

# State Water Corporation Act 2004 No 40

[2004-40]



New South Wales

## Status Information

### Currency of version

Historical version for 26 February 2010 to 30 June 2010 (accessed 23 November 2024 at 4:59)

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
*Industrial Relations Amendment (Public Sector Appeals) Act 2010 No 54* (not commenced — to commence on 1.7.2010)

### Authorisation

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File last modified 28 June 2010

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# State Water Corporation Act 2004 No 40



New South Wales

An Act to establish State Water Corporation as a statutory State owned corporation to exercise functions relating to the capture, storage and release of water and other functions; to make consequential amendments to other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *State Water Corporation Act 2004*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**area of operations** of the Corporation means the area of operations of the Corporation within the meaning of section 15.

**authorised officer** means a person to whom a certificate of authority is issued under section 32.

**board** means the board of directors of the Corporation.

**Corporation** means State Water Corporation.

**Department** means the Department of Energy, Utilities and Sustainability.

**estuary** has the same meaning as in the *Water Management Act 2000*.

**exercise** a function includes perform a duty.

**Fish River water supply scheme** means the water management work comprising the concrete dam on Fish River at Oberon and Duckmaloi Weir, together with:

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

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

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

**lake** has the same meaning as in the [Water Management Act 2000](#).

**metering equipment** includes any device used for or in connection with measuring the flow of water and any ancillary wiring, pipework, telemetry equipment or apparatus and any supporting structure.

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

**operating licence** means the operating licence granted under section 11 or any renewal of it.

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

**river** has the same meaning as in the [Water Management Act 2000](#).

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

**water management work, water source** and **water supply authority** have the same meaning as in the [Water Management Act 2000](#).

- (2) Subject to subsection (1), words and expressions used in this Act have the same meanings as they have in the [State Owned Corporations Act 1989](#).
- (3) Notes included in this Act do not form part of this Act.

## **Part 2 State Water Corporation**

### **Division 1 Constitution of State Water Corporation as statutory SOC**

#### **4 Establishment of State Water Corporation as statutory State owned corporation**

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

**Note—**

The [State Owned Corporations Act 1989](#) contains many provisions that apply to State Water Corporation as

a statutory State owned corporation. In particular, Part 3 contains provisions relating to their status, the application of the *Corporations Act 2001* of the Commonwealth, the issue of shares to the Treasurer and another Minister, the board of directors, the chief executive officer, the employment of staff, the giving of directions by the portfolio Minister (including directions as to the performance of non-commercial activities or the carrying out of public sector policies), the constitution, tax-equivalent payments, government guarantees, the sale or disposal of assets and legal capacity. Part 4 deals with the accountability of State owned corporations (including requirements for statements of corporate intent, annual reports and accounts). Part 5 deals with miscellaneous matters (including the duties and liabilities of directors and the application of public sector legislation).

## **Division 2 Objectives and functions of State Water Corporation**

### **5 Objectives of Corporation**

- (1) The principal objectives of the Corporation are to capture, store and release water in an efficient, effective, safe and financially responsible manner.
- (2) The other objectives of the Corporation are as follows:
  - (a) to be a successful business and, to that end:
    - (i) to operate at least as efficiently as any comparable business, and
    - (ii) to maximise the net worth of the State's investment in the Corporation,
  - (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
  - (c) where its activities affect the environment, to conduct 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*,
  - (d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (3) The other objectives of the Corporation are of equal importance, but are not as important as the principal objectives of the Corporation.
- (4) Section 20E of the *State Owned Corporations Act 1989* does not apply to the Corporation.

### **6 Functions of Corporation**

- (1) The principal functions of the Corporation are as follows:
  - (a) to capture and store water and to release water:
    - (i) to persons entitled to take the water, including release to regional towns, and
    - (ii) for the purposes of flood management, and
    - (iii) for any other lawful purpose, including the release of environmental water,

- (b) to construct, maintain and operate water management works,
  - (c) any other functions conferred or imposed on it by the operating licence or by or under this or any other Act or law.
- (2) 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.
- (3) The exercise by the Corporation of any of its functions is subject to the operating licence and any applicable requirements under the *Water Management Act 2000* or the *Water Act 1912*.
- (4) This section does not limit the functions of the Corporation apart from this section, but is subject to the provisions of the *State Owned Corporations Act 1989*, this Act and any other Act or law.

## **Division 3 Management of State Water Corporation**

### **7 Board of directors of Corporation**

- (1) The board of directors of the Corporation is to consist of not fewer than 3 and not more than 8 directors appointed by the voting shareholders. The voting shareholders are to consult with the portfolio Minister on the persons recommended for appointment as directors.
- (2) The person for the time being holding office as chief executive officer of the Corporation is to be a director of the board.
- (3) Of the directors, one is to be a person who is selected from a panel of 3 persons nominated by Unions NSW by a selection committee consisting of 2 persons nominated by the voting shareholders and 2 persons nominated by Unions NSW.
- (4) The procedures for constituting the selection committee, for making nominations and for determining other matters relating to the selection process are to be determined by regulations under this Act or (subject to any such regulations) by the voting shareholders.
- (5) Schedule 8 to the *State Owned Corporations Act 1989* (clause 4 excepted) and section 20J (subsections (2)–(5) and (7) excepted) of that Act apply with respect to the board.
- (6) The persons appointed as directors are, between them, to have the necessary expertise, skills and knowledge that will enable the Corporation to meet its objectives.



## **8 Chief executive officer**

- (1) The chief executive officer of the Corporation is to be appointed by the board after consultation with the voting shareholders and the portfolio Minister.
- (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders and the portfolio Minister.
- (3) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine after consultation with the voting shareholders.
- (4) The board may, after consultation with the voting shareholders and the portfolio Minister, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.
- (5) The *Public Sector Employment and Management Act 2002* (Chapter 5 included) does not apply to the chief executive officer.
- (6) Clauses 1 and 4 of Schedule 9 to the *State Owned Corporations Act 1989* have effect with respect to the chief executive officer.
- (7) The provisions of section 20K (2) and (4) of the *State Owned Corporations Act 1989* do not apply to the chief executive officer.
- (8) The provisions of this section are in addition to and (except to the extent to which this section provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

## **9 Acting chief executive officer**

- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer of the Corporation.
- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.
- (3) A person, while acting in the office of chief executive officer:
  - (a) has all the functions of the chief executive officer and is taken to be the chief executive officer, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) For the purposes of this section, a vacancy in the office of a chief executive officer is regarded as an absence from office of the chief executive officer.

- (5) The board is not to appoint a person to act in the office of chief executive officer during any vacancy in that office without the concurrence of the voting shareholders and the portfolio Minister.
- (6) The provisions of this section are in addition to and (except to the extent to which this section provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

## **Division 4 Transfer of assets, rights and liabilities**

### **10 Transfer of specified assets, rights and liabilities**

- (1) The Minister may, with the concurrence of the voting shareholders, by order in writing, transfer to the Corporation such of the assets, rights and liabilities of the Ministerial Corporation, the State or a public or local authority as are specified or referred to in the order.
- (2) The Minister may, with the concurrence of the voting shareholders, by order in writing, transfer to the Ministerial Corporation or to any other person or body on behalf of the State such of the assets, rights and liabilities of the Corporation, as are specified or referred to in the order.
- (3) The Minister is not to make an order under subsection (1) or (2) unless the relevant person or body from whom, or to whom, the assets, rights or liabilities are to be transferred has consented to the transfer.
- (4) The fee simple in land that comprises the bed of any river, lake or estuary is not to be transferred to the Corporation under this section unless the Minister administering the *Crown Lands Act 1989* has been consulted in relation to the transfer.
- (5) Subsection (4) does not prevent the transfer to the Corporation of the ownership of any works installed in or on the bed of any river, lake or estuary.
- (6) An order under this section may be made on such terms and conditions as are specified or referred to in the order.
- (7) Schedule 1 applies to any transfer of assets, rights or liabilities under this section.
- (8) Section 20C of the *State Owned Corporations Act 1989* does not apply to the transfer of assets, rights or liabilities to the Corporation.

## **Division 5 Operating licence**

### **11 Grant of operating licence**

- (1) The Governor, on the recommendation of the portfolio Minister, may grant an operating licence to the Corporation to enable the Corporation, in accordance with this Act, to carry out its functions.

- (2) Except to the extent to which this Act expressly provides, nothing in the operating licence limits the requirements imposed by or under any other Act or law with respect to the functions referred to in subsection (1).

**Editorial note—**

For the granting of an operating licence under this section, see Gazette No 81 of 1.7.2005, p 3503.

For the amendment of the operating licence, see Gazette No 183 of 15.12.2006, p 11058.

For the renewal of the operating licence, see Gazette No 72 of 20.6.2008, p 5589.

**12 Terms and conditions of operating licence**

- (1) The operating licence is subject to the terms and conditions determined by the Governor, on the recommendation of the portfolio Minister, but 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 to capture, store and release water, and
  - (b) to ensure that the systems and services meet the performance standards specified in the operating licence in relation to water delivery and any other applicable requirements set out in the operating licence.
- (2) The terms and conditions of the operating licence are to make provision for the preparation of operational audits by the Tribunal.
- (3) The terms and conditions of the operating licence may confer on the Corporation any specified functions of:
- (a) the Minister administering the [Water Management Act 2000](#) under that Act or the [Water Act 1912](#), or
  - (b) the Ministerial Corporation under any Act or law.
- (4) A function is not to be conferred under subsection (3) unless the Minister administering the [Water Management Act 2000](#) or the Premier provides his or her concurrence to the conferral of the function.
- (5) A function of the Minister referred to in subsection (3) (a) or of the Ministerial Corporation conferred on the Corporation under subsection (3) may also be exercised by the Minister or the Ministerial Corporation (as the case requires) despite that conferral. However, a function may be conferred exclusively on the Corporation if the Minister administering the [Water Management Act 2000](#) or the Premier provides his or her concurrence to the exclusive conferral of the function.
- (6) The conferral of functions under subsection (3) has effect according to its tenor.

### **13 Amendment of operating licence**

- (1) The Governor, on the recommendation of the portfolio Minister, may amend or substitute the operating licence or impose, amend or revoke conditions of the operating licence.
- (2) The portfolio Minister is to consult with the Corporation before making a recommendation to the Governor under subsection (1).

**Editorial note—**

See section 11 for amendments to the operating licence.

### **14 Term of operating licence**

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

**Editorial note—**

See section 11 for renewals of the operating licence.

### **15 Area covered by operating licence**

- (1) The area of operations of the Corporation is the whole of the State, other than the following areas:
  - (a) the area of operations of Sydney Water Corporation within the meaning of the [Sydney Water Act 1994](#),
  - (b) the area of operations of Sydney Catchment Authority within the meaning of the [Sydney Water Catchment Management Act 1998](#),
  - (c) the area of operations of Hunter Water Corporation within the meaning of the [Hunter Water Act 1991](#),
  - (d) the area of operations of a water supply authority.
- (2) Despite subsection (1) (b) and (d), the area of operations of the Corporation includes the area of operations of the Corporation in its capacity as a water supply authority in relation to the Fish River water supply scheme.
- (3) Despite subsection (1), the operating licence may authorise the Corporation to carry out any of its functions:
  - (a) outside the State, or

- (b) in any of the areas referred to in subsection (1) (a)–(d) with the agreement of Sydney Water Corporation, Sydney Catchment Authority, Hunter Water Corporation or the water supply authority, respectively (the **relevant body**).
- (4) If, under subsection (3) (b), the Corporation is to carry out its functions in more than one of the areas referred to in subsection (1) (a)–(d), the Corporation is to obtain the agreement of each relevant body in relation to the exercise of those functions.
- (5) Nothing in this Act affects the area of operations of Sydney Water Corporation, Sydney Catchment Authority or Hunter Water Corporation.
- (6) In this section, a reference to the **area of operations** of a water supply authority means the area of operations prescribed for that water supply authority by regulations made under section 289 (1) of the [Water Management Act 2000](#).

## **16 Contravention of operating licence**

- (1) If, in the opinion of the portfolio Minister, the Corporation contravenes the operating licence, the portfolio 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 portfolio Minister, the Corporation contravenes the 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 the Corporation is to pay a monetary penalty of 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 this section be taken if the contravention continues or a fresh contravention occurs.
- (4) The operating licence may make provision for advice to be furnished to the portfolio Minister in connection with the exercise of the portfolio 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 State.

## **17 Contravention of operating licence: action by Tribunal**

- (1) The Tribunal may impose a monetary penalty on the Corporation if the Corporation contravenes the operating licence.
- (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 the 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 concerned 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 whether 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 16 in respect of the contravention.
- (11) Nothing in this section affects any powers under section 16 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 State.

### **18 Review of certain decisions of Tribunal concerning operating licence**

- (1) The Corporation, if aggrieved by a decision of the Tribunal to take action under section 17 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.

### **19 Cancellation of operating licence**

- (1) The operating licence may be cancelled by the Governor, but only if:
  - (a) the Corporation ceases, otherwise than as authorised by the operating licence, to carry out its functions in accordance with the operating licence in the area of operations of the Corporation for any reason, or
  - (b) the Corporation:
    - (i) is, in the opinion of the portfolio Minister, in material default in complying 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 portfolio Minister in a notice to the Corporation, either rectified the default or shown cause, to the satisfaction of the portfolio Minister, why the operating licence should not be cancelled, or
  - (c) the Corporation has been convicted on more than 3 occasions within a period of 12 months of 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 16 (1) can be regarded also as a notice for the purposes of subsection (1) (b) (ii).
- (3) If the operating licence is cancelled under this section, the Governor may, by order published in the Gazette, transfer to the Ministerial Corporation, the State or a public or local authority (as specified in the order), from a 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 portfolio Minister, are necessary to enable the Ministerial Corporation, the State or the public or local authority to exercise such of the functions exercisable (or formerly exercisable) by the Corporation as appear to be necessary in the public interest.
- (4) An order under this section may provide for:
  - (a) the Ministerial Corporation, the State or a public or local authority to assume

those liabilities of the Corporation that the Governor considers appropriate and specifies in the order, or

(b) the Ministerial Corporation, the State or a public or local authority to pay the whole or any part of the liabilities of the Corporation.

(5) Schedule 1 applies to any transfer of assets, rights or liabilities under this section.

## Division 6 General

### 20 Foundation charter of Corporation

For the purposes of the *State Owned Corporations Act 1989*, the foundation charter of the Corporation is this Part (but not the remainder of this Act).

**Note—**

Section 3 of the *State Owned Corporations Act 1989* defines the foundation charter of a statutory State owned corporation (**SOC**) as the whole of any Act by which a SOC is established for the purposes of the *State Owned Corporations Act 1989* and, in particular, for the purpose of the provisions relating to the legal capacity of statutory SOCs and assumptions that they have complied with that Act and their foundation charter.

## Part 3 Powers of State Water Corporation

### 21 Ownership of works

- (1) The Corporation is the owner of all works installed by, vested in or transferred to the Corporation in or on any land (including the bed of any river, lake or estuary) whether or not the land is owned by the Corporation.
- (2) The Corporation may, subject to this and any other Act or law and for purposes consistent with its objectives:
  - (a) build and install works, and
  - (b) 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, and
  - (c) sell, demolish or otherwise deal with any of its works.
- (3) Part 3 and section 91 (b) and (c) of the *Public Works Act 1912* do not apply in respect of works owned by the Corporation.
- (4) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.
- (5) In this section, **works** includes metering equipment.



## 22 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) Other purposes for which land may be acquired under this section include the purposes of a future sale, lease or disposal, that is, to enable the Corporation to exercise its functions in relation to land under this Act.
- (3) 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*.
- (4) For the purposes of the *Public Works Act 1912*:
  - (a) an acquisition in accordance with this section is taken to be for an authorised work, and
  - (b) the Corporation is, in relation to that work, taken to be the Constructing Authority, and
  - (c) Part 3 and section 91 (b) and (c) of that Act do not apply in respect of that work.
- (5) The Corporation may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* for the purposes of this or any other Act, without the approval of the portfolio Minister.
- (6) Any such acquisition is not void merely because it is expressed to be for the purposes of the Corporation or for the purposes of this Act.

### 22A Metering equipment functions

- (1) **Conferral of functions** The Corporation may, if the operating licence so provides, operate, replace, repair, maintain, remove, connect, disconnect or modify metering equipment that the Corporation does not own.
- (2) The Corporation may from time to time test any metering equipment that it owns or any other metering equipment in respect of which it exercises functions under this section.
- (3) The regulations may provide that the Corporation is, or is not, to exercise any of its functions with respect to the operation, replacement, repair, maintenance, removal, connection, disconnection or modification of metering equipment under section 21 or this section to the exclusion of any other person and may limit the exercise of any of those functions to:
  - (a) specified water sources or classes of water sources, or
  - (b) a specified area, or

- (c) specified access licences or approvals or classes of access licences or approvals for specified areas, or
  - (d) specified works or classes of works.
- (4) **Operation of sections** The functions conferred by section 21 and this section in respect of metering equipment are in addition to any functions conferred on the Corporation under the *Water Management Act 2000* or the *Water Act 1912* in relation to water management works or other works.
- (5) The conferral of functions by section 21 and this section in respect of metering equipment, and any regulations under this section, have effect despite any other provision of the *Water Management Act 2000* or the *Water Act 1912*.
- (6) A direction under section 326 of the *Water Management Act 2000*, or a condition of an access licence or approval under that Act, ceases to have effect during any period that the exercise of a function is conferred exclusively on the Corporation by or under section 21 or this section, if the direction or condition requires the exercise of, or relates to the exercise of, that function.
- (7) Subsections (5) and (6) do not apply to a direction given to the Corporation or an access licence or approval held by the Corporation.
- (8) Subsection (6) does not affect the operation of, or enforcement of, a direction under section 326 or a condition of an access licence or approval in relation to any period before the direction or condition ceased to have effect.
- (9) In this section, a reference to an access licence or approval includes a reference to an entitlement (within the meaning of clause 2 of Schedule 10 to the *Water Management Act 2000*) that confers a corresponding authority.

### **23 Entry on land**

- (1) The Corporation has, for the purposes of exercising its functions under this or any other Act, the powers of entry on land that a water supply authority has under sections 296 and 297 of the *Water Management Act 2000*.
- (2) For the purposes of this section, the reference in section 297 (1) (d) of the *Water Management Act 2000* to an offence against that Act is taken to include a reference to an offence under this Act.

### **24 Power to break up roads**

- (1) The Corporation may, on giving reasonable notice to persons likely to be affected, open and break up:
- (a) the soil and pavement of a public road or public reserve, and

(b) any sewer, drain or tunnel in or under a public road or public reserve,  
for the purpose of exercising its functions under this or any other Act.

- (2) The statutory body having the control and management of a public road or public reserve may, as prescribed by the regulations, require the Corporation to comply with conditions in exercising its powers under subsection (1), including conditions for restoration of the surface and removal of rubbish.
- (3) If a public road or public reserve is damaged by a leakage from, or a bursting of, the Corporation's water main, the statutory body 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:
- (a) to comply with a condition in force under subsection (2), or
  - (b) to comply with a requirement under subsection (3),
- the statutory body affected by the failure may remedy it and recover the cost of doing so in a court of competent jurisdiction as a debt owed to the statutory body by the Corporation.

## **25 Altering position of conduits**

- (1) If:
- (a) the Corporation, in order to exercise its functions, needs an alteration to be made in the position of a conduit owned by another person, and
  - (b) the alteration would not permanently damage the conduit or adversely affect its operation,
- the Corporation may serve on the person a written notice that complies with subsection (2).
- (2) A notice must:
- (a) specify the alteration needed, and
  - (b) require the alteration to be made within a reasonable time stated in the notice, and
  - (c) include an undertaking by the 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 such a manner as not to damage the conduit permanently or adversely

affect its operation on completion of the alteration.

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

## **26 Corporation may use water management works to generate hydro-electricity**

The Corporation may authorise devices for generating electricity from water released in the exercise of the Corporation's functions under this Act to be placed on or in any of its water management works.

## **27 Obstruction of water management works**

- (1) If a person places a structure or other thing in or near any of the Corporation's water management works in such a manner as to interfere with the work, the Corporation may:
- (a) demolish and remove the structure or other thing, and
  - (b) repair the work, and
  - (c) recover the cost of doing so in a court of competent jurisdiction as a debt owing to the Corporation by the person who placed the structure or other thing there.
- (2) The Corporation may apply for and obtain an injunction to prevent a structure or other thing being placed as referred to in subsection (1).

## **28 Finding source of pollution of water supply**

- (1) If water captured, stored or released by the Corporation is being polluted, the Corporation may, after giving reasonable notice to persons likely to be affected by its action, dig up the ground and try to find the source of the pollution.
- (2) If it is found that a person given notice under this section is not responsible for the pollution, the Corporation must bear the expenses of:
- (a) the digging, examination, repair and reinstatement of the broken ground, and
  - (b) the repair of any damage caused by the Corporation to the property of the person.
- (3) The Corporation may recover the expenses incurred by it in a court of competent jurisdiction as a debt due to the Corporation by any person responsible for the pollution.

## **29 Corporation may impose fees and charges**

- (1) The Corporation may impose fees and charges on any person to whom the Corporation provides a service in the exercise of its functions, including any person to

whom the Corporation makes water available.

- (2) The Corporation may impose different fees and charges according to specified factors or circumstances.
- (3) Any fee or charge imposed under this section is taken to be a debt due to the Corporation and is recoverable in a court of competent jurisdiction.
- (4) A fee or charge levied under this Act on the holder of an access licence (within the meaning of the [Water Management Act 2000](#)) and any costs awarded to the Corporation by a court in proceedings to recover the fee or charge are a charge on the access licence and may be registered in accordance with the [Water Management Act 2000](#).

## **Part 4 Independent Pricing and Regulatory Tribunal**

### **30 Regulatory functions of Tribunal**

- (1) The regulatory functions of the Tribunal under this Act are as follows:
  - (a) the function of making recommendations under subsection (2),
  - (b) the function of monitoring and reporting under subsection (3),
  - (c) the auditing functions of the Tribunal under subsection (4),
  - (d) the function of determining the operating licence fee (if any),
  - (e) the function of imposing monetary penalties or requiring other action to be taken under section 17,
  - (f) 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 portfolio 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, and
  - (c) action to be taken, and sanctions to be applied, in respect of a contravention of the operating licence, and
  - (d) remedial action that may be warranted as a result of a contravention of the operating licence.
- (3) The Tribunal has the function of monitoring and reporting to the portfolio Minister on

compliance by the Corporation with the operating licence.

- (4) The Tribunal has such functions as may be conferred or imposed on it by the operating licence in connection with operational audits of the Corporation.

### **31 Operational and other audits**

- (1) The Tribunal is to prepare operational audits of the Corporation at the times directed by the portfolio Minister.
- (2) The portfolio Minister may direct the Tribunal to prepare an operational audit of specified matters only.
- (3) The Tribunal is to ensure that each operational audit of the Corporation is prepared in accordance with the operating licence.

## **Part 5 Miscellaneous**

### **32 Authorised officers**

- (1) The Corporation may appoint authorised officers for the purposes of exercising its functions under this or any other Act.
- (2) On appointing an authorised officer under subsection (1), the Corporation must issue to the officer a certificate of authority.
- (3) A certificate of authority must:
  - (a) state that it is issued under the [State Water Corporation Act 2004](#), and
  - (b) give the name of the person to whom it is issued, and
  - (c) state the date, if any, on which it expires, and
  - (d) describe the nature of the functions conferred and the source of the functions.
- (4) An authorised officer may exercise such of the Corporation's functions under this or any other Act as are described in the officer's certificate of authority.
- (5) A certificate of authority may appoint the authorised officer to be an authorised officer for the purposes of section 365 of the [Water Management Act 2000](#), but only in relation to penalty notice offences, within the meaning of that section, that occur in the area of operations of the Corporation.
- (6) If an authorised officer serves a penalty notice under section 365 of the [Water Management Act 2000](#), a reference to the Ministerial Corporation in section 365 (7) of that Act is taken to be a reference to the Corporation.

### **33 Obstruction of authorised officers**

A person must not obstruct or hinder an authorised officer in the exercise of the authorised officer's functions.

Maximum penalty: 20 penalty units (in the case of an individual) and 50 penalty units (in any other case).

### **34 Exclusion of personal liability**

An act or omission of any of the following:

- (a) the Minister, the Corporation, or a director of the Corporation,
- (b) a member of staff of the Department or of the Corporation,
- (c) a person acting under the direction of a person referred to in paragraph (a) or (b),

does not subject a director, member of staff or person so acting personally to any action, liability, claim or demand if the act or omission was done, or omitted to be done, in good faith for the purpose of executing this or any other Act.

### **35 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

### **36 Transfer of staff**

Schedule 2 has effect.

### **37 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) The regulations may create offences punishable by a penalty not exceeding 50 penalty units (in the case of an individual) and 100 penalty units (in any other case).

### **38 (Repealed)**

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

Schedule 4 has effect.

### **40 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 Minister is to make arrangements for public comment on the Act and consider those comments as part of the review.
- (3) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Transfer of assets, rights and liabilities**

(Sections 10 (7) and 19 (5))

### **1 Application and interpretation**

- (1) This Schedule applies to any transfer of assets, rights or liabilities:
  - (a) by order under section 10 or 19, or
  - (b) under clause 9 of Schedule 4.
- (2) In this Schedule, the person or body from which any assets, rights or liabilities are transferred is called the **transferor** and the person or body to which they are transferred is called the **transferee**.

### **2 Vesting of undertaking in transferee**

- (1) When any assets, rights or liabilities are transferred by a transfer to which this Schedule applies, the following provisions have effect:
  - (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities of the transferor become by virtue of this Schedule the rights or liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to:



(i) the transferor, or

(ii) any predecessor of the transferor,

to the extent to which the reference relates to those assets, rights or liabilities, is taken to be, or include, a reference to the transferee.

(2) The operation of this Schedule 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, or

(d) as an event of default under any contract or other instrument.

(3) No attornment to the transferee by a lessee from the transferor is required.

(4) A transfer is subject to the terms and conditions of the order by which it is effected.

### **3 No compensation payable**

(1) No compensation is payable to any person or body in connection with a transfer to which this Schedule applies except to the extent (if any) to which the order giving rise to the transfer so provides.

(2) Despite subclause (1), if the transferor or transferee is a local authority, compensation may be paid in relation to any asset or right the subject of the transfer.

(3) Despite clause 6, the amount of any compensation payable under subclause (2) in relation to any such asset or right is to be determined by the Valuer-General.

### **4 Transfer of interests in land**

(1) An order under section 10 or 19 may transfer an interest in respect of land vested in the transferor without transferring the whole of the interests of the transferor in that land.

(2) If the interest transferred is not a separate interest, the order operates to create the interest transferred in such terms as are specified in the order.

(3) This clause does not limit any other provision of this Act.

### **5 Date of vesting**

(1) An order under section 10 or 19 takes effect on the date specified in the order.

- (2) A transfer under clause 9 of Schedule 4 takes effect on the commencement of Schedule 3.21 [1].

## 6 Consideration for vesting

The Minister may, by order in writing, specify the consideration on which a transfer to which this Schedule applies is made and the value or values at which the assets, rights or liabilities are transferred.

## 7 State taxes not chargeable

- (1) State tax is not chargeable in respect of:

- (a) a transfer to which this Schedule applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

- (2) In this clause:

**State tax** includes application or registration fees or any other tax, rate, levy, duty, fee or charge imposed by any Act or other law of the State.

## 8 Confirmation of vesting

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that transfer.

## Schedule 2 Transfer of staff

(Section 36)

### 1 Definitions

In this Schedule:

**relevant agency** means the Department of Infrastructure, Planning and Natural Resources, the Department of Commerce, the Department of Energy, Utilities and Sustainability or the Ministerial Corporation.

### 2 Transfer of staff to Corporation

- (1) The Minister may, by order in writing, transfer to the Corporation such of the staff of a relevant agency as are specified or referred to in the order.
- (2) The members of staff of a relevant agency who are transferred to the Corporation by such an order are to be regarded for all purposes as having become employees of the Corporation, in accordance with the terms of the order, on a day specified in the order as being the day on which the transfer takes effect.

- (3) The Minister is to consult with the Minister for Natural Resources before making an order transferring staff of the Department of Infrastructure, Planning and Natural Resources or the Ministerial Corporation.
- (4) The Minister is to consult with the Minister for Commerce before making an order transferring staff of the Department of Commerce.

### **3 General saving of conditions of employment**

- (1) A person who is transferred under this Schedule is (until other provision is duly made under any Act or law) to be continued to be employed in accordance with any awards, agreements and determinations that would have applied to the person if the person had not been transferred but had instead remained as a member of the staff of the relevant agency from which they were transferred.
- (2) However, nothing in this clause affects the application of section 36 (1) of the *State Owned Corporations Act 1989* to the Corporation. Accordingly, the *Government and Related Employees Appeal Tribunal Act 1980* does not apply to the Corporation or any subsidiary of the Corporation.

### **4 Saving of leave**

A person who is transferred under this Schedule retains any rights to annual leave, extended service leave, sick leave, and other forms of leave, accrued or accruing in his or her employment with the relevant agency from which the person was transferred.

### **5 No payment out on transfer or dual benefits**

- (1) A person who is transferred under this Schedule is not entitled to receive any payment or other benefit merely because the person ceases to be a member of staff of the relevant agency from which the person was transferred.
- (2) A person who is transferred under this Schedule is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

## **Schedule 3 (Repealed)**

## **Schedule 4 Savings, transitional and other provisions**

(Section 39)

### **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 Management Amendment Act 2009*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Previous acts, matters or things**

- (1) Any act, matter or thing done before the commencement of this clause:
  - (a) by the Ministerial Corporation, the Department of Infrastructure, Planning and Natural Resources or the Department of Energy, Utilities and Sustainability in respect of the capture, storage or release of water or any other function of the Corporation in the area of operations of the Corporation, or
  - (b) by the Minister administering the Fish River water supply scheme in respect of the supply of water from that scheme,or any associated functions, continues to have effect after that commencement as if the act, matter or thing were done by the Corporation.
- (2) The Corporation may vary or revoke (if otherwise permitted under this Act or the regulations or any other applicable Act or law) any act, matter or thing continued under this clause.

### **3 Prices for bulk water**

- (1) In this clause:

**IPART determination** means determination No 3, 2001 made by the Tribunal and published in Gazette No 30 of 25 January 2002 at pages 563-577.
- (2) For the purposes of the *Independent Pricing and Regulatory Tribunal Act 1992*, the IPART determination continues to apply to water released by the Corporation until a replacement determination is issued.

- (3) Despite subclause (2), the prices in the IPART determination that applied to water supplied immediately before 30 June 2004 are to be increased by 2% in relation to water supplied on or after 1 July 2004.
- (4) Nothing in this clause prevents the IPART determination being replaced, or a further determination being issued for the Corporation.

#### **4 Prices for water from Fish River water supply scheme**

- (1) In this clause:

**order of the Minister** means the order of the Minister under section 243 (3) of the [Water Management Act 2000](#) that had effect immediately before the repeal of section 243 of that Act by Schedule 3.21 [1].

- (2) The order of the Minister continues to apply to water supplied from the Fish River water supply scheme until a determination under section 315 of the [Water Management Act 2000](#) in respect of that scheme takes effect.

#### **5 Timetable for first statement of corporate intent**

A period within which any matter is required to be done under this Act or the [State Owned Corporations Act 1989](#) in relation to a statement of corporate intent, in connection with the first statement of corporate intent of the Corporation, may be extended by the voting shareholders of the Corporation.

#### **6 Existing development applications and other matters**

- (1) This clause applies to development or an activity relating to:
  - (a) water management works or other infrastructure or assets transferred to the Corporation from the Ministerial Corporation, the State or a public or local authority under this Act, or
  - (b) a function conferred on the Corporation under this Act that was, immediately before its conferral, conferred on the Ministerial Corporation, the State or a public or local authority.
- (2) A development application or environmental impact statement relating to a matter referred to in subclause (1) made or prepared by the Ministerial Corporation, the State or a public or local authority under the [Environmental Planning and Assessment Act 1979](#) before its conferral, and not finally determined (in the case of a development application) or considered (in the case of an environmental impact statement) before that commencement, is taken to have been made or prepared by the Corporation.

#### **7 Licences and other authorisations**

- (1) This clause applies to an authorisation granted to the Ministerial Corporation, the State or a public or local authority under any of the following Acts or under a

regulation under any of those Acts, and in force immediately before the commencement of this clause:

- (a) *Dangerous Goods Act 1975*,
- (b) *Environmental Planning and Assessment Act 1979*,
- (c) *Occupational Health and Safety Act 2000*,
- (d) *Protection of the Environment Operations Act 1997*,
- (e) *Water Act 1912*,
- (f) *Water Management Act 2000*,
- (g) any other Act prescribed by the regulations.

- (2) An authorisation is, to the extent that it relates to transferred functions or assets, taken to be held by the Corporation on the same terms and conditions as the Ministerial Corporation, the State or the public or local authority held the authorisation immediately before the commencement of this clause.
- (3) The regulations may exempt an authorisation from the operation of this clause.
- (4) Nothing in this clause prevents an authorisation from being varied, cancelled or replaced.
- (5) In this clause:

**authorisation** includes a licence, permit or approval.

**transferred functions or assets** means functions conferred on, or assets, rights or liabilities vested in, the Corporation by or under this Act, that were, immediately before the conferral or vesting, conferred on, or vested in, the Ministerial Corporation, the State or a public or local authority.

## 8 Deemed licences and approvals

- (1) For the purposes of Part 9 of the *Water Act 1912*, the Corporation is taken, at the time of transfer, to have been granted a water management licence under section 188 of that Act, for each water management work transferred to the Corporation by or under this Act (a **deemed water management licence**).
- (2) A deemed water management licence (other than a deemed water management licence for the Fish River water supply scheme) does not authorise the Corporation to take and use water from any water source.
- (3) The Ministerial Corporation is not required to comply with section 189 (3) of the *Water Act 1912* in relation to any condition that it imposes on a deemed water management

licence within 6 months after the date that the licence is taken to have been granted.

- (4) If water management works are transferred to the Corporation by or under this Act, the Corporation is taken on the date of the transfer to have been granted all relevant approvals under Part 3 of Chapter 3 of the *Water Management Act 2000* required to allow the Corporation to use those works in accordance with the Corporation's functions (a **deemed approval**).
- (5) A deemed approval is subject to the provisions of the *Water Management Act 2000* as if the approval had been granted under Division 2 of Part 3 of Chapter 3 of that Act at the time of the transfer of the relevant water management works, and accordingly it may be subjected to conditions, suspended or cancelled in accordance with that Act.
- (6) The Minister administering the *Water Management Act 2000* is not required to comply with section 102 (1) of that Act in relation to any discretionary condition imposed on a deemed approval within 6 months after the date that the approval is taken to have been granted.
- (7) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of a deemed water management licence or a deemed approval.
- (8) The Corporation is taken to hold any other licence or approval necessary under the *Water Management Act 2000* or the *Water Act 1912* to allow it to take and use water in the exercise of its functions.
- (9) Any licence or approval under subclause (8) is taken to have effect for a period of 12 months commencing on the date of commencement of this clause or for such longer period as may be prescribed by the regulations.

## **9 Fish River water supply scheme assets**

- (1) All assets, rights and liabilities of the Ministerial Corporation, the State or a public or local authority comprising the Fish River water supply scheme are transferred to the Corporation on the commencement of Schedule 3.21 [1].
- (2) Any money in, or required to be paid into, the Fish River Water Supply Account immediately before the commencement of Schedule 3.21 [1], less any amount required, at that time, to be repaid to the Treasurer under section 251 (2) of the *Water Management Act 2000*, is to be paid to the Corporation.
- (3) Any amount owing to the Minister immediately before the commencement of Schedule 3.21 [1] in relation to the supply of water from the Fish River water supply scheme, is to be paid to the Corporation and may be recovered by the Corporation as a debt in a court of competent jurisdiction.
- (4) On and after the commencement of Schedule 3.21 [1], the Corporation is entitled to the benefit and subject to the burden of, and taken to be a party to, any contract or

arrangement in relation to the Fish River water supply scheme entered into by the Minister (or by a person on behalf of the Minister) with any person and having force immediately before the commencement of Schedule 3.21 [1].

(5) Schedule 1 applies to any transfer of assets, rights or liabilities under this clause.

(6) In this clause:

**Fish River Water Supply Account** has the same meaning as in Division 4 of Part 1 of Chapter 5 of the *Water Management Act 2000*, before the repeal of that Division by Schedule 3.21 [1].

**Minister** means the Minister administering the Fish River water supply scheme immediately before the commencement of Schedule 3.21 [1].

## 10 Transferred easements

For the purposes of any easement, the benefit of which is transferred to the Corporation by or under this Act, the Corporation is taken to be a body representing the Crown.

## 11 Existing hydro-electric works

Any device for generating electricity from water released in accordance with this Act, that was on or in any water management work immediately before that work was transferred to the Corporation by or under this Act, is taken to have been authorised under section 26.

## 12 Interim operating licence

(1) Despite any other provision of this Act, the Governor may, on the recommendation of the portfolio Minister, grant an interim operating licence to the Corporation.

(2) The interim operating licence is subject to the terms and conditions determined by the Governor.

(3) Subject to subclause (4), the interim operating licence is taken to be an operating licence and the provisions of this Act apply accordingly.

(4) Section 12 (1) and (2) and section 14 do not apply in relation to the interim operating licence.

(5) The interim operating licence ceases to have effect:

(a) on the granting of an operating licence under section 11, or

(b) 1 year after the date of assent to this Act,

whichever occurs first.