

# Sydney Water Act 1994 No 88

[1994-88]



New South Wales

## Status Information

### Currency of version

Historical version for 17 July 2009 to 30 June 2010 (accessed 15 November 2024 at 4:20)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Previously named**  
Water Board (Corporatisation) Act 1994
- **Does not include amendments by**  
[Water Management Act 2000 No 92](#), Sch 8.27 [5] [7] and [8] (amended by [Water Management Amendment Act 2002 No 138](#)) (not commenced)  
[Associations Incorporation Act 2009 No 7](#) (not commenced — to commence on 1.7.2010)  
[Government Information \(Public Access\) \(Consequential Amendments and Repeal\) Act 2009 No 54](#) (not commenced — to commence on 1.7.2010)  
[Residential Tenancies Act 2010 No 42](#) (not commenced)

### Authorisation

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File last modified 18 June 2010

# Sydney Water Act 1994 No 88



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# Sydney Water Act 1994 No 88



New South Wales

An Act to establish a State owned corporation in relation to the supply of water, the provision of sewerage and stormwater drainage systems and the disposal of waste water in Sydney and other regions and certain other matters; to provide for the transfer of assets, rights and liabilities of the Water Board; to amend the *State Owned Corporations Act 1989*; to amend the *Government Pricing Tribunal Act 1992* in relation to the fixing of maximum prices for government monopoly services; to amend certain other Acts; to repeal the *Water Board Act 1987*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Sydney Water Act 1994*.

### 2 Commencement

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

### 3 Definitions

(1) Words and expressions used in this Act have the same meanings as they have in the *State Owned Corporations Act 1989*.

(2) In this Act:

**area of operations** means the area of operations referred to in Part 4.

**availability charge** means a charge of a kind referred to in section 64.

**business undertaking** means all assets, rights and liabilities of Sydney Water Corporation Limited, but does not include any excluded undertaking.

**contract charge** means any fee or charge payable under a customer contract.

**controlled area** means an area of land declared by an order in force under section 88 to be a controlled area.

**Corporation** means Sydney Water Corporation.



**customer contract** means a contract of a kind referred to in section 55 (1).

**excluded undertaking** means any assets, rights or liabilities of Sydney Water Corporation Limited that the Minister has directed to be excluded under section 8.

**exercise** of a function includes the performance of a duty.

**function** includes a power, authority or duty.

**instrument** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

**lease** includes a licence or permit.

**meter** includes any measuring device.

**Ministerial Holding Corporation** means the Ministerial Holding Corporation constituted by section 37B of the [State Owned Corporations Act 1989](#).

**operating licence** means an operating licence granted under section 12 or any renewal of it.

**operational audit** means an operational audit of the Corporation that is required to be prepared under the operating licence.

**owner**, in relation to land, includes every person who jointly or severally at law or in equity:

- (a) is entitled to the land for an estate of freehold in possession, or
- (b) is a person to whom the Crown has contracted to sell the land under the [Crown Lands Act 1989](#) or any other Act relating to alienation of land of the Crown, or
- (c) is entitled to receive, or receives, or if the land were let to a tenant would receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise,

and, in relation to land of the Crown, means the Crown, but does not include a person who, or a class of persons that, is declared by the regulations not to be within this definition, either generally or in a particular case or class of cases.

**public reserve** has the same meaning as it has in the [Local Government Act 1993](#).

**public road** means:

- (a) any road that is opened or dedicated as a public road, whether under the [Roads Act 1993](#) or any other Act or law, or

(b) any road that is declared to be a public road for the purposes of the [Roads Act 1993](#).

**statutory body** means a corporation that is incorporated by or under an Act, but does not include:

- (a) a company within the meaning of the [Corporations Act 2001](#) of the Commonwealth, or
- (b) a society within the meaning of the [Co-operatives Act 1992](#) or the [Friendly Societies Act 1989](#), or
- (b1) a society registered under the [Financial Institutions \(NSW\) Code](#) or the [Co-operative Housing and Starr-Bowkett Societies Act 1998](#), or
- (c) an association incorporated under the [Associations Incorporation Act 1984](#), or
- (d) a body prescribed by the regulations as not being a statutory body for the purposes of this definition.

**storages** means dam walls, pumps and other works used for or with respect to the extraction, and storage, of:

- (a) water in rivers and lakes, and
- (b) water occurring naturally on the surface of the ground, and
- (c) sub-surface waters.

**stormwater drainage area charge** means a charge of a kind referred to in section 65.

**stormwater drainage channel** means any artificial channel by which surface water is carried off.

**Tribunal** means the Independent Pricing and Regulatory Tribunal established under the [Independent Pricing and Regulatory Tribunal Act 1992](#).

**Water Administration Ministerial Corporation** means the Water Administration Ministerial Corporation constituted by the [Water Management Act 2000](#).

**Water Board** means the Water Board constituted under the [Water Board Act 1987](#).

**works** means:

- (a) storages, water mains, sewer mains, water and sewage treatment plants, waste water treatment plants, or stormwater drainage channels, or
- (b) monitoring devices in, under, over or near:

- (i) any works referred to in paragraph (a), or
- (ii) any rivers or oceans, or
- (c) any works ancillary or antecedent to any works referred to in paragraph (a) or (b).

### **3A Sydney Water Catchment Management Act 1998**

- (1) This Act has effect subject to the *Sydney Water Catchment Management Act 1998*.
- (2) The Governor may amend or substitute any operating licence in consequence of the enactment of the *Sydney Water Catchment Management Act 1998*, but only for the purpose of conferring functions on the Sydney Catchment Authority or in consequence of conferring functions on the Authority.
- (3) Any such amended or substituted operating licence may, without limitation:
  - (a) divest the Corporation of functions for which the Sydney Catchment Authority becomes or is to become responsible, and
  - (b) make provision for or with respect to the receipt by the Corporation of water supplied by the Sydney Catchment Authority, and
  - (c) make such necessary or consequential modifications to the operation of any of the provisions of this Act as are specified in the operating licence.
- (4) Accordingly, and despite anything in this Act, the Corporation ceases to have those functions or to have any responsibilities in relation to them as from the time the amendment or substitution takes effect, except so far as an operating licence otherwise provides, and this Act operates with those modifications.

## **Part 2 Sydney Water Corporation**

### **4 Establishment of Corporation as a statutory SOC**

- (1) There is constituted by this Act a corporation with the corporate name of the Sydney Water Corporation.
- (2) The *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, the words "Sydney Water Corporation".

### **5 Functions of Corporation**

- (1) The Corporation has the functions conferred or imposed on it by or under this or any other Act.
- (2) The principal functions of the Corporation are those that are referred to in section 12 and that are the subject of one or more operating licences.

- (3) Subject to the terms of any operating licence, the Corporation may:
  - (a) provide facilities or services that are necessary, ancillary or incidental to its principal functions, and
  - (b) conduct any business or activity (whether or not related to its principal functions) that it considers will further its objectives.
- (4) This section does not limit the functions of the Corporation apart from this section, but is subject to the provisions of this Act, the *State Owned Corporations Act 1989* and any other Act or law.

#### **5A Board of Corporation**

- (1) The board of the Corporation is to consist of the following:
  - (a) a chairperson, appointed by the voting shareholders of the Corporation,
  - (b) 9 directors appointed by the voting shareholders, who are to have appropriate expertise, to the intent that the board includes directors with separate expertise in at least the following areas:
    - (i) business management,
    - (ii) protection of the environment,
    - (iii) public health.
- (2) The Minister is to advertise publicly for nominations for selection for the board.
- (3) Subsection (1) has effect despite the provisions of section 20J (2), (3) and (4) of, and clauses 2 (1) and 4 of Schedule 8 to, the *State Owned Corporations Act 1989*.

#### **6 Role of certain Ministers**

- (1) The Premier may not nominate:
  - (a) the portfolio Minister of the Corporation, or
  - (b) a Minister administering the *Environmental Planning and Assessment Act 1979*, the *Water Management Act 2000*, the *Protection of the Environment Administration Act 1991* or the *Public Health Act 1991*,as a voting shareholder of the Corporation.
- (2) However, the portfolio Minister of the Corporation is authorised to attend meetings of the shareholders of the Corporation.
- (3) If a Minister nominated by the Premier as a voting shareholder of the Corporation becomes the portfolio Minister of the Corporation or the Minister who is responsible for

the administration of any of the Acts referred to in subsection (1) (b), the Premier must, as soon as practicable, revoke the nomination of the Minister as a voting shareholder and nominate another Minister in the Minister's place.

- (4) The portfolio Minister is to answer all questions directed to the Minister in Parliament in relation to the administration of this Act.

## **Part 3 Transfer of assets, rights and liabilities**

### **7 Direction to transfer business undertaking**

- (1) The Minister may, by order in writing, direct that the business undertaking of Sydney Water Corporation Limited be transferred to the Corporation, in exchange for the issue of shares or on any other basis.
- (2) The transfer of assets, rights and liabilities under this section is to take place at a value or values specified in the order.
- (3) On the date specified in the order, the following provisions have effect (subject to the order):
- (a) the assets of Sydney Water Corporation Limited comprised in its business undertaking vest in the Corporation by virtue of this section and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities of Sydney Water Corporation Limited comprised in its business undertaking become by virtue of this section the rights and liabilities of the Corporation,
  - (c) all proceedings relating to the business undertaking commenced before the transfer by or against Sydney Water Corporation Limited or a predecessor of Sydney Water Corporation Limited and pending immediately before the transfer are taken to be proceedings pending by or against the Corporation,
  - (d) any act, matter or thing done or omitted to be done in relation to the business undertaking before the transfer by, to or in respect of Sydney Water Corporation Limited is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Corporation,
  - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to Sydney Water Corporation Limited or a predecessor of Sydney Water Corporation Limited is, subject to regulations under clause 1 (1) of Schedule 9, to be read as, or as including, a reference to the Corporation.
- (4) The operation of this section is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or

- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (5) The operation of this section is not to be regarded as an event of default under any contract or other instrument.
  - (6) No attornment to the Corporation by a lessee from Sydney Water Corporation Limited is required.
  - (7) Assets, rights or liabilities may not be transferred under this section to the Corporation unless the Corporation is a State owned corporation.

## **8 Excluded undertakings**

- (1) The Minister may direct, by order in writing, that such assets, rights or liabilities of Sydney Water Corporation Limited as are specified or referred to in the order be excluded from Sydney Water Corporation Limited's business undertaking.
- (2) On the date specified in the order, the excluded undertaking concerned is transferred to the Ministerial Holding Corporation or such other person on behalf of the Crown as is so specified.
- (3) The functions of the Ministerial Holding Corporation include the following:
  - (a) to hold and dispose of assets, rights and liabilities transferred to it under this Act,
  - (b) to carry on any activities or business that relate to the assets, rights and liabilities transferred to it or that are incidental or ancillary to the assets, rights and liabilities transferred to it, including demanding, collecting and receiving charges, levies, rates and fees.
- (4) Section 7 applies to the transfer of the excluded undertaking under this section in the same way as it applies to the transfer of Sydney Water Corporation Limited's business undertaking to the Corporation.
- (5) Different parts of any excluded undertaking may be transferred under subsection (2) to different persons.
- (6) The Ministerial Holding Corporation or other person is authorised to dispose of any excluded undertaking transferred under subsection (2) or to retain it and conduct any business to which it relates.

## **9 Transfer of other assets, rights or liabilities**

- (1) The Minister may direct, by order in writing, and on such terms and conditions as are

set out or referred to in the order, that such other assets, rights or liabilities used by or attaching to Sydney Water Corporation Limited for the supply of water, the provision of sewerage and stormwater drainage systems, the disposal of waste water and associated purposes, and belonging to the State or an authority of the State, as are specified in the order, be transferred to the Corporation or to a subsidiary of the Corporation.

- (2) Section 7 applies to that transfer in the same way as it applies to the transfer of Sydney Water Corporation Limited's business undertaking to the Corporation.

## **Part 4 Area of operations**

### **10 Area of operations**

- (1) The Corporation has, subject to this section, the same area of operations that Sydney Water Corporation Limited had immediately before it ceased to be a company State owned corporation. Each operating licence is to contain a schedule that details the area of operations or the part of the area of operations to which the operating licence applies.
- (2) The Governor may, by order published in the Gazette, vary the area of operations and may, by that order, specify which systems and services the Corporation may provide in the whole or a part or parts of the area of operations as so varied.
- (3) An order under subsection (2) may expand or reduce the area of operations. However, an order must not reduce the area of operations unless the Minister is satisfied that, after the order takes effect, similar services to those provided by the Corporation in the area to be excised from the area of operations are able to, and will, be provided by any one or more of the following:
- (a) a council of an area, or
  - (b) Hunter Water Corporation,
  - (c) a public authority within the meaning of the [Water Management Act 2000](#), or
  - (d) a water supply authority within the meaning of the [Water Management Act 2000](#).
- (4) Despite subsections (2) and (3), the area of operations must not be:
- (a) reduced, or
  - (b) expanded to include the whole or part of the area within which any of the bodies referred to in subsection (3) (a)-(d) provides services that are the same services the Corporation is authorised to provide under the operating licence,
- unless consultations, regarding the proposed reduction or expansion and the implications of the proposed reduction or expansion, have taken place between the

Corporation and the council, Hunter Water Corporation, public authority or Water Supply Authority before the order reducing or expanding the area of operations is made.

- (5) It does not matter if a reduction or expansion of the area of operations results in parts of the area of operations covered by an operating licence not being contiguous.
- (6) An order to vary the area of operations does not take effect until written notice of the order, accompanied by a copy of the order, is laid before each House of Parliament and either:
  - (a) 15 sitting days of each House of Parliament has passed after the order was tabled and notice of a motion to disallow the order has not been given, or
  - (b) if notice of a motion to disallow the order has been given, the motion has lapsed or has been withdrawn or defeated.

#### **11 Facilitating provisions of orders**

- (1) An order of the Governor for the purposes of this Part may include such provisions as are necessary or convenient for giving effect to the order, including provisions for or with respect to:
  - (a) the transfer or apportionment of assets, rights and liabilities,
  - (b) the transfer of staff,
  - (c) the delivery or retention of records,
  - (d) the termination, cessation, dissolution or abolition of anything existing before the order takes effect,
  - (e) the preservation or continuance of anything existing before the order takes effect,
  - (f) the imposition of fees and charges,
  - (g) the recovery of fees and charges.
- (2) Such an order may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
  - (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.



## **Part 5 Operating licences**

### **12 Grant of operating licences**

- (1) The Governor may grant one or more operating licences to enable the Corporation in accordance with this Act, in the area of operations, to provide, construct, operate, manage or maintain systems or services for:
  - (a) storing or supplying water, or
  - (b) providing sewerage services, or
  - (c) providing stormwater drainage systems, or
  - (d) disposing of waste water.
- (2) Operating licences may be granted to enable the Corporation to provide all or any of the systems or services in the same or different parts of the area of operations.
- (3) Except to the extent to which this Act expressly provides, nothing in an operating licence limits the requirements imposed by or under any other Act or law with respect to the provision, construction, operation, management or maintenance of any system or service referred to in subsection (1).
- (4)-(6) (Repealed)

### **13 (Repealed)**

### **14 Terms and conditions of operating licences**

- (1) An operating licence is subject to the terms and conditions determined by the Governor, but (so far only as is relevant to the ambit of the operating licence) must include terms or conditions under which the Corporation is required:
  - (a) to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services for supplying water, providing sewerage services and disposing of waste water, and
  - (b) to provide, operate, manage and maintain a stormwater drainage system within the capacity of the stormwater drainage system included in the business undertaking transferred under Part 3 from the Water Board to the Corporation as at the date of the transfer of the business undertaking, and
  - (c) to ensure that the systems and services meet the quality and performance standards specified in the operating licence in relation to water quality, service interruptions, pricing and other matters determined by the Governor and set out in the operating licence, and
  - (d) to compile indicators of the direct impact on the environment of the Corporation's

activities:

- (i) to enable preparation of an annual report on the Corporation's performance, and
  - (ii) to provide information for a year to year comparison in relation to the Corporation's performance in this area.
- (2) The operating licence granted to the Corporation is to provide for the preparation of an operational audit in accordance with Division 2 of Part 6.
- (3) The operating licence granted to the Corporation is to provide, or (if there is more than one such licence) the operating licences granted to the Corporation are to provide collectively, for the provision of the systems and services referred to in subsection (1) (a) and (b) in the area of operations or the relevant part of the area of operations, except to the extent that:
- (a) the Governor has, by order made under section 10 (2), restricted the systems and services that the Corporation may provide in the area of operations or the relevant part of the area of operations, or
  - (b) this Act otherwise provides.
- (4) Despite this section, the provision, operation, management or maintenance of the stormwater drainage system described in subsection (1) (b) need not be required as a term or condition of an operating licence if the Minister is satisfied that satisfactory arrangements have been made for the service to be provided by another appropriate body.
- (5) If it is proposed to transfer responsibility for the provision, operation, management or maintenance of the stormwater drainage system to a council or councils (within the meaning of the [Local Government Act 1993](#)), in order to be satisfied that satisfactory arrangements have been made for the purposes of subsection (4), the Minister:
- (a) is to cause written notice of the proposed transfer and details of the proposed new arrangements to be served on the council or councils concerned and is to invite them, by that notice, to comment on the proposal within 40 days after service of the notice, and
  - (b) is to be satisfied that at least the same standard of services will be provided under the new arrangements as had been provided by the Corporation.
- (6) If new arrangements are entered into in pursuance of subsections (4) and (5), the Corporation must, within 14 days after the arrangements are entered into, give notice of the terms of the arrangements by notification published in the Gazette.

## **15 Customer Councils**

- (1) An operating licence must also include terms or conditions that require the Corporation to establish and regularly consult with one or more Customer Councils, each consisting of persons appointed from time to time by the Corporation.
- (2) The Corporation is to consult with the Customer Councils from time to time, as the Corporation thinks fit, in relation to the provision of the systems and services referred to in this Part.

## **16 Amendment of operating licences**

- (1) An operating licence may only be amended in the manner specified in the operating licence.
- (2) However, a proposed amendment to an operating licence will not take effect until written notice of the proposed amendment, accompanied by a copy of the proposed amendment, is laid before each House of Parliament and either:
  - (a) 15 sitting days of each House of Parliament has passed after the proposed amendment was tabled and notice of a motion to disallow the proposed amendment has not been given, or
  - (b) if notice of a motion to disallow the proposed amendment has been given, the motion has lapsed or has been withdrawn or defeated.
- (3) This section applies to the substitution of an operating licence in the same way as it applies to the amendment of an operating licence.
- (4) The other provisions of this section do not apply to the amendment or substitution of an operating licence under section 3A.

## **17 Term of operating licences**

- (1) The initial term of an operating licence is to be for a maximum of 5 years, as determined by the Governor.
- (2) After the initial term, the Governor may renew an operating licence for a maximum of 5 years at a time.
- (3) An operating licence may be renewed even if its term has expired.

## **18 Area covered by operating licences**

An operating licence applies to the whole or a part of the area of operations, as specified in the operating licence.

## **19 Contravention of operating licences**

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

### **19A Enforcement of operating licences: action by Tribunal**

- (1) The Tribunal may impose a monetary penalty on the Corporation.
- (2) The Tribunal may, instead of imposing a monetary penalty, require the Corporation to take such action as the Tribunal considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.
- (3) The Tribunal may not require action to be taken under subsection (2) by the Corporation if the cost of that action would exceed the monetary penalty that the Tribunal could impose under this section on the Corporation.
- (4) If the Tribunal requires information to be sent to a customer under subsection (2), the Corporation may satisfy that requirement by sending the information to the customer with the next account or bill to be sent to the customer by the Corporation or, if the Corporation is sending other information to that customer before the next account or bill, with that other information.
- (5) Action may be taken under this section only if the Corporation has knowingly contravened an operating licence.

- (6) The monetary penalty that the Tribunal may impose under this section must not exceed \$10,000 for the first day on which the contravention occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues.
- (7) The Tribunal must not take action under this section unless:
  - (a) the Tribunal has considered whether the contravention has been or is likely to be the subject of any other penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under this section, and
  - (b) the Tribunal has considered the action that the Corporation has taken or is likely to take in respect of the contravention and the cost to the Corporation in taking that action, and is satisfied that it is nevertheless appropriate to take action under this section.
- (8) The Tribunal is required to consider the seriousness of the contravention concerned in determining to impose a monetary penalty under this section.
- (9) The Tribunal must not take action under this section unless:
  - (a) notice of the proposed action has been given to the Corporation, and
  - (b) the Corporation has been given a reasonable opportunity to make submissions with respect to the proposed action, and
  - (c) the Tribunal has given due consideration to any such submissions.
- (10) The Tribunal must not take action under this section in respect of a contravention if any action has already been taken under section 19 in respect of the contravention.
- (11) Nothing in this section affects any powers under section 19 in respect of a contravention, whether or not the Tribunal has already taken action under this section in respect of the contravention.
- (12) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Crown.

#### **19B Review of certain decisions of Tribunal concerning operating licences**

- (1) The Corporation, if aggrieved by a decision of the Tribunal to take action under section 19A in relation to the Corporation, may apply to the Administrative Decisions Tribunal for a review of the decision.
- (2) Section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* does not apply to such a decision of the Tribunal.

## 20 Cancellation of operating licences

- (1) An operating licence may be cancelled by the Governor, but only if:
  - (a) the Corporation ceases, otherwise than as authorised by the operating licence or as permitted in accordance with an order made under section 10 (2), to do the things referred to in section 14 (1) or any of them in the area of operations for any reason, or
  - (b) the Corporation:
    - (i) is, in the opinion of the Minister, in material default in compliance with the operating licence, viewed in terms of the operation of the operating licence as a whole, and
    - (ii) has not, within the time specified by the Minister in a notice to the Corporation, either rectified the default or shown cause, to the satisfaction of the Minister, why the operating licence should not be cancelled, or
  - (c) the Corporation is an externally administered corporation within the meaning of the [Corporations Act 2001](#) of the Commonwealth, or
  - (d) the Corporation has been convicted on more than 3 occasions within a period of 12 months of criminal offences that are punishable by a fine of at least \$10,000 or, if the Corporation were a natural person, imprisonment for 12 months or more.
- (2) A notice under section 19 can be regarded also as a notice for the purposes of subsection (1) (b).
- (3) If an operating licence is cancelled under this section, the Governor may, by order published in the Gazette, vest in the Crown or in another person specified in the order, from the date specified in the order, the assets and rights of the Corporation that are specified in the order and that, in the opinion of the Minister, are necessary to enable the Crown or other person to do immediately the things referred to in section 14 (1), or any of them, for the benefit of existing recipients of the Corporation's systems and services.
- (4) An order under this section may provide for:
  - (a) the Crown or other person specified in the order to assume those liabilities of the Corporation that the Governor considers appropriate and specifies in the order, or
  - (b) the Crown to pay the whole or any part of the liabilities of the Corporation.

## **Part 6 Provisions relating to the Corporation**

### **Division 1 Objectives of Corporation**

#### **21 Objectives of Corporation**

- (1) The principal objectives of the Corporation are:
  - (a) to be a successful business and, to this end:
    - (i) to operate at least as efficiently as any comparable businesses, and
    - (ii) to maximise the net worth of the State's investment in the Corporation, and
    - (iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
  - (b) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the [Protection of the Environment Administration Act 1991](#), and
  - (c) to protect public health by supplying safe drinking water to its customers and other members of the public in compliance with the requirements of any operating licence.
- (2) Despite section 8 of the [State Owned Corporations Act 1989](#), each of the Corporation's principal objectives is of equal importance.

#### **22 Implementation of principal objectives**

- (1) In implementing the principal objectives set out in section 21, the Corporation has the following special objectives:
  - (a) to reduce risks to human health,
  - (b) to prevent the degradation of the environment.
- (2) Those special objectives are to be interpreted by reference to the objectives referred to in section 6 (1) (b) of the [Protection of the Environment Administration Act 1991](#), so far as they are relevant to the Corporation.
- (3) In implementing those special objectives, regard is to be had to the means referred to in section 6 (1) (b) of the [Protection of the Environment Administration Act 1991](#), so far as they are relevant to the Corporation, and (in particular) to the following means:
  - (a) reducing the environmental impact of its discharges into or onto the air, water or land of substances likely to cause harm to the environment,
  - (b) minimising its creation of waste by the use of appropriate technology, practices and procedures,

- (c) reducing its use of energy, water and other materials and substances,
  - (d) re-using and recovering energy, water and other materials and substances, used or discharged by it, by the use of appropriate technology, practices and procedures,
  - (e) reducing significantly, by 30 June 2000, the combined environmental impact of the per capita amount of energy and water used by the Corporation and other materials and substances discharged by the Corporation, compared with that impact in the year ending 30 June 1994.
- (4) The Corporation is to have regard to the levels of energy that would be necessary to implement its special objectives and may adjust its implementation of those objectives if the levels of energy would be excessive.
  - (5) However, the Corporation is to have regard to its statutory functions, and may adjust its implementation of its special objectives but only if it is necessary in order to act responsibly.
  - (6) The Corporation must publish in the annual report on the Corporation's performance prepared for the purposes of section 14 (1) (d) (i), a statement as to the implementation of its special objectives and annual adjustments made under subsections (4) and (5).
  - (7) The Environment Protection Authority must review the statement referred to in subsection (6) as soon as practicable after it is published and must, within 3 months after the publication date, make its evaluation of the statement available for public inspection. The evaluation is to include an opinion as to whether the best environmental outcome has been achieved.

### **23 Pollution reduction targets**

- (1) The Corporation must adopt targets (as developed and determined in accordance with this section) to effect significant reductions, by 30 June 2000, of Schedule 10 substances present in waters as a result of the conduct of the Corporation's sewerage services under an operating licence.
- (2) The targets are to be developed as follows:
  - (a) The Corporation is to publish in the Gazette a statement, in a form approved by the Environment Protection Authority, showing:
    - (i) the range of concentrations and total load of those Schedule 10 substances that were monitored at the Corporation's sewage treatment plants, and
    - (ii) the total volumes of sewage discharged from its sewage treatment plants to waters as monitored by the Corporation,



for the year ended 30 June 1994.

- (b) The statement is to be published within 14 days after the initial operating licence is granted to the Corporation.
  - (c) The Corporation is to conduct ecological risk assessments in relation to Schedule 10 substances discharged into waters from each of the Corporation's sewage treatment plants.
  - (d) Ecological risk assessments are to be carried out in accordance with a methodology for the time being approved by the Environment Protection Authority in accordance with section 24.
  - (e) Reports on ecological risk assessments are to be provided to the Environment Protection Authority as follows:
    - (i) reports on assessments for the ocean are to be provided by 31 December 1995, and
    - (ii) reports on assessments for the Hawkesbury-Nepean catchment are to be provided by 30 June 1996, and
    - (iii) reports on the remaining assessments are to be provided by 30 June 1997.
  - (f) Copies of the reports on ecological risk assessments are to be placed on display for public comment by the Corporation in accordance with section 25.
- (3) The Environment Protection Authority is, within 3 months after the expiration of the period for public comment referred to in section 25 (2), to determine the targets for the Corporation that are referred to in subsections (1) and (2), having regard to the following:
- (a) the reports on ecological risk assessments,
  - (b) any public comments on the reports that have been provided to the Authority by the Corporation in accordance with section 25 (3),
  - (c) such other factors as appear relevant to the Authority, taking into account the statutory obligations of the Authority under any Act.
- (4) The Corporation must adopt the targets as determined by the Environment Protection Authority.
- (5) The Environment Protection Authority must ensure that the licence conditions imposed by it on the Corporation, and any directions given by it to the Corporation under section 12 of the *Protection of the Environment Administration Act 1991*, are consistent with and are conducive to the meeting, or exceeding, by the Corporation of its targets, as determined in accordance with this section, by 30 June 2000.

- (6) As and when the targets, licence conditions and directions are determined, imposed or given and take effect, the Corporation and the Environment Protection Authority are each to enter details of the targets, licence conditions and directions in a register kept at their respective principal offices and are to make the register available for public inspection, free of charge.
- (7) The Corporation is to monitor its performance against the targets and publish the results on an annual basis in accordance with the requirements of an operating licence.
- (8) By 30 June 1999, the Corporation is to determine the bases for setting targets to effect further reductions, after 30 June 2000, of Schedule 10 substances present in waters as a result of the conduct of the Corporation's sewerage services under an operating licence. However, the targets are not to be set until the Environment Protection Authority approves of the bases determined.
- (9) In this section, **Schedule 10 substances** means the substances listed in Schedule 10.

#### **24 Approval of methodology for ecological risk assessment**

- (1) Before the Corporation submits a proposed methodology to the Environment Protection Authority for approval for the purposes of section 23 (2) (d), the Corporation must:
  - (a) place the proposed methodology on display for public comment for a period of 30 days after the date of publication of the notice referred to in paragraph (b), and
  - (b) by notice published in a newspaper circulating throughout New South Wales, specify the place or places at which copies of the proposed methodology may be inspected and the address to which public comments concerning the methodology may be directed.
- (2) Any person may, within the period of 30 days referred to in subsection (1) (a), or such longer period as may be specified in the notice, direct comments concerning the proposed methodology to the Corporation.
- (3) A methodology must be approved by the Environment Protection Authority within 30 days after the Corporation has provided the Authority with the proposed methodology that has been placed on display and copies of any public comments received on that methodology.
- (4) In approving a methodology, the Environment Protection Authority is to have regard to any public comments concerning the proposed methodology that have been provided to it and made in accordance with this section.

## **25 Public display of reports on ecological risk assessments**

- (1) As soon as practicable after providing the reports on ecological risk assessments to the Environment Protection Authority in accordance with section 23 (2) (e), the Corporation must:
  - (a) place copies of those reports on display for public comment for a period of 30 days after the date of publication of the notice referred to in paragraph (b), and
  - (b) by notice published in a newspaper circulating throughout New South Wales, specify the place or places at which copies of the reports may be inspected and the address to which public comments concerning the reports may be directed.
- (2) Any person may, within the period of 30 days referred to in subsection (1) (a), or such longer period as may be specified in the notice, direct comments concerning the reports to the Corporation.
- (3) The Corporation must provide the Environment Protection Authority with copies of any such public comments.

## **26 Amendment of pollution reduction targets**

- (1) After the Corporation has adopted a target under section 23 (4), the Environment Protection Authority may, from time to time, re-determine the target.
- (2) The Corporation is to adopt a target as re-determined by the Environment Protection Authority. Subsections (5)–(7) of section 23 then apply to the re-determined target.
- (3) The Environment Protection Authority may, for the purpose of assessing whether to re-determine a target under this section, require the Corporation to carry out a further ecological risk assessment and provide a report on that assessment to the Environment Protection Authority by a specified date. Sections 23–25 apply, with necessary modifications, to any such further ecological risk assessment and report.
- (4) Any target re-determined in accordance with this section is to be re-determined by the Environment Protection Authority having regard to the following:
  - (a) the report on any further ecological risk assessment or, if no further assessment is made, the report on the previous assessment,
  - (b) any public comments on the report on the further assessment that has been provided to the Authority by the Corporation in accordance with section 25 (3) (as applied by this section) or, if no further assessment is made, any such public comments on the previous report,
  - (c) such other factors as appear relevant to the Authority, taking into account the statutory obligations of the Authority under any Act.

- (5) The Corporation and the Environment Protection Authority are to enter the reasons for the re-determination of a target in the registers kept by the Corporation and the Authority under section 23 (6).

## **27 Re-use of sewage effluent**

- (1) Without limiting sections 21 and 22, the Corporation is to adopt as an ultimate aim the prevention of all dry weather discharges of sewage to waters, including from ocean outfalls, except to the extent that this is necessary to safeguard public health or prevent environmental degradation, or both.
- (2) The Corporation is to publish in the Gazette by 30 June 1995 a statement specifying the projected amount of sewage or effluent that it proposes will be re-used, intercepted or otherwise prevented from discharge, by 30 June 2000, into the ocean, waterways and other waters.
- (3) In respect of years after 30 June 2000, the Corporation is, on a 5 yearly basis, to review an increase in the projected amount applying under subsection (2) in the light of the aim referred to in subsection (1).
- (4) In reviewing the projected amounts, the Corporation is to have regard to reductions in the amount of sewage discharged by the Corporation due to any demand management provision in an operating licence.
- (5) Before specifying projections in accordance with this section, the Corporation must:
  - (a) place the proposed projections on display for public comment for a period of 30 days after the date of publication of the notice referred to in paragraph (b), and
  - (b) by notice published in a newspaper circulating throughout New South Wales, specify the place or places at which copies of the proposed projections may be inspected and the address to which public comments concerning the projections may be directed.
- (6) Any person may, within the period of 30 days referred to in subsection (5) (a), or such longer period as may be specified in the notice, direct comments concerning the proposed projections to the Corporation.
- (7) The Corporation must, when specifying projections, have regard to any public comments concerning the proposed projections that have been directed to it.

## **Division 1A Regulatory functions of Tribunal**

### **28 Regulatory functions of Tribunal**

- (1) The regulatory functions of the Tribunal under this Act are:
  - (a) the function of making recommendations under subsection (2), and

- (b) the function of informing, monitoring and reporting under section 31 (2) (a) and (b), and
  - (c) the function of advising about penalties or remedial action under section 31 (2) (c), and
  - (d) the function of imposing monetary penalties, or requiring other action to be taken, under section 19A, and
  - (e) such other functions of the Tribunal under this Act as are specified by the regulations for the purposes of this section.
- (2) The Tribunal has the function of making recommendations to the Minister for or with respect to:
- (a) the granting, amendment or cancellation of the operating licence, and
  - (b) the imposition, amendment or cancellation of conditions in relation to the operating licence.
- (3) Part 4B of the *Independent Pricing and Regulatory Tribunal Act 1992* applies in relation to the Tribunal's regulatory functions under this Act.

## **Division 2 Licence auditing functions of Tribunal**

### **29, 30 (Repealed)**

#### **31 Functions of Tribunal**

- (1) The function of the Tribunal under this Division is to ensure that the operational audit is prepared in accordance with the operating licence.
- (2) The Tribunal must:
- (a) inform the Minister about any failure of the Corporation to meet operational standards or any other requirements imposed on the Corporation under the operating licence, and
  - (b) monitor, and report to the Minister on, compliance by the Corporation with the operating licence, and
  - (c) provide advice to the Minister about any penalties or remedial action required as a result of the Corporation's performance under the operating licence.
- (3) The Tribunal has such other functions under this Division as may be conferred or imposed on it by the operating licence.
- (4) The Tribunal is to report annually to the Minister in accordance with the requirements of this Division.

(5) (Repealed)

### **32 Operational report**

The Tribunal is to present to the Minister a report on each operational audit within one month after its receipt of the audit.

### **33 Presentation of report to Parliament**

- (1) The Minister is to lay the report (or cause it to be laid) before both Houses of Parliament within one month after the Minister receives the report.
- (2) If a House of Parliament is not sitting when the Minister seeks to furnish a report to it, the Minister may present copies of the report to the Clerk of the House concerned.
- (3) The report:
  - (a) on presentation and for all purposes is taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

### **33A Cost of audit**

- (1) The Corporation is required to pay to the Treasurer the cost (as certified by the Tribunal) involved in and in connection with carrying out the operational audit of the Corporation.
- (2) Without limitation, an operating licence may include terms and conditions relating to the determination of the cost of carrying out the operational audit.

## **Division 3 Memoranda of understanding**

### **34 Definitions**

In this Division:

**memorandum of understanding** means a memorandum of understanding referred to in the operating licence.

**regulatory agencies** means the Water Administration Ministerial Corporation, the Director-General of the Department of Health and the Environment Protection Authority.

### **35 Corporation to enter into memoranda of understanding**

- (1) The Corporation is to enter into a separate memorandum of understanding with each of the regulatory agencies.
- (2) Subject to section 36, the Corporation is to enter into the memoranda of understanding as soon as practicable after it is granted an operating licence.
- (3) If the Corporation and a regulatory agency are not able to agree on a term of a memorandum of understanding, the view of the regulatory agency is to prevail.

### **36 Public exhibition of memoranda of understanding**

- (1) Each regulatory agency must give notice of the preparation of the memorandum of understanding to which it is a party.
- (2) The notice is to be given in a newspaper circulating in the Corporation's area of operations and must:
  - (a) specify the address of the place at which copies of the memorandum of understanding may be inspected, and
  - (b) specify the address to which representations concerning the memorandum of understanding may be forwarded.
- (3) Any person may, within 30 days or such longer period as may be specified in the notice, make representations to the regulatory agency concerning the memorandum of understanding.
- (4) Each regulatory agency must, on the expiration of the period referred to in subsection (3), and before entering into the memorandum of understanding, consider any representations made under this section.
- (5) Notice of the execution of a memorandum of understanding is to be published in the Gazette and in a newspaper circulating in the area of operations within 14 days after the execution.
- (6) The requirements of this section apply to an amendment to a memorandum of understanding in the same way as they apply to a memorandum of understanding.

## **Division 4 Provisions relating to works**

### **37 Ownership of works**

- (1) The Corporation is the owner of all works installed in or on land, at sea, in or on the seabed, in rivers and other waterways and in or on the beds of rivers and waterways by the Corporation and of all works in or on land or in water vested in or transferred to the Corporation (whether or not the land is owned by the Corporation).
- (2) The Corporation may, subject to this Act, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that are necessary or appropriate to any of its works to ensure that, in the opinion of the Corporation, the works are used in an efficient manner for the purposes for which they were installed.
- (3) The Corporation may sell or otherwise deal with works that it owns.
- (4) The provisions of this section have effect despite anything contained in section 42 of the [Real Property Act 1900](#).

### **38 Entry on to land**

- (1) The Corporation may, by persons issued with certificates of authority under section 39, enter and occupy land or a building in accordance with this Division for any one or more of the following purposes:
  - (a) to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that the Corporation considers are necessary or appropriate to any of its works or to construct new works and, for these purposes, to carry out any work on, below or above the surface of the land,
  - (b) to read a meter that measures water supplied by the Corporation or material discharged into the Corporation's sewers,
  - (c) to make a valuation or assessment of the usage of the land or of any building on the land,
  - (d) to find the source of pollution of water supplied by the Corporation and, for this purpose, to dig up and remove material from the land,
  - (e) to ascertain whether a customer contract or other contract for the provision of services by the Corporation is being breached in relation to the connection to or use of works and, for this purpose, to dig up and remove material from the land,
  - (f) to cut off or restrict the supply of water or other services to the land if any contract charges relating to the supply of water or those services to the land by the Corporation are unpaid,



- (g) to rectify defective or improper work that has not been rectified in accordance with a notice served by the Corporation under a customer contract or other contract,
  - (h) to ascertain the character and condition of the land or a building to enable the Corporation to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect or improve, or do any other thing to, the Corporation's systems and services for the purposes of carrying out the terms and conditions of an operating licence,
  - (i) to ascertain the condition and location of any pipe, sewer, drain, channel or fitting or other work used in connection with the land or a building to enable the Corporation to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect or improve, or do any other thing to, the Corporation's systems and services for the purposes of carrying out the terms and conditions of an operating licence.
- (2) Material that has been excavated from land for the purposes of this section may only be removed from the land by the Corporation:
- (a) if this is necessary for the purpose of ascertaining whether an offence has been committed against this Act, or
  - (b) if the owner of the land has consented to its removal.

### **39 Certificates of authority**

- (1) The board of the Corporation may authorise an officer of the Corporation or the holder for the time being of an office in the Corporation's establishment to issue certificates of authority for the purposes of this Act.
- (2) Such an officer or holder of an office may issue certificates of authority.
- (3) A certificate of authority must:
  - (a) state that it is issued under this Act, and
  - (b) specify the person or class of persons who are authorised to exercise the power of entry under this Act, and
  - (c) describe the nature of the powers proposed to be exercised, and
  - (d) state the date (if any) on which it expires, and
  - (e) bear the signature of the person by whom it is issued.
- (4) The Minister may, if the Minister thinks fit, by order published in the Gazette, impose conditions or restrictions on certificates of authority issued under this Act, either generally or in particular cases, including restrictions on the purposes for which and

the circumstances in which a power of entry may be exercised.

#### **40 Exercise of powers of entry**

- (1) Before a person enters any land or building under a power conferred by this Division, the Corporation or a person must serve on the owner or occupier of the land or building notice in writing of the intention to enter the land or building on a day or days specified in the notice unless:
  - (a) entry to the land or building is made with the consent of the owner or occupier of the land or building, or
  - (b) entry is required urgently and the case is one in which the board of the Corporation has authorised in writing (either generally or in the particular case) entry without notice, or
  - (c) entry is made solely for the purpose of reading a meter that measures water supplied by the Corporation or material discharged into the Corporation's sewers if the meter is not in a dwelling-house or building, or
  - (d) the giving of notice would defeat the purpose for which the power is to be exercised.
- (2) A power conferred by this Division to enter any land or building may not be exercised unless the person proposing to exercise the power:
  - (a) is in possession of a certificate of authority issued under section 39, and
  - (b) exercises the power at a reasonable time during daylight, unless this would defeat the purpose for which the power is to be exercised or the power is exercised in an emergency, and
  - (c) produces the certificate of authority if required to do so by the occupier of the land, and
  - (d) uses no more force than is reasonably necessary to effect the entry.
- (3) Nothing in this section authorises the use of force to enter a dwelling-house or any enclosed part of a building occupied as a dwelling or authorises the entry of such premises at night without the consent of the owner or occupier of the premises unless entry is required urgently and the case is one in which the board of the Corporation has authorised in writing (either generally or in the particular case) entry without notice.

#### **41 Compensation**

- (1) The Corporation, in exercising its functions under this Division, is to do as little damage as practicable and is, subject to this Division, to compensate all persons who

suffer damage by the exercise of the functions.

- (2) Compensation may be made by reinstatement, repair, construction of works or payment.
- (3) If the Corporation installs a sewer on land in exercise of powers under this Division, the Corporation is required to pay compensation only if the sewer damages, or interferes with, a building or other structure on the land or causes other physical damage to property or if an access chamber or main ventilator is constructed on the land.

#### **42 Power to open roads**

- (1) The Corporation may, for the purpose of exercising its functions in relation to systems or services in accordance with an operating licence and after giving reasonable notice to persons likely to be affected, including the appropriate roads authority under the [Roads Act 1993](#), open and break up:
  - (a) the soil and pavement of a public road or public reserve, and
  - (b) any pipe, sewer, drain or tunnel in or under or any ground under a public road or public reserve.
- (2) The person having the control and management of a public road or public reserve may require the Corporation to comply with conditions in exercising its powers under this section, including conditions for restoration of the surface and removal of rubbish.
- (3) If a public road or public reserve is damaged by a malfunction of a main of the Corporation, the person having the control and management of the public road or public reserve may require the Corporation to make good the damage without delay.
- (4) If the Corporation fails to comply with a condition under subsection (2) or a requirement under subsection (3), the person affected by the failure may remedy it and recover the cost of doing so as a debt owed to the person by the Corporation.
- (5) A person desiring to connect premises with a water main or sewer main of the Corporation that is available for connection may (subject to such conditions as may be imposed by or under any Act or law) open and break up the soil and pavement of a public or private road or way or a footpath or public reserve to the extent required to make the connection.

#### **43 Altering position of conduit**

- (1) The Corporation may serve a written notice on a person if:
  - (a) the Corporation, in order to comply with an operating licence, needs an alteration to be made in the position of a conduit owned by the person, and

(b) the alteration would not permanently damage the conduit or adversely affect its operation.

(2) The notice must:

(a) specify the alteration needed, and

(b) require the alteration to be made within a reasonable time stated in the notice, and

(c) include an undertaking by the Corporation to pay the reasonable cost of the alteration.

(3) If the alteration is not made as required by the notice, the Corporation may make the alteration in a manner that does not damage the conduit permanently or adversely affect its operation on completion of the alteration.

(4) The Corporation may, for the purposes of subsection (3), exercise any powers of the person on whom the notice was served, in addition to or instead of any powers of the Corporation.

(5) Except as provided by subsection (4), this section does not confer on the Corporation or the owner of the conduit any additional powers of entry or powers to carry out works than would be available apart from this section.

(6) In this section, **conduit** means anything that is in or under a public road (or any other land on which no building or other structure is located) and is used for the conveyance of a substance, energy or signals.

#### **44 Protection of works**

(1) Land in or on which a work of the Corporation is installed is taken to be the subject of a covenant in favour of the Corporation pursuant to which the owner from time to time of land in or on which the work is installed must ensure that:

(a) the work or any structure owned by, or under the control or management of, the Corporation is not wilfully or negligently destroyed, damaged or interfered with, and

(b) the Corporation and persons issued with certificates of authority under section 39 are not delayed or obstructed in and about the taking, in relation to the work, of any of the steps referred to in section 37 (2), and

(c) no structure is placed in, on or near the work in a manner that interferes with the operation of the work, and

(d) ground is not opened to expose any pipe or other work of the Corporation without reasonable excuse, or the consent of the Corporation, and without giving the

Corporation at least 2 days' written notice of intention to open the ground unless that requirement is waived by the Corporation.

- (2) A lease, including a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1987*, is taken to include a term requiring the lessee of land referred to in subsection (1) or any part of it to comply with the same obligations, in relation to land, as are imposed by that subsection on the owner who has leased the land to the lessee.
- (3) A covenant to which subsection (1) relates is enforceable as a duly created covenant.
- (4) It is a defence to proceedings by the Corporation under this section that the owner or, in a case to which subsection (2) applies, the lessee could not reasonably have prevented action taken by any person that would, if capable of prevention by the owner or lessee, have resulted in a breach of this section by the owner or lessee.
- (5) A person who, on land in, on or near which any work owned by the Corporation is installed, places a structure in, on or near the work in a manner that interferes with the operation of the work, must, on receiving a written notice from the Corporation requiring the removal of the structure within a period specified in the notice, remove the structure and compensate the Corporation for all loss or damage suffered by the Corporation as a result of the placement of the structure in, on or near the work.
- (6) If a person fails to comply with a notice under subsection (5) within the period specified in the notice or within any extension of that period allowed by the Corporation in writing, the Corporation may remove the structure and recover from the person the cost of the removal together with compensation for all loss or damage referred to in that subsection.
- (7) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

#### **45 Compensation to Corporation for damage**

- (1) Without limiting section 44, a person who, without the consent of the Corporation, carries out any activity that causes destruction of, damage to or interference with any work owned by the Corporation in circumstances in which the person should have known that the destruction, damage or interference would result from the carrying out of the activity, is liable to compensate the Corporation for all loss or damage suffered by the Corporation as a result.
- (2) The Corporation is not entitled to compensation both under this section and another provision of this Act for the same destruction, damage or interference.
- (3) A reference in this section to a person extends to any person:
  - (a) who caused the carrying out of the activity, or

(b) by whose order or direction the activity was carried out, or

(c) who aided, assisted, counselled or procured the carrying out of the activity.

- (4) The Corporation may proceed against a person for recovery of its loss or compensation for its damage under this section whether or not the Corporation has proceeded against the person principally responsible for the loss or damage or any other person involved in the carrying out of the activity that caused the loss or damage.

#### **46 Interference with works by trees**

- (1) If the Corporation has reasonable cause to believe that a tree is destroying, damaging or interfering with a work of the Corporation, the Corporation may, by written notice, require the owner of the land on which the tree is situated, within a reasonable period specified in the notice, to remove the tree, including all roots of the tree that are or may be destroying, damaging or interfering with the work.
- (2) The Corporation must reimburse the owner for the reasonable expenses of any action taken by the owner under this section unless the Corporation establishes that:
- (a) after the work was first laid or installed, an owner or occupier planted the tree, or caused or permitted the tree to be planted, in, on or near the work in circumstances in which the owner or occupier should have known that destruction of, damage to or interference with the work would result, or
  - (b) the work of the Corporation is located, within the land on which the tree has been planted, on land that was the subject of an easement in favour of the Corporation (or a predecessor of the Corporation) or an easement for water supply, sewerage or stormwater drainage purposes when the tree was planted.
- (3) An owner given notice under this section may, with the consent of the Corporation and without destroying, damaging or interfering with the Corporation's works, take steps, other than removal of the tree, to eliminate the cause of the destruction of, damage to or interference with the Corporation's works and any reasonable expectation of the destruction, damage or interference occurring in the future.
- (4) No compensation is payable by the Corporation to a person for the expenses of taking steps under subsection (3).
- (5) If, in circumstances other than those referred to in subsection (3), an owner fails to comply with a notice under this section within the period specified in the notice or within any extension of that period allowed by the Corporation in writing, the Corporation may remove the tree at its own expense.
- (6) The Corporation may recover from an owner the cost of removing a tree under subsection (5), but only if the Corporation establishes:

- (a) that the tree was planted during the ownership of that owner, and
  - (b) that:
    - (i) an owner or occupier should have known that the planting of the tree would result in the destruction of, damage to or interference with the work concerned, or
    - (ii) the tree was planted on land that was then the subject of an easement in favour of the Corporation (or a predecessor of the Corporation) or an easement for water supply, sewerage or stormwater drainage purposes.
- (7) This section applies despite the existence of a tree preservation order or environmental planning instrument, but does not apply to any tree that is the subject of or is within an area that is the subject of:
- (a) an interim heritage order, or a listing on the State Heritage Register, under the *Heritage Act 1977*, or
  - (b) an order in force under section 136 of the *Heritage Act 1977*, or
  - (c) an interim protection order under the *National Parks and Wildlife Act 1974*, or
  - (d) a protection conferred by any similar law.
- (8) Nothing done by an owner of land in compliance with a notice under this section or by the Corporation under subsection (5) constitutes an offence against any law under which a tree preservation order or environmental planning instrument relating to the land is made.
- (9) In this section, **tree** includes shrub or other plant.

#### **46A Approval of infrastructure activities in area of operations**

- (1) In this section:
- infrastructure activity** means any development or other activity of any kind:
- (a) that is proposed to be carried out within the area of operations of the Corporation:
    - (i) on land owned or leased by, or leased to, the Corporation, or
    - (ii) on other land but under a contract to which the Corporation is a party, and
  - (b) that, but for this section, would be subject in any respect to the *Environmental Planning and Assessment Act 1979*, the *Local Government Act 1993* or any instrument in force under either of those Acts.
- (2) The Minister may approve the carrying out of an infrastructure activity, if the Minister certifies in the instrument of approval that the carrying out of the activity is:

- (a) required to protect the quality of water supplied by the Corporation, and
  - (b) required in the interests of public health or public safety, and
  - (c) required to be carried out urgently.
- (3) If the Minister has given such an approval, the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993* and any instruments in force under either of those Acts do not apply to or in respect of:
- (a) the approval of the Minister to the carrying out of that activity, or
  - (b) the carrying out of that activity, or
  - (c) the use at any time of the works with which that activity is concerned, or
  - (d) the land on which that activity is carried out or proposed to be carried out or on which those works are used or proposed to be used, so far as is relevant to that activity or those works.

## **Division 5 Acquisition of land**

### **47 Acquisition of land for purposes of this Act**

- (1) The Corporation may acquire land (including an interest in land) for the purposes of this Act.
- (2) Land that the Corporation is authorised to acquire under this section may be acquired by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* for the purposes of this Act.
- (3) The Corporation may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the Minister.

## **Division 6 Offences**

### **48 Illegal diversion of water**

A person must not:

- (a) wrongfully take, use or divert any water that is available for supply by the Corporation or that is in any pipe or work used for supply by the Corporation, or
- (b) wrongfully alter the index of a meter or prevent a meter from duly registering the quantity of water supplied by the Corporation.

Maximum penalty: 200 penalty units (or 400 penalty units in the case of a corporation).



#### 49 Offence to discharge into works

- (1) A person must not discharge any substance into a work owned by the Corporation except with the written agreement of the Corporation.

Maximum penalty: 100 penalty units (or 200 penalty units in the case of a corporation).

- (2) This section does not apply to the use of a work by a person in accordance with a customer contract or other contract or arrangement between the Corporation and a person.

#### 50 Penalty notices

- (1) An authorised person may serve a penalty notice on a person if it appears to the authorised person that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for the alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section, **authorised person** means a person appointed in writing by the

Minister as an authorised person for the purposes of this section.

### **51 Payment of penalty does not affect other proceedings**

- (1) Prosecution or conviction of a person for an act or omission that is an offence against this Act does not affect any right of the Corporation to take civil proceedings or any other action to recover from the person:
  - (a) an amount in respect of loss or damage caused by the act or omission, or
  - (b) the expenses incurred by the Corporation in remedying the loss or damage, or
  - (c) the value of water lost to the Corporation because of the act or omission.
- (2) Payment of a penalty for an offence against this Act does not affect any right of the Corporation to institute any other action or proceeding.

### **52 Persons causing offences**

- (1) A person:
  - (a) who causes the commission of an offence against this Act, or
  - (b) by whose order or direction an offence against this Act is committed, or
  - (c) who aids, abets, counsels or procures the commission of an offence against this Act,is guilty of an offence against this Act and liable to a penalty in the same way as the principal offender.
- (2) A person may be proceeded against for an offence under subsection (1) whether or not the principal offender has been prosecuted or convicted.

### **53 Disposal of proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before:
  - (a) the Local Court, or
  - (b) the Land and Environment Court in its summary jurisdiction.
- (2) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Act is 100 penalty units or the maximum monetary penalty for the offence, whichever is the lesser.
- (3) Proceedings in the Land and Environment Court in its summary jurisdiction or in the Local Court in relation to an offence against this Act may be commenced not later than 12 months after the commission of the offence.

## Division 6A Special provisions relating to water restriction offences

### 53A Definitions

In this Division:

**authorised person** has the same meaning as in section 50.

**occupier** of land includes any person occupying the land under a lease.

**penalty notice** means a penalty notice under section 50.

**relevant time**, in relation to a water restriction offence, means the time that the offence is committed and the time immediately after the commission of the offence.

**water restriction offence** means an offence of using water contrary to a notice by the Minister under the regulations regulating or restricting the use of water.

### 53B Liability for water restriction offences in certain circumstances

- (1) **Offence** If a water restriction offence occurs on any land and the identity of the person who committed the offence cannot be ascertained at the relevant time by an authorised person who witnessed the commission of the offence, the following are, subject to this section, taken to be guilty of the offence:
  - (a) each person who was an owner of the land at the relevant time,
  - (b) each person who was an occupier of the land at the relevant time.
- (2) **Liability of actual offender not affected** Subsection (1) does not affect the liability of the person who committed the water restriction offence but, if a penalty has been recovered from any person in relation to the offence, no further penalty may be imposed on or recovered from any other person.
- (3) **Exception for owner** Subsection (1) (a) does not apply if a person who was an owner of the land at the relevant time:
  - (a) gives notice in accordance with subsection (5) of the name and address of the person who the owner has reasonable grounds to believe:
    - (i) committed the offence, or
    - (ii) was an occupier of the land at the relevant time, or
  - (b) satisfies the person specified in the penalty notice or the court dealing with the offence (as the case requires) that the owner did not commit the offence and did not know, and could not with reasonable diligence have ascertained, the name and address of the person who was an occupier of the land at the relevant time.
- (4) **Exception for occupier** Subsection (1) (b) does not apply if a person who was an

occupier of the land at the relevant time:

- (a) gives notice in accordance with subsection (5) of the name and address of the person who the occupier has reasonable grounds to believe committed the offence, or
- (b) satisfies the person specified in the penalty notice or the court dealing with the offence (as the case requires) that the occupier did not commit the offence and did not know, and could not with reasonable diligence have ascertained, the name and address of the person who committed the offence.

(5) **Notice given by owner or occupier** A notice for the purposes of subsection (3) (a) or (4) (a) must be verified by statutory declaration and:

- (a) if a penalty notice has been given for the water restriction offence—the notice must be given to the person specified in the penalty notice within 21 days after service of the penalty notice, or
- (b) if a court is dealing with the offence—the notice must be given to the informant within 21 days after service of the court attendance notice for the offence.

### **53C Evidentiary provision**

A notice under section 53B (3) (a) or (4) (a), if produced in any proceedings against the person named in the notice for a water restriction offence, is evidence that the named person committed the offence, or was an occupier of the land at the relevant time, as the case may be.

### **53D Power of authorised persons to enter land to investigate water restriction offences**

- (1) If an authorised person reasonably suspects that a water restriction offence is being committed on any land (including any land used for residential purposes), the authorised person may:
  - (a) enter the land for the purposes of investigating the offence, and
  - (b) take photographs in connection with the investigation.
- (2) The power conferred by this section to enter any land may not be exercised unless the authorised person:
  - (a) exercises the power at a reasonable time, and
  - (b) produces, if requested to do so by the occupier of the land, the authorised person's identification as an authorised person.
- (3) An authorised person may not, in exercising the power to enter land:
  - (a) enter any dwelling or enclosed structure on the land, or

- (b) use any force, or
- (c) remain on the land for a longer period than is reasonably necessary in the circumstances.

## **Division 7 Customer contracts**

### **54 Publication of terms and conditions of customer contracts**

- (1) The terms and conditions of customer contracts are to be set out in the operating licence or licences that relate to the provision of water supply or sewerage services by the Corporation.
- (2) (Repealed)
- (3) The terms and conditions must include particulars of the contract charges or of the manner in which the contract charges are to be calculated or determined in relation to the provision of water supply or sewerage services to customers by the Corporation.
- (4), (5) (Repealed)

### **55 Owner of land taken to have entered into customer contract**

- (1) An owner of land that is connected to a water main or sewer main owned by the Corporation is taken to have entered into a customer contract with the Corporation, on the terms and conditions set out in the relevant operating licence or licences as varied from time to time in accordance with section 59, for the provision of water supply or sewerage services, or either of them, to the land.
- (2) In addition, a customer contract may also include terms and conditions relating to the imposition and payment of charges imposed under section 64 or 65. If a customer contract makes provision for such matters, a person by whom one or more of the charges are payable is taken to have entered into a customer contract with the Corporation on those terms and conditions.
- (3) A customer contract is not unjust, unconscionable, harsh or oppressive for the purposes of any law.
- (3A) A customer contract does not operate so as to impose obligations on the Corporation or any owner of land in respect of the supply of water, or the provision of a sewerage service, during the term of any contract in that regard entered into between the owner of the land and a licensed retail supplier within the meaning of the [Water Industry Competition Act 2006](#).
- (3B) If:
  - (a) the Corporation is a retailer of last resort within the meaning of the [Water Industry Competition Act 2006](#) in relation to any water supply or sewerage service, and

(b) a direction in relation to that service is given to the Corporation under section 56 of that Act,

the Corporation and the owner are taken to have entered into a special circumstances contract in such terms as are prescribed by the regulations for the purposes of this subsection.

(4) This section has effect subject to section 56.

#### **56 No customer contract for unauthorised connection**

(1) An owner of land is not to be taken to have entered into a customer contract under section 55 if the connection of the land to a water main or sewer main:

(a) was not authorised by the Corporation, a predecessor of the Corporation or another appropriate authority, and

(b) has not since been approved by the Corporation, a predecessor of the Corporation or another appropriate authority.

(2) The Corporation may give approvals for the purpose of this section.

#### **57 Division not to apply to certain contracts**

(1) This Division does not apply to the extent that the terms and conditions of a contract or other arrangement for the provision of water supply or sewerage or stormwater drainage systems, or any of them, have been specifically agreed to by the Corporation and a person who is taken to have entered into a customer contract under section 55.

(2) Without limiting subsection (1), nothing in section 55, 64 or 65 affects the operation of:

(a) a contract between the Corporation and a person (whether or not the person is taken to have entered into a customer contract under section 55), or

(b) a contract between a public authority and a person (whether or not the person is taken to have entered into a customer contract under section 55) relating to the supply of water or the provision of water recycling, effluent treatment, stormwater drainage or similar services within the area of operations.

#### **58 Consumer claims**

The jurisdiction of the Consumer, Trader and Tenancy Tribunal as conferred under the [Consumer Claims Act 1998](#) extends to the hearing and determination of a consumer claim (within the meaning of that Act) relating to a service supplied by the Corporation under a customer contract.

## **59 Variation of customer contracts**

- (1) The terms and conditions of a customer contract may, subject to the approval of the Governor, be varied by the Corporation by a notice setting out or summarising the variation and published in a daily newspaper circulating in the area of operations. The notice must be published at least 6 months before the variation becomes effective or within a shorter period approved by the Minister.
- (2) A copy of the notice published under this section is to be given by the Corporation to the person who is taken to have entered into the customer contract under section 55. The copy is to be given with the next account or bill issued after the date of publication of the notice. Failure to comply with the requirements of this subsection does not affect the validity of the variation or any contract charge made in accordance with the variation.
- (3) A statement in a notice published under this section that the Governor has approved of the variation of the terms and conditions set out or summarised in the notice is evidence that the Governor has approved of the variation of the terms and conditions unless the contrary is proved.
- (4) Subsections (1)–(3) do not apply to the variation of the terms and conditions of a customer contract to the extent that the variation relates to alteration of the level of fees or charges and the alteration is in accordance with a determination of the Independent Pricing and Regulatory Tribunal.
- (5) Following variation of a customer contract, copies of the contract and explanatory material concerning the contract are to be made available to the public in such manner as the operating licence may provide.

## **Division 8 Fees and charges**

### **60 Fees and charges generally**

- (1) The Corporation may impose:
  - (a) fees and charges for or in connection with any service or thing supplied or provided by the Corporation in the exercise of its functions under this Act, and
  - (b) without affecting the generality of paragraph (a)—availability charges and stormwater drainage area charges.
- (2) Any such fees and charges may be fixed by reference to any factors or combination of factors, including but not limited to the following:
  - (a) the nature of the service or thing provided,
  - (b) the place where the service or thing is provided,

- (c) usage or estimated usage of the service or thing provided,
  - (d) land value or any other value provided for in the *Valuation of Land Act 1916* and at such base date as the Corporation determines,
  - (e) land size, meter size or pipe size,
  - (f) any factor specified in an operating licence or prescribed by the regulations.
- (3) The Corporation may impose any such fees and charges by customer contracts or by any other means. A fee or charge that is imposed by a customer contract cannot be altered except in accordance with the customer contract or an operating licence.
- (4) The Corporation may impose a compulsory fee or charge by means of a customer contract only, except to the extent that an operating licence or the regulations permit a specified compulsory fee or charge or specified class of compulsory fee or charge to be imposed by some other means. The regulations may determine for the purposes of this subsection the kinds of fees or charges that are or are not compulsory in nature.
- (5) An operating licence may regulate the imposition of any fees and charges, and in particular may provide for any or all of the following:
- (a) specified fees and charges must not be imposed or must cease being imposed,
  - (b) specified fees and charges must be imposed,
  - (c) specified fees and charges may be imposed by customer contracts only.
- (6) An operating licence may provide that the Corporation must, in imposing fees or charges or any specified class of fees or charges, do so:
- (a) on a basis that is consistent with the system employed by the Water Board for fixing such fees or charges immediately before the transfer of the business undertaking (including the relevant provisions of clauses 4 and 5 of the *Water Board (Finance) Regulation 1988*), or
  - (b) on some other basis stipulated in the operating licence.
- (7) This section has effect subject to the *Independent Pricing and Regulatory Tribunal Act 1992*.

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

On a change in the ownership of land situated in the area of operations, the new owner of the land is liable to the Corporation for the amount of any contract charges unpaid in relation to the land as if the new owner had entered into the customer contract with the Corporation for the supply of the service or services to which the unpaid contract charges relate.



## **62 Occupier may pay, and recover, contract charges in certain cases**

(1) In this section:

**lease** means a lease, licence, permit or other agreement under which an occupier is in possession of land.

**occupier** means a person who is in possession of land under a lease.

**owner** means a person who parts with possession of land to an occupier under a lease.

(2) If a lease of land in the area of operations provides, expressly or impliedly, that the owner of the land is to pay the contract charges payable in relation to the land, the occupier may pay to the Corporation any charges that are due but unpaid by the owner and may:

(a) recover the amount paid from the owner as a debt due to the occupier, or

(b) deduct the amount paid from any rent, licence fee or other occupation fee payable by the occupier to the owner.

## **63 Fees and charges not to be charges on land**

On and after the transfer under Part 3 of the business undertaking of the Water Board to the Corporation, no fees or charges imposed by the Corporation are to be a charge on the land to which they relate, unless expressly provided for by this Act.

## **64 Availability charges**

(1) The Corporation may and, if so required by an operating licence must, require the owner of land that is not connected to a water main or sewer main owned by the Corporation and available for connection to pay an availability charge.

(2) An availability charge imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(3) Despite section 63, an availability charge imposed under this section is a charge on the land to which the availability charge relates.

(4) An availability charge is payable in relation to a particular water main to which the land concerned is not connected even if the land is connected to another water main, provided the kinds of water available from the services differ in nature or quality.

(5) Without limiting the generality of section 60 (5), the Corporation must cease imposing availability charges if an operating licence so requires.

(6) The provisions of this section have effect despite anything contained in section 42 of the [Real Property Act 1900](#).

## 65 Stormwater drainage area charges

- (1) In this section, **stormwater drainage area** means an area of land declared by an order of the Governor to be a stormwater drainage area for the purposes of this section.
- (2) An order in force under section 28 (3) of the [Water Board Act 1987](#) (as in force immediately before the commencement of section 86 of this Act) declaring an area of land to be a stormwater drainage area is taken to be an order for the purposes of this section.
- (3) The Corporation may and, if so required by an operating licence must, make and levy stormwater drainage area charges on the owners of land within a stormwater drainage area located in the area of operations.
- (4) A stormwater drainage area charge levied under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.
- (5) Despite section 63, a stormwater drainage area charge levied under this section is a charge on the land to which the stormwater drainage area charge relates.
- (6) The provisions of this section have effect despite anything contained in section 42 of the [Real Property Act 1900](#).

## 66 Certificates as to amounts due

- (1) The Corporation must, on written application being made to it, and on payment of the fee determined by the Corporation, issue to the applicant a certificate:
  - (a) containing particulars of any amounts payable to the Corporation in respect of a parcel of separately assessed land, with those particulars distinguishing between any amounts charged on the land and any amounts that are not so charged, or
  - (b) to the effect that there are no such amounts.
- (2) A certificate authenticated and issued in accordance with the regulations is taken to be a certificate applied for under subsection (1) and issued by the Corporation.
- (3) An application for a certificate must:
  - (a) specify the name and address of the applicant, and
  - (b) identify the land to which the application relates.
- (4) A certificate is conclusive proof, in favour of a purchaser in good faith and for value of the land to which the certificate relates, that, at the date of its issue, no amounts were payable to the Corporation in respect of that land other than the amounts specified in the certificate.

## 67 Exemptions from service charges

- (1) The Corporation may not levy service charges on land described in Part 1 of Schedule 2 unless it is land described in Part 2 of Schedule 2.
- (2) The Minister may, by order published on the NSW legislation website, amend Schedule 2 by omitting from the Schedule a description of land contained in it or by inserting in the Schedule a description of land.
- (3) In this section, **service charge** means a charge of the kind that was included in the definition of **service charge** in section 3 (1) of the [Water Board Act 1987](#), and includes any kinds of fees and charges prescribed by the regulations as service charges to which this section applies, but does not include any kinds of fees and charges so prescribed as service charges to which this section does not apply.

## 68 Special arrangements with Valuer-General

- (1) The Corporation may enter into special arrangements with the Valuer-General under Part 6B of the [Valuation of Land Act 1916](#), but must not do so in contravention of a condition of an operating licence.
- (2) Any valuations supplied to the Corporation under any such special arrangements may be used for the purposes of this Act, but subject to the terms of an operating licence under that Act.
- (3) The Corporation must take all available steps to terminate or vary any such special arrangements if required to do so by an operating licence.

## Division 9 Development

### 69 Definitions

In this Division:

**approval** means:

- (a) an approval under Part 1 of Chapter 7 of the [Local Government Act 1993](#) for the erection of a building, or
- (b) (Repealed)
- (c) a development consent under Part 4 of the [Environmental Planning and Assessment Act 1979](#), or
- (d) any similar approval, consent or other matter, prescribed by the regulations for the purposes of this definition.

**compliance certificate** means a certificate referred to in this Division.

**consent authority** has the meaning given in the *Environmental Planning and Assessment Act 1979*, and includes a council to which an application for approval for the erection of a building under Part 1 of Chapter 7 of the *Local Government Act 1993* may be made.

**developer** means a person to whom an approval has been given.

**development**, in relation to land, means any activity to which an approval relates.

**works** has the meaning given by section 3, and includes:

- (a) structures on or improvements to land that are designed to facilitate the carrying of water (including, for example, excavations along natural watercourses), or
- (b) structures on or improvements to land that are designed to facilitate the operation of water and sewerage plants or waste water treatment plants (including, for example, artificial wetlands), or
- (c) monitoring devices in, under, over or near any works referred to in paragraph (a) or (b), or
- (d) any works ancillary or antecedent to any works referred to in paragraphs (a)-(c).

## **70 Compliance certificates**

- (1) A compliance certificate is a certificate issued by the Corporation under this Division in relation to a particular development, and certifying:
  - (a) that the requirements of the Corporation under this Division in relation to the development have been complied with, or
  - (b) that no such requirements were imposed by the Corporation in relation to the development.
- (2) A compliance certificate can be issued to:
  - (a) a developer who is subject to a condition requiring that such a certificate be obtained and who applies for a certificate, or
  - (b) a developer who, though not subject to such a condition, nevertheless applies for such a certificate.

## **71 Conditions requiring compliance certificates**

- (1) It may be a condition of an approval given with respect to land within the Corporation's area of operations that a compliance certificate be obtained from the Corporation.
- (2) The Corporation may issue guidelines from time to time to assist consent authorities

and other authorities in relation to the imposition of conditions of the kind referred to in subsection (1).

- (3) Nothing in this section affects the generality of the *Environmental Planning and Assessment Act 1979* or any other Act with regard to the imposition of conditions on approvals.

## **72 Applications for compliance certificates**

- (1) If an approval has been given with respect to land within the Corporation's area of operations and the developer to whom the approval has been given is required, or wishes, to obtain a compliance certificate, the developer may apply to the Corporation for a compliance certificate.
- (2) The application must be accompanied by a copy of the approval.

## **73 Grant of compliance certificates**

If an application is made to the Corporation for a compliance certificate, the Corporation:

- (a) may grant the developer a compliance certificate, without serving a notice on the developer under section 74, or
- (b) must grant the developer a compliance certificate, when the Corporation is satisfied that the requirements of a notice served on the developer under section 74 have been complied with, or
- (c) must, at the developer's request, grant the developer a compliance certificate, if no compliance certificate has been granted to, and no notice under section 74 has been served on, the developer within 60 days after the making of an application under section 72 or within a further period approved by the Minister in a particular case that is notified to the developer within the period of 60 days.

## **74 Notice of requirements before grant of compliance certificate**

- (1) If an application is made to the Corporation for a compliance certificate, the Corporation may, before proceeding further with the application, serve a notice on the developer requiring the developer to do any one or more of the following:
- (a) to pay an amount to the Corporation to cover the whole or an appropriate portion of relevant costs (as defined in section 75), as assessed by the Corporation either in the notice or in another notice,
- (b) to enter into one or more agreements providing for any one or more of the following:
- (i) the payment of such an amount to the Corporation,
- (ii) the construction, or the construction and the manner of construction, of the

works specified in the notice,

(iii) the transfer of any such works to the Corporation,

(c) to provide reasonable security, in a form approved by the Corporation, for due performance of such an agreement,

(d) to attend to such additional or ancillary matters as are specified by the Corporation and as are necessary to give effect to any one or more requirements imposed under paragraphs (a)-(c).

(2) The Corporation may withdraw a requirement contained in a notice under this section, in which case the requirement is treated as not having been made.

(3) This section has effect subject to the *Independent Pricing and Regulatory Tribunal Act 1992*.

## **75 Relevant costs**

For the purposes of section 74, the relevant costs are:

(a) the full cost of any or all of the following:

(i) works and systems already constructed by or on behalf of, or at the request of, or under an agreement with, the Corporation or a predecessor of the Corporation,

(ii) works and systems to be constructed by or on behalf of, or at the request of, or under an agreement with, the Corporation or a predecessor of the Corporation,

that benefit or are available to the land concerned, based on net present value, historical cost or any other appropriate basis, and having regard (if the Corporation thinks it appropriate) to its expected operating costs and revenues, and

(b) the full cost of amplification of the Corporation's works and systems in consequence of the proposed development, and

(c) the investment costs incurred by the Corporation or a predecessor of the Corporation and by developers in relation to the existing and proposed works and systems referred to in paragraphs (a) and (b), and

(d) costs of such kinds as are prescribed by the regulations as additional to or in substitution for any or all of the costs referred to in paragraphs (a), (b) and (c).

## **76 Conditions of compliance certificates**

(1) A compliance certificate may be granted unconditionally or subject to specified conditions, including, for example, a condition to the effect that the grant is conditional on carrying out the terms of an agreement entered into under section 74.

- (2) The requirement to obtain a compliance certificate is taken not to be complied with until the conditions attached to the certificate have been complied with.
- (3) An unconditional compliance certificate may be granted to replace one already granted subject to conditions.

#### **77 Grant of compliance certificates in stages**

- (1) A compliance certificate may, instead of being issued in relation to the whole of the development concerned, be issued progressively in relation to any or all of the stages of the development.
- (2) A compliance certificate may be granted to replace one or more already granted.

#### **78 Consent authority to notify Corporation of development and building applications**

- (1) If a consent authority within the area of operations receives a development application or building application in relation to any matter that would:
  - (a) increase the demand for water supplied by the Corporation, or
  - (b) increase the amount of waste water that is to be removed by the Corporation, or
  - (c) damage or interfere with the Corporation's works, or
  - (d) adversely affect the Corporation's operations, or
  - (e) (Repealed)

the consent authority must give the Corporation notice of the application, unless it is relieved from doing so under subsection (2).

- (2) The consent authority is not required to give notice of the application if it decides:
  - (a) not to approve the application, or
  - (b) to approve the application with a condition that the developer must obtain a compliance certificate from the Corporation.
- (3) The Corporation must issue guidelines from time to time to assist consent authorities to determine which matters should be the subject of notice under subsection (1).
- (4) The consent authority must take into account any submissions made by the Corporation in relation to a development application or building application that is the subject of a notice under subsection (1), in determining whether to approve the development application or building application or to attach conditions to it. The consent authority may, however, approve the application at any time if it imposes a condition that the developer must obtain a compliance certificate from the Corporation.

- (5) The consent authority may assume that the Corporation has no submissions to make in relation to a development application or building application of which notice has been given under this section if no such submissions are received by the consent authority within 21 days after the notice was given to the Corporation.
- (6) If a consent authority has complied with this section in relation to a development application, the consent authority is not required to comply with this section in relation to a building application that deals with the same subject matter as the development application.

## **79 Enforcement**

- (1) Any money owing to the Corporation as a consequence of a notice referred to in section 74 may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.
- (2) Nothing in this section affects any power or remedy that the Corporation has apart from this section.

## **Division 10**

### **80-87 (Repealed)**

## **Division 11 Controlled areas**

### **88 Controlled areas**

- (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land described in the order to be a controlled area.
- (2) An order under this section applies to land only while it is owned by or vested in the Corporation.
- (3) The lands referred to in Schedule 1 to the *Water Board (Special Areas) Regulation 1989* as in force immediately before the commencement of this section (but excluding the lands referred to in the first paragraph, including paragraphs (a)-(c), and the second paragraph of that Schedule) are taken to be the subject of an order declaring them to be a controlled area, despite anything in section 81 (3).
- (4) An order referred to in subsection (3) is taken to be an order made under this section, and accordingly may be amended or repealed by an order made by the Governor.

### **89 Regulations concerning controlled areas**

- (1) The regulations may make provision for or with respect to controlled areas, including the regulation or prohibition of abstracting, using, polluting or contaminating waters or polluting or contaminating land within such areas.



- (2) A regulation made under this Division prevails to the extent of any inconsistency with a statutory instrument made under another Act, including an environmental planning instrument within the meaning of the *Environmental Planning and Assessment Act 1979*.

## **Division 12 Activities outside area of operations**

### **90 Activities outside area of operations**

- (1) If an operating licence has been issued to the Corporation under this Act, the Corporation may:
- (a) exercise outside the area of operations, on behalf of the Water Administration Ministerial Corporation, the right to the use and flow, and to the control, of water conferred on the Water Administration Ministerial Corporation by section 12 of the *Water Administration Act 1986*, and
  - (b) undertake activities in the exercise of any such right outside the area of operations,

for the purpose of supplying water to councils or the owners or occupiers of land in the vicinity of the bulk supply lines (or carrying out any other activities previously authorised under section 13 (5) of the *Water Board Act 1987*).

- (2) Subsection (1) applies only until such time as the Corporation is granted a licence or permit by the relevant authority for the purpose referred to in that subsection and the Minister, by certificate published in the Gazette, certifies that such a licence or permit has been granted.
- (3) Subsection (1) applies only if the activities are necessary for the purpose of providing systems or services that the Water Board was authorised to provide in accordance with a Ministerial consent under section 13 (5) of the *Water Board Act 1987* that was current on the repeal of that Act.
- (4) This section applies to an activity only until the Minister revokes the consent or the activity becomes the subject of an operating licence.
- (5) This section has effect despite anything in the *Water Administration Act 1986*.

## **Division 13 Other matters**

### **91 Contracting out**

- (1) The Corporation may enter into a contract or other arrangement with any person for the provision, construction, operation, management or maintenance of systems or services that are the subject of an operating licence or for the carrying out of any of its other activities.

- (2) The person with whom any such contract or other arrangement is entered may (subject to the contract or other arrangement) exercise, on behalf of the Water Administration Ministerial Corporation, the right to the use and flow, and to the control, of water conferred on the Water Administration Ministerial Corporation by section 12 of the [Water Administration Act 1986](#) for the purposes referred to in subsection (1).
- (3) The power to exercise rights conferred by subsection (2) has effect only until such time as the Corporation is granted a licence or permit by the relevant authority for the purposes referred to in subsections (1) and (2) and the Minister, by certificate published in the Gazette, certifies that such a licence or permit has been granted.
- (4) The power to exercise rights under subsection (2) may be exercised only in relation to activities carried out under an operating licence.
- (5) The entering into of a contract or other arrangement under this section does not relieve the Corporation of its responsibilities to comply with an operating licence.
- (6) This section has effect despite anything in the [Water Administration Act 1986](#).

## **Part 7 Miscellaneous**

### **92 Alteration of names**

References in this Act to a company by a specified name include references to the company under any altered name.

### **93 (Repealed)**

### **93A Ministerial directions in the public interest**

- (1) A direction may be given to the board of the Corporation under section 20P of the [State Owned Corporations Act 1989](#) without compliance with subsection (3) of that section if the portfolio Minister decides that this action is warranted on grounds involving urgency, public health or public safety.
- (2) The notice referred to in section 20P (5) of the [State Owned Corporations Act 1989](#) is to include a statement of the reasons for that decision.
- (3) The portfolio Minister is to publish in the Gazette (and is to make available on the Internet) any direction under section 20P of the [State Owned Corporations Act 1989](#), and any notification under section 20O of that Act, given to the board of the Corporation as soon as practicable after it is given.
- (4) Any such notification or direction is of no effect to the extent that it is inconsistent with the terms and conditions of the Corporation's operating licence.
- (5) However, subsection (4) does not apply in respect of a direction given as referred to in

subsection (1).

**94 (Repealed)**

**95 Provisions relating to subsidiaries**

Schedule 7 to the *State Owned Corporations Act 1989* is, as regards the Corporation, taken to be altered as set out in Schedule 4 to this Act.

**96 Provisions relating to certain staff**

- (1) Pursuant to clause 1 of Schedule 4 to the *State Owned Corporations Act 1989*, it is declared that the Water Board is an authority to which that Schedule applies.
- (2) Unbroken service with the Corporation that is continuous with service with the Water Board is to be taken into account in accordance with Schedule 3A to the *Public Sector Employment and Management Act 2002*, both during and after service with the Corporation.
- (3) Schedule 3A to the *Public Sector Employment and Management Act 2002* does not otherwise apply to members of the staff of the Corporation.

**97 Special audit of activities**

- (1) Despite section 36 (1) (b) of the *State Owned Corporations Act 1989*, the provisions of Division 2A of Part 3 of the *Public Finance and Audit Act 1983* apply to the Corporation.
- (2) For the purposes of this section and Division 2A of Part 3 of the *Public Finance and Audit Act 1983*:
  - (a) the Corporation is taken to be an authority within the meaning of section 38A of that Act, and
  - (b) the chief executive officer of, or the person who exercises the functions of a chief executive officer in relation to, the Corporation is taken to be the Head of an authority within the meaning of that expression as defined in section 4 (1) of that Act.

**98 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**99 Work for water supply, sewerage or stormwater drainage**

- (1) A person must not do any kind of work of water supply, sewerage or stormwater drainage intended for direct or indirect connection with the pipes, sewers or drains of the Corporation unless the person:

- (a) holds an endorsed licence or a supervisor certificate in force under the *Home Building Act 1989* authorising the holder to do that kind of work, or
- (b) does the work under the immediate supervision of the holder of such a licence or certificate, or
- (c) holds a tradesperson certificate in force under the *Home Building Act 1989* authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).

Maximum penalty: 100 penalty units.

- (2) The regulations may make provision for or with respect to any such work, including the standards for and supervision of any such work and the grant of permission by the Corporation or its officers for the performance of any such work.
- (3) Subsection (1) does not apply to an employee of the Corporation who carries out any such work on behalf of the Corporation or to any other person who is authorised by the Corporation to carry out any such work.

#### **100 Service of notices**

- (1) A notice under this Act to a person liable for payment of a fee or charge, or to a person who is the owner or occupier of land or a building, may be served:
  - (a) personally, or
  - (b) by leaving it, at the place where the person to be served lives or carries on business, with a person apparently residing or employed there who seems to be at least 16 years old, or
  - (c) by post to the residence or place of business of the person to be served last known to the Corporation, or
  - (d) by affixing it to a conspicuous part of the land or building.
- (2) A notice under this Act to a corporation constituted by or under an Act or other law may be served:
  - (a) by leaving it at the principal or other office of the corporation with a person apparently employed there who seems to be at least 16 years old, or
  - (b) in any manner authorised by or under the Act or law by which the corporation is constituted or which applies to the corporation.
- (3) A notice under this Act to a government department or administrative office may be served:

- (a) in the case of a notice of valuation or a notice of a fee or charge—on the Treasurer or as prescribed by the regulations, or
  - (b) in any other case—on the Department Head or as prescribed by the regulations.
- (4) A notice under this Act may be served on a person who appears to be absent from the State, or who has authorised service on an agent, by serving it on the agent of the person as if the agent were the person to be served.
- (5) If a notice relates to unoccupied land or premises and the address of the owner is not known to the Corporation, it may be served by an advertisement that:
- (a) is published in a newspaper circulating in the locality of the land or premises, and
  - (b) states the name of the owner of the land or premises if known to the Corporation, and
  - (c) if the notice is notice of a fee or charge—states the amount of the fee or charge, the period (if any) for which it is owing and that a detailed notice of the fee or charge may be obtained by inquiry at an office of the Corporation identified in the advertisement, and
  - (d) states that the advertisement operates as service of the notice.
- (6) A notice under this Act may be served on a person in accordance with a means of communication (such as facsimile transmission, telecommunication or another electronic means of communication) notified by the person as being an available means of communication.
- (7) A customer contract or the regulations may impose additional requirements in relation to any means of service provided by this section or may provide other means of serving notices.

### **101 Annual reports and consumer confidence reports**

- (1) The Corporation is to comply with requirements of Schedule 5 regarding the annual report of the operations of the Corporation, in addition to any other relevant requirements of the [State Owned Corporations Act 1989](#).
- (2) The regulations may amend or replace Schedule 5.
- (3) In addition to producing an annual report, the Corporation must publish on the Internet at intervals of 3 months reports (**consumer confidence reports**) on the quality of the water it has available for supply to its customers.
- (4) The reports are also to be made available for inspection by the public free of charge at the Head Office of the Corporation during normal business hours.

- (5) A consumer confidence report must include, in summary form, the following:
  - (a) details of the quality and quantity of water in the Corporation's catchment areas,
  - (b) an evaluation of the effectiveness of the Corporation's treatment of water from its catchment areas during the immediately preceding 3 months,
  - (c) a review of developments in the literature concerning issues relating to the quality of drinking water, being issues faced by authorities worldwide who are responsible for the quality of any drinking water,
  - (d) an overview of issues relating to catchment management that were current during the immediately preceding 3 months,
  - (e) such other matter as the regulations may prescribe.
- (6) Each account for the supply of water that the Corporation sends to its customers must contain a summary of the most recent consumer confidence report and must state that the full report is published on the Internet and is available for inspection by the public free of charge at the Head Office of the Corporation during normal business hours.
- (7) The first consumer confidence report must be published within 4 months after the commencement of this subsection.

## **102 Restraint of breaches of Act**

- (1) Any person may bring proceedings, concerning matters relating to the protection of the environment, in the Land and Environment Court for an order to restrain a breach of this Act (or a threatened or apprehended breach of this Act).
- (2) Any such proceedings may be brought whether or not any right of that person has been or may be infringed by or as a consequence of the breach (or the threatened or apprehended breach).
- (3) If the Court is satisfied that a breach, or a threatened or apprehended breach, will, unless restrained by order of the Court, be committed or be likely to be committed, it may make such orders as it thinks fit to restrain the breach or other conduct of the person by whom the breach is committed or by whom the threatened or apprehended breach is likely to be committed.
- (4) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of the committee or other controlling or governing body), having like or common interests in those proceedings.
- (5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person

bringing the proceedings.

### **103 Restraint of breaches of customer contract**

- (1) Any person may bring proceedings in the Supreme Court for an order to restrain a breach (or a threatened or apprehended breach) of a customer contract by the Corporation.
- (2) Any such proceedings may be brought whether or not any right of that person has been or may be infringed by or as a consequence of the breach (or the threatened or apprehended breach).
- (3) If the Court is satisfied that a breach, or a threatened or apprehended breach, will, unless restrained by order of the Court, be committed or be likely to be committed, it may make such orders as it thinks fit to restrain the breach or other conduct of the person by whom the breach is committed or by whom the threatened or apprehended breach is likely to be committed.
- (4) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of the committee or other controlling or governing body), having like or common interests in those proceedings.
- (5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

### **104 Application of [Freedom of Information Act 1989](#)**

- (1) The [Freedom of Information Act 1989](#) applies to and in respect of the Corporation and any subsidiaries of the Corporation as if they were each a public authority.
- (2) For the purposes of that Act:
  - (a) the Minister administering this section is the responsible Minister, and
  - (b) the Chief Executive Officer of the Corporation, or the holder of another office prescribed by the regulations, is the principal officer of the Corporation, and
  - (c) the holder of an office prescribed by the regulations is the principal officer of a subsidiary of the Corporation.

### **105 Application of [Independent Commission Against Corruption Act 1988](#)**

Section 23 of the [Independent Commission Against Corruption Act 1988](#) applies to the Corporation and its subsidiaries and to persons who are public officials by virtue of their connection with the Corporation or such a subsidiary. This section has effect despite section 36 of the [State Owned Corporations Act 1989](#).

## 106 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting any of the provisions of this section, the regulations may make provision for or with respect to:
  - (a) the renewal of, and the arrangements to apply pending the renewal of, an operating licence, and
  - (b) in the case of drought or accident, or if the Minister is for some other reason of the opinion that it is necessary in the public interest and for the purpose of maintaining water supply—the restriction or regulation of the supply and use of water in the area of operations, and
  - (c) the classification or valuation of land or other basis or bases for the making of fees or charges, and the procedure for the making and imposing of fees or charges, and
  - (d) charges on land and the recovery of amounts charged on land, including applying the provisions (with or without modification) of Divisions 4 and 5 of Part 2 of Chapter 17 of the *Local Government Act 1993*, and
  - (e) any matters to which the regulations referred to in clause 2 of Schedule 9 relate.
- (3) A regulation may create an offence punishable by a penalty for a breach of the regulation not exceeding:
  - (a) 200 penalty units in the case of an offence by a corporation, or
  - (b) 100 penalty units in any other case.
- (4) Regulations may be made for or with respect to:
  - (a) authorising the Corporation to make arrangements with another person to collect fees or charges on behalf of the Corporation, and
  - (b) the fees to be paid by the person to the Corporation.
- (5) The regulations may apply, adopt or incorporate any of the following publications as in force for the time being:
  - (a) a standard published or adopted by Standards Australia,
  - (b) the *New South Wales Code of Practice—Plumbing and Drainage* produced by the Committee on Uniformity of Plumbing and Drainage Regulations in New South Wales.



## **107 Repeals**

- (1) The *Water Board Act 1987* is repealed.
- (2) All regulations and by-laws under that Act and the *Metropolitan Water, Sewerage, and Drainage Act 1924* are repealed, except as provided in Schedule 9 to this Act.

## **108-110 (Repealed)**

## **111 Savings, transitional and other provisions**

Schedule 9 has effect.

## **112 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 (Repealed)**

## **Schedule 2 Exemptions from service charges**

(Section 67)

### **Part 1 Land exempt from service charges**

- 1** Land which is vested in the Crown, or in a public body, or in trustees, and is used for a public cemetery.
- 2** Land which is vested in the Crown, or in a public body, or in trustees, and is used for a common.
- 3** Land which is vested in the Crown, or in a public body, or in trustees, and is used for a public reserve or park.
- 4** Land which belongs to any public benevolent institution, or public charity, and is used or occupied by the institution or charity for its purposes.
- 5** Land which is used or occupied solely for the purposes of, or connected with, a baby health centre, day nursery, kindergarten or amenities for the aged not conducted for private gain.
- 6** Land which is vested in the Crown, or in a public body, or in trustees, and is used solely for the purposes of a free public library.
- 7** Land which belongs to a religious body and which is occupied and used in connection with:

- (a) any church or other building used or occupied in public worship, or
- (b) any building used or occupied solely as the residence of a minister of religion in connection with any such church or building, or
- (c) any building used or occupied for the purposes of religious teaching or training, or
- (d) any building used or occupied solely as the residence of the official head or the assistant official head, or both, of any religious body in the State or in any diocese in the State, or
- (e) any building used or occupied solely as a hospital and not conducted for private gain.

**8** Land which is a public place within the meaning of the *Local Government Act 1993*.

**9** Land which:

- (a) is unoccupied, and
- (b) is not supplied with water from any water-pipe of the Corporation and is not connected to any sewer of the Corporation, and
- (c) has been determined, by the council of the area in which the land is situated, to be unsuitable for the erection of a building because of flooding or landslip.

**10** Land which is unoccupied and which is below highwater mark of any tidal water.

**11** Land which belongs to and which is occupied and used in connection with any registered non-government school within the meaning of the *Education Reform Act 1990*, including any playground which belongs to and is used in connection with any such school, and any building occupied as a residence by any caretaker, servant, or teacher of any such school which belongs to and is used in connection with the school.

**12** Drill grounds, sports grounds, gardens, or children's playgrounds provided by the council of an area under the powers conferred by the *Local Government Act 1993*.

**13** Land vested in the New South Wales Aboriginal Land Council, a Regional Aboriginal Land Council or a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*, being land which is declared under Division 5 of Part 2 of that Act to be exempt from the payment of rates under this Act.

## Part 2 Exceptions

**1** Land within a public place, public reserve or park that is the subject of a lease, licence or other authority under which a person carries on a trade or business.

**2** Land that is vested in the Crown or a public body and is leased to any person for private purposes.

**3** Land vested in the Crown or an authority (within the meaning of the *Public Finance and Audit Act 1983*) that:

- (a) is used or occupied by the Crown or such an authority for a purpose specified in item 1, 2, 3, 5 or 6 of Part 1 of this Schedule, or

- (b) is land referred to in item 8 of Part 1 of this Schedule (other than a public road or the permanent way of a railway).

### **Schedule 3 (Repealed)**

### **Schedule 4 Subsidiaries of Corporation**

(Section 95)

Part 2 of Schedule 7 to the *State Owned Corporations Act 1989* is, as regards Sydney Water Corporation, taken to be altered by omitting clause 1 (8) and by inserting instead the following subclause:

- (8) Shares may not be issued except with the prior written approval of the voting shareholders of the State owned corporation, and shares held by eligible Ministers or by or on behalf of the State owned corporation may not be transferred except with such prior written approval or by the Premier under subclause (4).

### **Schedule 5 Annual report of Corporation**

(Section 101 (2))

#### **1 Definition**

In this Schedule:

***financial year*** means the financial year of the Corporation.

#### **2 Budgetary information**

The annual report of the operations of the Corporation is to include or be accompanied by:

- (a) a detailed budget for the financial year to which the report relates, and  
(b) an outline budget for the next following financial year.

#### **3 Specific particulars**

The annual report of the operations of the Corporation is to include the following particulars in relation to the following matters:

- (a) **research and development**—particulars of completed research and continuing research and development activities together with the resources allocated for that research and those activities, unless the inclusion of those particulars would, in the opinion of the Corporation, adversely affect the business or commercial operations of the Corporation,
- (b) **human resources**:
- (i) the number of employees, by category, with comparison to each of not less than 3

years before the financial year to which the report relates,

- (ii) any exceptional movement in wages, salaries or allowances of material effect,
- (iii) personnel policies and practices,
- (iv) industrial relations policies and practices,

(c) **consultants:**

(i) in respect of the engagement during the financial year of a consultant by the Corporation the cost of which exceeds \$30,000, the following details relating to the consultant:

- the name of the consultant,
- if the consultant has been engaged for a particular project, the title of the project,
- the actual cost of engaging the consultant,

(ii) in respect of the engagement during the financial year of consultants by the Corporation, if the cost of each such engagement is less than \$30,000, the following details relating to the consultants:

- the total number of engagements costing less than \$30,000,
- the total cost of all such engagements,

(iii) if no consultants were engaged by the Corporation during the financial year, a statement of that fact,

(d) **equal employment opportunity:**

(i) a statement setting out the equal opportunity achievements of the Corporation during the financial year and the key equal employment opportunity strategies proposed by the Corporation for the following year,

(ii) statistical information for the financial year of such kind, and set out in such form, as is determined by the Secretary of the Treasury or, if such information is not currently available, particulars of the arrangements that have been made to obtain and provide such information during the following year,

(e) **promotion:**

(i) a statement setting out the types of publications and other information available to the public dealing with the functions and activities of the Corporation and indicating those which were published by the Corporation during the financial year,

- (ii) overseas visits undertaken with the main purposes highlighted,
- (f) **consumer response**—the extent and main features of consumer complaints, indicating any services improved or changed as a result of complaints or consumer suggestions made,
- (g) **guarantee of service**—where appropriate, the standard for providing services, together with comment on any variance from the standard or changes made to the standard,
- (h) **time for payment of accounts** (in relation to contracts entered into by or on behalf of the Corporation for the supply of goods or services, or both, to the Corporation)—all instances where penalty interest has been paid if payment has not been made within a period and the reason for the delay in making the payment which led to the payment of the interest.

#### 4 Comparison of investment performance

- (1) The annual report of the operations of the Corporation is to include, in the form of a comparison, details of the investment performance of the Corporation in respect of its surplus funds and of the investment performance of the appropriate Treasury Corporation investment facilities.
- (2) The appropriate Treasury Corporation investment facility is (in respect of any particular surplus funds) the one chosen by the Corporation from among the investment facilities made available under the description “Hour-Glass Investment Facilities” by the Treasury Corporation to public authorities for investment of their surplus funds.
- (3) The Corporation’s choice of investment facility is to be made on the basis of the nature and term of the underlying liability to which the particular surplus funds relate, as determined in accordance with guidelines issued by the Treasurer.
- (4) The Corporation is to notify the Treasurer of its choice of investment facilities for the purposes of the comparison, giving reasons for its choice, within 1 month after the beginning of the financial year to which the report relates.
- (5) The Treasurer can disallow the Corporation’s choice of investment facility and substitute the Treasurer’s own choice (advising the Corporation accordingly), in which case the comparison is to be based on the Treasurer’s choice of investment facility.
- (6) The following provisions apply to a comparison required by this clause:
  - (a) investment performance is to be stated as an annual compound percentage rate of return,
  - (b) the investment performance of an investment facility made available by the

Treasury Corporation is as advised to statutory bodies by the Treasurer from time to time,

- (c) the comparison is to relate to investment performance during the financial year to which the report relates.
- (7) For the purposes of the comparison, the following matters are to be as determined in accordance with guidelines issued to statutory bodies by the Treasurer from time to time:
- (a) which cash assets of the Corporation are to be considered to be its surplus funds,
  - (b) the method of calculating investment return, including the method of calculating an annual return from an actual period of investment of less than a year,
  - (c) the method of calculating and comparing investment return where there is a difference between the period of actual investment of funds and the period over which the return of the relevant Treasury Corporation investment facility is measured.

## **5 Comparison of liability management performance**

- (1) The annual report of the operations of the Corporation is to include, in the form of a comparison, details of the performance of the Corporation's liability portfolio and the performance of the Corporation's benchmark portfolio.
- (2) The Corporation's benchmark portfolio is a notional portfolio maintained by the Corporation and constructed in accordance with guidelines issued by the Treasurer so as to be risk neutral.
- (3) The comparison required by this clause:
  - (a) is to be in terms of the measure or measures advised in guidelines issued by the Treasurer, and
  - (b) is to relate to liability portfolio performance during the financial year to which the report relates.

## **Schedules 6-8 (Repealed)**

## **Schedule 9 Savings, transitional and other provisions**

(Section 111)

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent

on the enactment of the following Acts:

This Act

*Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998*

including provisions for or with respect to the following:

- (a) the interpretation of references to the Water Board or to the *Water Board Act 1987*,
  - (b) the interpretation of references to Sydney Water Corporation Limited or any of its subsidiaries.
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.
  - (3) To the extent to which any such savings or transitional 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, the Corporation, the Water Board or any 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, the Corporation, the Water Board or any 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 enactment of this Act**

### **2 Continuation of certain regulations**

- (1) The following are excluded from repeal under section 107:
  - (a) Part 1, clauses 11 and 12 of Part 2, and Part 4, of the *Water Board (Finance) Regulation 1988*,
  - (b) Parts 1 and 2, and clause 24, of the *Water Board (Plumbing and Drainage) Regulation 1989*,
  - (c) the *Water Board (Special Areas) Regulation 1989*,
  - (d) the *Water Board (Water Restrictions) Regulation 1994*.
- (2) The provisions and the Regulation referred to in subclause (1) (a), (b) and (d) as in force immediately before the commencement of this clause are taken to have been made under this Act.
- (3) The *Water Board (Special Areas) Regulation 1989* as in force immediately before the

commencement of this clause is taken to be made under:

- (a) section 85 so far as it relates to special areas, and
- (b) section 89 so far as it relates to controlled areas.

(4) In the provisions referred to in subclause (1) (a)-(d):

- (a) a reference to a provision of the *Water Board Act 1987* is to be read as a reference to the corresponding provision (if any) of this Act, and
- (b) a reference to the Managing Director of the Board includes a reference to the chief executive of the Corporation.

### **3 Further amendment or repeal of regulations amended by Schedule 8**

The amendments made by this Act to the regulations referred to in Schedule 8 do not affect the future amendment or repeal of those regulations.

### **4 Dissolution of Water Board**

- (1) The Water Board is dissolved.
- (2) The assets, rights and liabilities (if any) of the Water Board immediately before its dissolution are transferred to the Ministerial Holding Corporation.
- (3) Section 7 applies to that transfer in the same way as it applies to the transfer of the Water Board's business undertaking to the Corporation.

### **5 Members of Water Board to vacate office**

- (1) A person who, immediately before the dissolution of the Water Board, held office as a member of the Water Board:
  - (a) ceases to hold office as such, and
  - (b) except as provided by subclause (2), is not entitled to any remuneration or compensation because of the loss of that office.
- (2) Part 8 of the *Public Sector Management Act 1988* applies to a person who so ceases to hold office as a member of the Water Board, without immediately being appointed to the service of the Corporation or a subsidiary of the Corporation, in the same way as it applies to a person removed from office under that Part.

### **6 Corporation to be same legal entity as Water Board**

- (1) On the dissolution of the Water Board, the Corporation is taken for all purposes, including the rules of private international law, to be a continuation of and the same legal entity as the Water Board.



- (2) This clause does not affect any transfer of assets, rights and liabilities under clause 4 of this Schedule or Part 3 of this Act.

## **7, 8 (Repealed)**

## **9 Survival of unpaid amounts and amounts charged on land at transfer of business undertaking**

- (1) Any amount that was due but unpaid to the Water Board immediately before the transfer of the business undertaking, including any amount that was charged on the land to which the amount relates immediately before that transfer, survives and is included in the transfer of the business undertaking to the Corporation.
- (2) Subject to clause 10, any amount that was due but unpaid to the Water Board immediately before the transfer of the business undertaking, and was charged on the land to which the amount relates immediately before that transfer, remains a charge on the land until the amount is paid.

## **10 Certain amounts levied by Water Board not charged on land**

- (1) No service charges or fees levied by the Water Board in relation to water supply or sewerage services after the end of the last charging period before the transfer of the business undertaking are a charge on the land to which the service charges or fees relate.
- (2) In this clause, **charging period**, in relation to the Water Board means a period declared by an order in force under section 28 (2) of the [Water Board Act 1987](#) (as in force immediately before the commencement of section 107 of this Act) to be a charging period for the Board.

## **11 Pending applications for compliance certificates**

- (1) An application for a compliance certificate under the [Water Board Act 1987](#) and pending at the commencement of this clause is taken to be an application for a compliance certificate under this Act.
- (2) Any agreement in force or notice operative under Division 2 of Part 3 of the [Water Board Act 1987](#) at the commencement of this clause continues to be in force and operative after that commencement, and for that purpose the relevant provisions of that Act are taken to continue in force in relation to such an agreement or notice (and not otherwise).
- (3) The provisions of this clause are subject to the provisions of regulations made under clause 1.

## **12 Guarantees**

Nothing in this Act affects any guarantee given by or in relation to the Water Board before

the commencement of this clause and any such guarantee is, after the commencement of this clause, taken to be a guarantee for the payment by the Corporation of the amounts specified or described in the guarantee.

### **13 Environmental planning instruments: reservation of land**

A reference in an environmental planning instrument as in force at the commencement of this clause to the Water Board, in the context of the reservation of land and its acquisition by the Water Board, is to be read as a reference to the Corporation. For this purpose, the Corporation is taken to be a public authority referred to in section 27 of the *Environmental Planning and Assessment Act 1979*.

### **14 (Repealed)**

### **15 Environmental impact statements and other planning matters**

(1) If, before the commencement of this clause:

- (a) the Director of Planning has notified the Water Board of requirements as to the form and content of a proposed environmental impact statement or any other matter to be attended to by or on behalf of the Water Board in accordance with Part 5 of the *Environmental Planning and Assessment Act 1979*, or
- (b) the Water Board or a person on its behalf has commenced the preparation of an environmental impact statement under that Part, or
- (c) an environmental impact statement has been prepared by or on behalf of the Water Board under that Part,

that Part applies in relation to the activity concerned as if the Water Board had continued in existence and the Corporation were the Water Board.

(2) Part 4 of the *Environmental Planning and Assessment Act 1979* does not apply so as to require development consent in relation to an activity referred to in this clause.

### **16 (Repealed)**

### **17 Permits**

Without limiting clause 2 of this Schedule, a permit issued under Part 2 of the *Water Board (Plumbing and Drainage) Regulation 1989* before the commencement of this clause is taken to have been issued under the authority of a regulation made under this Act.

### **18 Existing interests in special areas**

Nothing in section 82 affects the rights of a person who has entered into an arrangement with the Water Board before the commencement of that section relating to the alienation, mortgage, charging or demise of land in a special area and, in particular, the entitlement of such a person to require due performance or completion (or both) of such an

arrangement.

## **Part 3 Provisions consequent on enactment of [Water Legislation Amendment \(Drinking Water and Corporate Structure\) Act 1998](#)**

### **19 Definitions**

In this Part:

**amending Act** means the [Water Legislation Amendment \(Drinking Water and Corporate Structure\) Act 1998](#).

**appointed day** means the day on which the name of the Corporation is inserted in Schedule 5 to the [State Owned Corporations Act 1989](#) by the operation of section 4 of this Act (as substituted by the amending Act).

**Company** means Sydney Water Corporation Limited.

### **20 Role of Company**

- (1) On and from the appointed day, the Company ceases to have any functions that are the subject of any operating licence.
- (2) Subject to any direction under clause 29, the Company, its directors and officers are responsible for complying with any reporting requirements and similar matters in respect of any period before the appointed day under the [Corporations Law](#) or any other law.

### **21 Transfer of assets, rights and liabilities of Company**

- (1) Part 3 of this Act, as amended by the amending Act, authorises the making of orders for the transfer of the assets, rights and liabilities of the Company and associated matters.
- (2) Without affecting the generality of subclause (1), that subclause extends to any shares held by or on behalf of the Company immediately before the appointed day.

### **22 Shares in Company or subsidiaries**

The constitution of the Company or any of its subsidiaries may provide for the transfer of any shares in the Company or such a subsidiary to the Ministerial Holding Corporation or any other person.

### **23 Board of directors of Company**

- (1) The person holding office as chairman of the board of the Company immediately before the commencement of this clause is taken to have been appointed as Chairperson of the board of the Corporation.

- (2) The persons holding office as directors of the board of the Company immediately before the commencement of this clause as selected by the voting shareholders for their relevant expertise are taken to have been appointed as directors under section 5A (1) (b).
- (3) The person holding office as a director of the board of the Company immediately before the commencement of this clause as selected by a selection committee is taken to have been appointed as a director under section 5A (1) (b).

#### **24 Managing Director of Company**

A reference in any Act, in any instrument made under any Act or any document of any kind to the Managing Director of the Company or of the board of the Company is, subject to regulations under clause 1, to be read as, or as including, a reference to the Chief Executive Officer of the Corporation.

#### **25 Staff of Company**

On the appointed day, the staff of the Company becomes the staff of the Corporation.

#### **26 Dissolution of Company**

- (1) The Governor may, by order published in the Gazette, wind up, deregister, dissolve or otherwise deal with the Company or make provision for or with respect to such winding up, deregistration, dissolution or other dealing.
- (2) The order may contain such ancillary, consequential, savings, transitional and other provisions as are relevant to those matters.
- (3) An order under this clause takes effect on the date of its publication in the Gazette or a later date specified in the order.
- (4) Nothing in this clause prevents the winding up, deregistration or dissolution of the Company, or other dealing with the Company, under any other law.

#### **27 Corporation to be same legal entity as Company**

- (1) On the appointed day, the Corporation is taken, for all purposes, including the rules of private international law, to be a continuation of and the same legal entity as the Company.
- (2) Subclause (1) has effect whether or not the Company is dissolved.

#### **28 Amendment of constitution of Company and subsidiaries**

Despite anything in this Act or the constitution of the Company or any of its subsidiaries, that constitution may be altered or added to in any way that is not inconsistent with this Act as amended by the amending Act.

## 29 Directions

- (1) The Minister may, by order in writing, give such directions as the Minister considers appropriate, for or with respect to the manner in which any reporting requirements and similar matters under the *Corporations Law* or any other law are to be dealt with in respect of any period before, including or immediately after the appointed day.
- (2) Without limiting the generality of subclause (1), such an order may require the Company or its board of directors or officers to deal with matters relating to any period commencing on or after as well as before the appointed day or may require the Corporation or its board of directors or officers to deal with matters relating to any period commencing before as well as on or after the appointed day.

## 30 Operating licence

An operating licence granted to the Company and in force immediately before the appointed day is taken to have been granted to the Corporation.

## Schedule 10 List of substances

(Section 23 (9))

Aluminium

Ammonia (insofar as it is a toxicant)

Arsenic

Barium

Benzidene

Boron

Cadmium

Chloride

Chromium

Cobalt

Copper

Cyanide

Dichlorobenzidine

Diphenylhydrazine

Halogenated aliphatic compounds, including chlorinated alkanes and alkenes

Iron

Lead

Manganese

Mercury

Molybdenum

Monocyclic aromatic compounds, including chlorinated benzenes, chlorinated phenols and phenolic compounds

Nickel

Nitrate and nitrite (insofar as they are toxicants)

Pesticides, including organochlorines and organophosphates

Polyaromatic hydrocarbons, including chlorinated naphthylenes, polychlorinated biphenyls (PCBs) and polycyclic aromatic hydrocarbons (PAHs)

Selenium

Silver

Sulphate

Surfactants

Tin

Trihalomethanes

Total residual chlorine, including available chloramines

Zinc