completion of such alterations, repairs or additions not exceeding three years.

13D Water not to be taken until works have been completed

The holder of a licence granted for the purpose of irrigation or water supply shall not, except with the permission in writing of the Ministerial Corporation, take water from a river or lake by means of any work covered by the licence until the whole of the works covered by the licence have been constructed or provided.

13E (Repealed)

13F Ministerial Corporation may cancel licence if work not used for three years

In any case where the work covered by a licence has not been used for a period of three years or more the Ministerial Corporation may give the holder of the licence notice by registered letter addressed to the holder at the holder's address last known to the Ministerial Corporation that after the expiration of a period specified in the notice the licence will be cancelled. At the expiration of the period mentioned in the notice, the licence shall be deemed to be cancelled unless the Ministerial Corporation shall have annulled or withdrawn the notice in the meantime.

14 Renewal

- (1) Subject to the provisions of this Part with regard to the renewal of licences, a licence may be renewed from time to time by the Ministerial Corporation on the application of the licensee or of the owner of the land upon which the licensed work is situated and payment of the prescribed fee. Such application shall be made before the licence expires but the Ministerial Corporation may deal with an application even if it is lodged later.
- (1A) Pending consideration of the application by the Ministerial Corporation or the decision of the Land and Environment Court on appeal the licence shall not lapse, but should the required fee be not paid within the prescribed time or the application be not granted, the licence shall lapse.
- (1B) No renewal, except in respect of a licence granted to a Department of the State, the Rail Corporation New South Wales, the Board of Fire Commissioners of New South Wales, or to a county council, or any board or joint committee in respect of works of water supply affecting more than one of such councils jointly, a council within the meaning of the [Local Government Act 1993](#), or such other statutory body as may be prescribed, shall be for a period that, except in such circumstances as may be prescribed, exceeds 10 years.

- (1C) An application for renewal of a licence for a work constructed or used for the purpose of irrigation or water supply shall be accompanied by:
- (a) particulars of the maximum rate at which water may be taken from the river or lake by means of the licensed work,
 - (b) particulars of the estimated quantity of water proposed to be taken annually,
 - (c) particulars of the purpose or purposes for which the water is to be used, and
 - (d) if the work is for the purpose of irrigation, particulars of the area and location of the land being irrigated and the class or classes of crops to be grown thereon.
- (1D) Where the Ministerial Corporation deals with an application for renewal lodged after the licence expires, subsection (1A) has effect as if the application had been under consideration since before the expiration of the licence.

- (2) Where the Ministerial Corporation decides that the application for the renewal of a licence shall not be granted, or that the renewal of a licence shall be subject to a period, terms, limitations and conditions differing from those which were previously attached to the licence, the applicant shall within twenty-eight days after the posting to the applicant by the Ministerial Corporation of a notification of the refusal of the application, or of particulars of such period, terms, limitations and conditions, as the case may be, have the right of appeal to the Land and Environment Court against the decision of the Ministerial Corporation. the decision of the Court shall be final.

The appeal shall be made as prescribed by rules of Court and be accompanied by a fee of ten dollars as security for the costs of the appeal. Notice in the prescribed form of appeal shall be given by the appellant to the Ministerial Corporation with the lodging of the appeal in the Court.

- (2A) Where the Ministerial Corporation decides that the application for the renewal of a licence issued under section 13A shall be granted the Ministerial Corporation shall notify the owners and occupiers of the intervening lands set out in the licence of such decision and of the period, terms, limitations and conditions to be attached to the renewal of the licence, and any such owner or occupier may, within twenty-eight days after the posting to the owner or occupier of such notification, lodge with the Ministerial Corporation an objection to the Ministerial Corporation's decision to grant the application or to the said period, terms, limitations and conditions. Every such objection shall be in writing and shall specify the grounds of objection.

Where an objection has been lodged under the provisions of this subsection the application shall be dealt with in the manner provided in section 13A (4) for an application for a licence.

- (3) Subject to the said right of appeal a renewal of a licence may be subject to such terms, limitations and conditions as the Ministerial Corporation deems expedient in

the public interest, and, without prejudice to the generality of the foregoing provisions of this subsection, such terms, limitations and conditions may include:

- (a) a limitation or reduction of the area of land which may be irrigated by water obtained by the licensed work,
- (b) a provision allowing any alteration in the licensed work which does not increase the quantity of the water conserved or obtained thereby.

(3A) Notwithstanding the provisions of subsections (2) and (3) an applicant shall have no right of appeal:

- (a) where the reduction of the area of land or of any class of crops or plantings which may be irrigated by water obtained by the licensed work or the reduction of the quantity of water which may be taken by the licensed work is imposed by the operation of section 13B (3), or
- (b) against the decision of the Ministerial Corporation whereby conditions are applied to the renewal of a licence under the provisions of section 13C (4) and (5).

(4) This section shall apply to and in respect of licences granted or renewed before the commencement of the [Water \(Amendment\) Act 1936](#), as well as to licences granted or renewed after such commencement.

(5) Unless the appellant and the Ministerial Corporation otherwise agree any appeal under this section shall (subject to the concurrence of the Land and Environment Court) be heard at such venue as in the opinion of the Court is as near as conveniently may be to the site of the work in respect of which such appeal has been lodged as aforesaid.

14A Fees

For the purposes of sections 12, 13A and 14 different fees may be prescribed differentiating according to the class of the work, the object or purpose of the work, and the river or lake on which it is situate:

Provided that in case of a work carried out by a public authority as prescribed with the object of conferring public benefit or securing district development a licence may, in the discretion of the Ministerial Corporation, be issued and renewed at a nominal fee.

14B (Repealed)

15 Separate applications

A separate application for a licence or a group licence may be required by the Ministerial Corporation in respect of each work except in such cases where, in the opinion of the Ministerial Corporation, two or more works form a combined work, and the determination as to what works may be included as a combined work in an application for a licence or a

group licence shall rest with the Ministerial Corporation.

16 Benefit of licence

- (1) A licence (other than a licence for a work constructed or used or proposed to be constructed or used for the purpose of irrigation or water supply) shall, except where the licence otherwise specifically provides:
 - (a) be deemed to be held by, and
 - (b) operate and enure for the benefit of,
the lawful occupier for the time being of the land on which the licensed work is constructed or used or is proposed to be constructed or used.
- (2) A licence for a work constructed or used or proposed to be constructed or used for the purpose of irrigation or water supply shall, except where the licence otherwise specifically provides:
 - (a) be deemed to be held by, and
 - (b) operate and enure for the benefit of,
the lawful occupier for the time being of:
 - (c) the land which is or is to be supplied with water by means of the licensed work,
and
 - (d) the land on which the licensed work is constructed or used or is proposed to be constructed or used.
- (3) This section is subject to section 22D.

17 Rights of holder of licence or group licence

Subject to the provisions of this Part, or the regulations hereunder, the person holding a licence or group licence under this Part in respect of any work shall have absolutely, during the person's lawful occupation of the work, so far only as the said work is constructed or maintained on the land occupied by the person, the quiet enjoyment and the sole and exclusive use of the work as against all other persons whomsoever, including the Crown and the Ministerial Corporation, and shall be entitled to take, use, and dispose of any water contained therein or conserved or obtained thereby to the extent and in respect of the land, and in the manner specified in the licence or group licence.

17A Revocation or suspension etc of licence

- (1) If at any time during the currency of a licence the Ministerial Corporation is satisfied that:
 - (a) the holder of the licence has conserved, diverted, taken or used any quantity of

water in excess of the quantity authorised by the licence,

- (b) any land has been irrigated as to an area in excess of that authorised by the licence,
- (c) the holder of the licence has used the licensed work for a purpose other than that authorised by the licence,
- (d) the holder of the licence has contravened or failed to comply with any of the terms, limitations or conditions to which the licence is subject,
- (e) any water diverted, taken or used by the holder of the licence is not being beneficially used or is being wasted, or
- (f) beneficial use is not being made of the licensed work,

the Ministerial Corporation may serve on the holder of the licence a notice that, after the expiration of a period specified in the notice, the licence will be revoked, suspended or modified as indicated in the notice, and where any such notice is served, unless the Ministerial Corporation annuls or withdraws the notice before the expiration of the period so specified, the licence shall, on the expiration of that period, be deemed to be revoked, suspended or modified, as the case may be.

(2) If in the opinion of the Ministerial Corporation there are circumstances which render it necessary or expedient:

- (a) that any licence should be suspended or modified,
- (b) that the quantity of water authorised to be taken under any licence be reduced, or
- (c) that a right held under any licence for the taking of water for any purpose from a river, lake or section of a river should be restricted or suspended,

the Ministerial Corporation may serve on the holder of the licence a notice to that effect, and where any such notice is served, the licence shall be deemed to be suspended or modified, or the quantity of water reduced or, as the case may be, the right restricted or suspended, according to the tenor of the notice.

(3) If the Ministerial Corporation is satisfied that the holder of a licence has failed to comply with the terms of a notice served by the Ministerial Corporation whereby:

- (a) the licence has been modified,
- (b) the quantity of water authorised to be taken under the licence has been reduced, or
- (c) a right held under the licence for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended,

the Ministerial Corporation may serve on the holder of the licence a notice that, after the expiration of a period specified in the notice, the licence will be suspended, and where any such notice is served, unless the Ministerial Corporation annuls or withdraws the notice before the expiration of the period so specified, the licence shall, on the expiration of that period, be deemed to be suspended.

- (4) Service of a notice under this section may be effected on the holder of a licence:
- (a) by delivering the notice to the holder personally,
 - (b) by leaving the notice with any person apparently of or above the age of 14 years who apparently resides or is employed on the land of the holder, or
 - (c) by letter sent by post and addressed to the holder at the holder's address last known to the Ministerial Corporation.
- (5) A reference in this section to modification of a licence is not limited to a modification by way of restriction.

17B Offences with respect to licences

- (1) Any person who:
- (a) being the holder of a licence in respect of a work to which this Part extends, uses the work when the licence is suspended,
 - (b) being the former holder of such a licence, uses the work when the licence is revoked or cancelled or has expired,
 - (c) being the holder of a licence, contravenes or fails to comply with any term, limitation or condition to which the licence is subject,
 - (d) being the holder of a licence, fails to comply with the terms of any notice served on the holder by the Ministerial Corporation whereby:
 - (i) the licence has been modified,
 - (ii) the quantity of water authorised to be taken under the licence has been reduced, or
 - (iii) a right held under the licence for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended, or
 - (e) being the holder of a licence, contravenes section 13D,
- is guilty of an offence and is liable on conviction:
- (f) where the offence was an offence under paragraph (a), (b), (c) or (d) committed by a corporation—to a penalty not exceeding 200 penalty units and, in the case of a

continuing offence, to a further penalty not exceeding 20 penalty units for each day the offence continues,

(g) where the offence was an offence under paragraph (a), (b), (c) or (d) committed by any other person—to a penalty not exceeding 100 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 10 penalty units for each day the offence continues, or

(h) where the offence was an offence under paragraph (e)—to a penalty not exceeding 10 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1 penalty unit for each day the offence continues.

(2) In any prosecution under this section against the holder or former holder of a licence, proof:

(a) that a work in respect of which the licence is or was held has been used when the licence is suspended, revoked or cancelled or has expired,

(b) that any term, limitation or condition to which the licence is subject has been contravened or has not been complied with,

(c) of failure to comply with the terms of any notice served by the Ministerial Corporation on that holder whereby:

(i) the licence has been modified,

(ii) the quantity of water authorised to be taken under the licence has been reduced, or

(iii) a right held under the licence for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended, or

(d) that water has been taken from a river or lake by means of a work covered by a licence before the whole of the works covered by the licence have been constructed or provided,

shall, in the absence of proof to the contrary, be evidence that the use, contravention, non-compliance or failure has been caused by that holder or former holder of the licence.

17C Revocation and cancellation of licences

Where a licence is deemed to be revoked or cancelled under this Division, the Ministerial Corporation may notify the revocation or cancellation in the Gazette, and any such notification shall be conclusive evidence of the revocation or cancellation.

17D (Repealed)

18 Penalty for alteration of work during currency of licence

- (1) If, during the time that a licence under this Part is in force in respect of a work, alterations have been made in or in connection with the work which materially and prejudicially affect the quantity or quality of water flowing in, to, or from, or being in any river or lake, the person who has made the alterations shall be liable to a penalty not exceeding 100 penalty units, and, in addition to the imposition of the said penalty, the licence may, by notice in the Gazette, be cancelled and annulled:

Provided that the holder of any licence may, during the currency thereof, apply for an additional licence, allowing alterations in the work as originally licensed, and any such application shall be dealt with as hereinbefore provided in respect of applications for a licence in the first instance:

Provided also that the alterations herein referred to shall not apply to any repairs or alterations rendered necessary for maintenance or any sudden or unforeseen emergency.

- (2) If, during the time that a licence under this Part is in force in respect of a work for the purpose of irrigation, an area has been irrigated in excess of the area permitted by the licence the person who has irrigated the excess area shall be liable to a penalty not exceeding 100 penalty units and in addition to the imposition of the said penalty the licence may, by notice in the Gazette, be cancelled and annulled:

Provided that the holder of any such licence may, during the currency thereof, apply for an additional licence for the purpose of irrigating an additional area, and any such application shall be dealt with as hereinbefore provided in respect of applications for a licence in the first instance.

Division 3A

18A-18E (Repealed)

Division 3B Permits

18F Permits

Notwithstanding anything contained in Division 3, an occupier or owner of land whereon any work to which this Part extends is constructed or used or is proposed to be constructed or used for the purpose of:

- (a) water conservation, irrigation of an area not exceeding 4 hectares, water supply or drainage, or
- (b) (Repealed)
- (c) changing the course of a river

may apply to the Ministerial Corporation in the form prescribed for a permit to construct and use the said work and to take and use, for the purposes specified in the application, the water, if any, conserved or obtained thereby, and to dispose of such water for the use of occupiers of land for any purpose other than irrigation.

18G Application for permit

On application being made for a permit the Ministerial Corporation shall decide whether the permit shall be granted or refused, and before such decision is arrived at the Ministerial Corporation may, should it consider it desirable so to do, cause to be advertised, once in the Gazette and once in a newspaper circulating in the district where the work is or will be situate, a notice:

- (a) acknowledging receipt of the application, and
- (b) requesting:
 - (i) where, at the time the application is made, the work is, or is proposed to be, situated within a declared local area, any local occupier or statutory authority (being an occupier or an authority whose interests may be affected by the granting of the application), or
 - (ii) where, at the time the application is made, the work is not, or is not proposed to be, situated within a declared local area, any person whose interests may be affected by the granting of the application,

to inform the Ministerial Corporation whether they support the application or object thereto and if they do so object the reasons therefor, and

- (c) stating the last day on which such information will be received and the name or official designation and address of the persons to whom it shall be sent.

18H Power to grant permit instead of licence

If the Ministerial Corporation considers that the granting of a permit will for the time being better meet the circumstances of the case than will the issue of the licence under Division 3 the Ministerial Corporation may grant a permit accordingly and may impose such limitations and conditions in connection therewith as it may deem fit provided that no permit shall be granted for a period exceeding one year.

18I Issue of permits

A permit shall be issued only upon payment of a fee calculated in the manner and according to the scale prescribed by regulations under this Act and before granting a permit the Ministerial Corporation may require such alterations to be made to or in connection with the work or to the plans and specifications of the work as it may deem necessary.

18J Renewal of permits

- (1) A permit may, subject to such limitations and conditions as the Ministerial Corporation may impose, be renewed by the Ministerial Corporation on the application of the occupier and payment of the prescribed fee: Provided that the Ministerial Corporation shall not renew a permit for any period which will extend its currency beyond two years from the date when it was first issued.
- (2) An application for renewal of a permit shall be lodged before the permit expires but the Ministerial Corporation may deal with an application even if it is lodged later.
- (3) Where the Ministerial Corporation deals with an application for renewal lodged after the permit expires, section 18K has effect as if the application had been under consideration since before the expiration of the permit.

18K Permit not to lapse pending consideration of application for renewal

Pending consideration of the application by the Ministerial Corporation for renewal of a permit the permit shall not lapse but should the prescribed fee be not paid within the prescribed time the permit shall lapse.

18L Power to require application to be made for licence

The Ministerial Corporation may, as a condition under which a permit is issued, specify that the holder thereof shall, if called upon by the Ministerial Corporation so to do, apply under the provisions of Division 3 for a licence for the work in respect of which the permit is issued, provided that the holder of the permit shall desire to continue to use the work.

18M Power to charge different fees

For the purpose of sections 18I and 18J different fees may be prescribed, differentiating according to the class of work, the object or purpose of the work, the river or lake on which it is situate, and the benefit (if any) to the permittee received from works constructed by the Crown: Provided that in the case of a work carried out by a public authority as prescribed with the object of conferring public benefit or securing district development a permit may in the discretion of the Ministerial Corporation be issued at a nominal fee.

18N Separate application for each work

A separate application for a permit may be required by the Ministerial Corporation in respect of each work except in cases where, in the opinion of the Ministerial Corporation, two or more works form a combined work and the determination as to what works may be included as a combined work in an application for a permit shall rest with the Ministerial Corporation.

18O Power to suspend permit etc

If by reason of an actual or threatened shortage of water or for other sufficient cause the Ministerial Corporation considers a permit should be suspended, modified or withdrawn, or that the quantity of water authorised by the permit to be taken thereunder should be reduced, the Ministerial Corporation may give the permittee notice by letter served on the permittee personally or sent by post to the permittee at the permittee's address last known to the Ministerial Corporation, that, after the expiration of a period specified in the notice, it is the intention of the Ministerial Corporation to suspend, modify or withdraw the permit or to reduce the quantity of water to be taken and thereupon the permit shall be suspended, modified or withdrawn or the quantity of water reduced according to the tenor of the notice.

18P (Repealed)

18Q Permit to pass with land

Subject to the provisions of this Division and to section 22D, a permit shall operate and enure for the benefit of the owner or occupier for the time being of the land whereon any work is constructed or used or is proposed to be constructed or used.

For the purpose of this Division **occupier** includes a person who has been granted an authority to enter under the provisions of the Acts relating to mining.

18R Offences with respect to permits

(1) Any person who:

- (a) being the holder of a permit in respect of a work to which this Part extends, uses the work when the permit is suspended,
- (b) being the former holder of such a permit, uses the work when the permit is withdrawn or has expired, or
- (c) being the holder of a permit, contravenes or fails to comply with any limitation or condition to which the permit is subject,

is guilty of an offence and is liable, on conviction, to a penalty not exceeding 100 penalty units and, in the case of a continuing offence, to a penalty not exceeding 10 penalty units for each day the offence continues.

(2) In any prosecution under this section against the holder or former holder of a permit, proof:

- (a) that a work in respect of which the permit is or was held has been used when the permit is suspended or withdrawn or has expired, or
- (b) that any limitation or condition to which the permit is subject has been contravened or has not been complied with,

shall, in the absence of proof to the contrary, be evidence that the use, contravention or non-compliance has been caused by that holder or former holder of the permit.

Division 4 Joint water supply schemes

19 Joint water supply scheme

No water shall be taken from any river or lake for the purposes of any joint water supply scheme except under authority granted in pursuance of the provisions of this Division.

20 Application for authority

- (1) The occupiers of the whole of the lands supplied or proposed to be supplied with water obtained by means of a joint water supply scheme, and, where the land or lands on which the scheme is or is to be constructed is not in the occupation of one or more of those occupiers, the occupier of that land or, as the case may be, the occupiers of those lands, may apply to the Ministerial Corporation for an authority to construct and use the scheme and to take and use, for the purposes specified in the application, the water which may be conserved or obtained by the scheme.
- (2) The application shall be in or to the effect of the prescribed form and shall be accompanied by the prescribed deposit as security for the cost of investigation and inquiry in connection with the application, and such deposit may be applied by the Ministerial Corporation in payment or part payment of the fee payable by the applicants in respect of the authority.

In the event of the application being withdrawn or abandoned such deposit or any part thereof may in the discretion of the Ministerial Corporation be retained by it.

The application shall also be accompanied by:

- (a) particulars as to the means (by gravitation, pumping or otherwise) by which water is to be taken from the river or lake, and of any channel, flume, pipe, conduit or other work in which water is to be conveyed to the land of each applicant to whom it is proposed to supply water obtained by means of the joint water supply scheme,
- (b) a plan showing the land occupied by each applicant, the location of the means by which water is to be taken from the river or lake, the location of any channel, flume, pipe, conduit or other work in which water is to be so conveyed, and the location of any bridge, culvert, syphon, check, regulator or other structure or work to be provided, and if the work is for the purpose of irrigation the location of the areas proposed to be irrigated within the land of each applicant to whom it is proposed to supply water obtained by means of the scheme,
- (c) particulars of the purpose or purposes for which the water is to be used,

- (d) if the work is for the purpose of irrigation particulars of the area proposed to be irrigated within the land of each applicant to whom it is proposed to supply water obtained by means of the scheme and of the total of such areas and particulars of the class or classes of crops proposed to be irrigated,
 - (e) particulars of the maximum rate at which water may be taken from the river or lake,
 - (f) particulars of the estimated quantity of water proposed to be taken annually,
 - (g) particulars of the quantities of water proposed to be delivered annually to the land of each applicant to whom it is proposed to supply water obtained by means of the scheme, the rates and times of such deliveries, and of any other matters affecting the apportionment of the water between the several applicants to whom it is proposed to supply water so obtained as may be appropriate,
 - (h) where the applicants or any two or more of the applicants have entered into an agreement, either between themselves or between themselves and any other person, in respect of the scheme, a copy of that agreement,
 - (i) particulars of any moneys paid or proposed to be paid to any person in respect of the supply of water and the occupancy or transfer of any land because of or in connection with the scheme,
 - (j) particulars of the proposals of the applicants in respect of the arrangements to be entered into between them for the provision, construction, operation, maintenance and renewal of the works and the provision and payment of money for those matters.
- (2A) The prescribed deposit referred to in subsection (2) is not payable in the case of an initial authority in respect of an existing work.
- (3) A reference in subsection (1) to an occupier of land includes a reference to a person who proposes to obtain the right to occupy that land.

20A Notification of application and reference to local land board or Magistrate

- (1) On application being made for an authority the Ministerial Corporation shall cause to be published, once in the Gazette and once in a newspaper published and circulating in the district where the work is or is proposed to be situated, a notice giving particulars of the application.
- (1AA) Subsection (1) does not require the Ministerial Corporation to cause to be published a notice giving particulars of an application unless it is satisfied that each part of the land to which the application relates is land which one or more of the applicants occupies or occupy or to which one or more of the applicants will obtain the right of occupation.

(1A) Where, at the time the application is made, the work is, or is proposed to be, situated within a declared local area, any:

- (a) local occupier, or
- (b) statutory authority,

whose interests may be affected by the granting of the application may, within 28 days after the date of publication of the later of the advertisements referred to in subsection (1), lodge with the Ministerial Corporation an objection thereto.

(1B) Where, at the time the application is made, the work is not, or is not proposed to be, situated within a declared local area, any person whose interests may be affected by the granting of the application may, within 28 days after the date of the later of the advertisements referred to in subsection (1), lodge with the Ministerial Corporation an objection thereto.

(1C) An objection referred to in subsection (1A) or (1B) shall be in writing and shall specify the grounds of objection.

(1D) If, after the application is advertised:

- (a) the applicant amends the application as advertised, and
- (b) in the opinion of the Ministerial Corporation the changes warrant the advertising of the application as amended,

the Ministerial Corporation shall advertise the amended application in the manner referred to in subsection (1) and:

- (c) the provisions of this section shall apply to the amended application as if it were a new application, and
- (d) the application as originally made shall be deemed to be withdrawn.

(2) The Ministerial Corporation shall, where an objection has been lodged with it pursuant to subsection (1A) or (1B), direct the local land board or a Magistrate to hold a public inquiry as to the desirability of granting the application. Where the recommendation of the local land board or Magistrate is in favour of the granting of the application the local land board or Magistrate, as the case may be, shall embody in such recommendation the arrangements which should in the board's or Magistrate's opinion be made by the applicants in respect of the provision, construction, operation, maintenance and renewal of the works, the apportionment between them of the water taken by means of such works and any payments to be made by any of them in respect of the works or the water supply.

The holding of the inquiry shall be notified once in the Gazette and once in a newspaper published and circulating in the district where the work is or is proposed to

be situated.

The Ministerial Corporation and:

(a) where, at the time the application is made, the work is, or is proposed to be, situated within a declared local area, any:

(i) local occupier, or

(ii) statutory authority,

whose interests may be affected by the granting of the application, or

(b) where, at the time the application is made, the work is not, or is not proposed to be, situated within a declared local area, any person whose interests may be affected by the granting of the application,

shall be permitted to attend at the inquiry and be heard in support of, or in opposition to, the granting of the application.

The local land board or Magistrate, as the case may be, holding the inquiry, shall report in writing upon the inquiry to the Ministerial Corporation.

(3) This section does not apply to an application for an authority in respect of an existing work.

20B Authority

(1) If no objection to the granting of the application has been lodged pursuant to section 20A (1A) or (1B) or the Ministerial Corporation has received the report of the local land board or Magistrate upon any inquiry pursuant to section 20A (2), the Ministerial Corporation shall decide whether or not to grant the application.

(2) Where the Ministerial Corporation has decided to grant an application for an authority the Ministerial Corporation shall, on payment of the prescribed fee, issue to the applicants an authority for the joint water supply scheme for a period that, except in such circumstances as may be prescribed, does not exceed 10 years subject to such terms and conditions in respect of the taking of water as the Ministerial Corporation may deem fit and subject to such conditions in respect of the arrangements to be made between the applicants for the provision, construction, operation, maintenance and renewal of the works, the apportionment of the water taken by means of the works between the applicants to whom it is proposed to supply that water and the payments to be made in respect of each and all parts of the operations for the water supply as shall be determined by the Ministerial Corporation.

(2A) The Ministerial Corporation shall not issue an authority to the applicants therefor if any part of the land to which the application relates is not occupied by at least one of the applicants.

- (3) If the applicants fail to pay to the Ministerial Corporation within the time prescribed the fee payable upon the issue of the authority the Ministerial Corporation may at any time thereafter reject the application.

When an application is rejected under this subsection the deposit accompanying such application or any part of such deposit may, in the discretion of the Ministerial Corporation, be retained by it.

- (4) The prescribed fee is not payable in the case of an initial authority in respect of an existing work.

20BA Ministerial Corporation may refuse to grant certain applications for authorities

- (1) The Ministerial Corporation may refuse to grant any application for an authority for the purpose or irrigating grasses or pastures other than sown grasses or improved pastures.
- (2) The Ministerial Corporation may refuse to grant any application for an authority if it is not satisfied with the proposals for the construction of the works in regard to nature, class or form, or with the work proposed to be undertaken by any applicant in the preparation of the land for irrigation.
- (3) A decision of the Ministerial Corporation under subsection (1) or (2) to refuse to grant an application for an authority shall be final and shall not be subject to appeal.
- (4) The Ministerial Corporation may, when renewing an authority under which water has been used for the purpose of irrigating grasses or pastures other than sown grasses or improved pastures, renew the authority subject to a condition that the irrigation of those grasses or pastures shall be discontinued either forthwith or progressively within a specified period not exceeding 5 years.
- (5) The Ministerial Corporation may, when renewing an authority in respect of a work used for the purpose of irrigation and:
- (a) that work is, in the opinion of the Ministerial Corporation, of such nature, class or form as to cause undue wastage of water by the filling of depressions, lakes or swamps, or
- (b) the design of the work, or the failure of the holder or any of the holders of the authority to maintain the work or any part of it in good order and condition, warrants the Ministerial Corporation so doing,
- renew the authority subject to a condition that the work shall be altered in design or form or repaired to the satisfaction of the Ministerial Corporation, or that additional works shall be provided, within a specified period not exceeding 2 years.
- (6) In any case where the alterations, repairs or additional works referred to in subsection (5) are, in the opinion of the Ministerial Corporation, so extensive as to warrant its so

doing, the Ministerial Corporation may grant an extension of time, not exceeding 3 years, for completion of those alterations, repairs or additional works.

20BB Water not to be taken until works completed

The holders of an authority granted for the purpose of irrigation or water supply shall not, except with the permission in writing of the Ministerial Corporation, take water from a river or lake by means of a work in respect of which the authority is held until the whole of the works in respect of which the authority is held have been constructed or provided.

20BC Ministerial Corporation may cancel authority if work not used for 3 years

In any case where the work in respect of which an authority is held has not been used for a period of 3 years or more, the Ministerial Corporation may give to the holders of the authority notice by letter sent to each of them by post addressed to them at their addresses last known to the Ministerial Corporation that, after the expiration of a period specified in the notice, the authority will be cancelled and, where any such notice is given, unless the Ministerial Corporation annuls or withdraws the notice before the expiration of the period so specified, the authority shall, on the expiration of that period, be deemed to be cancelled.

20C Renewal of authority

(1) Subject as hereinafter in this section provided an authority may be renewed from time to time by the Ministerial Corporation on the application of the holders of the authority and on payment of the prescribed fee.

Such application shall be made before the authority expires but the Ministerial Corporation may deal with an application even if it is lodged later.

No renewal shall be for a period that, except in such circumstances as may be prescribed, exceeds 10 years at any one time.

(1A) Pending consideration of the application by the Ministerial Corporation the authority shall not lapse, but should the prescribed fee be not paid within the prescribed time the authority shall lapse.

(1B) Where the Ministerial Corporation deals with an application for renewal lodged after the authority expires, subsection (1A) has effect as if the application had been under consideration since before the expiration of the authority.

(2) An authority may be renewed by the Ministerial Corporation subject to such terms and conditions in respect of the taking of water as the Ministerial Corporation may deem fit and subject to such conditions in respect of the arrangements to be made between the holders of the authority for the provision, construction, operation, maintenance and renewal of the works, the apportionment of the water taken by means of the works between such of the holders as are supplied with that water and the payments

to be made in respect of each and all parts of the operations for the water supply as shall be determined by the Ministerial Corporation.

(3), (4) (Repealed)

(5) In this section, **authority** means an authority issued under section 20B.

20CA Application for authority by persons who do not occupy land on which works are to be constructed

(1A) This section does not apply to or in respect of an existing work.

(1) The occupiers of the whole of the lands supplied or proposed to be supplied with water obtained by means of a joint water supply scheme (hereinafter in this section referred to as the **supply work**) who desire to construct and use the supply work for the purpose of domestic water supply, stock water supply or irrigation, but one or more of whom do not occupy:

(a) the whole of the lands on which they desire to construct the supply work, or

(b) the whole of the lands on which they desire to construct works (hereinafter in this section referred to as the **conveying works**) to convey the water from the supply work to the lands on which they desire to use the water,

and who cannot obtain occupation of the land required for the supply work or conveying works may apply to the Ministerial Corporation for an authority to construct the supply work and to take and use for the purpose or purposes specified in the application the water, if any, conserved or obtained thereby.

(2) The provisions of sections 13A (2) (c) and (e), 20 (2) and 20A (1), (1A), (1B), (1C) and (1D) shall mutatis mutandis apply to an application under this section.

(3)

(a) After the expiry of a period of twenty-eight days after the date of the publication of the later of such advertisements, the Ministerial Corporation shall decide whether the application should be granted or refused.

(b) In any case where the decision of the Ministerial Corporation is that the application should be refused, the applicants shall be notified in writing of such decision.

(4) In any case where the decision of the Ministerial Corporation is that the application should be granted, the following provisions shall have effect:

(a) the Ministerial Corporation shall direct the local land board or a Magistrate to hold a public inquiry as to the desirability of granting the application,

(b) the Ministerial Corporation shall notify the owners and occupiers of the

intervening lands of the application and of the reference thereof to the local land board or the Magistrate,

- (c) the holding of the inquiry shall be notified once in the Gazette and once in a newspaper published and circulating in the district where the supply work is or is proposed to be situated,
- (d) the Ministerial Corporation, the owners and occupiers of the intervening lands, and:
 - (i) where, at the time the application is made, the supply or conveying works are, or are proposed to be, situated within a declared local area, any local occupier or statutory authority (being an occupier or an authority whose interests may be affected by the granting of the application), or
 - (ii) where, at the time the application is made, the supply or conveying works are not, or are not proposed to be, situated within a declared local area, any person whose interests may be affected by the granting of the application,shall be permitted to attend at the inquiry and be heard in support of, or in opposition to, the granting of the application,
- (e) the local land board or Magistrate, as the case may be, holding the inquiry shall announce the board's or Magistrate's decision in open court and shall thereupon report in writing upon the inquiry to the Ministerial Corporation,
- (f) where the decision of the local land board or Magistrate is in favour of granting the application, the local land board or Magistrate, as the case may be, shall also make recommendations to the Ministerial Corporation as to:
 - (i) the arrangements which should in the board's or Magistrate's opinion be made by the applicants in respect of the provision, construction, operation, maintenance and renewal of the works, the apportionment between them of the water taken by means of such works and any payments to be made by any of them in respect of the works or the water supply (hereinafter in this section referred to as the **works arrangements**), and
 - (ii) the period for which the authority should be granted, the terms, limitations and conditions which should be applied to the authority concerning the occupancy and use of the intervening lands by the holders of the authority, the payments (if any and by whom) to be made in respect of such occupancy and use and the construction, use and maintenance of the supply work and conveying works,
- (g) on receipt of the report of the local land board or Magistrate deciding in favour of granting the application, the Ministerial Corporation shall determine the works arrangements and the period, terms, limitations and conditions including those

relating to the taking of water,

- (h) the decision of the local land board or Magistrate as to the desirability or otherwise of granting the application shall be notified by the Ministerial Corporation to the applicants and to the owners and occupiers of the intervening lands and to any person who attended at the inquiry and was heard by the local land board or Magistrate in support of or in opposition to the granting of the application,
 - (i) where such decision is in favour of the granting of the application the Ministerial Corporation shall in such notification include the period, terms, limitations and conditions to be applied to the authority and, in the notification to the applicants, the works arrangements determined by the Ministerial Corporation,
 - (j) any owner or occupier of the intervening lands may, within twenty-eight days after the posting to the owner or occupier of the Ministerial Corporation's notification, appeal to the Land and Environment Court against the decision of the local land board or Magistrate or the determination by the Ministerial Corporation of the period, terms, limitations and conditions to be applied to the authority,
 - (k) the decision of the Court shall be final,
 - (l) the appeal shall be made as prescribed by rules of court of the Land and Environment Court and be accompanied by a fee of ten dollars as security for the costs of the appeal. Notice of appeal in the prescribed form shall be given by the appellant to the Ministerial Corporation upon the lodging of the appeal in the Land and Environment Court.
- (5) In dealing with the application the Ministerial Corporation, local land board, Magistrate or Land and Environment Court, as the case may be, shall *mutatis mutandis* be governed by the provisions of section 13A (5).
- (6)
- (a) The Ministerial Corporation shall, in compliance with any decision of the local land board or Magistrate upon an inquiry held under subsection (4) or of the Land and Environment Court upon appeal favouring the granting of the application for an authority on payment of the prescribed fee, issue to the applicants an authority subject to the works arrangements determined by the Ministerial Corporation and subject to the period, terms, limitations and conditions determined by the Ministerial Corporation or set out in the decision of the Land and Environment Court, as the case may be.
 - (b) No authority shall be issued under this subsection for a period that, except in such circumstances as may be prescribed, exceeds 10 years.
 - (c) No authority shall be issued under this subsection pending any appeal.

(d) An authority under this section shall be issued only upon payment of a fee calculated in the manner and according to the scale prescribed by regulations under this Act.

(e) If the applicants fail to pay to the Ministerial Corporation within the time prescribed the fee payable upon the issue of the authority the Ministerial Corporation may at any time thereafter reject the application.

(f) Where an application is rejected under paragraph (e) the deposit accompanying such application or any part of such deposit may, in the discretion of the Ministerial Corporation, be retained by it.

(7) (Repealed)

(8)

(a) Upon the issue of an authority under this section the holders thereof may, during the currency of the authority, enter, occupy and use, subject to the terms, limitations and conditions applied to the authority, the intervening lands set out in the authority for the purpose of providing, constructing, operating, maintaining and using the supply work and the conveying works.

(b) In the event of the authority lapsing or being cancelled, the holders' rights thereunder to enter, occupy and use the intervening lands shall, subject to the provisions of subsection (11), terminate.

(9) In the event of any of the holders of the authority failing to comply with any of the terms, limitations, or conditions of the authority relating to the holder's entry upon, occupancy or use of the intervening lands, the Ministerial Corporation shall, on being satisfied of such failure, cancel the authority.

(10) For the purpose of subsections (8) and (9) **holders** shall include servants and agents of the holders.

(11) For the purpose of sections 21B and 22 each person who was, immediately before the lapse or cancellation of the authority, the holder of an authority issued under this section shall be deemed to be the occupier of the intervening lands set out in such authority.

20CB Renewal of authorities under section 20CA

(1)

(a) Subject as hereinafter in this section provided an authority may be renewed from time to time by the Ministerial Corporation on the application of the holders of the authority and on payment of the prescribed fee.

(b) Such application shall be made before the authority expires but the Ministerial

Corporation may deal with an application even if it is lodged later.

- (c) No renewal shall be for a period that, except in such circumstances as may be prescribed, exceeds 10 years at any one time.
- (d) Pending the consideration of the application by the Ministerial Corporation, the local land board or Magistrate or the Land and Environment Court on appeal, as the case may be, the authority shall not lapse but should the prescribed fee be not paid within the prescribed time the authority shall lapse.
- (e) Where the Ministerial Corporation deals with an application for renewal lodged after the authority expires, paragraph (d) has effect as if the application had been under consideration since before the expiration of the authority.

(2)

- (a) Where the Ministerial Corporation decides that an application for the renewal of an authority should be granted, the Ministerial Corporation shall notify the owners or occupiers of the intervening lands set out in the authority of such decision and of the period, terms, limitations and conditions to be attached to the renewal of the authority, and any such owner or occupier may, within twenty-eight days after the posting to the owner or occupier of such notification, lodge with the Ministerial Corporation an objection to the Ministerial Corporation's decision to grant the application or to the said period, terms, limitations and conditions. Every such objection shall be in writing and shall specify the grounds of objection.
- (b) Where an objection has been lodged under the provisions of this subsection the application shall be dealt with in the manner provided in section 20CA (4).

(3)

- (a) The Ministerial Corporation shall, where its decision is that an application for renewal of an authority should be granted and no objection or appeal has been lodged under subsection (2), or in compliance with any decision of the local land board or Magistrate upon objection or that of the Land and Environment Court upon appeal favouring the granting of the application for renewal of such authority, issue to the applicants an authority subject to the works arrangements determined by the Ministerial Corporation and subject to the period, terms, limitations and conditions determined by the Ministerial Corporation or set out in the decision of the Land and Environment Court, as the case may be.
- (b) An authority shall not be issued under paragraph (a) while any appeal is pending with respect to the application for the renewal of that authority.
- (c) An authority under this subsection shall be issued only upon payment of a fee calculated in the manner and according to the prescribed scale.

(4) (Repealed)

(5) In this section, **authority** means an authority issued under section 20CA.

20D Penalty for certain alterations to work

If during the time that an authority is in force, alterations have been made in or in connection with the work which materially and prejudicially affect the quantity of water flowing into or from, or being in any river or lake, without the previous consent of the Ministerial Corporation, the person who made the alterations shall be liable to a penalty not exceeding 100 penalty units, and, in addition to the imposition of the said penalty, the authority may be cancelled by the Ministerial Corporation.

20E Amended authorities

(1) If the holders of an authority apply to the Ministerial Corporation for an amended authority to exclude any part of the lands which may be supplied with water under the terms of the authority for the joint water supply scheme the Ministerial Corporation shall issue in respect of the remaining lands and in substitution for the existing authority an amended authority for the unexpired portion of the period for which the existing authority had been granted and subject to such terms and conditions as the Ministerial Corporation may deem fit.

Any such amended authority shall be issued without payment of a fee.

(2)

(a) If it be desired that an authority be amended so that land additional to the land specified in the authority may be supplied with water obtained by means of the work covered by the authority, the holders of the authority and the occupier of the additional land may apply to the Ministerial Corporation for an amended authority.

(b) On application being made for an amended authority under this subsection the Ministerial Corporation shall cause to be published, once in the Gazette and once in a newspaper published and circulating in the district where the work is situated, a notice giving particulars of the application.

(b1) Where the work is, or is proposed to be, situated within a declared local area, any:

(i) local occupier, or

(ii) statutory authority,

whose interests may be affected by the granting of the application may, within 28 days after the publication of the later of such advertisements, lodge with the Ministerial Corporation an objection thereto.

(b2) Where the work is not, or is not proposed to be, situated within a declared local area, any person whose interests may be affected by the granting of the application may, within 28 days after the publication of the later of the advertisements, lodge with the Ministerial Corporation an objection thereto.

(b3) An objection referred to in paragraph (b1) or (b2) shall be in writing and shall specify the grounds of objection.

(b4) If, after the application is advertised:

(i) the applicant amends the application as advertised, and

(ii) in the opinion of the Ministerial Corporation the changes warrant the advertising of the application as amended,

the Ministerial Corporation shall advertise the amended application in the manner referred to in subsection (1) and:

(iii) the provisions of this section shall apply to the amended application as if it were a new application, and

(iv) the application as originally made shall be deemed to be withdrawn.

(c) The Ministerial Corporation shall, where an objection has been lodged with it pursuant to paragraph (b1) or (b2), direct the local land board or a Magistrate to hold a public inquiry as to the desirability of granting the application.

Where the recommendation of the local land board or Magistrate is in favour of the granting of the application the local land board or Magistrate, as the case may be, shall report to the Ministerial Corporation as to whether any of the terms and conditions to which the authority is subject should be amended and if so in what respect.

(d) If no objection to the granting of the application has been lodged pursuant to paragraph (b1) or (b2) or the Ministerial Corporation has received the report of the local land board or Magistrate upon any inquiry pursuant to paragraph (c), the Ministerial Corporation shall decide whether or not to grant the application.

(e) Where the Ministerial Corporation has decided to grant an application for an amended authority the Ministerial Corporation shall, on payment of such fee as it may determine, issue in respect of the lands which may be supplied with water under the terms of the existing authority and the additional land, and in substitution for the existing authority, an amended authority for the unexpired portion of the period for which the existing authority had been granted and subject to such terms and conditions as the Ministerial Corporation may deem fit.

(3) (Repealed)

- (4) The provisions of subsection (2) (c), (d) and (e) shall not apply to an application under subsection (2) (a) for the amendment of an authority issued under section 20CA but any such application shall be dealt with as an application for an original authority under that section:

Provided that any such amended authority shall be issued only on payment of such fee as the Ministerial Corporation may determine in respect of the lands which may be supplied with water under the terms of the existing authority and the additional land, and in substitution for the existing authority and for the unexpired portion of the period for which the existing authority had been granted.

20F Benefit of authority

- (1) An authority shall be deemed to be held by and shall operate and enure for the benefit of the lawful occupiers for the time being of the lands specified in the authority and of the lands which are supplied with water obtained by means of the work covered by the authority. Such occupiers shall be bound by the terms and conditions of the authority and upon breach of any such terms and conditions the authority may be cancelled by the Ministerial Corporation.
- (2) This section is subject to section 22D.

20G Existing authorities

- (1) Any work which immediately before the commencement of the *Irrigation and Water (Amendment) Act 1946* was the subject of a private irrigation authority, but which after such commencement is not a joint water supply scheme as defined in section 5, shall be deemed to be a work duly licensed under the provisions of Division 3.

The Ministerial Corporation shall, as soon as practicable after the said commencement, issue in respect of such work and in substitution for the private irrigation authority a licence under Division 3 for the unexpired portion of the period for which the private irrigation authority had been granted and subject to similar terms, limitations and conditions to those to which the private irrigation authority was subject.

Notwithstanding the provisions of section 12 a licence issued in accordance with this subsection shall be issued without payment of a fee.

- (2) Any private irrigation authority in existence immediately before the commencement of the *Irrigation and Water (Amendment) Act 1946*, for a work which after such commencement is a joint water supply scheme as defined in section 5 shall be deemed to be an authority for the unexpired portion of the period for which the private irrigation authority had been granted and subject to the same terms, conditions and limitations as those to which the private irrigation authority was subject.

20H Revocation or suspension etc of authority

- (1) If at any time during the currency of an authority the Ministerial Corporation is satisfied that:
- (a) the holders or any of the holders of the authority have or has conserved, diverted, taken or used any quantity of water in excess of the quantity authorised by the authority,
 - (b) any land has been irrigated as to an area in excess of that authorised by the authority,
 - (c) the holders or any of the holders of the authority have or has used the work in respect of which the authority is held for a purpose other than that authorised by the authority,
 - (d) the holders or any of the holders of the authority have or has contravened or failed to comply with any of the terms, limitations or conditions to which the authority is subject,
 - (e) any water diverted, taken or used by any of the holders of the authority is not being beneficially used or is being wasted, or
 - (f) beneficial use is not being made of the work in respect of which the authority is held,

the Ministerial Corporation may serve on the holders of the authority a notice that, after the expiration of a period specified in the notice, the authority will be revoked, suspended or modified as indicated in the notice, and where any such notice is served, unless the Ministerial Corporation annuls or withdraws the notice before the expiration of the period so specified, the authority shall, on the expiration of that period, be deemed to be revoked, suspended or modified, as the case may be.

- (2) If in the opinion of the Ministerial Corporation there are circumstances which render it necessary or expedient:
- (a) that any authority should be suspended or modified,
 - (b) that the quantity of water authorised to be taken under any authority should be reduced, or
 - (c) that a right held under any authority for the taking of water for any purpose from a river, lake or section of a river should be restricted or suspended,

the Ministerial Corporation may serve on the holders of the authority a notice to that effect, and where any such notice is served, the authority shall be deemed to be suspended or modified, or the quantity of water reduced or, as the case may be, the right restricted or suspended, according to the tenor of the notice.

(3) If the Ministerial Corporation is satisfied that the holders or any of the holders of an authority have or has failed to comply with the terms of a notice by the Ministerial Corporation whereby:

- (a) the authority has been modified,
- (b) the quantity of water authorised to be taken under the authority has been reduced, or
- (c) a right held under the authority for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended,

the Ministerial Corporation may serve on the holders of the authority a notice that, after the expiration of a period specified in the notice, the authority will be suspended and where any such notice is served, unless the Ministerial Corporation annuls or withdraws the notice before the expiration of the period so specified, the authority shall, on the expiration of that period, be deemed to be suspended.

(4) Service of a notice under this section may be effected on a holder of an authority:

- (a) by delivering the notice to the holder personally,
- (b) by leaving the notice with any person apparently of or above the age of 14 years who apparently resides or is employed on the land of the holder, or
- (c) by letter sent by post and addressed to the holder at the holder's address last known to the Ministerial Corporation.

(5) A reference in this section to modification of an authority is not limited to a modification by way of restriction.

20HA Offences with respect to authorities

(1) Any person who:

- (a) being a holder of an authority in respect of a work to which this Part extends, uses the work when the authority is suspended,
- (b) being a former holder of such an authority, uses the work when the authority is revoked or cancelled or has expired,
- (c) being a holder of an authority, contravenes or fails to comply with any term, limitation or condition to which the authority is subject,
- (d) being a holder of an authority, fails to comply with the terms of any notice served on the holder by the Ministerial Corporation whereby:
 - (i) the authority has been modified,

(ii) the quantity of water authorised to be taken under the authority has been reduced, or

(iii) a right held under the authority for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended, or

(e) being a holder of an authority, contravenes section 20BB,

is guilty of an offence and is liable, on conviction:

(f) where the offence was an offence under paragraph (a), (b), (c) or (d) committed by a corporation—to a penalty not exceeding 200 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 20 penalty units for each day the offence continues,

(g) where the offence was an offence under paragraph (a), (b), (c) or (d) committed by any other person—to a penalty not exceeding 100 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 10 penalty units for each day the offence continues, or

(h) where the offence was an offence under paragraph (e)—to a penalty not exceeding 10 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1 penalty unit for each day the offence continues.

(2) In any prosecution under this section against a holder or former holder of an authority on whose land a work in respect of which the authority is or was held is situated, proof:

(a) that the work has been used when the authority is suspended, revoked or cancelled or has expired,

(b) that any term, limitation or condition to which the authority is subject has been contravened or has not been complied with,

(c) of failure to comply with the terms of any notice served by the Ministerial Corporation on that holder whereby:

(i) the authority has been modified,

(ii) the quantity of water authorised to be taken under the authority has been reduced, or

(iii) a right held under the authority for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended, or

(d) that water has been taken from a river or lake by means of a work covered by an authority before the whole of the works covered by the authority have been constructed or provided,

shall, in the absence of proof to the contrary, be evidence that the use, contravention, non-compliance or failure was caused by that holder or former holder of the authority.

20HB Revocation and cancellation of authorities

Where an authority is deemed to be revoked or cancelled under this Division, the Ministerial Corporation may notify the revocation or cancellation in the Gazette, and any such notification shall be conclusive evidence of the revocation or cancellation.

Division 4A Group licences

20I Definitions

In this Division, except in so far as the context or subject-matter otherwise indicates or requires:

Board means Board of Management elected under the *Private Irrigation Districts Act 1973*.

instalment, in relation to a fee, means an instalment of the fee payable in accordance with section 20PA.

private district means private domestic and stock water supply district or private domestic and stock water supply and irrigation district constituted under the *Private Irrigation Districts Act 1973*.

20J Boards to take water only under a group licence

A Board shall not take water from any river or lake for the use of occupiers of lands within a private district except under a group licence.

20K Application for group licence

- (1) A Board may apply to the Ministerial Corporation in the prescribed form for a group licence authorising the Board:
 - (a) to construct and use or to use any work to which this Part extends, specified in the application, for the purpose of taking water from a river or lake, and
 - (b) to take the water conserved or obtained thereby and dispose of it for the use of the occupiers from time to time of lands within the private district of the Board for the purposes specified in the application.
- (2) The provisions of section 20 (2) (paragraphs (h), (i) and (j) excepted) and section 20A (except so much of subsection (2) as relates to the matters to be embodied in the recommendation referred to in that subsection) apply to and in respect of an application under this section in the same way as those provisions apply to and in respect of an application for an authority under Division 4 of Part 2.

- (3) It shall not be a function of the local land board or Magistrate to inquire and report whether the Board has the right to enter and occupy the site of any work referred to in subsection (1) (a) or of any works which may be required to convey water to the lands of the occupiers on which the water is to be used and no objection relating to that right shall be entertained.

20L Issue of group licence

- (1) If no objection to the granting of the application has been lodged or if such an objection has been lodged and the Ministerial Corporation has received the report of the local land board or Magistrate upon any inquiry into the application, the Ministerial Corporation shall decide whether or not to grant the application.
- (2) Where the Ministerial Corporation's decision is that the application for the group licence shall be granted, the Ministerial Corporation shall notify the Board of the prescribed fee, of the period for which the group licence is to be issued and of the terms, limitations and conditions which the Ministerial Corporation has decided shall be attached to the group licence.
- (2A) The prescribed fee is not payable in the case of an initial group licence in respect of an existing work.
- (3) On payment of the whole, or the first instalment, of the prescribed fee and the Board certifying that the works referred to in section 20K (1) (a) and the works required to convey the water to the lands of the occupiers on which the water is to be used:
- (a) have, under section 29 of the *Private Irrigation Districts Act 1973*, been constructed,
 - (b) are the subject of a notice served under section 34 (1) of that Act, or
 - (c) have been transferred to the Board under section 35 of that Act,
- the Ministerial Corporation shall issue to the Board a group licence for the period and on the terms, limitations and conditions referred to in subsection (2).
- (4) A group licence shall not be issued for a period that, except in such circumstances as may be prescribed, exceeds 10 years.
- (5) If the Board fails to pay to the Ministerial Corporation within the prescribed time the first instalment of the prescribed fee or, where that fee is not paid by instalments, the whole of that fee, the Ministerial Corporation may at any time thereafter reject the application.
- (6) When an application is rejected under subsection (5) the deposit accompanying such application or any part of that deposit may, in the discretion of the Ministerial Corporation, be retained by it.

20M Lapse of licence or authority

- (1) Unless the Ministerial Corporation otherwise determines, upon the issue of a group licence or an amended group licence any licence or authority issued under this Part and any licence issued under Part 5 pursuant to which water may be taken and used by the occupier or occupiers of any lands within the private district of the Board to which the group licence or amended group licence has been issued shall lapse and no compensation shall be payable by reason of the operation of this subsection.
- (2) Any such determination may be subject to such terms, limitations and conditions whether by way of restriction or variation or modification or otherwise of the licences or authorities referred to in subsection (1), or any of them, as the Ministerial Corporation may in its absolute discretion determine.

20N Partial waiver of fee

Where any licence or authority lapses pursuant to section 20M (1), the Ministerial Corporation may waive payment of so much of the prescribed fee relating to the issue of the group licence or amended group licence as it may think fit.

20O Renewal of group licence

- (1) An application for renewal of a group licence may be made by a Board to the Ministerial Corporation before the group licence expires but the Ministerial Corporation may deal with an application even if it is lodged later.
- (2) (Repealed)
- (3) Where the decision of the Ministerial Corporation is that the application for renewal shall be granted, the Ministerial Corporation shall notify the Board of the prescribed fee, of the period for which the group licence is to be renewed and of the terms, limitations and conditions which the Ministerial Corporation has decided shall be attached to the group licence upon its renewal.
- (4) On payment of the whole, or the first instalment, of the prescribed fee, the Ministerial Corporation shall renew the group licence for the period and on the terms, limitations and conditions referred to in subsection (3).
- (5) A group licence shall not be renewed for a period that, except in such circumstances as may be prescribed, exceeds 10 years at any one time.
- (6) Pending consideration by the Ministerial Corporation of the application for renewal and, where the application for renewal is granted, pending the renewal of the group licence, the group licence shall not lapse, but if the first instalment of the prescribed fee or, where that fee is not paid by instalments, the whole of that fee is not paid within the time prescribed the group licence shall lapse and the application for renewal shall be deemed to have been rejected.

- (7) Where the Ministerial Corporation deals with an application for renewal lodged after the group licence expires, subsection (6) has effect as if the application had been under consideration since before the expiration of the group licence.

20P Power to charge different fees

For the purpose of sections 20L and 20O different fees may be prescribed, differing according to the class of work, the object or purpose of the work or the river or lake on which it is situate.

20PA Fees payable by instalments

- (1) A board may pay the fee payable in respect of the issue or renewal of a group licence by instalments in accordance with this section.
- (2) Where a Board pays a fee in respect of the issue or renewal of a group licence by instalments:
- (a) the number of instalments shall be the number of complete periods of 12 months for which the group licence is to be issued or renewed,
 - (b) each instalment shall be of an amount equal to the fee divided by the number of instalments, disregarding any remainder, together, in the case of the first instalment, with that remainder, and
 - (c) the second and each subsequent instalment shall be due and payable on the expiration of each complete period of 12 months after the date of issue or renewal of the group licence.

20Q Amendment of group licence

- (1) The Board may apply to the Ministerial Corporation in the prescribed form for an amended group licence to be issued to it in substitution for the group licence or amended group licence held by it.
- (2) Where:
- (a) a Board is notified by the Ministerial Corporation that the Governor proposes pursuant to section 11 of the *Private Irrigation Districts Act 1973* to re-define the boundaries of a private district by adding to that private district any lands and the Board makes an application under subsection (1) for an amended group licence to enable those lands to be supplied with water, or
 - (b) a Board makes an application under subsection (1) for an amended group licence by reason of any proposed alteration of any work to which this Part extends and the Ministerial Corporation is of the opinion that the alteration would, if made, materially and prejudicially affect the quantity or quality of water flowing in, to, or from, or being in any river or lake,

the provisions of section 20E (2) (b), (b1), (b2) and (c) apply to and in respect of the application in the same way as those provisions apply to an application referred to in that section and:

- (c) the provisions of section 20K (3) apply to and in respect of any inquiry and report made for the purposes of this subsection, and
 - (d) the provisions of section 20L (1) and (2) (except so much of section 20L (2) as relates to the period for which a group licence is to be issued) apply to and in respect of the granting of the amended group licence in the same way as they apply to the granting of a group licence.
- (3) The Ministerial Corporation may grant any application made under subsection (1) but shall not grant an application referred to in subsection (2) unless:
- (a) the provisions referred to in subsection (2) have been complied with,
 - (b) such fee as the Ministerial Corporation may determine has been paid in respect of the amended group licence applied for, and
 - (c) in the case of an application referred to in subsection (2) (a):
 - (i) a proclamation under section 11 of the *Private Irrigation Districts Act 1973* re-defining the boundaries of the private district has been published in the Gazette, and
 - (ii) the Board has certified that any works necessary to convey water to the lands added to the private district have, under section 29 or 34 of that Act, been constructed or taken over.
- (4) Except as provided in subsections (3) and (6), no fee shall be payable in respect of an application for or the issue of an amended group licence.
- (5) An amended group licence shall be issued for the unexpired period for which the group licence it replaces was issued.
- (6) Any instalment of a fee payable in respect of the issue or renewal of a group licence which is unpaid when the licence is replaced by an amended group licence shall be deemed to be payable in respect of the issue of the amended group licence.

20R Occupiers bound by group licence

The Board and the occupiers from time to time of the lands specified in a group licence which are supplied with water obtained by means of the work covered by the group licence shall be bound by the terms, limitations and conditions of the group licence.

20S Revocation or suspension etc of group licence

- (1) If at any time during the currency of a group licence the Ministerial Corporation is

satisfied that:

- (a) the Board holding the group licence or any of the group licence occupiers has conserved, diverted, taken or used any quantity of water in excess of the quantity authorised by the group licence,
- (b) any land has been irrigated as to an area in excess of that authorised by the group licence,
- (c) the Board holding the group licence or any of the group licence occupiers has used the work in respect of which the licence is held for a purpose other than that authorised by the licence,
- (d) the Board holding the group licence or any of the group licence occupiers has contravened or failed to comply with any of the terms, limitations or conditions to which the licence is subject,
- (e) any water diverted, taken or used by the Board holding the group licence or by any of the group licence occupiers is not being beneficially used or is being wasted,
- (f) beneficial use is not being made of the work in respect of which the group licence is held, or
- (g) the Board holding the group licence has failed to pay by the due date the second or any subsequent instalment of the fee payable in respect of the issue or renewal of the group licence,

the Ministerial Corporation may serve on the Board a notice that, after the expiration of a period specified in the notice, the group licence will be revoked, suspended or modified as indicated in the notice, and where any such notice is served, unless the Ministerial Corporation annuls or withdraws the notice before the expiration of the period so specified, the group licence shall, on the expiration of that period, be deemed to be revoked, suspended or modified, as the case may be.

- (2) If in the opinion of the Ministerial Corporation there are circumstances which render it necessary or expedient:
- (a) that any group licence should be suspended or modified,
 - (b) that the quantity of water authorised to be taken under any group licence should be reduced, or
 - (c) that a right held under any group licence for the taking of water for any purpose from a river, lake or section of a river should be restricted or suspended,

the Ministerial Corporation may serve on the Board which holds the group licence a notice to that effect, and where any such notice is served, the group licence shall be

deemed to be suspended or modified, or the quantity of water reduced or, as the case may be, the right restricted or suspended, according to the tenor of the notice.

(3) If the Ministerial Corporation is satisfied that the Board which holds a group licence has failed to comply with, or to cause to be complied with, the terms of a notice served by the Ministerial Corporation whereby:

- (a) the group licence has been modified,
- (b) the quantity of water authorised to be taken under the group licence has been reduced, or
- (c) a right held under the group licence for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended,

the Ministerial Corporation may serve on the Board a notice that, after the expiration of a period specified in the notice, the group licence will be suspended, and where any such notice is served, unless the Ministerial Corporation annuls or withdraws the notice before the expiration of the period so specified, the group licence shall, on the expiration of that period, be deemed to be suspended.

(4) Service of a notice under this section may be effected on a Board:

- (a) by delivering the notice to the principal place of business of the Board,
- (b) by leaving the notice with any person apparently of or above the age of 14 years who is apparently employed by the Board, or
- (c) by letter sent by post and addressed to the Board at its address last known to the Ministerial Corporation.

(5) A reference in this section to modification of a group licence is not limited to a modification by way of restriction.

20SA Offences with respect to group licences

(1) Any person who:

- (a) being a Board holding a group licence or a group licence occupier, uses a work in respect of which the group licence is held when the group licence is suspended,
- (b) being a Board which formerly held a group licence or an occupier of land to which water was formerly supplied under such a group licence, uses a work in respect of which the group licence was held when the group licence is revoked or cancelled or has expired,
- (c) being a Board holding a group licence or a group licence occupier, contravenes or fails to comply with any term, limitation or condition to which the group licence is subject, or

- (d) being a Board holding a group licence, fails to comply with the terms of any notice served on the Board by the Ministerial Corporation whereby:
 - (i) the group licence has been modified,
 - (ii) the quantity of water authorised to be taken under the group licence has been reduced, or
 - (iii) a right held under the group licence for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended,

is guilty of an offence and is liable, on conviction:

- (e) where the offence was committed by a corporation—to a penalty not exceeding 200 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 20 penalty units for each day the offence continues, or
- (f) where the offence was committed by any other person—to a penalty not exceeding 100 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 10 penalty units for each day the offence continues.

- (2) In any prosecution under this section against a Board holding a group licence or a group licence occupier, or a Board which formerly held a group licence or an occupier of land to which water was formerly supplied under a group licence, being a Board or an occupier on whose land a work in respect of which a group licence is or was held is situated, proof:

- (a) that the work has been used when the group licence is suspended, revoked or cancelled or has expired, or
- (b) that any term, limitation or condition to which the group licence is subject has been contravened or not complied with,

shall, in the absence of proof to the contrary, be evidence that the use, contravention or non-compliance was caused by that Board, group licence occupier or occupier, as the case may be.

- (3) In any prosecution under this section against a Board holding a group licence, proof of failure to comply with the terms of any notice served on that Board by the Ministerial Corporation whereby:
 - (a) the group licence has been modified,
 - (b) the quantity of water authorised to be taken under the group licence has been reduced, or
 - (c) a right held under the group licence for the taking of water for any purpose from a river, lake or section of a river has been restricted or suspended,

shall, in the absence of proof to the contrary, be evidence that the failure was caused by that Board.

20T Penalty for certain alterations to work

If during the time that a group licence is in force, alterations have been made in or in connection with the work covered by the group licence which materially and prejudicially affect the quantity of water flowing into or from, or being in any river or lake, without the previous consent of the Ministerial Corporation, the person who made the alterations shall be liable to a penalty not exceeding 100 penalty units, and, in addition to the imposition of that penalty, the group licence may be cancelled by the Ministerial Corporation.

20U Revocation and cancellation of group licences

Where a group licence is deemed to be revoked or cancelled under this Division, the Ministerial Corporation may notify the revocation or cancellation in the Gazette, and any such notification shall be conclusive evidence of the revocation or cancellation.

Division 4B Volumetric water allocations schemes

20V Definitions

(1) In this Division, except in so far as the context or subject-matter otherwise indicates or requires:

entitlement means:

- (a) a licence, permit, authority, irrigation corporation licence or group licence, or
- (b) in relation to a trust, the right to take and use water conferred on the trust by section 38B.

scheme, in relation to any water source, means a volumetric water allocations scheme in force in respect of that water source under section 20X.

trust means a trust constituted under Part 3 that is declared by the regulations to be a trust to which this Division applies.

water allocation, in relation to any entitlement, which authorises the taking of water from a water source which is subject to a scheme, means the quantity of water specified in the condition (as may be modified from time to time under this Division) attached to, or included in, the entitlement pursuant to section 20X (5) or section 20AB (1) (b) as being the maximum quantity which may, subject to this Division, be taken from that water source in any year under the entitlement for the purpose or purposes specified in the entitlement.

water source means:

- (a) a river, lake or section of a river, or

(b) a combination of 2 or more of them.

year, in relation to a scheme, means:

(a) a year commencing on 1 July, or

(b) if the Ministerial Corporation by order published in the Gazette specifies a different year for the scheme—the specified year.

(1A) Where the year applicable to an existing scheme is changed, the order making the change may also make provision for the transitional arrangements leading to the change.

(2) A reference in this Division to the holder of an entitlement includes:

(a) if the entitlement is an authority, a reference to each of the holders of the authority, and

(b) if the entitlement is the right of a trust to take and use water, a reference to the trust.

20W Power of Ministerial Corporation to declare water source to be subject to volumetric water allocations scheme

The Ministerial Corporation may, by order published in the Gazette, declare that any water source and all of the entitlements, which authorise the taking of water from that water source, shall, on and from such date as may be specified in the order (being the date of its publication or a later date), be subject to a volumetric water allocations scheme prepared under section 20X or may, by a like order, declare that a scheme already in force shall be subject to a modification so prepared.

20X Determination of water allocations in respect of entitlements

(1) Before an order under section 20W may be made, the Ministerial Corporation shall prepare a volumetric water allocations scheme, or a modification of such a scheme, in respect of the water source to which it is proposed that the order will, when made, apply.

(2) In preparing or modifying a scheme in respect of a water source, the Ministerial Corporation:

(a) shall assess the total quantity of water:

(i) that is likely to be available in each year for apportionment among the holders of entitlements, and

(ii) that, in the opinion of the Ministerial Corporation, should be reserved for other uses or for future use, and

(b) shall then determine in respect of each entitlement the maximum quantity of water which may, subject to this Division, be taken from that water source in any year under the entitlement for the purpose or purposes specified in the entitlement.

(3) The Ministerial Corporation may:

- (a) fix differing quantities of water per hectare according to whether water authorised to be taken from the water source under an entitlement may be used for the purpose of irrigating orchards, vineyards, trees (other than trees in orchards), lucerne, pasture, fodder crops, cereal crops or vegetables or crops or plantings of any other description,
- (b) fix differing quantities of water according to whether water authorised to be taken from the water source under an entitlement may be used for a purpose other than a purpose specified in paragraph (a), and
- (c) determine that in no case shall the maximum quantity of water which may be taken from the water source in any year under any entitlement exceed a quantity specified by the Ministerial Corporation.

(3A) The Ministerial Corporation may, from time to time, vary any determination made under subsection (3) (c) by increasing the quantity specified by it as being the maximum quantity of water which may be taken from a water source in any year under any entitlement.

(4) Subject to any determination in force under subsection (3) (c):

- (a) a determination under subsection (2) (b) in respect of an entitlement may be made:
 - (i) in the case of an entitlement issued for the purpose of irrigating a crop or planting of a class specified in subsection (3) (a), by reference to the area of land which is authorised to be irrigated under the entitlement and to such quantity as may be fixed under subsection (3) (a) in respect of that class of crop or planting, and
 - (ii) in the case of an entitlement issued for any purpose other than the irrigation of a crop or planting of a class specified in subsection (3) (a), by reference to such quantity as may be fixed under subsection (3) (b) in respect of that purpose, and
- (b) where water authorised to be taken from the water source under an entitlement may be used for the purpose of irrigating two or more classes of crops or plantings specified in subsection (3) (a) or for two or more purposes, a maximum quantity of water may be determined under subsection (2) (b) in respect of each of those classes or, as the case may be, each of those purposes.

- (5) As soon as practicable after the publication of an order declaring a water source to be subject to a scheme, the Ministerial Corporation shall, by notice in writing served on the holder of each entitlement which authorises the taking of water from the water source, attach to the entitlement a condition that, except where the operation of the condition is suspended under section 20AA, on and from the date on which the scheme commences and in respect of each year during which the scheme is in force, not more than the maximum quantity of water determined in respect of the entitlement under subsection (2) (b) and specified in the condition (as may be modified from time to time under this Division) shall be taken from the water source during any year under the entitlement for the purpose or purposes specified in the entitlement.
- (6) Service of a notice under subsection (5) may be effected on a holder referred to in subsection (5):
 - (a) by delivering the notice to the holder personally,
 - (b) by leaving the notice with any person apparently of or above the age of 14 years who apparently resides or is employed on the land of the holder, or
 - (c) by letter sent by post and addressed to the holder at the holder's address last known to the Ministerial Corporation.
- (7) On the service of a notice under subsection (5), the entitlement to which the notice relates shall be modified according to the tenor of the notice.
- (8) Where any order under section 20W declaring a water source to be subject to a scheme has effect on and from a date falling after the beginning of a year, the quantity of water determined under subsection (2) (b) in respect of an entitlement, which authorises the taking of water from that water source, shall, for that year, be deemed to be reduced by the proportion that the part of that year which has elapsed at that date bears to the whole of that year and the condition which is attached to the entitlement in accordance with subsection (5) shall be construed accordingly.
- (9) Notwithstanding anything in this Part, a determination made under subsection (2) (b) in respect of an entitlement and a condition attached to the entitlement in accordance with subsection (5) shall not be the subject of an objection or appeal under this Part.

20XA Variation of water allocations

- (1) Subject to any determination in force under section 20X (3) (c), the Ministerial Corporation may, from time to time and by notice in writing served on the holder of an entitlement (being an entitlement which authorises the taking of water from a water source which is subject to a scheme), vary any determination made under section 20X (2) (b) or 20AB (1) (a) in respect of the entitlement.
- (2) A notice under subsection (1) may specify that the variation has effect:

- (a) in respect of a year specified in the notice, or
 - (b) in respect of a year so specified and in respect of each subsequent year.
- (3) Where a notice has been served under subsection (1) on the holder of an entitlement (being an entitlement which authorises the taking of water from a water source which is subject to a scheme), the condition which pursuant to section 20X (5) is attached to, or which pursuant to section 20AB (1) (b) is included in, the entitlement shall be modified according to the tenor of the notice and the water allocation in respect of the entitlement shall be deemed to be varied accordingly.
- (4) Service of a notice under subsection (1) on a holder referred to in that subsection may be effected:
- (a) by delivering the notice to the holder personally,
 - (b) by leaving the notice with any person apparently of or above the age of 14 years who apparently resides or is employed on the land of the holder, or
 - (c) by letter sent by post and addressed to the holder at the holder's address last known to the Ministerial Corporation.

20XB Removal of area restrictions on irrigation entitlements

Any term, limitation or condition which:

- (a) is included in an entitlement which authorises the taking of water, for the purpose of irrigating crops or plantings (other than prescribed crops or plantings), from a water source which is subject to a scheme, and
- (b) purports to restrict the area of land which may be irrigated pursuant to the entitlement,

does not, while the water source remains subject to the scheme, operate so as to restrict the area of land which may be so irrigated.

20XC Corresponding increase and decrease of water allocation

- (1) The Ministerial Corporation may at any time, or from time to time, during a year:
- (a) increase the basic water allocation for an entitlement for that year without exceeding any maximum quantity determined under section 20X (3) (c), and
 - (b) decrease the basic water allocation for the entitlement for the next succeeding year,
- without altering the total basic water allocation for the entitlement for those years.
- (2) The condition of a water entitlement imposed under section 20X or 20AB to control

the quantity of water that may be taken under the entitlement (with any modification effected under section 20XA, 20Z or 20AA) is modified to the extent necessary to permit any increase, and to require any decrease, effected under subsection (1).

(3) The Ministerial Corporation may waive a decrease that has been imposed under subsection (1) (b) and, where a decrease is waived, the modification of a condition effected by subsection (2) in relation to the decrease ceases to have effect.

(4) In this section:

basic water allocation, in relation to an entitlement for a year, means the water allocation applicable to the entitlement for that year under a condition imposed under section 20X or 20AB, with any modification effected under section 20XA, 20Z or 20AA.

20Y Invalidation of applications for entitlements

(1) Where the Ministerial Corporation is satisfied that a water source which is subject to a scheme is unlikely to have more water available than is sufficient to meet the requirements of the persons already authorised by law to take water from the water source and such other possible requirements for water from the water source as are determined by the Ministerial Corporation, it may, by a notice published in the Gazette and in a newspaper circulating in the district in which the water source is located, declare that, on and from a date specified in the notice (being the date of publication in the Gazette or a later date):

(a) no applications made after the date on which the notice is so published for entitlements, and

(b) no applications made after the date on which the notice is so published:

(i) for additional licences made under the proviso to section 18 (2),

(ii) for amended authorities made under section 20E (2) (a), or

(iii) for amended group licences referred to in section 20Q (2) (a),

will be granted until the notice is revoked by a subsequent notice so published.

(1A) A declaration under subsection (1) may relate:

(a) to a specified application for an entitlement,

(b) to all applications for entitlements,

(c) to a specified class of applications for entitlements, or

(d) to all applications for entitlements other than a specified application for an entitlement or a specified class of applications for entitlements.

- (2) Subsection (1) does not apply to an application for an entitlement, or to applications for entitlements, in replacement of an entitlement if the water allocation in respect of the replacement entitlement or, as the case may be, the total water allocations in respect of the replacement entitlements will not exceed the water allocation in respect of the entitlement that is being replaced or, as the case may be, the total water allocations in respect of the entitlements that are being replaced.
- (2A) Notwithstanding the provisions of sections 11 (2C) (d), 20A (1D) (d) and 20K (2), a notice in force under subsection (1) does not apply to an amended application referred to in those provisions if the original application was made before the date on which the notice took effect, but any amendment made on or after that date has no effect, and shall be disregarded, if the Ministerial Corporation is of the opinion that the granting of the application with the amendment could result in a larger water allocation than would be the case if the application were to be granted without the amendment.
- (2B) Subsection (1) does not apply to an application for an irrigation corporation licence.
- (3) If an application to which a notice under subsection (1) applies is made while the notice is in force, it is invalid and shall be rejected by the Ministerial Corporation.
- (4) Where a notice published under subsection (1) has effect in relation to any water source and any land in respect of which an entitlement authorises the taking of water from that water source is subdivided into parts, an application for an entitlement to take water from that water source for use in connection with any such part shall, for the purpose of this section, be deemed to be an application for an entitlement in replacement of an existing entitlement.

20Z Power of Ministerial Corporation to reduce water allocations in time of shortage

- (1) If, at any time, or from time to time, during a year, it appears to the Ministerial Corporation that a water source which is subject to a scheme is unlikely to have sufficient water available to meet the requirements during that year of the persons authorised by law to take water from that water source and such other possible requirements for water from that water source as are determined by the Ministerial Corporation, the Ministerial Corporation may, by a notice published in the Gazette and in a newspaper circulating in the district in which that water source is located, either before or after the beginning of that year, reduce the water allocations under the scheme for that year by such proportion as may be specified in the notice.
- (1A) A notice published under subsection (1) may relate:
 - (a) to all entitlements, generally,
 - (b) to specified entitlements or entitlements of a specified class, or
 - (c) to all entitlements, other than specified entitlements or entitlements of a specified

class,

as the Ministerial Corporation may determine.

- (2) Where a notice has been published in accordance with subsection (1), the condition which pursuant to section 20X (5) is attached to, or which pursuant to section 20AB (1) (b) is included in, any entitlement to which the notice relates shall, for any year specified in the notice, be modified according to the tenor of the notice and the water allocation in respect of the entitlement shall be deemed to be reduced accordingly.
- (3) Where, after the beginning of a year, the condition attached to, or included in, an entitlement as referred to in subsection (2) has been modified as provided in that subsection and the quantity of water taken under the entitlement during that year before the modification had effect did not exceed the water allocation in respect of the entitlement but exceeded the water allocation as reduced in consequence of the modification of the condition, the holder of the entitlement shall not be regarded as having contravened the condition, as so modified, with respect to the taking of that excess quantity.

20AA Powers of Ministerial Corporation in years of surplus

- (1) The Ministerial Corporation may, during a year or before its commencement, give a direction in such manner as it thinks fit as to the times at which, the manner in which, and the extent to which, water may, under an entitlement, be taken in excess of the water allocation for the entitlement from a water source subject to a scheme, and may vary or revoke such a direction.
- (2) To the extent to which the taking of water in accordance with a direction relating to an entitlement is inconsistent with a condition to which the entitlement is subject, the condition shall be deemed to be suspended.
- (3) Water taken under an entitlement in accordance with a direction under subsection (1) shall be disregarded in determining whether the water allocation for the entitlement has been exceeded.
- (4) Without limiting subsection (1), if the Ministerial Corporation is satisfied that a water source subject to a scheme is likely to have more water available during a year than is required to meet:
 - (a) the requirements during that year of the persons authorised by law to take water from that water source, and
 - (b) such other possible requirements for water from that water source as it determines,

the Ministerial Corporation may, in such manner as it thinks fit, increase the water allocations under the scheme by a specified proportion.

- (5) The condition of an entitlement for which the water allocation is increased under subsection (4) is modified to the extent necessary to give effect to the increase.

20AB Issue of new entitlements

- (1) Where the Ministerial Corporation decides to grant an application made under this Part or under the *Irrigation Corporations Act 1994* for the issue of an entitlement which will authorise the taking of water from a water source which is subject to a scheme, it shall:
 - (a) determine in respect of the entitlement the maximum quantity of water which may, subject to this Division, be taken from the water source in any year for the purpose or purposes for which the entitlement is to be issued, and
 - (b) include in the entitlement a condition that, except where the operation of the condition is deemed to be suspended under section 20AA (2), on and from the date on which the entitlement is to have effect and in respect of each year during which the scheme is in force, not more than the maximum quantity of water determined in respect of the entitlement under paragraph (a) and specified in the condition (as may be modified from time to time under this Division) shall be taken from that water source during any year under the entitlement for the purpose or purposes specified in the entitlement.
- (2) The provisions of section 20X (3), (3A) and (4) shall apply in relation to the determination of a water allocation under subsection (1) (a) in the same way as those provisions apply in relation to the determination of a water allocation under section 20X (2) (b).
- (3) Where any entitlement becomes effective on a date falling after the beginning of a year, the quantity of water determined under subsection (1) (a) in respect of the entitlement shall, for that year, be deemed to be reduced by the proportion that the part of that year which has elapsed at that date bears to the whole of that year and the condition included in the entitlement in accordance with subsection (1) (b) shall be construed accordingly.
- (4) Notwithstanding anything in this Part, a determination made under subsection (1) (a) in respect of an entitlement and a condition included in that entitlement in accordance with subsection (1) (b) shall not be the subject of an objection or appeal under this Part.

20AC Water meters

- (1) Except where the Ministerial Corporation in any particular case otherwise determines, a person shall not take any water from a water source which is subject to a scheme by means of a work authorised by an entitlement unless there is connected to the work a water meter, or other measuring device, which has been approved by the Ministerial Corporation.

Maximum penalty: 200 penalty units in the case of a corporation and 100 penalty units in any other case.

(2) A person who:

(a) intentionally, fraudulently or by culpable negligence:

(i) damages a water meter or other measuring device connected to a work referred to in subsection (1),

(ii) prevents any such meter or measuring device from recording the quantity of water taken through or by means of the work, or uses any means whereby water so taken is not recorded by the meter or measuring device, or

(iii) without the consent of the Ministerial Corporation given in writing, interferes with any such meter or measuring device, or

(b) being the holder of the entitlement in respect of the work, permits, suffers or directs any other person to do any of the acts specified in paragraph (a),

is guilty of an offence and is liable, on conviction:

(c) where the offence was committed by a corporation—to a penalty not exceeding 200 penalty units, or

(d) where the offence was committed by any other person—to a penalty not exceeding 100 penalty units or to imprisonment for a term not exceeding 12 months, or both.

(3) In any prosecution for an offence under subsection (2), proof of the existence of:

(a) any means for preventing a meter or measuring device from recording the quantity of water taken through or by means of the work to which the meter or measuring device is connected, or

(b) any means whereby water is taken through or by means of the work without being recorded by the meter or measuring device,

shall be admissible as evidence that the prevention or, as the case may be, the use of the means was caused by the holder of the entitlement authorising the use of the work.

20AD Provisions applicable in cases of subdivision of land

Where land (being land which is supplied with water obtained from a water source which is subject to a scheme by means of a work in respect of which an entitlement is held) is subdivided into parts, the Ministerial Corporation is not, when issuing entitlements relating to those parts, or any of those parts, obliged to make water allocations in respect of those entitlements which in aggregate exceed the water allocation in respect of the

first-mentioned entitlement.

20AE Power of entry

- (1) An officer under the *Water Administration Act 1986*, or an employee or agent of the Ministerial Corporation, may:
 - (a) enter on any land on which there is constructed any work which is used for taking water from a water source which is subject to a scheme, and
 - (b) inspect any work so constructed and used,for the purpose of ascertaining whether or not the provisions of this Division have been or are being complied with or contravened.
- (2) An officer under the *Water Administration Act 1986* or an employee or agent of the Ministerial Corporation may enter on any land and dismantle for inspection a water meter or other measuring device that is on the land and is connected to a work referred to in subsection (1).

20AF Ordering of supply of water

- (1) The Ministerial Corporation may temporarily vary or waive a condition of an entitlement relating to the ordering of supplies under the water allocation of the holder of the entitlement.
- (2) Where, in accordance with a condition to which an entitlement is subject, a supply of water is ordered before, but is taken after, the end of a year, the Ministerial Corporation may, at its discretion, debit the quantity of water taken under the order against either the water allocation for the year in which the supply was ordered or the water allocation for the year in which it is taken.
- (3) Where, in accordance with a condition to which an entitlement is subject, a quantity of water is ordered, the Ministerial Corporation may, at its discretion, treat the water ordered as part of the water allocation for the entitlement even if it is not taken.

Division 4C Transfer of water allocations

20AG Interpretation

- (1) This Division shall be construed with, and as if it formed part of, Division 4B.
- (2) A reference in this Division to the holder of an entitlement includes a reference to a person who is an applicant for an entitlement.

20AH Water allocation may be transferred

- (1) The holder of an entitlement (in this Division referred to as the *transferor*) may, with the approval of the Ministerial Corporation, transfer the whole, or part, of the water

allocation for the entitlement to the holder of another entitlement (in this Division referred to as the **transferee**).

- (2) A transfer may be a temporary transfer for a limited period before the transferred water allocation reverts to the transferor or may be a transfer without limitation as to duration.
- (3) A transfer may be effected between different schemes only if the Ministerial Corporation is satisfied:
 - (a) that the transfer would not result in the transferee's scheme being subjected to an unacceptable commitment, and
 - (b) that such other conditions as may be prescribed have been complied with.

20AI Application for transfer

- (1) Except where an application may be made under subsection (2), application for a transfer shall be made by the transferee applying for a new entitlement (or, if the holder so desires in the case of an authority or a group licence, for an amended entitlement) and a water allocation for the entitlement that:
 - (a) if the transferee is not already the holder of an entitlement—comprises or includes the water allocation proposed to be transferred, or
 - (b) if the transferee is already the holder of an entitlement—comprises the water allocation for the existing entitlement together with the water allocation proposed to be transferred.
- (2) If the Ministerial Corporation agrees and subsection (3) is complied with, the Ministerial Corporation may accept and consider an application by a transferor or transferee for the transfer of a water allocation by way of an appropriate modification under section 20XA of the conditions to which the entitlements of the transferor and transferee are subject.
- (3) This subsection is complied with in relation to an application referred to in subsection (2) if:
 - (a) the application is for a temporary transfer for a period of not more than 3 years or, if some other period is prescribed for the purposes of this paragraph, the period so prescribed,
 - (b) the transfer will be to the holder of an existing entitlement,
 - (c) the period for which the transfer is to be effected does not, when aggregated with the period or periods for which any other transfer or transfers obtained by the transferee under subsection (2), exceed 3 years or any other period prescribed for the purposes of paragraph (a), and

- (d) the application is made in a form approved by the Ministerial Corporation.
- (3A) Subsection (3) (c) does not apply in relation to an application referred to in subsection (2) if the Ministerial Corporation is satisfied that the water allocation to which the application relates will be used in accordance with a farm water management plan approved by the Ministerial Corporation.
- (3B) A farm water management plan must include details concerning the following matters:
- (a) existing and proposed recycling schemes,
 - (b) existing and proposed surface and sub-surface drainage patterns,
 - (c) existing and proposed irrigation and water reticulation patterns,
 - (d) any proposed removal of vegetation,
 - (e) current groundwater levels,
 - (f) current soil types,
 - (g) levels of water consumption and water usage patterns during the previous 5 year period,
 - (h) such other matters as the regulations require.
- (3C) Before approving a farm water management plan in relation to a proposed transfer that in its opinion involves a significant increase in water consumption by the transferee above the water allocation for the transferee's entitlement, the Ministerial Corporation:
- (a) must cause information as to where and when the plan may be inspected to be advertised in a newspaper circulating in the locality of the transferee, and
 - (b) must give persons in that locality a reasonable opportunity to inspect the plan and to make written submissions to the Ministerial Corporation with respect to the plan, and
 - (c) must have regard to any submission that is duly made.
- (3D) The reference in subsection (3) (c) to any other transfer or transfers does not include a reference to any other transfer that, because of a deemed reduction under section 20Z in the water allocation for the transferee's entitlement, has merely maintained the transferee's consumption of water at or below the level of the water allocation for that entitlement.
- (3E) The taking and using of any water pursuant to a temporary transfer referred to in this section must be in accordance with the relevant farm water management plan (if

any) approved by the Ministerial Corporation. Compliance with the plan is a condition of the entitlement to which the relevant water allocation is transferred.

- (4) The Ministerial Corporation may, in relation to an application for a transfer:
 - (a) require the transferor to provide such information and consents, and
 - (b) require the transferee to provide such information and evidence,as are specified by the Ministerial Corporation.
- (5) A requirement under subsection (4) may be complied with in any manner acceptable to the Ministerial Corporation but the Ministerial Corporation may decline to proceed with consideration of the application until the requirement is complied with.
- (6) In determining whether or not to approve a transfer, the Ministerial Corporation may take into consideration such matters as it thinks fit including (without limiting the matters that may be considered) its opinion as to the social and economic effect that the transfer would have if approved.

20AJ Form of transfer to be lodged and fee paid

An approved application for a transfer shall not be given effect by the issue of an entitlement, or by the modification of a condition of an entitlement, before:

- (a) there has been lodged with the Ministerial Corporation a written record of the particulars of the transfer that is in a form approved by the Ministerial Corporation and is executed by the transferor and the transferee, and
- (b) the Ministerial Corporation has received payment of the fee for the transfer prescribed as:
 - (i) a specified amount, or
 - (ii) an amount calculated in a specified manner.

20AK Superseded entitlement to be cancelled

- (1) Where an entitlement effecting a transfer of a water allocation otherwise than by amendment of an existing entitlement is issued to the holder of an existing entitlement, the existing entitlement ceases to have effect and shall be cancelled by the Ministerial Corporation.
- (2) The water allocation for the entitlement of a transferor is abated to the extent of the transfer and the condition to which the entitlement is subject is modified accordingly.

20AL Purchase of water allocations by the Ministerial Corporation

For any public purpose, the Ministerial Corporation may, as prescribed, acquire by purchase and surrender the whole or part of the water allocation for an entitlement

without compliance with the requirements of this Division.

20AM Applications not affected by section 20Y notice

A notice in force under section 20Y does not apply to an application for an entitlement made in order to effect a transfer of a water allocation under this Division.

Division 4D Sale by the Ministerial Corporation of water allocations

20AN Interpretation

(1) In this Division:

available water means water that is, or but for a notice in force under section 20Y would be, available for allocation:

- (a) under a new scheme,
- (b) because of the modification of an existing scheme,
- (c) because an entitlement has lapsed or has been surrendered or amended, or
- (d) because a water allocation purchased by the Ministerial Corporation has become surplus to its requirements.

(2) This Division shall be construed with, and as if it formed part of, Division 4B.

20AO Sale etc of water allocations of available water

(1) Even if a notice under section 20Y is in force in relation to a water source, the Ministerial Corporation may, in such manner as it thinks fit, give notice:

- (a) to any person holding an entitlement to take water from the water source that an offer may be made to the Ministerial Corporation to purchase for the entitlement an additional water allocation of available water from the water source, or
- (b) to any person desiring to apply for an entitlement to take available water from the water source that an offer may be made to the Ministerial Corporation to purchase the water allocation that would be applicable to the entitlement if it were granted.

(2) A notice under subsection (1) may be given:

- (a) to a person specified in the notice,
- (b) to all persons within a class of persons specified in the notice, or
- (c) to all persons other than those within a class of persons specified in the notice.

(3) A notice under subsection (1):

- (a) shall specify whether an offer is to be the subject of negotiation or is to be made

by way of a tender or at auction,

(b) may, in the case of an offer by way of a tender or at auction, specify the conditions of sale, and

(c) may be general or subject to specified exceptions or limitations.

(4) The Ministerial Corporation may:

(a) accept an offer made under this section, whether or not subject to conditions, or

(b) refuse to accept such an offer.

(5) Where an offer under this section is made by way of a tender, the Ministerial Corporation:

(a) may require the provision of further information and evidence in relation to the tender, the use of the water allocation to which it relates or the entitlement required to be applied for under section 20AP,

(b) is not obliged to accept the highest or any tender, and

(c) may reject a tender for any reason, whether or not it is related to the price.

(6) The Ministerial Corporation may, in such circumstances as may be prescribed, invite and consider an application for an entitlement to take available water without requiring the purchase of the water allocation for the entitlement.

20AP Application for entitlement

(1) If the purchaser of a water allocation is already the holder of an entitlement authorising the taking of water from the same water source, acceptance of the offer to purchase is conditional upon:

(a) the purchaser applying, within a time specified by the Ministerial Corporation, for an entitlement (or, if the holder of an authority or a group licence so desires, an amended entitlement) carrying the water allocation for the existing entitlement together with the water allocation purchased, and

(b) the application being granted.

(2) If the purchaser of a water allocation is not already the holder of an entitlement authorising the taking of water from the same water source, acceptance of the offer to purchase is conditional upon:

(a) the purchaser applying, within a time specified by the Ministerial Corporation, for an entitlement carrying the water allocation purchased, and

(b) the application being granted.

- (3) If an application for an entitlement made under this section is subject to the applicant becoming the occupier of particular land, the Ministerial Corporation may refuse to grant the application unless it is shown to the satisfaction of the Ministerial Corporation that the applicant has a reasonable prospect of occupying the land within a reasonable time.

20AQ Superseded entitlement to be cancelled

If the holder of an existing entitlement is granted a new entitlement that includes a water allocation purchased under this Division, the existing entitlement ceases to have effect and shall be cancelled by the Ministerial Corporation.

20AR Applications not affected by section 20Y notice

A notice in force under section 20Y does not apply to an application for an entitlement or an amended authority or an amended group licence made in order to effect a purchase of a water allocation under this Division, or to an application for an entitlement made under section 20AO (6).

Division 5 Miscellaneous

21 Injuries to works

Any person who maliciously cuts, breaks, or destroys, or damages with intent to destroy or render less useful any licensed work, or any work permitted under Division 3B or authorised under Division 4, or any work to which this Part extends, constructed or controlled by the Crown or by the Ministerial Corporation on behalf of the Crown, shall be liable on indictment to imprisonment for a term not exceeding five years.

21A Pollution of rivers and lakes

- (1) Any person who discharges or puts, or permits to be discharged, put, or carried, or to fall, or flow into a river or lake:
- (a) any noisome, noxious, poisonous or unwholesome matter, or
 - (b) any foul water, slop water or household waste water, refuse, rubbish, garbage, solid or liquid sewage, sludge, slime, cinders, ashes, or any solid refuse of any factory, manufacturing process, mine, quarry, trade works or business, or drainage from a privy, cess pit, slaughter house, stable, cowyard or pigsty, or
 - (c) any water or liquid proceeding from any mine (including sluicing and dredging operations), factory, manufacturing process, trade works or business, which water is so charged with chemicals, sludge, slime, silt, soil or other matter as to render the water of the river or lake unfit for human consumption, or domestic purposes, or for watering stock or for the irrigation of land,

shall be guilty of an offence and shall be liable on summary conviction to a penalty not

exceeding 25 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1 penalty unit for each day during which the offence continues after notice in writing by the Ministerial Corporation to abate or cease the offence has been given to the person offending.

- (2) Notwithstanding the provisions of subsection (1) where the Ministerial Corporation has served upon any person a notice requiring that person to abate any act matter or thing mentioned in that subsection and the person has failed to comply with the notice, the Ministerial Corporation by its officers or servants or any person authorised by it in that behalf may enter upon any land or premises and inspect the same and take such measures as it may consider necessary for such abatement and it shall not be necessary for the Ministerial Corporation to obtain an injunction or other order of a court to entitle it to make such entry or to take such measures. The Ministerial Corporation may recover the cost and expense incurred by it in making such entry and taking such measures from the person offending as a debt.
- (3) Nothing contained in this section shall be construed to impair any power of abating nuisances at common law.

21B Offences with respect to construction, erection and use of work without licence etc

- (1) Any person who:
 - (a) constructs, erects or uses a work to which this Part extends otherwise than pursuant to a right conferred on the person by this Part or Part 10 or by a licence, group licence, irrigation corporation licence, authority or permit,
 - (b) fails to comply with any direction given to the person by the Ministerial Corporation to remove the whole or any part of a work to which this Part extends (being a work in respect of which no right conferred by this Part or Part 10 exists and in respect of which no licence, group licence, irrigation corporation licence, authority or permit is in force) which is situated on land owned or occupied by the person, or
 - (c) fails to comply with any direction given to the person by the Ministerial Corporation to carry out any work which the Ministerial Corporation considers necessary:
 - (i) to permit the flow of water through or past any work to which this Part extends (being a work in respect of which no right conferred by this Part or Part 10 exists and in respect of which no licence, group licence, irrigation corporation licence, authority or permit is in force) which is situated on land owned or occupied by the person, or
 - (ii) to prevent the use of any work to which this Part extends (being a work in respect of which no right conferred by this Part or Part 10 exists and in respect of which no licence, group licence, irrigation corporation licence, authority or

permit is in force) which is situated on land owned or occupied by the person and which is a work for the diversion or abstraction of water,

is guilty of an offence and is liable, on conviction:

- (d) where the offence was committed by a corporation—to a penalty not exceeding 200 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 20 penalty units for each day the offence continues, or
 - (e) where the offence was committed by any other person—to a penalty not exceeding 100 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 10 penalty units for each day the offence continues.
- (2) In any prosecution under this section, proof that a work to which this Part extends has been constructed, erected or used otherwise than pursuant to a right conferred by this Part or Part 10 or a licence, group licence, irrigation corporation licence, authority or permit shall, in the absence of proof to the contrary, be evidence that the construction, erection, use or failure has been caused by the occupier of the land on which the work is situated.
- (3) Where a direction referred to in subsection (1) (b) or (c) has been given to an occupier of land and that occupier is not the owner of the land, that occupier may apply to the local land board to apportion between that occupier and the owner of the land the expenses incurred in complying with the direction, and, on any such application being made to it, the local land board may make such apportionment of those expenses as it considers fair and just.

22 Power of entry

- (1) For the purposes of this Part the Ministerial Corporation, or any person authorised by it, may enter on any land and take levels and make surveys and marks, and fix pegs and stakes, and inspect any works.
- (2) Any person who removes, injures, or interferes with any marks made, or pegs or stakes fixed as aforesaid, shall be liable to a penalty not exceeding 5 penalty units, or to imprisonment for a term not exceeding three months.
- (3) The Ministerial Corporation may, by any of its officers, employees or agents, enter on any land and:
- (a) remove any dam or weir or any other work forming an unlawful obstruction to the flow of water in a river, and
 - (b) prevent or stop any unlawful diversion of water from a river or lake, whether by dismantling a pump or blocking the offtake of a race or by such other means as the Ministerial Corporation considers necessary.
- (4) The Ministerial Corporation may recover in any court of competent jurisdiction as a

debt due to it from the occupier of the land from which any work has been removed under subsection (3), or of the land on which the diversion of water was prevented or stopped under that subsection, the expenses incurred by it in carrying out the removal or, as the case may be, in preventing or stopping the diversion.

- (5) Where judgment has been obtained against an occupier of land under subsection (4) and that occupier is not the owner of the land, that occupier may apply to the local land board to apportion between that occupier and the owner of the land the amount adjudged to be paid to the Ministerial Corporation under that subsection and any costs awarded against the occupier in connection with that judgment, and, on any such application being made to it, the local land board may make such apportionment of that amount and those costs as it considers fair and just.

22A Public authorities may construct and use works in times of shortage of water

The Ministerial Corporation in any time of emergency or when there is an actual or threatened shortage of water may for such period and subject to such limitations and conditions as it may think fit authorise any public authority as prescribed to take such measures as may by the Ministerial Corporation be thought fit to conserve water in or obtain water from a river or lake for the purpose of supplying water or augmenting the supply of water for town or village water supply or other public purpose, and in the exercise of powers conferred by that authority the public authority may enter any land and construct and use any work to which this Part extends and it shall not be necessary for the public authority to obtain a licence or permit for any work constructed or used solely in respect of the authority so conferred by the Ministerial Corporation.

22B Restriction or suspension of rights held under licences etc during periods of water shortage

- (1) If at any time the Ministerial Corporation is satisfied that the quantity of water available, or likely to be available, in a river, lake or section of a river is insufficient to meet all requirements with respect to the taking of water from the river, lake or section, it may, in the manner provided in this section, restrict or suspend the rights held under licences, group licences, authorities or permits issued under this Part, or held under section 7, for the taking of water for any purpose from the river, lake or section or any part of the river, lake or section.
- (2) Particulars of any restrictions or suspensions imposed by the Ministerial Corporation under subsection (1) shall be notified in the Gazette and in a newspaper published and circulating in the district in which the river, lake or section is located.
- (3) A notification made under subsection (2) may be amended, altered, modified or cancelled by the Ministerial Corporation and particulars of any such amendment, alteration, modification or cancellation shall be notified in the Gazette and in a newspaper published and circulating in the district in which the river, lake or section is located.

- (4) In imposing restrictions or suspensions under this section, the Ministerial Corporation may restrict or suspend rights for the taking of water in accordance with the following order of priority:
 - (a) firstly, rights under permits for any purpose other than domestic and stock supply,
 - (b) secondly, rights under licences, group licences and authorities for the purpose of irrigation,
 - (c) thirdly, rights under licences, group licences and authorities for purposes other than irrigation and domestic and town and village water supply, rights under permits for stock supply and rights held under section 7 for the taking of water for stock supply, and
 - (d) fourthly, rights under licences, group licences, authorities and permits for domestic purposes and town and village water supply and rights held under section 7 for the taking of water for domestic purposes.
- (5) In exercising the power conferred on it by subsection (4), the Ministerial Corporation:
 - (a) shall impose restrictions or suspensions in respect of all rights specified in a paragraph of that subsection before imposing any restrictions or suspensions in respect of any rights specified in any subsequent paragraph of that subsection, and
 - (b) may, when imposing restrictions or suspensions under subsection (4) (b), restrict or suspend rights with respect to the irrigation of any class of crops or plantings without restricting or suspending rights with respect to the irrigation of any other class of crops or plantings.
- (6) When the Ministerial Corporation has, in accordance with this section, imposed a restriction on a right held under section 7 or held under a licence, group licence, authority or permit to take water, a person shall not take water except in accordance with the right as so restricted.
- (7) When the Ministerial Corporation has, in accordance with this section, suspended a right held under section 7 or held under any licence, group licence, authority or permit to take water, a person shall not take water in purported exercise of that right.
- (8) Any person who contravenes subsection (6) or (7) is guilty of an offence and is liable, on conviction, to a penalty not exceeding:
 - (a) where the offence was committed by a corporation—200 penalty units, or
 - (b) where the offence was committed by any other person—100 penalty units.
- (9) If, in any proceedings against an occupier of land for an offence under subsection (8), it is proved that a work on that land was used in contravention of subsection (6) or, as

the case may be, subsection (7), the water concerned in that alleged offence shall, unless the contrary is proved, be presumed to have been taken by the occupier.

22BA Invalidation of applications for entitlements

- (1) This section applies to a water source that is not the subject of a volumetric water allocations scheme under Division 4B if the Ministerial Corporation is satisfied that the water source is unlikely to have more water available than is sufficient to meet:
 - (a) the requirements of the persons already authorised by law to take water from the water source, and
 - (b) such other possible requirements for water from the water source as are determined by the Ministerial Corporation.
- (2) The Ministerial Corporation may, by order published in the Gazette, declare that, until the order is revoked, an application for an entitlement to which the order applies may not be made after a specified date (being a date not earlier than the date of publication) if the entitlement would authorise the taking of water from a water source specified in the order that is a water source to which this section applies.
- (3) An order may be made to apply:
 - (a) to a specified application for an entitlement,
 - (b) to all applications for entitlements,
 - (c) to a specified class of applications for entitlements, or
 - (d) to all applications for entitlements other than a specified application for an entitlement or a specified class of applications for entitlements.
- (4) An order does not apply to an entitlement that would merely replace an existing entitlement and, for the purposes of this subsection, where land to which an entitlement relates is subdivided into parts, an application for an entitlement relating to one of the parts shall be deemed to be an application for an entitlement to replace an existing entitlement.
- (5) If an application for an entitlement to which an order applies is made while the order is in force, the application is invalid and shall be rejected by the Ministerial Corporation.
- (6) In this section:

entitlement means a licence, permit, authority or group licence.

water source means:

 - (a) a river, lake or section of a river, or

(b) a combination of 2 or more of them.

22BB Invalidation of applications for entitlements in respect of dams

(1) In this section:

dam includes any work used for the purposes of water storage or conservation, but does not include any such work that, in the opinion of the Ministerial Corporation, is used for environmental purposes.

entitlement means a licence, permit, authority or group licence.

- (2) The Ministerial Corporation may, by order published in the Gazette, declare that, until the order is revoked, an application for an entitlement in respect of a dam or class of dam specified in the order may not be made after a specified date (being a date not earlier than the date of publication).
- (3) If an application for an entitlement in respect of a dam to which any such order relates is made while the order is in force, the application is invalid and must be rejected by the Ministerial Corporation.
- (4) The provisions of section 22BA (3) and (4) apply to an order under this section in the same way as those provisions apply to an order under section 22BA.

22C Charge if flow of water assured by work of Crown or water or dam managed by State

(1) In this section:

dam includes any work used for the purposes of water storage or conservation.

entitlement means:

- (a) a licence, permit, authority or group licence, or
- (b) in relation to a trust, the right to take and use water conferred on the trust by section 38B.

trust means a trust constituted under Part 3 that is declared by the regulations to be a trust to which this section applies.

(1A) In this section:

- (a) a reference to a work of the Crown includes a reference to a work vested in or controlled by the Dumaresq-Barwon Border Rivers Commission, and
- (b) a reference to the holder of an entitlement includes:
- (i) if the entitlement is an authority, a reference to each of the holders of the authority, and

(ii) if the entitlement is the right of a trust to take and use water, a reference to the trust.

(2) The Ministerial Corporation may, by order published in the Gazette, declare that the flow or supply of water in any river, lake or section of a river has been augmented, stabilised or assured by a work of the Crown.

(2A) The Ministerial Corporation may, by order published in the Gazette, declare that the sharing and use of water from any river, lake or section of river is managed by the State.

(2B) The Ministerial Corporation may, by order published in the Gazette, declare that the storage or conservation of water in any specified dam or specified class of dam is managed by the State.

(3) Where a work in respect of which an entitlement is held:

(a) is used for the purpose of irrigation or water supply for stock, for industrial use or for such other use as may be prescribed, and

(b) is connected with a river, lake or section of a river in respect of which an order under subsection (2) or (2A) is in force,

the holder of the entitlement shall, subject to and in accordance with this section, pay a charge for the right to take and use water from the river, lake or section in addition to the fee (if any) payable for the entitlement.

(3A) The holder of an entitlement in respect of a dam to which an order under subsection (2B) relates must, subject to and in accordance with this section, pay a charge for the right to store or conserve water in the dam in addition to the fee (if any) payable for the entitlement.

(4) The charge payable under subsection (3) or (3A) shall:

(a) subject to subsection (4A), be fixed by the Ministerial Corporation from time to time,

(a1) be paid:

(i) in respect of each complete year during which the entitlement is in force, and

(ii) if the entitlement is not in force for the whole of a year—in respect of the part of the year during which it is in force,

after the date of the order referred to in subsection (2), (2A) or (2B),

(b) be calculated at a rate which may vary according to the nature of the entitlement but is not greater than the maximum rate which shall be prescribed according to:

- (i) the purpose or purposes for which the water is to be taken and used,
 - (ii) the nature of the work, and
 - (iii) the method of obtaining the water,
- (c) be paid at the prescribed times and in the prescribed manner,
- (d) to the extent of a minimum annual amount fixed by the Ministerial Corporation in each case, be payable even if the entitlement is suspended or the work to which it relates is not used, and
- (e) be on the basis of a fixed charge and either:
- (i) the quantity of water taken and used by means of the work during the relevant year, or part of a year, referred to in paragraph (a1), or
 - (ii) the area of land irrigated with water so taken and used,
- even if the water is taken and used while the entitlement is suspended.

Without limiting the above, the charge payable under subsection (3) or (3A) may be a specified amount if means for measuring the quantity of water taken and used are not available or if there is other good cause to do so.

- (4A) Where the Ministerial Corporation varies the amount it has fixed as the charge payable under subsection (3) or (3A), the variation shall take effect on such date as the Ministerial Corporation may determine.
- (5) The Ministerial Corporation shall, in every entitlement referred to in subsection (3), specify which of the alternative charges shall be paid.
- (6) The Ministerial Corporation shall, when fixing the amount of a charge payable under this section in connection with an order under subsection (2), have regard to:
- (a) the benefits received by the holder of the entitlement (including, in relation to a group licence, each of the group licence occupiers) as a result of the work of the Crown, and
 - (b) the augmentation, stabilisation or assurance of the water supply provided by that work.
- (6AA) The Ministerial Corporation must, when fixing the amount of a charge payable under this section in connection with an order under subsection (2A), have regard to the benefits received by the holder of the entitlement (including, in relation to a group licence, each of the group licence occupiers) as a result of the management by the State of the sharing and use of water from the river, lake or section of river.
- (6AB) The Ministerial Corporation must, when fixing the charge payable under this section

in connection with an order under subsection (2B), have regard to the benefits received by the holder of the entitlement (including, in relation to a group licence, each of the group licence occupiers) as a result of the management by the State of the storage or conservation of water in the dam.

- (6A) Any amount due and unpaid under subsection (3) or (3A):
- (a) bears interest on a daily basis at the prescribed rate until paid, even if judgment for the amount has been given by a court,
 - (b) is, together with any such interest, recoverable as a debt due and payable to the Ministerial Corporation by the holder, or jointly and severally by the holders, of the relevant entitlement, and
 - (c) is, together with any such interest, a charge on the land supplied with water under the entitlement.
- (6B) A payment made in respect of a charge payable under subsection (3) or (3A) shall be applied first in payment of any interest borne by the charge.
- (7) If, in the opinion of the Ministerial Corporation, a benefit is not received as a result of the work of the Crown by the holder of the entitlement (including, in relation to a group licence, any 1 or more of the group licence occupiers), a charge in connection with an order under subsection (2) shall not be fixed under this section in respect of the entitlement.
- (8) Any order under subsection (2), (2A) or (2B) may be amended, altered, modified, revoked or corrected by the Ministerial Corporation by order published in the Gazette.
- (9) If the holder of an entitlement (not being the right of a trust to take and use water) fails to pay the charge required under this section within the prescribed period, the Ministerial Corporation may suspend the entitlement until the charge is paid.
- (10) The Ministerial Corporation may remit or waive the payment in any year of any charge paid or payable under this section.
- (11) In this section, a reference to a year in relation to payment of a charge for the right to take and use water from a river, lake or section of a river, is a reference to:
- (a) a year commencing on 1 July, or
 - (b) if the Ministerial Corporation by order published in the Gazette specifies a different year for the river, lake or section of a river—the specified year.
- (12) Where a change of the year relating to payment of a charge affects an existing right to take and use water, the order making the change may also make provision for the transitional arrangements leading to the change.

22D Sale of land pending transfer of water allocation

- (1) Despite any other provision of this Act, if the land to which an entitlement relates is sold before a transfer under this Part (or under the regulations made under this Part) of the whole or part of the water allocation (or the water rights) in respect of the entitlement has been completed in accordance with this Part (or those Regulations), the sale of the land does not:
 - (a) if the whole of the water allocation (or the water rights) in respect of the entitlement is being transferred—operate to pass the benefit of the entitlement to the occupier for the time being of the land, and
 - (b) if only part of the water allocation (or the water rights) for the entitlement is being transferred—operate to pass the benefit of the relevant part of the entitlement to the occupier for the time being of the land, and
 - (c) prevent the transfer of the whole or the part of the water allocation (or the water rights) from being completed in accordance with this Part or those Regulations.
- (2) In this section, **entitlement** and **water allocation** have the same meanings as in section 20V.

23 Obstructing persons in the performance of duties

Any person who obstructs or hinders any person while performing any duty which the person is authorised by this Part, or by any regulation made thereunder, to perform, is guilty of an offence and is liable, on conviction:

- (a) where the offence was committed by a corporation—to a penalty not exceeding 200 penalty units, or
- (b) where the offence was committed by any other person—to a penalty not exceeding 100 penalty units or to imprisonment for a term not exceeding 3 months.

24 Recovery of fees, charges, and penalties

Fees and charges payable under this Part, or any regulation made thereunder, may be recovered before a magistrate or any 2 justices constituting a Local Court.

25 Conditions relating to environmental protection

The conditions subject to which a licence, permit, authority or group licence is granted or renewed under this Part may include conditions relating to the protection of the environment.

26 Consolidated Fund

All contributions, fees, and charges payable under this Part shall be paid at the times and in the manner prescribed into the Consolidated Fund.

26A Act prevails over certain other Acts

Where the operation of any statute, including the *Local Government Act 1993* and any Act relating to mining, but excluding the *River Murray Waters Act 1915*, conflicts with the operation of the provisions of this Part, the provisions of this Part shall prevail, and such statute shall to the extent of such conflict be inoperative.

26B Powers to determine licence, group licence or authority

The Ministerial Corporation may cancel at any time after giving reasonable notice a licence, group licence or an authority on payment of compensation to the person entitled to the benefit of the licence or authority or to the holder of the group licence, as the case may be.

The right to the water which was vested in that person shall thereupon vest in the Ministerial Corporation.

Such compensation shall be assessed by the local land board of the land district in which the licensed work, the work the subject of the group licence or the authorised work is situated.

26C Construction of work by Crown for councils

No work to which this Part extends shall be constructed by the Crown for or on behalf of any council or county council within the meaning of the *Local Government Act 1993* or any person unless such council or person shall have first obtained a licence under this Part for the work.

This section shall not apply to any such work in course of construction by the Crown at the commencement of the *Irrigation and Water (Amendment) Act 1943*.

26D, 26DA (Repealed)

27 Regulations

- (1) The Governor may make regulations prescribing or relating to:
 - (a) forms of, and of application for:
 - (i) licences, group licences, authorities and permits, and
 - (ii) renewal of licences, group licences, authorities and permits,and forms of notices required or authorised under this Part,
 - (b) fees payable in respect of licences, renewals of licences, authorities, renewals of authorities, permits and renewals of permits, group licences and renewals of group licences,
 - (c) the prevention of the pollution of water and the obstruction or injury to or

interference with works,

- (c1) a scheme for transfers between holders of licences, authorities and group licences of rights to take and use water from a water source that is not the subject of a volumetric water allocations scheme under Division 4B,
- (c2) a scheme for transfers between holders of licences, authorities and group licences of rights to store or conserve water in dams within the meaning of section 22BB,
- (d) the furnishing by holders of licences, holders of group licences, holders of permits, holders of authorities or group licence occupiers, of returns specifying the area of their irrigated land, crops watered, number of days on which irrigation is carried on, times of irrigation, and such other particulars as the Governor may consider fit,
- (e) the terms and conditions governing joint water supply schemes, including charges for water
- (e1) the prohibition or regulation of the mooring of any ship, boat, barge, punt, craft, houseboat or any other vessel whatsoever within prescribed areas in any river or lake which is a source of public water supply or of water supply for any town or village within the State of New South Wales or the State of Victoria,
- (e2) the empowering of the Ministerial Corporation or any person authorised by the Ministerial Corporation to remove or cause to be removed any ship, boat, barge, punt, craft, houseboat or other vessel moored in contravention of the regulations,
- (e3) matters giving effect to the provisions of this Part relating to the purchase and sale of water allocations including, in the case of purchases by tender, matters relating to the submission, and the acceptance or rejection, of a tender, and
- (f) the imposition of a penalty for any breach of the regulations:
 - (i) where the breach is committed by a corporation—not exceeding 200 penalty units and, in the case of a continuing breach, the imposition of a further penalty not exceeding 20 penalty units for each day the breach continues, or
 - (ii) where the breach is committed by any other person—not exceeding 100 penalty units and, in the case of a continuing breach, the imposition of a further penalty not exceeding 10 penalty units for each day the breach continues,
- (g) (Repealed)

and generally for the purposes of carrying out the provisions of this Part and providing for the procedure thereunder.

(1A) A provision of a regulation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,
- or may do any combination of those things.

(2) Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the regulations under this Part.

27A Application of Part

This Part does not apply to any part of the State to which Part 3 of Chapter 3 of the *Water Management Act 2000* applies in relation to water supply work approvals within the meaning of that Act.

Parts 3, 4

28-104 (Repealed)

Part 5 Artesian wells

Division 1 Interpretation and general

105 Definitions

In this Part, except in so far as the context or subject-matter otherwise indicates or requires:

Artesian well includes an artesian well from which the water does not flow naturally, but has to be raised by pumping or other artificial means, and

Bore means any bore or well or any excavation or other work connected or proposed to be connected with sources of sub-surface water and used or proposed to be used or capable of being used to obtain supplies of such water whether the water flows naturally at all times or has to be raised either wholly or at times by pumping or other artificial means, but does not include a work to which Part 2 extends.

Licence means a licence in force under this Part.

Sub-surface water means water under the surface of the ground whatever may be the geological structure in which it is standing or moving.

Sub-surface water basin means land overlying, as nearly as may be determined by known facts, a distinct body of sub-surface water.

Water allocation, in relation to a licence, means the volume of water to which the licensee of the bore is restricted by means of a condition of the licence referred to in section 115 or 116 or by means of a notice referred to in section 117A (3) (a).

106 Works under repealed Acts

Any work constructed under the authority of the *Artesian Wells Act 1897*, or any Act amending the same, shall be deemed to have been constructed under this Part.

Division 2 Construction and charges

107 Notification of proposal etc

- (1) The Governor may notify in the Gazette any proposal for the construction by the Crown of any artesian well, and for the conservation and supply of the water flowing from such well, together with an estimate of the cost of the same.
- (2) After such notification the Ministerial Corporation may refer any such proposal to the local land board (or local land board for an adjacent land district) and the local land board shall thereupon forward a report to the Ministerial Corporation describing the land which, in the opinion of the board, would be benefited by water from the proposed well, and should be included in any district to be constituted in respect of the said work.
- (3) Upon receipt of such report the Ministerial Corporation may, by notification in the Gazette, declare the land so described to be a district within which the charges in the next following section mentioned may be levied.
- (4) If, after such last-mentioned notification, a petition in favour of the proposal of the Ministerial Corporation is presented to the local land board signed by persons:
 - (a) who constitute a two-thirds majority of the total number of those owning or occupying, or being mortgagees, of land within the district, and
 - (b) who own or occupy or are mortgagees of an area exceeding two-thirds of the total area within the district,

the board may report to the Ministerial Corporation recommending that the proposal be carried out.

- (5) Thirty days after the receipt of a report to that effect the Ministerial Corporation may carry out the work with funds legally available for the purpose:

Provided that if an appeal to the Land and Environment Court affecting the same is pending, the carrying out of the work shall be stayed until the appeal is decided.

108 Assessment of charges

- (1) On the completion of a work constructed under the preceding section, the Ministerial

Corporation may direct the local land board to assess the charges to be paid by each occupier of land within the district notified as aforesaid.

- (2) Such charges shall not exceed the yearly value to each occupier of the direct benefit accruing to the occupier's land from the construction of the well and from the supply to the said land of water from the well, deduction being made for the probable cost of the maintenance of the channels and works as hereinafter provided.
- (3) The total of such charges shall not exceed six per centum of the cost to the Crown of the construction of the work.
- (4) On the petition of persons liable in the aggregate to pay one-quarter of the total amount of the charges, or at the request of the Ministerial Corporation, the local land board shall make a fresh assessment of the charges to be paid.

109 Construction of well on petition of occupiers

If the occupiers, owners, or mortgagees of any lands in writing request the Ministerial Corporation to construct an artesian well for the purpose of supplying water to their lands, and consent to pay any charges which may be levied in respect of the same, the Ministerial Corporation may, if it approve of the request, construct the well and such channels and other works for the supply of the water as it may think fit, with funds legally available for the purpose.

110 Assessment of charges

- (1) On the completion of a work constructed under the preceding section, the Ministerial Corporation may direct the local land board to assess the charges to be paid by each occupier of any of the said lands.
- (2) Such charges shall not exceed the yearly value to each occupier of the direct benefit accruing to the occupier's land from the construction of the well, and from the supply to the said land of water from the well, deduction being made for the probable cost of the maintenance of the channels and works as hereinafter provided.
- (3) The total of such charges shall not exceed six per centum of the cost to the Crown of the construction of the work.
- (4) On the petition of persons liable in the aggregate to pay one-half of the total amount of the charges, or at the request of the Ministerial Corporation, the local land board shall make a fresh assessment of charges to be paid.

111 Extension of supply

On the receipt of a petition in writing by the occupiers, owners, or mortgagees of any land situate in the neighbourhood of an artesian well constructed under this Part, and in respect of which charges are payable under this Part, and on obtaining the consent in

writing of the persons who:

- (a) constitute a two-thirds majority of the total number of those liable to pay charges as aforesaid, and
- (b) who occupy an area exceeding two-thirds of the total area in respect of which those charges are payable,

the Ministerial Corporation may, by notice in the Gazette, extend the supply of water from the well to the lands of the first mentioned occupiers, owners, and mortgagees.

Charges shall be assessed and paid in respect of such lands under this Part.

Division 3 Licences

111A (Repealed)

112 Bores to be licensed

- (1) The sinking of a bore shall not be commenced, nor shall a bore be enlarged, deepened, or altered unless:
 - (a) in pursuance of a licence issued under this Part, or
 - (b) the bore is to be sunk, enlarged, deepened, or altered by the Crown.
- (2) If any person contravenes the provisions of this section, the said person, and the owner of the bore in respect of which the contravention has occurred, shall be guilty of an offence and shall be liable, on conviction:
 - (a) where the offence was committed by a corporation—to a penalty not exceeding 200 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 20 penalty units for each day the offence continues, or
 - (b) where the offence was committed by any other person—to a penalty not exceeding 100 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 10 penalty units for each day the offence continues.
- (3) This section extends to any bore that was constructed, or was otherwise in existence, before 1912.

113 Application for licence

- (1) Application for a licence for any new bore, or for enlarging, deepening, or altering any existing bore, shall be made to the Ministerial Corporation in the form prescribed, accompanied by the prescribed plans and descriptions, together with a statement of the purposes for which it is proposed to utilise the water.
- (2) On application being so made, and if in the opinion of the Ministerial Corporation the

bore is or will be an artesian bore or the circumstances so warrant, the Ministerial Corporation shall cause to be advertised once in the Gazette and once in a public newspaper circulating in the neighbourhood where the bore or the site thereof is situate a notice:

- (a) acknowledging the receipt of the application, and
 - (b) requesting all persons interested to inform the Ministerial Corporation whether they support the application or object thereto, and if they do so object, the reasons therefor, and
 - (c) stating the last day on which such information will be received and the name or official designation and address of the person to whom it should be sent.
- (3) An application for a licence in respect of any bore that was constructed before the commencement of this subsection (as inserted by the [Water Legislation Amendment Act 1999](#)) is not required to be advertised in accordance with subsection (2).

113A Invalidation of applications for licences

- (1) If the Ministerial Corporation is satisfied that the whole or any part of a sub-surface water basin (referred to in this section as a **water shortage zone**) is unlikely to have more water available than is sufficient to meet:
 - (a) the requirements of the licensees of the bores situated within the water shortage zone, and
 - (b) such other possible requirements from the water shortage zone as are determined by the Ministerial Corporation,it may, by order, place an embargo on any further applications for licences with respect to that zone.
- (2) Such an order may relate to:
 - (a) a specified application for a licence, or
 - (b) a specified class of applications for licences, or
 - (c) all applications for licences, or
 - (d) all applications for licences, other than:
 - (i) a specified application for a licence, or
 - (ii) a specified class of applications for licences.
- (3) Notice of such an order must be published in:
 - (a) the Gazette, and

- (b) a newspaper circulating in the district in which the water shortage zone is situated.
- (4) The notice must specify the date (being the date of publication in the Gazette or a later date) on and from which the order has effect.
- (5) An application to which such an order relates is invalid, and is to be rejected by the Ministerial Corporation, if it is made on or after the date specified in the notice published in relation to the order.
- (6) Subsection (5) does not apply to:
 - (a) an application for a renewal of a licence, or
 - (b) an application for a licence for a bore to replace some other licensed bore that the applicant has ceased to use, or
 - (c) an application for a licence for a bore to produce water to satisfy a water allocation arising from the transfer of a water allocation under section 117J.

114 Inquiry

- (1) The Ministerial Corporation may where, in its opinion, the circumstances so warrant, and after the day mentioned in paragraph (c) of subsection (2) of the preceding section, cause a public inquiry to be held as to the desirability of granting the application.

The inquiry shall be held by the local land board.

The Ministerial Corporation shall cause particulars as to the time, date, and place of the inquiry to be advertised once in the Gazette and once in a public newspaper circulating in the neighbourhood where the bore or the site thereof is situate.

The local land board shall report in writing to the Ministerial Corporation upon the inquiry.

- (2) All persons whose interests appear to be affected by the granting of the application shall be permitted to attend at the inquiry and be heard in support of, or in opposition to, the granting of the application.

115 Issue of licence

- (1) In any case where an application has not been advertised pursuant to section 113 (2) the Ministerial Corporation shall, as soon as practicable after it has investigated and considered the application and on payment of the prescribed fee, issue a licence to the applicant in the prescribed form, subject to such limitations and conditions as it may deem fit and proper.
- (2) In any other case the Ministerial Corporation shall:

- (a) where an inquiry has been held pursuant to section 114 and the local land board reports in favour of the issuing of a licence, or
 - (b) where no inquiry has been held pursuant to section 114 and the Ministerial Corporation decides to grant the application,
- on payment of the prescribed fee issue a licence to the applicant in the prescribed form, subject to such limitations and conditions as it may deem fit and proper.

115A (Repealed)

116 Granting of licence

- (1) The Ministerial Corporation may, if, in its opinion such a course is necessary, grant a licence for a limited period, and any licence so granted shall (subject to the provisions of this Part with regard to the renewal of licences, and subject to such limitations and conditions as the Ministerial Corporation may think fit to make) be renewed by the Ministerial Corporation from time to time on the application of the person holding the licence and on payment of the prescribed fee.
- (2) The Ministerial Corporation may limit the period of any renewal. The licence shall lapse if the sinking of the bore or the enlarging, deepening, or altering of the bore licensed be not commenced and completed within such times or extended times as may be notified by the Ministerial Corporation to the licensee.

116AA Conditions relating to environmental protection

The conditions subject to which a licence is issued or renewed under this Part may include conditions relating to the protection of the environment.

116A Licence fees

- (1) Fees prescribed for the purposes of sections 115 and 116 may differentiate according to:
 - (a) the areas in which bores are situated,
 - (b) the purposes for which bores are constructed,
 - (c) the purposes for which water taken from bores is to be used, and
 - (d) such other factors as may be prescribed.
- (2) The power to prescribe fees for the purposes of section 115 or 116 includes a power to prescribe fees by reference to a prescribed manner of calculation or a prescribed scale, or both.
- (3) Where a licence in respect of a bore is to be issued or renewed on the application of a public authority as prescribed for the purposes of this subsection, the licence may, in

the discretion of the Ministerial Corporation, be issued or renewed at a nominal fee.

116B Rejection of application

If an applicant under section 113 or 116 fails to pay to the Ministerial Corporation within the time prescribed the fee payable upon the issue or renewal of the licence, the Ministerial Corporation may at any time thereafter reject the application.

116C Limitations and conditions

- (1) Limitations and conditions referred to in section 115 (1) or (2) or 116 (1) may be imposed on a licence at the time of, or from time to time after, the issue or grant of the licence.
- (2) Before imposing a limitation or condition on a licence, the Ministerial Corporation:
 - (a) must cause written notice of its intention to impose such a limitation or condition to be served on the licensee or proposed licensee, and
 - (b) must give the licensee or proposed licensee a reasonable opportunity to make written submissions to the Ministerial Corporation with respect to the limitation or condition to be imposed, and
 - (c) must have regard to any submission that is duly made.

116D Authority conferred by licence

A licence authorises its holder:

- (a) to sink, enlarge, deepen or alter the bore in respect of which it is issued, and
- (b) to take and use any water obtained by means of the bore,

subject to the limitations and conditions of the licence and subject to the provisions of this Part.

117 Benefit of licence

A licence shall be deemed to be held by and shall operate for the benefit of the lawful occupier for the time being of the land whereon the bore is sunk or is proposed to be sunk.

117A Declaration of restricted sub-surface water area

- (1) The Ministerial Corporation may, by order published in the Gazette, declare any sub-surface water basin, or any part thereof, to be a restricted sub-surface water area.
- (2) The Ministerial Corporation may, by a like order, at any time:
 - (a) vary, whether as to the whole or any part, or revoke the order of any restricted

sub-surface water area, or

(b) amend the boundaries of any restricted sub-surface water area.

(3) In respect of any restricted sub-surface water area:

(a) the Ministerial Corporation may by order in writing direct the licensee of any bore, whether sunk or commenced to be sunk before or after the proclamation of the restricted sub-surface water area:

(i) to restrict or control the rate of flow or pumping or the manner of extraction of water from the bore, or the quantity of water which may be allowed to flow or be pumped therefrom in any stated period of time or its usage,

(ii) to take such measures or precautions as may be specified in the order for the protection of the quality and prevention of pollution or contamination of any sub-surface water wherever pollution or contamination, in the opinion of the Ministerial Corporation, is or may be caused by abandoned, defective or improperly constructed bores through the interconnection of strata or the introduction of unsuitable surface water into the sub-surface water,

(iii) to furnish to the Ministerial Corporation at such intervals as may be specified in the order a report of static water level in the bore from a point of measurement predetermined by the Ministerial Corporation and of the quantities of water pumped from the bore,

(iv) to provide, fit and maintain a metering or measuring device acceptable to the Ministerial Corporation which will adequately and continuously record the quantity of water flowing or pumped from a bore from which water is used,

and may, in any such order, set forth such requirements as it deems necessary for proper compliance with a direction contained therein,

(b) the Ministerial Corporation may by order in writing to the licensee of any bore referred to in paragraph (a):

(i) specify the minimum distance or distances at which any bore may be sunk from any other bore or bores wheresoever situate,

(ii) direct the licensee of any bore the sinking of which is completed after the proclamation of the restricted sub-surface water area and from which water is to be used for other than stock, domestic or home garden purposes to furnish to the Ministerial Corporation within ninety days of completion of equipping the bore such detailed particulars of the equipment installed, including the capacity of any pump, as the Ministerial Corporation may require.

(4) (Repealed)

117B Charges

(1) In this section:

prescribed area means an area for the time being declared to be a prescribed area under subsection (2).

year, in relation to a prescribed area, or part of a prescribed area, means:

- (a) a year commencing on 1 July, or
- (b) if the Ministerial Corporation by order published in the Gazette specifies a different year for the prescribed area or part of a prescribed area—the specified year.

(1A) Where the year relating to an existing prescribed area, or part of an existing prescribed area, is changed, the order making the change may also make provision for the transitional arrangements leading to the change.

(2) The Ministerial Corporation may, by order published in the Gazette, declare that as from:

- (a) the date of publication of the order, or
- (b) a later date specified in the order,

any sub-surface water basin, or any part thereof, shall be a prescribed area for the purposes of this section.

(3) The Ministerial Corporation may, by order published in the Gazette, at any time:

- (a) vary, whether as to the whole or any part, or revoke the order of any prescribed area, or
- (b) amend the boundaries of any prescribed area.

(4) The licensee of any bore within a prescribed area shall, subject to and in accordance with this section and even if the licence is suspended, pay a charge for the right to take and use water from the bore in addition to the fee payable for the licence.

(5) The charge payable under subsection (4) shall:

- (a) subject to subsection (7), be fixed by the Ministerial Corporation from time to time,
- (b) be paid:
 - (i) in respect of each whole year during which the bore is within the prescribed area, or
 - (ii) where the bore is not within the prescribed area for a whole year—in respect

- of the part of a year during which the bore is within the prescribed area,
- (c) be calculated at a rate not greater than the maximum rate which shall be prescribed according to:
 - (i) the area in which the bore is situated, or
 - (ii) the purpose for which the water taken from the bore is used,
 - (d) be paid at the prescribed times and in the prescribed manner,
 - (e) be on the basis of a fixed charge or on the basis of the quantity of water taken from the bore (or a combination of both), and
 - (f) to the extent of a minimum annual amount fixed by the Ministerial Corporation, be payable even if the bore to which the licence relates is not used or the licence is suspended.
- (6) The Ministerial Corporation may, under subsection (5), fix different charges in respect of different bores or different charges in respect of the same bore, as the case may require, having regard to any one or more of the following factors:
- (a) the area in which a bore is situated,
 - (b) the purpose for which water taken from a bore is used,
 - (c) the quantity of water taken from a bore.
- (7) Where the Ministerial Corporation varies the amount it has fixed as the charge payable under subsection (4), the variation shall take effect on such date as the Ministerial Corporation may determine.
- (8) If the holder of a licence fails to pay the charge required under this section within the prescribed period, the Ministerial Corporation may suspend the licence until the charge is paid.
- (8A) Any amount due and unpaid under subsection (4):
- (a) bears interest on a daily basis at the prescribed rate until paid, even if judgment for the amount has been given by a court, and
 - (b) is, together with any such interest, recoverable as a debt due and payable to the Ministerial Corporation by the lawful occupier of the land on which the bore is situated.
- (8B) A payment made in respect of a charge payable under subsection (4) shall be applied first in payment of any interest borne by the charge.
- (9) The Ministerial Corporation may remit or waive the payment in any year of any charge

paid or payable under this section.

117C (Repealed)

117D Water meters

(1) A person who:

(a) intentionally, fraudulently or by culpable negligence:

- (i) damages a metering or measuring device fitted (in compliance with a direction given under section 117A) to a bore,
- (ii) prevents any such metering or measuring device from recording the quantity of water taken from the bore, or uses any means whereby water so taken is not recorded by the metering or measuring device, or
- (iii) without the consent of the Ministerial Corporation given in writing, interferes with any such metering or measuring device, or

(b) being the holder of the licence in respect of the bore, suffers, permits or directs any other person to do any of the acts specified in paragraph (a),

is guilty of an offence and is liable, on conviction:

(c) where the offence was committed by a corporation—to a penalty not exceeding 200 penalty units, or

(d) where the offence was committed by any other person—to a penalty not exceeding 100 penalty units or to imprisonment for a term not exceeding 12 months, or both.

(2) In any prosecution for an offence under subsection (1), proof of the existence of:

(a) any means for preventing a metering or measuring device from recording the quantity of water taken from the bore to which the metering or measuring device is fitted, or

(b) any means whereby water is taken from the bore without being recorded by the metering or measuring device,

shall be admissible as evidence that the prevention or, as the case may be, the use of the means was caused by the holder of the licence authorising the use of the bore.

(3) For the purpose of ascertaining whether an offence under subsection (1) has been committed, the Ministerial Corporation may, by any of its officers, employees or agents, enter on any land and dismantle for inspection a metering or measuring device referred to in that subsection.

117E Restriction or suspension of rights held under licences during periods of water

shortage

- (1) If the Ministerial Corporation is satisfied that the whole or any part of a sub-surface water basin (referred to in this section as a **water shortage zone**) is unlikely to have more water available than is sufficient to meet:
 - (a) the requirements of the licensees of bores situated within the water shortage zone, and
 - (b) such other possible requirements from the water shortage zone as are determined by the Ministerial Corporation,it may, by order, suspend or restrict the entitlement of licensees within that zone to take and use water obtained by such bores.
- (2) In particular, such an order may reduce a licensee's water allocation during the period for which the order is in force.
- (3) Such an order may relate to:
 - (a) a specified bore, or
 - (b) a specified class of bores, or
 - (c) all bores, or
 - (d) all bores, other than:
 - (i) a specified bore, or
 - (ii) a specified class of bores.
- (4) Notice of such an order must be published in:
 - (a) the Gazette, and
 - (b) a newspaper circulating in the district in which the water shortage zone is situated.
- (5) The notice must specify the date (being the date of publication in the Gazette or a later date) on and from which the order has effect.
- (6) A person must not take or use water from a bore to which such an order relates contrary to the terms of the order.

Maximum penalty: 200 penalty units (in the case of a corporation) and 100 penalty units (in any other case).
- (7) In the case of a bore with respect to which there is a water allocation, the water allocation is taken to be reduced, during the period for which the order is in force, in

accordance with the terms of the order.

- (8) Evidence that water has been taken from a bore is evidence that the water has been taken by the licensee of that bore.

117F Allocation of surplus

- (1) If the Ministerial Corporation is satisfied that the whole or any part of a sub-surface water basin (referred to in this section as a **water surplus zone**) is likely to have more water available than is sufficient to meet:
- (a) the requirements of the licensees of bores situated within the water surplus zone, and
 - (b) such other possible requirements from the water surplus zone as are determined by the Ministerial Corporation,
- it may, by order, increase the water allocation for any licensee in that zone for the period for which the order is in force.
- (2) Such an order may relate to:
- (a) a specified bore, or
 - (b) a specified class of bores, or
 - (c) all bores, or
 - (d) all bores, other than:
 - (i) a specified bore, or
 - (ii) a specified class of bores.
- (3) Notice of such an order must be published in:
- (a) the Gazette, and
 - (b) a newspaper circulating in the district in which the water surplus zone is situated.
- (4) The notice must specify the date (being the date of publication in the Gazette or a later date) on and from which the order has effect.
- (5) The licensee's water allocation is taken to be increased, during the period for which the order is in force, in accordance with the terms of the order.

117G Borrowing and carrying over

- (1) The Ministerial Corporation may, at the written request of a licensee, vary the licensee's water allocations for the current year and the following year so as to allow the licensee:

- (a) to use during the current year the whole or any part of the licensee's water allocation for the following year, or
 - (b) to use during the following year the whole or any part of the unused portion of the licensee's water allocation for the current year,
- and the licensee's water allocations for those years are taken to be varied accordingly.

- (2) The Ministerial Corporation may, at the request of a licensee, vary the licensee's water allocations for the current year and the previous year so as to allow the licensee to use during the current year the whole or any part of the unused portion of the licensee's water allocation for the previous year, and the licensee's water allocations for those years are taken to be varied accordingly.
- (3) In this section, ***unused portion***, in relation to a water allocation, means such part of the water allocation as has not been used during the year to which it relates.

117H Cancellation and suspension of licences

- (1) The Ministerial Corporation may cancel or suspend a licence if it is satisfied that the licensee has failed to comply with:
- (a) any limitation or condition of the licence, or
 - (b) any requirement imposed by or under this Part,
- whether or not the licensee has been prosecuted or convicted for an offence arising out of that failure to comply.
- (2) Before taking any action under this section, the Ministerial Corporation:
- (a) must cause written notice of the proposed action to be given to the licensee, and
 - (b) must give the licensee a reasonable opportunity to make written submissions to the Ministerial Corporation with respect to the proposed action, and
 - (c) must have regard to any submission that is duly made.

117I Offences

Any person:

- (a) who alters a licensed bore (otherwise than to make repairs or alterations necessary for the maintenance of the bore), or
- (b) who takes or uses water from an unlicensed bore, or
- (c) who takes or uses water from a licensed bore while the licence is suspended, or
- (d) who takes or uses water from a licensed bore otherwise than in accordance with the

conditions of the licence and the provisions of this Part,

is guilty of an offence.

Maximum penalty: 200 penalty units (in the case of a corporation) and 100 penalty units (in any other case).

117J Transfer of water allocations

- (1) This section applies only to such sub-surface water basins (or parts of sub-surface water basins) as the Ministerial Corporation has determined to be subject to this section.
- (2) The holder of a licence (the **transferor**) may, with the approval of the Ministerial Corporation, transfer the whole or part of the water allocation for the licence to any other person (the **transferee**), whether or not the transferee is the holder of another licence at the time the application for approval of the transfer is made.
- (3) Any such transfer:
 - (a) may be a temporary transfer for such period as may be determined by the Ministerial Corporation, after which time the transferred water allocation reverts to the transferor, or
 - (b) may be a permanent transfer, in which case the transferor's rights to take and use the water concerned are cancelled on completion of the transfer.
- (4) An application for the Ministerial Corporation's approval may be made by the transferor and transferee in the form approved by the Ministerial Corporation.
- (5) An application must be accompanied by the following:
 - (a) such application fee as is determined by the Ministerial Corporation either generally or in a particular case, and
 - (b) such information and consents as the Ministerial Corporation may require.
- (6) The Ministerial Corporation may approve the transfer, or it may refuse to approve the transfer.
- (7) The Ministerial Corporation may, in relation to an application for a transfer:
 - (a) require the transferor to provide such information and consents, and
 - (b) require the transferee to provide such information and evidence,as are specified by the Ministerial Corporation.
- (8) A requirement under subsection (7) may be complied with in any manner acceptable to the Ministerial Corporation, but the Ministerial Corporation may decline to proceed

with consideration of the application until the requirement is complied with.

- (9) In determining whether or not to approve a transfer, the Ministerial Corporation may take into consideration such matters as it thinks fit, including its opinion as to the social and economic effect that the transfer would have if approved.
- (10) If the Ministerial Corporation approves the transfer, it may give effect to the transfer in any one or more of the following ways:
- (a) by making such adjustments with respect to the transferor's and transferee's water allocations as the Ministerial Corporation considers appropriate,
 - (b) if the whole of the transferor's water allocation is being transferred, by cancelling the transferor's licence,
 - (c) if the transferee does not hold a licence, by issuing a licence to the transferee in accordance with this Part and including the transferred water allocation in the conditions of the licence.
- (11) The Ministerial Corporation may, in approving a transfer under this section, impose such conditions in relation to the transfer as the Ministerial Corporation thinks fit to impose.

117K Sale of land pending transfer of water allocation

- (1) This section applies to land in respect of which a transfer of water allocation under section 117J has been approved but has yet to take effect.
- (2) Despite section 117, the sale of land to which this section applies:
- (a) does not operate to pass the benefit of the water allocation being transferred to the purchaser of the land, and
 - (b) does not prevent the transfer taking effect.

118 (Repealed)

118A Drillers to be licensed

- (1) A person must not carry out any work as a driller on any land (other than land of which the person is the owner or occupier) unless:
- (a) the person is the holder of a driller's licence issued by the Ministerial Corporation, and
 - (b) the work being carried out is of a type or class prescribed in the regulations and set out in the licence issued to that person.
- (2) Any person who contravenes the provisions of subsection (1) shall, upon conviction, be liable to a penalty not exceeding 5 penalty units and a further penalty not

exceeding 1 penalty unit for each day during which the contravention continues after such conviction.

(3) (Repealed)

(3A) A driller's licence in the prescribed form may be issued from time to time by the Ministerial Corporation to any competent and capable person for a period of three years upon application in the prescribed form being made therefor in writing accompanied by the prescribed fee and upon the Ministerial Corporation having been furnished with such information as to the competency and capability of the applicant as it may require.

(4) A holder of a driller's licence who acts as a driller on or in connection with the construction of a bore shall, upon demand being made by the Ministerial Corporation and within such time as the Ministerial Corporation may specify, furnish to the Ministerial Corporation or to such person as the Ministerial Corporation may direct and in such form as the Ministerial Corporation may require, such information relating to:

- (a) the nature and thickness of the various strata met with during the drilling performed by the holder in connection with the bore,
- (b) the location, quantities and quality of all supplies of water met with during such drilling,
- (c) the height each such supply of water stands relative to the natural surface of the ground at the site of the bore, and
- (d) the depth, diameter and other particulars of the bore and the casing inserted in the bore,

as the Ministerial Corporation may require.

(5) Any driller who contravenes the provisions of subsection (4) shall, upon conviction, be liable to a penalty not exceeding 2 penalty units and to a further penalty not exceeding 0.5 penalty unit for each day during which the contravention continues after such conviction and, in addition to the imposition of the said penalty, the Ministerial Corporation may cancel the driller's licence.

(6) The Ministerial Corporation may at any time cancel any licence issued pursuant to subsection (3A) if in its opinion the holder of the licence is or has become incompetent or incapable or is not a fit and a proper person to continue to be licensed as a driller or for such other good and sufficient cause as to the Ministerial Corporation seems proper.

(7) No person shall be entitled to claim or be paid any compensation whatsoever arising out of or by reason of the exercise by the Ministerial Corporation of the powers conferred by subsection (6).

Division 4 Miscellaneous

119 Charge on land

- (1) All charges (including charges for the right to take and use water from a bore) and expenses payable under the authority of this Part shall be a charge on the land in respect of which they were payable.
- (2) In subsection (1), a reference to charges includes a reference to interest on the charges.

120 Duty of occupier to keep in repair

- (1) It shall be the duty of each occupier of any of the lands in sections 107 and 109 mentioned, and if any of the said lands should at any time be unoccupied it shall be the duty of the owner thereof, to maintain in good repair and in efficient condition such channels and other works in connection therewith as have been constructed through the land, and any occupier or owner who fails to comply with the provisions of this subsection shall be liable to a penalty not exceeding 5 penalty units.
- (2) The Ministerial Corporation, or any person appointed by it in that behalf, may, on being informed of any failure by an occupier or owner to comply with the provisions of the last preceding subsection, require the occupier or owner, by notice in writing served on the owner or occupier, to effect such repairs and do such things as the Ministerial Corporation may consider necessary in order to put the channel in an efficient condition.

If the occupier or owner for one week after receipt of the notice fails or neglects to comply therewith it shall be lawful for the Ministerial Corporation to cause such repairs and things as aforesaid to be effected and done, and recover from the occupier or owner, as the case may be, in any court of competent jurisdiction, the expenses thereby incurred.

121 Penalty for wilful destruction

Any person who wilfully cuts, breaks, or destroys or damages, with intent to destroy or render less useful, any work constructed under the authority of this Part shall be liable for all damage and loss sustained by such act, and shall be, in addition, liable to be fined any sum not exceeding 10 penalty units, or to be imprisoned for any term not exceeding six months.

121A Unlawful obstruction of sub-surface water

- (1) A person shall not, except in accordance with this Act or the written permission of the Ministerial Corporation, interfere with sub-surface water or obstruct its flow.
- (2) A person shall not fail to comply to the satisfaction of the Ministerial Corporation with an order by the Ministerial Corporation:

- (a) to remove wholly or in part from land owned or occupied by the person an unlawful artificial obstruction that is on or under the surface of the land and obstructs the flow of sub-surface water,
- (b) to carry out such work as the Ministerial Corporation considers to be necessary to permit the flow of sub-surface water through or past an unlawful artificial obstruction that is on or under the surface of land owned or occupied by the person, or
- (c) to render ineffective an unlicensed bore.

Maximum penalty:

- (a) in the case of an offence by a corporation—200 penalty units and 20 penalty units for each day during which the offence continues, or
- (b) in any other case—100 penalty units and 10 penalty units for each day during which the offence continues.

121B Removal of obstructions

The Ministerial Corporation may remove or render ineffective an unlawful artificial obstruction to the flow of sub-surface water or render ineffective an unlicensed bore and may recover the costs and expenses of so doing as a debt due to it from the occupier of the land on which the obstruction or bore was situated.

121C Apportionment of expenses

An owner of land is liable to pay to an occupier of the land such proportion of:

- (a) any costs and expenses incurred by the occupier in complying with a direction of the Ministerial Corporation under section 121A, or
 - (b) any costs and expenses recovered under section 121B by the Ministerial Corporation,
- as is, on the application of the occupier, determined by the local land board for the district in which the land or any part of it is situated.

122 Penalty for obstruction or diversion of water

Any person who wilfully and wrongly obstructs or diverts the flow of water in any channel constructed under the authority of this Part shall be liable to a penalty not exceeding 5 penalty units.

122A Cessation of supply of water from artesian well

Where the flow of an artesian well and supply of water therefrom become so reduced that the Ministerial Corporation considers that there is no longer a sufficient benefit being derived by the occupiers of lands who are liable to pay charges under this Part in respect

of such water and that the charges should no longer be payable, the Ministerial Corporation may by notification published in the Gazette declare that water from the artesian well shall no longer be available to the lands of occupiers who were liable to pay such charges.

Upon the publication of such notification water from the artesian well shall cease to be available to the said lands under the provisions of this Part and all charges under this Part in respect of the supply of water from the artesian well shall cease to be payable: Provided that such notification shall not operate to release any person from liability for any charges or expenses to the payment of which the person was liable immediately before the publication of such notification.

123 Waste of water

- (1) If the Ministerial Corporation is of opinion that the water from any artesian well or bore is being wastefully or improperly used, or is being wasted, it may order the closing or partial closing of such artesian well or bore, or order such other precautions to be taken as it may deem necessary to prevent such improper use or waste.
- (2) Any person refusing or neglecting to carry out any order given by the Ministerial Corporation under this section shall be liable, for every day during which such refusal or neglect continues after such order has been given, to a penalty not exceeding 2 penalty units.

123A (Repealed)

124 Power of entry

- (1) For the purposes of this Part the Ministerial Corporation or any person authorised by it, may enter any land and take levels and make surveys and marks, and fix pegs and stakes, and inspect any artesian well or bore and works in connection therewith, and measure and take the pressure of any artesian well or bore.
- (2) Any person hindering it in the exercise of such powers shall be liable to a penalty not exceeding 100 penalty units.
- (3) Any person who removes, injures, or interferes with any marks made, or pegs or stakes fixed as aforesaid, shall be liable to a penalty not exceeding 5 penalty units.

125 Recovery of charges and penalties

Charges and expenses payable under this Part, or any regulations made thereunder, may be recovered before a Magistrate or any 2 justices constituting a Local Court.

126 Appeal

Any report, recommendation, or decision of a local land board under this Part shall be subject to an appeal or reference to the Land and Environment Court, in the manner

prescribed by the Crown Lands Acts or any regulation made thereunder. The decision of the Court shall be final.

127 Public Works Act 1912

All works and wells constructed under the authority of this Part shall be subject to the provisions of the *Public Works Act 1912*.

128 Consolidated Fund

All charges payable under this Part shall be paid, at the times and in the manner prescribed, into the Consolidated Fund.

129 Regulations

(1) The Governor may make regulations:

- (a) for levying and collecting the charges payable under the authority of this Part,
- (b) for regulating the supply and use of water from any well constructed under the authority of this Part,
- (c) prescribing the steps to be taken in order to maintain the bores and channels in good repair and in efficient condition,
- (d) prescribing the forms of licences and renewals thereof, the fees payable in respect of licences and renewals thereof and the time for, and manner of, payment of those fees,
- (e) for carrying out the provisions of this Part,
- (f) for the prevention of waste or loss of water from any bore,
- (g) prescribing the form of application for drillers' licences, the form of those licences and the fees payable in respect thereof,

and may, in such regulations, impose any penalty not exceeding 100 penalty units for any breach of the same, or, where the breach is a continuing one, not exceeding 10 penalty units for every day during which the breach continues.

(1A) A provision of a regulation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

- (2) Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the regulations under this Part.

129A Application of Part

This Part (section 118A excepted) does not apply to any part of the State to which Part 3 of Chapter 3 of the *Water Management Act 2000* applies in relation to water supply work or aquifer interference approvals within the meaning of that Act.

Parts 6, 7

130-164 (Repealed)

Part 8 Flood control works

Division 1 Preliminary

165 Definitions

- (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires:

approval means an approval under this Part.

complying controlled work means a controlled work that is assessed as a complying controlled work under section 168B.

controlled work—see section 165A.

declared local area means an area declared by the Ministerial Corporation under section 5 (4).

floodplain means any land which is so designated by an order in force under section 166 (1).

floodplain management committee means a committee established under section 166B.

floodplain management plan means a floodplain management plan adopted by the Ministerial Corporation under section 166A.

lake includes a lagoon, swamp or other collection of still water, whether permanent or temporary, not being water contained in an artificial work.

local occupier, in relation to an application for an approval, means an occupier of land which is wholly or partly situated within the same declared local area as the land on which the controlled work the subject of the application is situated or is proposed

to be constructed, but does not include a statutory authority, statutory instrumentality or government department of any State other than the State of New South Wales or a Minister of the Crown for any State other than the State of New South Wales.

non-complying controlled work means a controlled work that is assessed as a non-complying controlled work under section 168B.

objection means an objection made under section 170 to the granting of an approval for a non-complying controlled work.

occupier means a person in actual occupation of any land whatsoever, and where there is no person in actual occupation the holder under any tenure of the land and in respect of a public road within the meaning of the *Roads Act 1993*, means the council of the area within which the public road is situated, and, in any case where a controlled work is proposed to be or is being constructed on the application of a council under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*, or a council has been charged with the care and management of a controlled work under that Division, includes the council.

river includes:

- (a) a stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream,
- (b) an affluent, confluent, branch or other stream of water into or from which a stream referred to in paragraph (a) flows, and
- (c) anything prescribed as being a river,

but does not include anything prescribed as not being a river.

statutory authority means a statutory authority, statutory instrumentality or government department of the State of New South Wales and includes a Minister of the Crown for the State of New South Wales.

- (2) A reference in this Part to the occupier of land includes, where more than one person occupies that land, a reference to any one of those persons.
- (3) A reference in this Part to the construction of a controlled work includes a reference to the enlargement, extension or modification of the controlled work, but does not include a reference to any work carried out by or on behalf of the Ministerial Corporation under section 180D.

165A Controlled work—meaning

- (1) In this Part, a **controlled work** means:

- (a) an earthwork, embankment or levee that is situated, or proposed to be constructed, on land that:
 - (i) is, or forms part of, the bank of a river or lake, or
 - (ii) is within a floodplain, or
 - (b) any work that is situated, or proposed to be constructed, on land that:
 - (i) is, or forms part of, the bank of a river or lake, or
 - (ii) is within a floodplain,and that is declared by order of the Ministerial Corporation published in the Gazette to be a controlled work, or
 - (c) an earthwork, embankment or levee, wherever situated or proposed to be constructed, that:
 - (i) affects or is reasonably likely to affect the flow of water to or from a river or lake, and
 - (ii) is used or is to be used for, or has the effect or likely effect of, preventing land from being flooded by water, or
 - (d) any work, wherever situated or proposed to be constructed, that:
 - (i) affects or is reasonably likely to affect the flow of water to or from a river or lake, and
 - (ii) is used or is to be used for, or has the effect or likely effect of, preventing land from being flooded by water, and
 - (iii) is declared by order of the Ministerial Corporation published in the Gazette to be a controlled work.
- (2) However, a controlled work does not include:
- (a) a work declared, by order of the Ministerial Corporation published in the Gazette, not to be a controlled work, and any work that forms or is intended to form part of, or is or is intended to be ancillary to, such a declared work, or
 - (b) a work or bore in respect of which a licence, group licence, authority, permit, consent or authorisation is in force under Part 2, 3, 5, 6, 7 or 9.

Division 2 Floodplains

166 Designation of floodplains

- (1) The Ministerial Corporation may, by order published in:

- (a) the Gazette, and
- (b) at least one newspaper published and circulating generally in the locality of the land to which the order relates,

designate any land specified in the order as a floodplain.

(2) An order under subsection (1) takes effect:

(a) on the date of its first publication in the Gazette and a newspaper pursuant to subsection (1) or, where it is first published in the Gazette and a newspaper on different dates, the later of those dates, or

(b) a date specified in the order in that regard,

whichever is the later.

(3) While an order under subsection (1) is in force, the Ministerial Corporation shall cause a map depicting the floodplain to which the order relates to be made available for public inspection at each of its offices, free of charge, during the ordinary office hours of the Ministerial Corporation.

166A Floodplain management plans

(1) The Ministerial Corporation may prepare and adopt a floodplain management plan for a floodplain or proposed floodplain.

(2) A floodplain management plan is to set out a scheme for the management of flood waters within the floodplain.

(3) A floodplain management plan is to accord with the general principles and policies set out in the relevant floodplain development manual.

(4) Before adopting a floodplain management plan, the Ministerial Corporation:

(a) is to give the public an opportunity to make submissions on the proposed plan in accordance with the procedure provided for by the relevant floodplain development manual, and

(b) is to take those submissions into account.

(5) The Ministerial Corporation is to consider the matters set out in section 166C before adopting a floodplain management plan.

(6) After adopting a floodplain management plan, the Ministerial Corporation is required:

(a) to give notice of the adoption of the plan in the Gazette and in a newspaper circulating in the area to which the plan relates, and

(b) to ensure that copies of the floodplain management plan are available for public

inspection, free of charge, at the office of the Ministerial Corporation for the region in which the floodplain is situated.

- (7) A floodplain management plan may be amended or revoked by the adoption of a new plan in accordance with this section.
- (8) In this section:

relevant floodplain development manual means the most recent manual relating to the management of flood liable land (being the manual most recently notified under section 733 (5) (a) of the *Local Government Act 1993*).

166B Establishment of floodplain management committees

- (1) The Ministerial Corporation may establish a floodplain management committee in respect of a floodplain or proposed floodplain.
- (2) A floodplain management committee has the following functions:
- (a) assisting the Ministerial Corporation in the preparation of a floodplain management plan for the floodplain for which the committee is established,
 - (b) monitoring and reviewing the floodplain management plan after it is adopted,
 - (c) such other functions as may be conferred or imposed on it by the Ministerial Corporation.
- (3) The membership and procedure of a floodplain management committee are to be determined by the Ministerial Corporation.
- (4) The Ministerial Corporation is to ensure that appropriate stakeholders are represented on a floodplain management committee.

Division 3 Approval of controlled works

166C Matters for general consideration

- (1) The Ministerial Corporation, in exercising its functions under this Division with respect to approvals, must have regard to the following matters, and any other matters that it considers relevant:
- (a) the contents of any relevant floodplain management plan or any other relevant Government policy,
 - (b) the need to maintain the natural flood regimes in wetlands and related ecosystems and the preservation of any habitat, animals (including fish) or plants that benefit from periodic flooding,
 - (c) the effect or likely effect on water flows in downstream river sections,

- (d) any geographical features, or other matters, of Aboriginal interest that may be affected by a controlled work,
 - (e) the effect or likely effect of a controlled work on the passage, flow and distribution of any flood waters,
 - (f) the effect or likely effect of a controlled work on existing dominant flood ways or exits from flood ways, rates of flow, flood water levels and the duration of inundation,
 - (g) the protection of the environment,
 - (h) any other matter relating to the desirability or otherwise of a controlled work.
- (2) The Ministerial Corporation is to ensure that the notice of its determination to grant or refuse to grant an approval, renew or refuse to renew an approval, impose conditions on an approval or vary or revoke the conditions of an approval includes a statement of the reasons for the determination and of the extent to which the Ministerial Corporation took into account the matters set out in subsection (1) in making that determination.

167 Applications for approval

- (1) An application for an approval shall:
- (a) be made, in or to the effect of the form approved by the Ministerial Corporation, by the occupier of the land, or the occupiers of the lands, upon which the controlled work the subject of the application is situated or proposed to be constructed,
 - (b) be accompanied by:
 - (i) the application fee approved by the Ministerial Corporation, and
 - (ii) an assessment of the likely impact of the controlled work, and
 - (iii) such other information as may be required by the application form, and
 - (c) be lodged with the Ministerial Corporation.
- (2) A reference in subsection (1) to an occupier of land includes a reference to a person who proposes to obtain the right to occupy the land.

168 Ministerial Corporation may refuse to determine certain applications

- (1) The Ministerial Corporation may refuse to determine an application for an approval:
- (a) if, in its opinion:
 - (i) the application relates to 2 or more controlled works, and

- (ii) a separate application should be made in respect of any one or more of those controlled works, or
 - (b) if, in its opinion, the application relates to part only of a controlled work, or
 - (c) if the applicant has failed to comply with section 167.
- (2) Where the Ministerial Corporation refuses to determine an application pursuant to subsection (1), it shall refund to the applicant any fee paid under section 167 (1) (b) (i) in relation to the application.

168A Ministerial Corporation may request further information

- (1) The Ministerial Corporation may, by notice in writing served on an applicant for approval, request the applicant to give to it any additional information about a controlled work that the Ministerial Corporation considers necessary for its assessment of the application.
- (2) The information that the Ministerial Corporation may request includes, but is not limited to, the following:
- (a) information relating to any matter referred to in section 166C or in any relevant floodplain management plan,
 - (b) information that is necessary for the purpose of assessing whether the controlled work is a complying or a non-complying controlled work under section 168B,
 - (c) hydrological calculations and projections in relation to the controlled work.
- (3) The information is to be provided by the applicant within the time specified in the request.
- (4) The Ministerial Corporation may refuse to determine an application if the applicant fails to comply with the request.

168B Preliminary assessment of whether controlled work complies with floodplain management plan

- (1) After receiving an application for an approval, and before determining the application under section 171, the Ministerial Corporation is to make an assessment of whether the controlled work the subject of the application is a complying or a non-complying controlled work.
- (2) A controlled work is to be assessed as a complying controlled work if the Ministerial Corporation is satisfied that the controlled work complies with the floodplain management plan for the area in which the controlled work is situated or proposed to be constructed.
- (3) A controlled work is to be assessed as a non-complying controlled work if:

- (a) the Ministerial Corporation is not satisfied that the controlled work complies with the floodplain management plan for the area in which the controlled work is situated or proposed to be constructed, or
 - (b) the controlled work is situated or proposed to be constructed in an area that is not the subject of a floodplain management plan.
- (4) If the controlled work concerned is a complying controlled work, the Ministerial Corporation may determine the application in accordance with section 171.
- (5) If the controlled work concerned is a non-complying controlled work, the Ministerial Corporation is to publicise the application in accordance with section 169 before determining the application.
- (6) The Ministerial Corporation may refuse to make an assessment under this section if any information required or requested to be provided in relation to the application has not been provided to the Ministerial Corporation.

169 Publication of applications relating to non-complying controlled works

- (1) The Ministerial Corporation is to cause notice of an application for approval of a non-complying controlled work to be published in:
- (a) the Gazette, and
 - (b) at least one newspaper circulating generally in the area in which the controlled work the subject of the application is situated or proposed to be constructed.
- (2) The notice:
- (a) is to contain the particulars approved by the Ministerial Corporation, and
 - (b) is to specify:
 - (i) the manner in which objections may be made to the granting of an approval for the controlled work, and
 - (ii) the closing date for such objections (being no sooner than 28 days after the date of publication of the notice).
- (3) The Ministerial Corporation must not determine under section 171 an application for approval of a non-complying controlled work before the closing date referred to in subsection (2) (b) (ii).

170 Objections to non-complying controlled works

- (1) An objection to the granting of an approval for a non-complying controlled work may be made:
- (a) where the controlled work was, at the time the application for the approval was

made, situated or proposed to be constructed within a declared local area:

(i) by any statutory authority, or

(ii) by any local occupier,

whose interests may be affected by the granting of such an approval, or

(b) in any other case—by any person whose interests may be affected by the granting of such an approval.

(2) An objection to the granting of an approval shall:

(a) be in writing,

(b) specify the grounds of the objection, and

(c) be lodged with the Ministerial Corporation on or before the closing date specified under section 169 (2) (b) (ii) in relation to the making of any such objection.

170A Ministerial Corporation may require further information about objection

(1) The Ministerial Corporation may require a person who has made an objection to provide such additional information as the Ministerial Corporation may reasonably require to assess the objection.

(2) Such a requirement is to be made by notice in writing to the person who made the objection and is to specify a time in which it must be complied with by the person.

(3) If the information is not provided by the person, within the time specified by the Ministerial Corporation in the notice, the Ministerial Corporation may reject the objection.

170B Compulsory mediation session

(1) If the Ministerial Corporation is satisfied that a person who has made an objection to the grant of an approval has provided sufficient information to demonstrate reasonable concerns about the grant of an approval, the Ministerial Corporation must, by notice in writing, require the applicant for approval and the person who made the objection to attend a conference (a **mediation session**) for the purpose of resolving the objection by mediation.

(2) A mediation session is to be conducted, by a person appointed by the Ministerial Corporation as chairperson of the mediation session, in accordance with the procedures determined by the Ministerial Corporation.

(3) The Ministerial Corporation may refuse to determine an application for approval if the applicant for approval fails to take part in a mediation session as required by the Ministerial Corporation.

- (4) The Ministerial Corporation may reject an objection if the person who made the objection fails to take part in a mediation session as required by the Ministerial Corporation.
- (5) A person is taken to have failed to take part in a mediation session if, in the opinion of the Ministerial Corporation, the person:
 - (a) has unreasonably failed to attend, or unreasonably delayed attending, a mediation session, or
 - (b) has not taken part in a mediation session in good faith.
- (6) Any statement or admission made in the course of a mediation session is not admissible in any legal proceedings.
- (7) The Ministerial Corporation is to have regard to the outcome of a mediation session, and any findings or recommendations made by the person appointed to conduct the mediation session, in determining whether to grant an approval, and in imposing any conditions on the grant of an approval.

171 Determination of applications

- (1) The Ministerial Corporation is to determine an application for an approval:
 - (a) by granting an approval for the controlled work the subject of the application, or
 - (b) by refusing to grant an approval.
- (2) The Ministerial Corporation must, as soon as practicable after it determines an application for an approval, cause notice of its determination to be served on the applicant.
- (3) The Ministerial Corporation is not to grant an approval to the applicant or applicants if the whole or any part of the land on which the controlled work the subject of the application is situated or proposed to be constructed is not occupied by the applicant or by at least one of the applicants.
- (4) This section does not apply in respect of any application for approval that is withdrawn before the application is determined.

171AA Notice of determination to be given to objector

- (1) If the Ministerial Corporation determines an application for an approval by granting the approval and an objection was made to the granting of an approval under section 170, the Ministerial Corporation is to cause notice of its determination to be served on the person who made the objection.
- (2) The person who made the objection may appeal against the determination to the Land and Environment Court.

- (3) Such an appeal may be made:
 - (a) no later than 28 days after notice of the determination of the application is served on the person, and
 - (b) in accordance with the rules of the Land and Environment Court.
- (4) This section does not apply in respect of an objection that:
 - (a) is withdrawn before the application for the approval concerned is determined, or
 - (b) is rejected by the Ministerial Corporation because of a failure to comply with a requirement under this Division.
- (5) This section is subject to section 171A.

171A Determination of application affected by public inquiry under the [Environmental Planning and Assessment Act 1979](#)

- (1) This section applies to any application under section 167 that concerns a controlled work in respect of which a Commission of Inquiry has given a section 120A notice to the Ministerial Corporation before the Ministerial Corporation makes its determination on the application under section 171.
- (2) The Ministerial Corporation:
 - (a) must refer to the Commission of Inquiry:
 - (i) the application (including any accompanying information required under section 167 (1) (b)), and
 - (ii) any objection to the granting of an approval that is duly lodged in connection with the application,

whether the application or objection is made or lodged before or after the section 120A notice is received, and
 - (b) must defer making any determination on the application under section 171 (1) until it receives the Commission of Inquiry's section 119 report.
- (3) In making its determination on the application under section 171 (1), the Ministerial Corporation must have regard to the findings and recommendations contained in the Commission of Inquiry's section 119 report.
- (4) The Ministerial Corporation's determination under section 171 (1) on the application is final, and the provisions of sections 171AA (2) and 178A do not have effect in relation to that determination.
- (5) This section extends to applications made (but not determined) before the commencement of this section.

(6) 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*.

172-174 (Repealed)

175 Approvals

An approval:

- (a) takes effect, and is to specify that it takes effect, at the expiration of 28 days after the Ministerial Corporation has caused notice of its determination to grant the approval to be served on the applicant, and
- (b) remains in force (unless sooner cancelled under section 178) for the period specified in the approval (being a period ending not more than 10 years after the date on which the Ministerial Corporation made the determination referred to in paragraph (a)), and
- (c) is to be in a form approved by the Ministerial Corporation.
- (d) (Repealed)

175A (Repealed)

176 Renewal of approvals

- (1) An application for renewal of an approval shall:
 - (a) be made, in or to the effect of the form approved by the Ministerial Corporation, by the occupier of the land, or the occupiers of the lands, to which the approval relates,
 - (b) be accompanied by the application fee approved by the Ministerial Corporation, and
 - (c) be lodged with the Ministerial Corporation before the date on which the approval would, but for subsection (2), cease to have effect.
- (2) Where an application for renewal of an approval is made in accordance with subsection (1), the approval shall, notwithstanding subsection (9) (b) or section 175 (b) but subject to any cancellation of the approval under section 178, continue in force until the application is finally disposed of in accordance with this section.

- (3) The Ministerial Corporation shall determine an application for renewal of an approval (other than an application that has been withdrawn):
 - (a) except as provided by subsection (4), by renewing the approval, subject to such conditions (if any) as the Ministerial Corporation thinks fit to impose, or
 - (b) by refusing to renew the approval.
- (4) The Ministerial Corporation shall not renew an approval if the whole or any part of the land to which the approval relates is not occupied by the applicant for the renewal, or by at least one of the applicants for the renewal, as the case may be.
- (5) (Repealed)
- (6) Nothing in this section operates to prevent the Ministerial Corporation from determining an application for renewal of an approval by reason only that the application was lodged with the Ministerial Corporation on or after the date referred to in subsection (1) (c).
- (7) The Ministerial Corporation shall, as soon as practicable after it has determined an application for renewal of an approval, cause notice to be served on the applicant of its determination.
- (8) (Repealed)
- (9) An approval renewed in accordance with this section:
 - (a) shall take effect on the date on which the Ministerial Corporation makes the determination whereby it renews the approval,
 - (b) remains in force (unless sooner cancelled under section 178) for the period specified in the approval (being a period ending not more than 10 years after the date on which the Ministerial Corporation made the determination referred to in paragraph (a)), and
 - (c) is to be in a form approved by the Ministerial Corporation.
 - (d) (Repealed)

176A Conditions of approval

- (1) An approval is subject to such conditions as may be imposed by the Ministerial Corporation, by notice served on the affected person:
 - (a) on the grant or renewal of the approval, or
 - (b) at any time during the currency of the approval.
- (2) The Ministerial Corporation may, by notice served on an affected person, vary or

revoke any conditions of an approval.

- (3) If the Ministerial Corporation intends to impose a condition on an approval, or to vary or revoke a condition, the Ministerial Corporation:
 - (a) must cause notice of its intention to be served on the affected person, and
 - (b) must give that person a reasonable opportunity to make written submissions to the Ministerial Corporation with respect to the condition concerned, and
 - (c) must have regard to any submission that is made.
- (4) Without limiting section 166C, the conditions to which an approval is subject may include conditions relating to the protection of the environment.
- (5) This section does not affect section 93 of the *Environmental Planning and Assessment Act 1979* (which relates to integrated development).
- (6) In this section:

affected person means:

 - (a) in the case of a condition imposed on the grant or renewal of an approval—the person who applied for the grant or renewal, or
 - (b) in any other case—the occupier of the land on which the controlled work that is the subject of the approval is situated.

177 Benefit of approval

An approval shall, except where it otherwise specifically provides:

- (a) be deemed to be held by, and
- (b) operate and enure for the benefit of,

the occupier for the time being of the land upon which the controlled work the subject of the approval is situated or proposed to be constructed.

178 Cancellation of approvals

- (1) Where the Ministerial Corporation is satisfied that a controlled work in respect of which an approval is in force does not comply with the approval, or with any condition imposed on the approval, the Ministerial Corporation may cause to be served on the occupier of the land upon which the work is situated a notice to the effect that, at the expiration of the period of 28 days next following service of the notice, the approval will be cancelled.
- (2) (Repealed)

- (3) At the expiration of the period referred to in subsection (1), an approval in respect of which a notice has been served under that subsection and has not been withdrawn shall, unless the approval is the subject of an appeal under section 178A, be deemed to be cancelled.
- (4) Where an approval is deemed to be cancelled under this section, the Ministerial Corporation may cause notice of the cancellation to be published in the Gazette, and any such notice shall be conclusive evidence of the cancellation.

178A Appeals to Land and Environment Court

- (1) A person who applies for the grant or renewal of an approval may appeal to the Land and Environment Court against a determination of the Ministerial Corporation:
 - (a) to refuse to grant the approval under section 171, or
 - (b) to grant the approval subject to any condition, or
 - (c) to refuse to renew the approval under section 176, or
 - (d) to renew the approval subject to any condition other than a condition to which the approval was subject immediately before it was renewed.
- (2) An occupier of any land on which a controlled work that is the subject of an approval is situated may appeal to the Land and Environment Court against a determination of the Ministerial Corporation:
 - (a) to impose a condition on the approval, or to vary or revoke a condition of the approval, during the currency of the approval, or
 - (b) to cancel the approval.
- (3) An appeal under this section may be made:
 - (a) no later than 28 days after the notice of the determination of the Ministerial Corporation is served on the person concerned, and
 - (b) in accordance with the rules of the Land and Environment Court.

179 (Repealed)

Division 4 Offences and enforcement

180 Construction of unauthorised works

A person must not construct a controlled work otherwise than in accordance with an approval that is in force in respect of the work.

Maximum penalty: 2,500 penalty units in the case of a corporation or 1,200 penalty units in the case of an individual.

180A Compliance with conditions of approval

- (1) The occupier of land on which a controlled work is situated, being a controlled work in respect of which an approval is in force, must comply with the conditions (if any) of that approval.
- (2) A person who contravenes subsection (1) is guilty of an offence and 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.

180B Stop work orders

- (1) If the Ministerial Corporation is of the opinion that a person is engaging in or about to engage in any activity in contravention of section 180 or 180A, the Ministerial Corporation may, by notice in writing served on the person, order the person not to engage in that activity.
- (2) The order:
 - (a) takes effect immediately (or from a later date specified in the notice), and
 - (b) is subject to such conditions as the Ministerial Corporation may specify in the notice.
- (3) The Ministerial Corporation may vary or revoke the order or the conditions of the order by further notice in writing served on the person subject to the order.
- (4) An order under this section remains in force until whichever of the following happens first:
 - (a) the order is revoked by the Ministerial Corporation,
 - (b) the period (if any) for which the order is expressed in the notice to be in force ends,
 - (c) the period of 2 years from the day on which the order took effect ends.
- (5) A person who fails to comply with an order in force under this section is guilty of an offence and 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.

180C Injunctions

- (1) On application by the Ministerial Corporation, the Land and Environment Court may grant an injunction restraining a threatened or apprehended contravention, or the continuation of a contravention, of section 180 or 180A.
- (2) An injunction may be granted without the Ministerial Corporation's being required to show a likelihood of damage.
- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.
- (4) When the Ministerial Corporation makes an application for the grant of an injunction under this section, the Court is not to require the Ministerial Corporation or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

180D Directions for remedial work

- (1) If the Ministerial Corporation is satisfied that:

- (a) there is no approval in force with respect to a controlled work, or
- (b) a controlled work has been constructed in contravention of an approval, or
- (c) a controlled work does not comply with the conditions to which an approval is subject,

the Ministerial Corporation may, by notice in writing served on the occupier of the land on which the controlled work is situated, direct the occupier to carry out specified work in a specified manner and within a specified time.

- (2) Any one or more of the following types of work may be directed to be carried out by a notice under this section:
 - (a) work to remove, modify, repair or restore the controlled work or to render the work ineffectual,
 - (b) work to repair any damage caused by the controlled work (including any damage caused to any specified land, structure, river, lake or vegetation, or to the environment),
 - (c) work to ensure that any specified land, structure, river, lake or vegetation, or the

environment, will not be damaged or adversely affected or further damaged or adversely affected, by the controlled work,

(d) without limiting paragraphs (a)–(c), work to correct or restore any alteration caused by the controlled work to the flow of water in, to or from, or the quantity of water contained in, any specified river or lake.

- (3) A direction under this section may be varied or revoked by a further notice in writing served on the person the subject of the direction.
- (4) A person who fails to comply with a direction under this section is guilty of an offence and 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.
- (5) If a person fails to comply with a direction under this section, the Ministerial Corporation may authorise any other person to enter the land and carry out the specified work.
- (6) The Ministerial Corporation must not exercise its powers under this section in relation to a controlled work that is within a floodplain before the expiration of 28 days after the date on which the order designating that land as a floodplain has taken effect.

180E Obstruction of persons

A person must not hinder or obstruct the Ministerial Corporation, or any of its officers, employees or agents, in the exercise of any function under section 180D.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in the case of an individual.

180F Interference with work done by Ministerial Corporation

(1) A person must not remove, damage or modify any work carried out by or on behalf of the Ministerial Corporation under section 180D.

Maximum penalty: 2,500 penalty units in the case of a corporation or 1,200 penalty units in the case of an individual.

(2) It is a defence to any proceedings against a person for an offence under this section if the person establishes that the person was acting with the approval of the Ministerial Corporation.

180G Recovery of cost of work done by Ministerial Corporation

- (1) The Ministerial Corporation may recover the cost of any work carried out by or on behalf of the Ministerial Corporation under section 180D from:
 - (a) the occupier of the land on which the work is carried out, or
 - (b) a person who caused the controlled work concerned to be constructed in contravention of section 180.
- (2) The occupier of the land on which work is carried out under section 180D may recover:
 - (a) the cost of any work carried out by the occupier in compliance with a notice under section 180D, or
 - (b) any amount that is recovered by the Ministerial Corporation from the occupier under subsection (1),from any person who, without the consent of the occupier, caused the controlled work concerned to be constructed in contravention of section 180.
- (3) An amount recoverable under this section may be recovered as a debt in any court of competent jurisdiction.
- (4) The recovery of an amount payable under this section is not dependent on any person having been convicted of an offence for contravening section 180 or 180A.

180H Prior notification not required

The Ministerial Corporation is not required, before making an order or giving a direction or taking any other action under this Division, to notify any person who may be affected by the order, direction or action.

180I Power to require information

- (1) The Ministerial Corporation may, by notice in writing served on a person, require the person:
 - (a) to give an authorised officer orally or in writing signed by the person (or, if the person is a corporation, by a competent officer) and within the time and in the manner specified in the notice, any information about a possible offence under this Division, or
 - (b) to produce to an authorised officer, in accordance with the notice, any document containing information about a possible offence under this Division.
- (2) An authorised officer may inspect a document produced in response to such a notice and may take copies of, or take extracts or notes from, the document.

(3) A person must not:

- (a) fail to comply with such a notice to the extent that the person is capable of complying with it, or
- (b) in purported compliance with such a notice, give information or an answer to a question, or produce a document, knowing that it is false or misleading in a material particular.

Maximum penalty: 10 penalty units.

- (4) A person is not excused from giving information, answering questions or producing documents under this section on the ground that the information, answers or documents may tend to incriminate the person.
- (5) Any information or document obtained from a person under this section is not admissible against the person in criminal proceedings other than proceedings for an offence under this section.
- (6) An authorised officer exercising any power under this section must, if requested to do so, produce the authorised officer's identification card to a person served with a notice under this section.
- (7) In this section:

authorised officer means a person authorised by the Ministerial Corporation to exercise the functions of an authorised officer under this section.

180J Appeals

- (1) A person aggrieved by a decision of the Ministerial Corporation under this Division may appeal against the decision to the Land and Environment Court in accordance with the rules of that court.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the decision appealed against.

180K Restraint of contravention of Division

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention, or a threatened or apprehended contravention, of this Division.
- (2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of that person and on behalf of other persons (with their consent), or a body corporate or unincorporated association (with the consent of its committee or other controlling or governing body), having like or common interests in those

proceedings.

- (3) 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.

Division 5 Miscellaneous

181 (Repealed)

182 Exclusion of liability

- (1) The Ministerial Corporation does not incur any liability for any advice furnished, or anything done or omitted to be done, in good faith by the Ministerial Corporation in the exercise of its functions under this Part.
- (2) Without limiting subsection (1), that subsection applies to the following:
- (a) the preparation or adoption of a floodplain management plan,
 - (b) the granting of or refusal to grant an approval,
 - (c) the renewal of or refusal to renew an approval,
 - (d) the imposition of any condition on an approval, or the variation or revocation of a condition of an approval,
 - (e) the cancellation of an approval,
 - (f) anything done or omitted to be done under Division 4.
- (3) Without limiting any other circumstances in which the Ministerial Corporation may have acted in good faith, the Ministerial Corporation is, unless the contrary is proved, taken to have acted in good faith for the purposes of this section if the advice was furnished, or the thing was done or omitted to be done, substantially in accordance with the principles contained in the relevant floodplain development manual.
- (4) This section applies to and in respect of:
- (a) the Crown, and
 - (b) a public servant, and
 - (c) a person acting under the direction of the Ministerial Corporation, and
 - (d) a floodplain management committee or a member of a floodplain management committee,
- in the same way as it applies to and in respect of the Ministerial Corporation.

(5) In this section:

relevant floodplain development manual means the most recent manual relating to the management of flood liable land (being the manual most recently notified under section 733 (5) (a) of the *Local Government Act 1993*).

183 Consolidated Fund

All fees payable under this Part shall be paid into the Consolidated Fund.

184 Service of notices

Any notice under this Part that is required to be served on or given to a person may be served or given:

- (a) by delivering it personally to the person, or
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it with any person apparently of or above the age of 14 years who apparently resides or is employed there, or
- (c) by letter sent by post and addressed to the person at the person's address last known to the Ministerial Corporation.

184A Proceedings for offences

- (1) Proceedings for an offence under this Part or the regulations under this Part may be commenced not later than 2 years after the date on which the offence is alleged to have been committed.
- (2) This section has effect despite:
 - (a) section 4G (5) of this Act, and
 - (b) the *Justices Act 1902* or any other Act.

185 Regulations

- (1) The Governor may make regulations, not inconsistent with this Part, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part and, in particular, for or with respect to fees payable under this Part.
- (2) A provision of a regulation may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

- (3) A regulation may impose a penalty for an offence against the regulation not exceeding:
- (a) where the offence is committed by a corporation—200 penalty units, and
 - (b) where the offence is committed by any other person—100 penalty units.
- (4) Section 41 of the *Interpretation Act 1897* applies in respect of a regulation made under subsection (1) as if this Act had been passed after the commencement of the *Interpretation (Amendment) Act 1969*.
- (5) Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the regulations under this Part.

186 Part to bind Crown

This Part binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

186A Application of Part

This Part does not apply to any part of the State to which Part 3 of Chapter 3 of the *Water Management Act 2000* applies in relation to flood work approvals within the meaning of that Act.

Part 9 Licensing of water management authorities

187 Definitions

(1) In this Part:

enforcement order means an order in force under section 192.

lake has the same meaning as it has in Part 2.

river has the same meaning as it has in Part 2.

sub-surface water has the same meaning as it has in Part 5.

sub-surface water basin has the same meaning as it has in Part 5.

water management authority means a person or body referred to in Schedule 3.

water management licence means a water management licence granted under this Part.

water management work means:

- (a) a work within the meaning of Part 2, or
- (b) a bore within the meaning of Part 5.

water source means a river, lake or sub-surface water basin.

- (2) The Governor may by proclamation amend Schedule 3 so as:
 - (a) to add the corporate name of any body that is to become a water management authority for the purposes of this Part, or
 - (b) to vary the name of any water management authority as a consequence of any change in its corporate name.

188 Water management licence

- (1) The Ministerial Corporation:
 - (a) on the application of a water management authority, and
 - (b) on payment of the appropriate licence fee,may grant to the water management authority a water management licence.
- (2) The appropriate licence fee is to be determined by the Minister, having regard to the costs incurred by the Ministerial Corporation in dealing with the application for the licence.
- (3) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of the first water management licence granted to a water management authority under this section.

189 Conditions of water management licence

- (1) A water management licence is subject to:
 - (a) the conditions imposed on the water management licence from time to time by or under this Act, and
 - (b) such other conditions as are imposed on the water management licence from time to time by the Ministerial Corporation.
- (2) In determining the conditions to be imposed on a water management licence, the Ministerial Corporation must have regard to any review that it has conducted under section 193.
- (3) Before imposing any condition on a water management authority's water management licence, the Ministerial Corporation:

- (a) must cause written notice of its intention to impose the condition to be given to the water management authority, and
- (b) must give the water management authority a reasonable opportunity to make written submissions to the Ministerial Corporation in relation to the proposed condition, and
- (c) must have regard to any submission that is duly made.

190 Duration of water management licence

- (1) A water management licence has effect for:
 - (a) such period (not exceeding 20 years) as is specified in the licence, or
 - (b) if that period is extended under this section, for that extended period.
- (2) At the end of each 5 year period following the date on which its current water management licence was granted, a water management authority may apply to the Ministerial Corporation 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 Ministerial Corporation must have regard to the review that it has conducted under section 193 in relation to that 5 year period.

191 Effect of water management licence

A water management licence authorises its holder:

- (a) to take and use water from any water source, and
- (b) to construct or use a water management work,

subject to the conditions of the licence and the provisions of this Part.

192 Enforcement order

- (1) For the purpose of ensuring that a water management authority complies with the conditions of its water management licence, the Ministerial Corporation may from time to time give a written order (an **enforcement order**) directing the authority to do, or to cease doing, such things as are specified in the order.
- (2) On the application of the Ministerial Corporation, the Land and Environment Court may direct a water management authority to comply with an enforcement order.

193 Review of water management licence

- (1) The activities of a licensed water management authority:

- (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 water management licence was granted, and
 - (ii) before the end of each 5 year period following the date on which its current water management licence was granted.
- (2) For the purpose of conducting such a review, the Ministerial Corporation 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 holder of the licence during the period under review.

194 Water management charges

- (1) A water management authority is liable to pay water management charges to the Ministerial Corporation.
- (2) The charges so payable are to be fixed by the Ministerial Corporation, having regard to the Ministerial Corporation's costs in relation to:
 - (a) its conduct of reviews under section 193, and
 - (b) its administration of this Act with respect to the water management authority, and
 - (c) its monitoring of the extraction of water from, and the flow of water along, the rivers and lakes that are affected by the work and activities of the water management authority, and
 - (d) its exercise of any other water resource management function with respect to the water management authority.

195 Offences with respect to water management licences

- (1) A water management authority that uses a water management work that is not the subject of a water management licence is guilty of an offence.
Maximum penalty: 200 penalty units.
- (2) A water management authority does not commit an offence under this section with respect to anything authorised by or under Part 2 or 5.

196 Evidence

A certificate that is issued by the Director-General of the Department of Land and Water Conservation and that states that, on a date or during a period specified in the certificate:

- (a) a specified water management licence was or was not in force, or
- (b) a specified water management licence was or was not subject to specified conditions, or
- (c) a specified water management work was or was not the subject of a specified water management licence,

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

197 Directions for remedial work

- (1) The Ministerial Corporation may, by order in writing, direct a water management authority to take such action as is specified in the order:
 - (a) to protect a water source from any adverse effects of the authority's activities, or
 - (b) to mitigate any adverse effects on a water source that have arisen from the authority's activities, or
 - (c) to prevent the wastage or pollution of water from the authority's water management works.
- (2) If the water management authority fails to take any action so directed, the Ministerial Corporation may authorise any other person to take that action on behalf of the Ministerial Corporation.
- (3) A person so authorised has and may exercise such of the functions of the water management authority as are necessary to enable the person to take that action.
- (4) The amount of any costs and expenses incurred by the Ministerial Corporation as a result of action taken as referred to in subsection (2) is recoverable in a court of competent jurisdiction as a debt due to the Ministerial Corporation from the water management authority.

198 Civil penalties

- (1) If satisfied that a water management authority:
 - (a) has contravened the conditions of its water management licence, or
 - (b) has failed to comply with an order under section 197,the Ministerial Corporation may order the authority to pay to the Ministerial Corporation a 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 contravention continues.

- (2) Before making an order under this section, the Ministerial Corporation:
 - (a) must cause written notice of its intention to make the order to be given to the water management authority, and
 - (b) must give the water management authority a reasonable opportunity to make written submissions to the Ministerial Corporation in relation to the proposed order, and
 - (c) must have regard to any submission that is duly made.

199 Appeals

- (1) A water management authority may appeal to the Land and Environment Court against the following decisions:
 - (a) a decision under section 188 refusing to grant a water management licence,
 - (b) a decision under section 189 imposing a condition on a water management licence,
 - (c) a decision under section 190 refusing to extend the term of a water management licence,
 - (d) a decision under section 192 to give an enforcement order to the water management authority,
 - (e) a decision under section 198 to make an order requiring the water management authority to pay a penalty.
- (2) The lodging of an appeal does not operate to stay action on the decision appealed against, except to the extent to which the Land and Environment Court otherwise directs.

200 Compensation for loss of certain water rights

- (1) This section applies to any holder of a licence under Part 2 where, as a result of a water management authority's failure to comply with a direction under section 192 (2), water that would otherwise be available to the licensee becomes unavailable.
- (2) A person to whom this section applies may recover from the water management authority the amount of any loss or damage suffered by the person as a result of the water management authority's failure to comply with the enforcement order.
- (3) An action under this section may be commenced at any time within 3 years after the date on which the failure to comply with the enforcement order occurred and may not

be commenced after that period.

201 Regulations

- (1) The Governor may make regulations, not inconsistent with this Part, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the regulations under this Part.

202 Part to bind Crown

This Part binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

202A Application of Part

This Part does not apply to any part of the State to which Part 3 of Chapter 3 of the *Water Management Act 2000* applies in relation to water supply work approvals within the meaning of that Act.

203 Exclusion of certain matters

This Part does not apply to or in respect of:

- (a) the taking or using of water from any water source within the Snowy water catchment (within the meaning of the *Snowy Hydro Corporatisation Act 1997*), or
- (b) the construction or use of any water management work within that catchment.

Part 10

204-212 (Repealed)

Schedule 1

(Section 2)

Number of Acts	Name of Act	Extent of repeal
No 41, 1897	<i>Artesian Wells Act 1897</i>	The whole
No 31, 1901	<i>Drainage Promotion Act 1901</i>	The whole
No 28, 1902	<i>Drainage Promotion Act Amendment Act 1902</i>	The whole
No 51, 1902	<i>Water Rights Act 1902</i>	The whole
No 93, 1902	<i>Water and Drainage Act 1902</i>	The unrepealed portion

No 59, 1906	<i>Water and Drainage and Artesian Wells (Amending) Act 1906</i>	The whole
No 20, 1911	<i>Water and Drainage (Amendment) Act 1911</i>	The whole

Schedule 2 Savings and transitional provisions

(Section 4H)

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:

Water (Amendment) Act 1988

Water and Environmental Planning Legislation Amendment Act 1997

Water Legislation Amendment Act 1997

Sydney Water Catchment Management Act 1998

Water Amendment (Flood Control Works) Act 1999

Water Legislation Amendment Act 1999

- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or on a later date.
- (3) To the extent to which any such provision takes effect on 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 its 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 its publication.

Part 2 Provisions consequent on the enactment of the **Water (Amendment) Act 1988**

2 Definitions

In this Part:

scheme, trust, water allocation and ***year*** have the same meanings as they have in

Division 4B of Part 2.

3 Effect of existing schemes on trusts

Where, pursuant to Division 4B of Part 2, a trust becomes subject to a scheme otherwise than at the beginning of a year, the water allocation for the trust shall be taken to be reduced by such proportion as the part of the year that has elapsed bears to the whole of the year.

Part 3 Provisions consequent on enactment of [Water and Environmental Planning Legislation Amendment Act 1997](#)

4 Definition

In this Part:

amending Act means the [Water and Environmental Planning Legislation Amendment Act 1997](#).

5 Pending inquiries and appeals

Section 4A of this Act, as inserted by Schedule 1 [2] to the amending Act, does not apply to an inquiry or appeal that commenced before the date of assent to the amending Act.

6 Transfer of water allocations and rights

(1) Section 22D of this Act, as inserted by Schedule 1 [6] to the amending Act, extends to any application:

- (a) to transfer a water allocation under Part 2 of this Act, and
- (b) to transfer water rights under Part 8 of the [Water \(Part 2\) Regulations](#),
that was made, but not completed, before the date of assent to the amending Act.

(2) Any thing done under:

- (a) this Act with respect to the transfer of a water allocation under Part 2 of this Act,
or
- (b) Part 8 of the [Water \(Part 2\) Regulations](#) with respect to the transfer of water rights
under that Part,

that would have been validly done had section 22D been in force at the time the thing was done is validated.

Part 4 Provisions consequent on enactment of [Water Legislation](#)

Amendment Act 1997

7 Definitions

In this Part, **amending Act** means the *Water Legislation Amendment Act 1997*.

8 Application of Part 2 amendments to existing applications

An amendment to section 20AI made by the amending Act applies to applications made under that section before the commencement of the amendment in the same way as it applies to applications made under that section after that commencement.

9 Application of Part 5 amendments to existing licences

An amendment to Part 5 made by the amending Act applies to licences issued under that Part before the commencement of the amendment in the same way as it applies to licences issued under that Part after that commencement.

10 Existing notices and directions taken to be orders

- (1) Any notice that was in force under section 117A immediately before the commencement of Schedule 1 [9] to the amending Act is taken to be an order under that section.
- (2) Any direction that was in force under section 121A immediately before the commencement of Schedule 1 [17] to the amending Act is taken to be an order under that section.
- (3) Any direction that was in force under section 123 immediately before the commencement of Schedule 1 [18] to the amending Act is taken to be an order under that section.

11 Part 9 licences for Sydney and Hunter Water Corporations

- (1) On the commencement of this clause, an application is taken to have been made by Sydney Water Corporation Limited for the grant of a water management licence under Part 9 for all water management works owned or operated by it immediately before that commencement.
- (2) On the commencement of this clause, an application is taken to have been made by Hunter Water Corporation Limited for the grant of a water management licence under Part 9 for all water management works owned or operated by it immediately before that commencement.
- (3) Part 9 applies to an application that is taken to have been made, as referred to in subclauses (1) and (2), in the same way as it applies to an application referred to in section 188.

Part 5 Provisions consequent on enactment of [Sydney Water Catchment Management Act 1998](#)

12 Definition

In this Part, **amending Act** means the [Sydney Water Catchment Management Act 1998](#).

13 Part 9 Licence for Sydney Catchment Authority

- (1) On the commencement of this clause, an application is taken to have been made by the Sydney Catchment Authority for the grant of a water management licence under Part 9 for all water management works owned or operated by it.
- (2) Part 9 applies to an application that is taken to have been made, as referred to in subclause (1), in the same way as it applies to an application referred to in section 188.

Part 6 Provisions consequent on enactment of [Water Amendment \(Flood Control Works\) Act 1999](#)

14 Definitions

In this Part:

amending Act means the [Water Amendment \(Flood Control Works\) Act 1999](#).

approval means an approval under Part 8.

15 Existing floodplain management plans

- (1) The Ministerial Corporation may adopt as a floodplain management plan a plan that was prepared before the commencement of section 166A, which relates to the management of flood waters within a floodplain.
- (2) If the plan was exhibited, and public comment was sought and taken into account before the plan was finalised, as required by the relevant floodplain development manual, the Ministerial Corporation may adopt the plan under section 166A without complying with section 166A (4).
- (3) In this clause:

relevant floodplain development manual means the manual relating to the management of flood liable land which, at the time of the preparation of the plan, was the most recently notified manual under section 733 (5) (a) of the [Local Government Act 1993](#).

16 Existing controlled works

The amendments made to this Act by the amending Act apply to controlled works

constructed before or after the commencement of those amendments.

17 Effect on pending applications

- (1) The amendments made to this Act by the amending Act extend to pending applications, except as provided by subclause (2).
- (2) Section 168B, section 169 (as substituted by the amending Act) and the amendments made to section 170 by the amending Act do not apply to pending applications.
- (3) In this clause:

pending application means an application for approval that was made, but not determined by the Ministerial Corporation, before the commencement of Schedule 1 [29] to the amending Act.

18 Continuation of certain provisions

- (1) The former provisions continue to have effect, as if the amending Act had not been enacted, with respect to any determination made by the Ministerial Corporation, before the relevant commencement date:
 - (a) to grant an approval under section 171 (including with respect to any objection that was made to the grant of that approval), or
 - (b) to refuse to grant an approval under section 171, or
 - (c) to grant an approval under section 171 subject to conditions, or
 - (d) to renew or refuse to renew an approval under section 176, or
 - (e) to renew an approval under section 176 subject to conditions other than those to which the approval was subject immediately before it was renewed.
- (2) Accordingly:
 - (a) such a determination is to be dealt with by the Ministerial Corporation in accordance with the former provisions (including by referring the determination to a prescribed tribunal for inquiry and report, if that is required under the former provisions), and
 - (b) the former provisions have effect with respect to any determination that is referred to a prescribed tribunal for inquiry and report (whether before or after the relevant commencement date), and
 - (c) the former provisions have effect with respect to the decision of the prescribed tribunal in relation to such a referred determination.
- (3) In this clause:

former provisions means the provisions of this Act, as in force immediately before the relevant commencement date.

prescribed tribunal means a Magistrate or a local land board.

relevant commencement date means the date of commencement of Schedule 1 [29] to the amending Act.

19 Conditions of approvals

Section 176A, as substituted by the amending Act, extends to approvals granted or renewed before the substitution of that section.

20 Recovery of costs of removal or modification of works

Section 181, as in force immediately before the commencement of Schedule 1 [49] to the amending Act, continues to apply in respect of any expenses incurred by the Ministerial Corporation in the exercise of its powers under section 179 (as in force immediately before the commencement of Schedule 1 [44] to the amending Act), as if section 181 had not been repealed.

21 Extension of time limit for prosecution of offences

Section 184A applies only to an offence under Part 8 or the regulations under Part 8 that is alleged to have been committed after the commencement of that section.

22 Saving of existing entitlements under Part 2 (1)

(1) An entitlement with respect to a work to which Part 2 applied because of paragraph (e) of the definition of **Work to which this Part extends** in section 5 (1) (as in force immediately before the relevant commencement date), being a work to which Part 2 no longer extends because of the repeal of that paragraph by the amending Act, continues in force, subject to Part 2, as if the amending Act had not been enacted.

(2) However, the entitlement cannot be renewed under that Part.

(3) In this clause:

entitlement means a licence, permit, authority or group licence issued under Part 2, and in force immediately before the relevant commencement date.

relevant commencement date means the date of commencement of Schedule 1 [5] to the amending Act.

Schedule 3 Water management authorities

(Section 187)

Sydney Water Corporation Limited
Hunter Water Corporation Limited

Sydney Catchment Authority
Delta Electricity
Eraring Energy
Macquarie Generation

Schedules 4-10 (Repealed)