

# Hunter Water Act 1991 No 53

[1991-53]



New South Wales

## Status Information

### Currency of version

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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**  
Hunter Water Board (Corporatisation) Act 1991
- **Does not include amendments by**  
[Public Health Act 2010 No 127](#) (not commenced — to commence on 1.9.2012)  
[Plumbing and Drainage Act 2011 No 59](#) (not commenced)

### Authorisation

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# Hunter Water Act 1991 No 53



New South Wales

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# Hunter Water Act 1991 No 53



New South Wales

An Act to establish a State owned corporation in relation to the supply of water, the provision of sewerage and drainage services and the disposal of waste water in the Hunter region and certain other matters; to provide for the transfer of assets, rights and liabilities of the Hunter Water Board; to amend the *State Owned Corporations Act 1989* and certain other Acts; to repeal the *Hunter Water Board Act 1988*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Hunter Water Act 1991*.

### 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 section 16.

**authorised person** means an officer or other person acting on behalf of the Corporation to whom a certificate of authority has been issued under section 21 (2).

**availability charge** means a charge of a kind referred to in section 43.

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

**contract charge** means any charge or fee payable under a customer contract, or other contract made between the Corporation and a customer, for the provision of water supply or sewerage services.

**Corporation** means Hunter Water Corporation.

**customer**, in relation to the Corporation, means a person who is taken to have entered into a customer contract or a person who has made a contract with the Corporation of a kind referred to in section 37.

**customer contract** means a contract of a kind referred to in section 36 (1).

**development** and **carry out development** have the same meanings as they have in the [Environmental Planning and Assessment Act 1979](#).

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

**environmental levy** means an amount imposed under section 45.

**excluded undertaking** means any assets, rights or liabilities of Hunter Water Corporation Limited that the Minister has directed to be excluded under section 6.

**headworks** means dam walls, pumps and other works used for or with respect to the extraction of water in rivers and lakes, water occurring naturally on the surface of the ground or sub-surface waters and the storage of that water.

**Hunter Water Board** means the Hunter Water Board constituted under the [Hunter Water Board Act 1988](#).

**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 and process of a court.

**lease** includes a licence or permit.

**meter** includes any measuring device.

**Ministerial Corporation** means the Hunter Water Ministerial Corporation constituted by section 63.

**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 specified by a regulation not to be an owner for the purposes of this definition, either generally or in a particular case or class of cases.

**public road** means a road the public are entitled to use, whether or not it is:

- (a) dedicated as a highway by the Crown or any person, or
- (b) notified, proclaimed or dedicated as a road or highway under an Act.

**rate** means a rate made and levied on land within a declared drainage area under section 46.

**special area** means an area of land declared by an order in force under section 53 to be a special area.

**statutory body** means a corporation that:

- (a) is not a company within the meaning of the *Corporations Act 2001* of the Commonwealth, and
- (b) is not a society within the meaning of the *Co-operatives Act 1992* or the *Friendly Societies Act 1989*, and
- (b1) is not a society registered under the *Financial Institutions (NSW) Code* or the *Co-operative Housing and Starr-Bowkett Societies Act 1998*, and
- (c) is not a body prescribed by the regulations as not being a statutory body for the purposes of this definition,

and is incorporated by or under an Act (other than this Act or the *Associations Incorporation Act 2009*).

**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*.

**works** means water mains, sewer mains, drainage channels and any works ancillary to those works.

(3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, if the function is a duty, a



reference to the performance of the duty.

## **Part 2 Hunter 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 Hunter Water Corporation.
- (2) (Repealed)

### **4A Functions of Corporation**

- (1) The Corporation has the functions conferred or imposed on it by or under this or any other Act or law.
- (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.

### **4B 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) 6 directors, appointed for their relevant expertise by the voting shareholders of the Corporation,
  - (c) one director, appointed under subsection (2),
  - (d) the Chief Executive Officer of the Corporation.
- (2) The director referred to in subsection (1) (c) is to be appointed by the voting shareholders of the Corporation on the recommendation of a selection committee comprising:
  - (a) 2 persons nominated by the voting shareholders, and

(b) 2 persons nominated by Unions NSW,

being a person selected by the committee from a panel of 3 persons nominated by Unions NSW.

- (3) The procedures for constituting a selection committee for the purposes of subsection (2), for making nominations and for determining other matters relating to the selection process are to be determined by the regulations or (subject to the regulations) by the voting shareholders of the Corporation.
- (4) Subsections (1)–(3) have 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*.

#### **4C 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**

#### **5 Direction to transfer business undertaking**

- (1) The Minister may, by order in writing, direct that the business undertaking of Hunter 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 commencement of the order, the following provisions have effect (subject to

the order):

- (a) the assets of Hunter 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 Hunter 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 Hunter Water Corporation Limited or a predecessor of Hunter 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 Hunter 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 Hunter Water Corporation Limited or a predecessor of Hunter Water Corporation Limited is, subject to regulations under section 70 (2), 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 Hunter 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.

## **6 Excluded undertakings**

(1) The Minister may direct, by order in writing, that such assets, rights or liabilities of

Hunter Water Corporation Limited as are specified or referred to in the order be excluded from Hunter Water Corporation Limited's business undertaking.

- (2) On the date specified in the order, the excluded undertaking concerned is transferred to the Ministerial Corporation or such other person on behalf of the Crown as is so specified.
- (3) Section 5 applies to that transfer in the same way as it applies to the transfer of Hunter Water Corporation Limited's business undertaking to the Corporation.
- (4) Different parts of any excluded undertaking may be so transferred to different persons.
- (5) The Ministerial Corporation or other person is authorised to dispose of any excluded undertaking so transferred or to retain it and conduct any business to which it relates.

#### **7 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 Hunter Water Corporation Limited for the supply of water, the provision of sewerage and drainage services, 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 5 applies to that transfer in the same way as it applies to the transfer of Hunter Water Corporation Limited's business undertaking to the Corporation.

### **Part 4 Dissolution of Hunter Water Board**

#### **8 Repeal of [Hunter Water Board Act 1988 No 119](#)**

The [Hunter Water Board Act 1988](#) and all regulations and by-laws under that Act are repealed.

#### **9 Dissolution of Hunter Water Board**

- (1) The Hunter Water Board is dissolved.
- (2) The assets, rights and liabilities (if any) of the Hunter Water Board immediately before its dissolution are transferred to the Ministerial Corporation.
- (3) Section 5 applies to that transfer in the same way as it applies to the transfer of the Hunter Water Board's business undertaking to the Corporation.

#### **10 Members of Hunter Water Board to vacate office**

- (1) A person who, immediately before the dissolution of the Hunter Water Board, held office as a member of the Hunter Water Board:

(a) ceases to hold office as such, and

(b) except as provided by subsection (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 Hunter 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.

#### **11 Corporation to be same legal entity as Hunter Water Board**

(1) On the dissolution of the Hunter 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 Hunter Water Board.

(2) This section does not affect any transfer of assets, rights and liabilities under section 6 or 9.

### **Part 5 Provisions applying to the Corporation**

#### **Division 1 Operating licence**

##### **12 Grant of operating licence**

(1) The Governor may grant an operating licence to the Corporation to enable the Corporation in accordance with this Act, in the area of operations specified in the licence, to provide, construct, operate, manage and maintain systems and services for:

(a) supplying water, and

(b) providing sewerage and drainage services, and

(c) disposing of waste water.

(2) 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).

(3) (Repealed)

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

(1) The operating licence is subject to the terms and conditions determined by the Governor 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 for supplying water, providing sewerage services and disposing of waste water, and
  - (b) to provide, operate, manage and maintain a drainage service within the capacity of the drainage service included in the business undertaking transferred under Part 3 by the Hunter 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, price levels and other matters determined by the Governor and set out in the operating licence.
- (2) The operating licence must also include terms or conditions that require the Corporation to maintain procedures under which the Corporation is to consult with its customers at regular intervals in relation to the provision of the systems and services referred to in this section.

#### **14 Amendment of operating licence**

The operating licence may only be amended in the manner specified in the operating licence.

#### **15 Term of operating licence**

- (1) The initial term of the operating licence is to expire on 30 June 1995.
- (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.

#### **16 Area covered by operating licence**

- (1) The operating licence applies to the area of operations specified in the operating licence, being the area of operations of Hunter Water Corporation Limited immediately before it ceased to be a company State owned corporation including:
  - (a) any parts of the Shire of Dungog specified in the operating licence at the date of the commencement of the operating licence, and
  - (b) any other land specified in the operating licence, not included in the above, in or on which works owned by the Corporation are installed or that is connected with a water main or sewer main owned by the Corporation at the date of the commencement of the operating licence, and
  - (c) any other land specified by the Governor by order for the purpose published in the

Gazette.

- (2) Despite subsection (1) (c), the area of operations must not be expanded to include the whole or part of the area within which:
- (a) a council within the meaning of the *Local Government Act 1993*, or
  - (b) a public authority within the meaning of the *Water Management Act 2000*, or
  - (c) a water supply authority within the meaning of the *Water Management Act 2000*,
- provides services that are the same services the Corporation is authorised to provide under the operating licence unless consultations, regarding the proposed expansion and its implications, have taken place between the Corporation and the council, public authority or Water Supply Authority before the order expanding the area of operations is made.

#### **17 Contravention of operating licence**

- (1) If, in the opinion of the Minister, the Corporation contravenes the operating licence, the Governor may direct that one of the following is to apply:
- (a) a letter of reprimand by the Minister is to be served on the Corporation,
  - (b) the Corporation is to pay a monetary penalty (not exceeding \$150,000) in an amount to be determined by the Governor,
  - (c) the operating licence is to be cancelled by the Governor in accordance with section 18.
- (2) 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.
- (3) The 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.
- (4) 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.

#### **17A Contravention of operating licence: 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 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 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 17 in respect of the contravention.
- (11) Nothing in this section affects any powers under section 17 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.

### **17B 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 17A 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.

### **18 Cancellation of operating licence**

- (1) The operating licence may be cancelled by the Governor, but only if:
- (a) the Corporation ceases, other than as authorised by the operating licence, to do the things referred to in section 13 (1) or any of them in the area of operations for any reason, or
  - (b) the Corporation is, in the opinion of the Minister, in material default in compliance with the operating licence, viewed in terms of the operation of the operating licence as a whole, or
  - (c) the Corporation is insolvent within the meaning of the *Corporations Act 2001* of the Commonwealth or has been convicted of a criminal offence that is punishable by a fine of at least \$1,000 or, if the Corporation were a natural person, imprisonment for 12 months or more.
- (2) If the 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 13 (1), or any of them, for the benefit of existing customers of the Corporation.
- (3) 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.

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

### **18A 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 monitoring and reporting under subsection (3), and
  - (c) the function of imposing monetary penalties, or requiring other action to be taken, under section 17A, and
  - (d) the licence auditing functions of the Tribunal under section 18B, 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, 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 Minister on compliance by the Corporation with the operating licence.
- (4) Part 4B of the *Independent Pricing and Regulatory Tribunal Act 1992* applies in relation to the Tribunal's regulatory functions under this Act.

## **Division 1B Licence auditing functions of Tribunal**

### **18B Licence auditing functions of Tribunal**

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.

### **18C Operational audits**

The Tribunal is required to ensure that the operational audit of the Corporation is prepared in accordance with the operating licence.

### **18D 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, the operating licence may include terms and conditions relating to the determination of the cost of carrying out the operational audit.

## **Division 2 Provisions relating to works**

### **19 Ownership of works**

- (1) The Corporation is the owner of all works installed in or on land by the Corporation and of all works in or on land vested in or transferred to the Corporation (whether or not the land is owned by the Corporation).
- (1A) Without limiting subsection (1), the Corporation is the owner of all works on land that is:
  - (a) within a special area, and
  - (b) reserved under the [National Parks and Wildlife Act 1974](#) or vested in Her Majesty or the Minister administering Part 11 of that Act.
- (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](#).

### **20 Entry on to land**

The Corporation may, by authorised persons, enter land 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 water discharged into the Corporation's sewers,
- (c) to find the source of pollution of water supplied by the Corporation,
- (d) 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,

- (e) to rectify defective or improper work that has not been rectified by a customer in accordance with a notice served by the Corporation on the customer under a customer contract or other contract,
- (f) 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 the systems and services referred to in section 13 (1) or to construct new works for the purposes of that subsection or section 12 (1),
- (g) 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 the systems and services referred to in section 13 (1) or to construct new works for the purposes of that subsection or section 12 (1).

## **21 Exercise of powers of entry**

- (1) Before an authorised person enters any land or building under a power conferred by this Division, the Corporation or an authorised 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 specified in the notice unless:
  - (a) entry to any 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 water 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 by an officer of the Corporation who has been authorised by the board of the Corporation to issue such certificates, 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.

(4) A certificate of authority must:

(a) state that it is issued under the *Hunter Water Board (Corporatisation) Act 1991*, and

(b) give the name of the person to whom it is issued, and

(c) describe the nature of the powers conferred and the source of the powers, and

(d) state the date (if any) on which it expires, and

(e) if issued to an officer of the Corporation, describe the general area or the land to which the power extends or, if issued to an authorised person who is not an employee of the Corporation, describe the land to which the power extends, and

(f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

(5) The Minister may, if the Minister thinks fit, by order published in the Gazette, attach conditions or restrictions to 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.

## **22 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 if a manhole or main ventilator is constructed on the land.

## **23 Power to open roads**

(1) The Corporation may, for the purpose of complying with the operating licence and after 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 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, as prescribed by the regulations, 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 leakage from, or a bursting 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 in force 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.

#### **24 Altering position of conduit**

- (1) The Corporation may serve a written notice on a person if:
- (a) the Corporation, in order to comply with the 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) In this section, **conduit** means anything that is in or under a public road and is used for the conveyance of a substance, energy or signals.

#### **25 Interference with works**

- (1) Land in or on which a work of the Corporation is installed is taken to be the subject of

an agreement in the nature 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 authorised persons are not delayed or obstructed in and about the taking, in relation to the work, of any of the steps referred to in section 19 (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 2010](#), 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) An agreement to which subsection (1) relates is enforceable as if it were a 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, did not know of, or could not reasonably have prevented, action taken by any person that would, if known to or 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*.

## **26 Compensation to Corporation for damage**

- (1) Without limiting section 25, 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) In this section, **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.

## **27 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, in land that is the subject of an easement in favour of the Corporation or an easement for water supply, sewerage or drainage purposes.



- (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) 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) to which an interim heritage order or listing on the State Heritage Register under the [Heritage Act 1977](#) applies or to which an order under section 136 of that Act applies, or
  - (b) an interim protection order under the [National Parks and Wildlife Act 1974](#), or
  - (c) a protection conferred by any similar law.
- (7) 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.
- (8) In this section, **tree** includes shrub or other plant.

## **28 Corporation not liable to pay annual charge on pipes etc**

Section 611 of the [Local Government Act 1993](#) does not apply to the Corporation.

## **Division 3 Compulsory acquisition of land**

### **29 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](#).

- (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 4 Offences**

### **30 Illegal diversion of water**

- (1) A person must not:
- (a) wrongfully take, use or divert any water from which the Corporation draws its supply or 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: 100 penalty units (or 200 penalty units in the case of a corporation).

- (2) It is to be presumed, unless the contrary is proved, that any wrongful taking or diversion of water to, or any wrongful use of water on, any land was at the direction, or with the connivance, of the owner or, if the land is occupied by a person other than the owner, of the occupier of the land.
- (3) If, in connection with the pipes or other apparatus of the Corporation used to supply water to any land, there exists any artificial means for:
- (a) taking, using or diverting the water, or
  - (b) altering the index of a meter or preventing it from duly registering the quantity of water supplied,

it is to be presumed, unless the contrary is proved, that the taking, use, diversion, alteration or prevention was wrongfully effected or caused by the owner or, if the land is occupied by a person other than the owner, by the occupier of the land.

### **31 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 between the Corporation and a customer.

### **31A Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (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 can pay, within the time and to the person specified in the notice, the amount of 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 penalty prescribed for an 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 to be regarded as an admission of liability for the purpose of, and does not in any way 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 payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that 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 that may be taken in respect of offences.
- (9) In this section, **authorised officer** means a person of a class prescribed by the regulations for the purposes of this section.

### **32 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.

### **33 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.

### **34 Disposal of proceedings for offence**

(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 Supreme 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 50 penalty units or the maximum monetary penalty for the offence, whichever is the lesser.

(3) Proceedings in the Supreme 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 5 Customer contracts**

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

(1) The terms and conditions of a customer contract are to be set out in the operating licence.

(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) (Repealed)

### **36 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 terms and conditions published under section 35 as varied from time to time in accordance with section 38, for the provision of water supply or sewerage services, or either of them, to the land.
- (2) A customer contract is not unconscionable, harsh or oppressive for the purposes of any law.
- (3) 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*.
- (4) 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.

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

This Division does not apply to the extent that the terms and conditions of a contract for the provision of water supply or sewerage services, or either of them, have been specifically agreed to by the Corporation and a customer.

### **38 Terms and conditions of customer contracts may be varied on 6 months' notice**

- (1) The terms and conditions of a customer contract may, subject to the approval of the Governor, be varied by the Corporation publishing, in a daily newspaper circulating in the area of operations, a notice setting out or summarising the variation at least 6 months, or a shorter period to which the Minister agrees, before the variation becomes effective.
- (2) A copy of the notice published under this section is to be given to the customer by the

Corporation with the next account for service charges issued after the date of publication of the notice. Failure to comply with this requirement 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 prima facie 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 6 Contract charges, availability charges, environmental levies and rates**

### **39 Operating licence may specify basis for fixing contract charges, availability charges, environmental levies and rates**

- (1) The operating licence may provide that the Corporation must in fixing:
  - (a) contract charges under customer contracts, and
  - (b) availability charges under section 43, and
  - (c) environmental levies under section 45, and
  - (d) rates under section 46,

do so on a basis that is consistent with the system employed by the Hunter Water Board for fixing service charges immediately before the transfer of the business undertaking or on some other basis stipulated in the operating licence.

- (2) Unless the operating licence otherwise provides, nothing in this section affects the power of the Corporation to fix charges, levies and rates for the purposes referred to in subsection (1) or to impose fees or charges for any service or thing supplied or provided by the Corporation in furnishing the services referred to in section 12 (1).

### **40 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.

#### **41 Occupier may pay, and recover, charges etc 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, availability charges, environmental levies or rates payable in relation to the land, the occupier may pay to the Corporation any charges, levies or rates 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.

#### **42 Certain contract and service charges of Corporation not charge on land**

- (1) On and after the transfer under Part 3 of the business undertaking of the Hunter Water Board to the Corporation, no contract charges levied by the Corporation in relation to the provision of water supply or sewerage services to customers by the Corporation are to be levied as a statutory charge or rate or are to be a charge on the land to which the contract charges relate.
- (2) No service charges or fees levied by the Hunter 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.
- (3) In this section, **charging period**, in relation to the Hunter Water Board, means a period declared by an order in force under section 28 (2) of the [Hunter Water Board Act 1988](#) (as in force immediately before the commencement of section 8) to be a charging period for the Board.

#### **43 Availability charges charge on land to which main available for connection**

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

charge in relation to the land.

- (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 42, an availability charge imposed under this section is a charge on the land to which the availability charge relates.
- (4) This section has effect until 30 June 1995.

#### **44 Transitional provisions: survival of unpaid amounts and amounts charged on land at transfer of business undertaking**

- (1) Any amount that was due but unpaid to the Hunter 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 section 42, any amount that was due but unpaid to the Hunter 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.

#### **45 Environmental levy charge on unserviced land**

- (1) The Corporation may, with the consent of the Minister, and, if so required by the operating licence must, require the owner of land that is not connected to a water main or sewer main (including land to which a main is not available for connection) but to which the Corporation proposes to make a sewer main available, to pay an environmental levy in relation to the land.
- (2) An environmental levy 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 42, an environmental levy imposed under this section is a charge on the land to which the levy relates.

#### **46 Rates on land within declared drainage areas charge on land**

- (1) In this section, **drainage area** means an area of land declared by an order of the Governor to be a drainage area for the purposes of this section.
- (2) An order in force under section 28 (3) of the [Hunter Water Board Act 1988](#) (as in force immediately before the commencement of section 8) declaring an area of land to be a drainage area is taken to be an order for the purposes of this section.
- (3) The Corporation may and, if so required by the operating licence must, make and levy rates on the owners of land within a drainage area located in the area of operations.



- (4) A rate 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 42, a rate levied under this section is a charge on the land to which the rate relates.
- (6) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

#### **47 Certificate 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) Regulations may be made for or with respect to:
  - (a) authorising the Corporation to make arrangements with another person for access by the other person to the information on which the Corporation would base a certificate under subsection (1), and
  - (b) the preparation, authentication and issue by or on behalf of the person of such a certificate, and
  - (c) the fees to be paid by the person to the Corporation.
- (3) A certificate authenticated and issued in accordance with regulations is taken to be a certificate applied for under subsection (1) and issued by the Corporation.
- (4) 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.
- (5) 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.

## **Division 7 New developments**

### **48 Definitions**

- (1) For the purposes of 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*.

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

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

**development**, in relation to land, means:

- (a) the erection of a building on the land, or
- (b) the carrying out of work in, on, over or under the land, or
- (c) the use of the land or of a building or work on the land, or
- (d) the subdivision of the land.

(2) (Repealed)

#### **49 Application for compliance certificate**

- (1) If an approval has been given with respect to any land within the Corporation's area of operations, the developer may apply to the Corporation for a certificate to the effect that the development complies with the requirements of section 50.
- (2) An application under this section must be accompanied by a copy of the approval.

#### **50 Issue of compliance certificate**

- (1) If an application is made to the Corporation under section 49, the Corporation may:
  - (a) grant the developer a compliance certificate in relation to the proposed development, or
  - (b) serve a notice on the developer requiring the developer to enter into an agreement providing for any one or more of:
    - (i) the payment of an amount to the Corporation for amplification of the Corporation's works and the headworks in consequence of the proposed development,
    - (ii) the construction of the works specified in the notice,
    - (iii) the transfer of the works to the Corporation,

and, if the Corporation considers necessary, requiring the developer to provide reasonable security, in a form approved by the Corporation, for due performance of that agreement.

- (2) When the Corporation is satisfied that the requirements of a notice referred to in subsection (1) (b) have been complied with, the Corporation must grant the developer a compliance certificate with respect to the proposed development.
- (3) If, within 60 days after the making of an application under section 49 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, no compliance certificate has been granted to, and no notice under subsection (1) has been served on, the developer, the Corporation must, at the developer's request, grant the developer a compliance certificate with respect to the proposed development.

#### **51 Consent authority to notify Corporation of certain applications etc**

- (1) In this section, **consent authority** has the meaning given in the *Environmental Planning and Assessment Act 1979* and includes a council to which an application for approval to erect a building under Part 1 of Chapter 7 of the *Local Government Act 1993* may be made.
- (2) If a consent authority within the area of operations or a special area receives a development application or building application in relation to any matter that, in the opinion of the consent authority, may:
  - (a) significantly damage or interfere with the Corporation's works, or
  - (b) significantly adversely affect the Corporation's operations, or
  - (c) significantly adversely affect the quality of the water from which the Corporation draws its supply of water in a special area,the consent authority must, within 7 days of the receipt of the application, give the Corporation notice of the application.
- (3) The consent authority must take into account any submissions made by the Corporation in relation to the development application or building application in determining whether to consent to the development application or building application or to attach conditions to any such consent.
- (4) 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.
- (5) 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.

## **Division 8 Catchment areas and other special areas**

### **52 Director of Department of Water Resources to have control of special areas**

The Director of the Department of Water Resources (in this Division called ***the Director***) has the control of special areas for the purposes of this Division.

### **53 Special areas**

- (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land described in the order to be a special area.
- (2) The Minister may recommend an order only if of the opinion that the exercise of the State's water rights under the [Water Management Act 2000](#) could be adversely affected unless the order is made.
- (3) An order under section 21 of the [Hunter Water Board Act 1988](#) in force immediately before the commencement of this section, and any proclamation of a catchment area in force by virtue of section 21 of that Act immediately before the commencement of this section, is taken to be an order in force under this section declaring the area to be a special area.

### **54 Crown land in special areas**

- (1) Action may not be taken under the [Crown Lands Act 1989](#) in relation to land within a special area unless the Director has given written approval and any conditions to which the approval is subject are complied with.
- (2) The Director may, in a special area, exercise the functions of a person or body appointed to manage the affairs of a reserve trust under Part 5 of the [Crown Lands Act 1989](#) without being appointed as such.

### **55 Exercise of functions by public bodies in special areas**

- (1) A public agency may not, in relation to land within a special area, exercise functions other than functions under this Act unless notice is first given as prescribed by the regulations to the Director.
- (2) On receiving a notice, the Director may make such representations to the public agency as the Director thinks fit.
- (3) A public agency may not exercise functions contrary to any such representations unless, before the exercise of its functions, not less than 28 days' notice has been given to the Director and the Corporation of the functions intended to be exercised.

- (4) In this section and section 56, **public agency** means the Governor, a Minister of the Crown or a statutory body.

#### **56 Director to notify Corporation of certain proposals etc**

- (1) If the Director receives notice of a proposal to take action under section 54 (1) or a notice under section 55 (1) in relation to any work that may damage or interfere with the Corporation's works or adversely affect the Corporation's operations, the Director is, within 14 days, to give the Corporation notice of the proposal or notice.
- (2) The Director is to take into account any submissions made by the Corporation in relation to a matter referred to in subsection (1) in determining whether to approve of the action, to attach conditions to an approval given or to make representations to the public agency.
- (3) The Director may assume that the Corporation has no submissions to make in relation to a matter referred to in subsection (1) of which notice has been given under this section if no such submissions are received by the Director within 28 days after the notice was given to the Corporation.

#### **57 Regulations concerning special areas**

- (1) The regulations may make provision for or with respect to special areas, including charges or payments for the abstraction of water and the regulation or prohibition of abstracting, using, polluting or contaminating waters within special areas.
- (2) A regulation made under this section 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](#).

#### **58 Continuation of previous regulation concerning special areas**

- (1) Despite section 8, the *Hunter Water Board (Special Areas) Regulation 1989* continues in force and is taken to be made under this Act.
- (2) Without limiting subsection (1), a permit issued under Part 4 of that Regulation is taken to have been issued under the authority of a regulation made under this Act.
- (3) In that Regulation, a reference to the Board immediately before the commencement of section 8 is taken to be a reference to the Director or any person exercising the functions of the Director in accordance with this Division.

#### **59 Director to pay charges etc collected for abstraction of certain water to Corporation**

All charges paid or other payments made to the Director by the holder of a permit issued under Part 4 of the *Hunter Water Board (Special Areas) Regulation 1989* for the benefit of the permit are, while the operating licence is current, to be paid by the Director to the

Corporation.

#### **60 Corporation etc may exercise Director's powers**

- (1) The Director may, with the consent and on the application of the Corporation, authorise the Corporation or a director or officer of the Corporation to exercise all or any of the Director's functions under a regulation or provision of a regulation made under this Act.
- (2) The authorisation is to be in writing and may be subject to conditions.
- (3) The Director may at any time revoke an authorisation or revoke or amend a condition of an authorisation.
- (4) Without limiting subsection (3), the Director may revoke an authorisation if the Corporation fails to comply with any condition of the authorisation or exercises any functions conferred by it in a manner that, in the Director's opinion, is not in the public interest.

### **Division 9 Other matters**

#### **61 Disposal of waste products**

- (1) The Minister may, by order published in the Gazette, declare an underground mine working to be a disused underground mine working for the purposes of this section.
- (2) Subject to compliance with the requirements of the [Environmental Planning and Assessment Act 1979](#) and the obtaining of any necessary statutory approvals, the Corporation may deposit and leave waste products from its sewerage treatment plants in a disused underground mine working despite the fact that the waste products within the mine working may pass beneath land that is not owned by the Corporation.
- (3) The exercise by the Corporation of a power conferred on it by this section does not constitute a trespass to land unless it results in loss or damage to the owner or occupier of the land that manifests itself in some physical way.
- (4) A person's legal rights and remedies are not affected by any power conferred on the Corporation by this section, except as provided by subsection (3).
- (5) An action that was disallowed by the operation of subsection (3) (as in force before the commencement of the [Hunter Water Board \(Corporatisation\) Amendment Act 1992](#)) is allowed after the commencement of that Act. Proceedings for such an action may be taken as if the relevant cause of action accrued on the commencement of the Act.

#### **62 Corporation in position of public authority in relation to drainage service**

- (1) In performing its obligations under the operating licence to provide, operate, manage

and maintain a drainage service, the Corporation has only those functions and liabilities of a public authority whose function is to operate, manage and maintain a drainage service.

- (2) The Corporation has no duty to upgrade or improve the drainage system included in the business undertaking.

## **Part 6 Miscellaneous**

### **63 Ministerial Corporation**

- (1) There is constituted by this Act a corporation with the corporate name of the Hunter Water Ministerial Corporation.
- (2) The affairs of the Ministerial Corporation are to be managed by the Minister.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Ministerial Corporation by the Minister, or with the authority of the Minister, is taken to have been done by the Ministerial Corporation.
- (4) The Ministerial Corporation has the functions conferred or imposed on it by or under this or any other Act.
- (5) The functions of the Ministerial Corporation are to hold and dispose of assets, rights and liabilities transferred to it under this Act and 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.

### **64 Alteration of names**

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

#### **64A 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).

#### **65 Provisions relating to certain staff**

Pursuant to clause 1 of Schedule 4 to the *State Owned Corporations Act 1989*, it is declared that the Hunter Water Board is an authority to which that Schedule applies.

#### **66 Provisions relating to subsidiaries**

Schedule 7 to the *State Owned Corporations Act 1989* is, as regards Hunter Water Corporation, taken to be altered by omitting clause 3 (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).

#### **67 Regulations may authorise or exempt for purposes of *Trade Practices Act 1974* (Cth)**

- (1) In this section:

**authorise** includes approve.

**the Commonwealth Act** means the *Trade Practices Act 1974* of the Commonwealth.

- (2) The regulations may make provision for or with respect to:

- (a) specifically authorising certain acts and things, or acts and things of certain kinds, for the purposes of section 51 of the Commonwealth Act, and

- (b) (Repealed)

- (3) In particular, the regulations may contain provisions specifically authorising, for the purposes of section 51 of the Commonwealth Act:

- (a) the transfer under Part 3 of the business undertaking of the Hunter Water Board to the Corporation, and

- (b) all conduct relating to the performance of any or all contracts, agreements or understandings concerning the supply of water, the provision of sewerage and drainage services and associated purposes that are comprised in the business undertaking of the Hunter Water Board by the Corporation and all parties to any such contracts, agreements or understandings, and



(c) the making by the Corporation of a contract, agreement or understanding relating to the supply of water, the provision of sewerage and drainage services and associated purposes:

(i) that is, or is of a kind that is, specified in the regulations for the purposes of this section, or

(ii) that is approved by the Minister,

and all conduct of the Corporation and all parties to the contract, agreement or understanding that relates to the proposed making of, negotiating for, making, and performance of any such contract, agreement or understanding.

- (4) If regulations made under this section authorise the Corporation to do any of the things referred to in subsection (3) (b) or (c), the Corporation, in exercising that authority, is authorised to do or omit to do any act or thing that is, or is of a kind that would be, but for the authorisation, a contravention of a provision of Part IV of the Commonwealth Act.
- (5) If authorisation is conferred by regulations made under this section, the contract, agreement or understanding so authorised is lawful and the Corporation and all parties to the contract, agreement or understanding are authorised by force of this Act to enter into it, and to engage in the conduct referred to in subsection (3).
- (6) Nothing in this section authorises the Corporation to do or omit to do any act or thing that it would not be empowered to do or omit to do apart from this section and the Commonwealth Act.
- (7) An approval under subsection (3) (c) (ii) may be given subject to conditions determined by the Minister.

## **68 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.

## **69 Work for water supply, sewerage or drainage**

- (1) A person must not do any kind of work of water supply, sewerage or 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) Despite section 8, Parts 1 and 2 of the *Hunter Water Board (Water, Sewerage and Drainage Systems) Regulation 1989* continue in force and are taken to be made under this Act.
- (4) Without limiting subsection (3), a permit issued under Part 2 of that Regulation before the commencement of this section is taken to have been issued under the authority of a regulation made under this Act.
- (5) In that Regulation, a reference to the Managing Director of the Board includes a reference to the chief executive of the Corporation.

## **70 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) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act (including the interpretation of references to the Hunter Water Board or any member or employee of the Hunter Water Board or to the *Hunter Water Board Act 1988* or any provision of that Act).
- (3) Any such savings or transitional provision may, if the regulations so provide, take effect on the commencement of this section or a later date.
- (4) 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 Hunter 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 Hunter Water Board or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

- (5) 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, the operating licence, and
  - (b) the supply of water, the provision of sewerage or drainage services or the disposal of waste water in any extension of the area of operations following any variation in the area of operations after the commencement of the operating licence, and
  - (b1) 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, and the procedure for the making and imposing or levying of availability charges, environmental levies and rates, 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*.
- (6) 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.
- (7) Regulations may be made for or with respect to:
- (a) authorising the Corporation to make arrangements with another person to collect availability charges, environmental levies or rates on behalf of the Corporation, and
  - (b) the fees to be paid by the person to the Corporation.

## **71 (Repealed)**

## **72 Transitional: commencement of amendments of certain Acts**

- (1) If the day or days on which the provisions of the proposed *Electricity Commission (Corporatisation) Act 1991* that amend the *Interpretation Act 1987* and the *State Owned Corporations Act 1989* commence is earlier than the day or days on which the provisions of this Act that amend those provisions commence, the amendments proposed to be made by this Act to those provisions and to the proposed *Electricity Commission (Corporatisation) Act 1991* have no effect.

- (2) If the day on which the section of the proposed *Electricity Commission (Corporatisation) Act 1991* that repeals the *Electricity Commission Act 1950* commences is earlier than the day on which the provisions of this Act that amend the *Electricity Commission Act 1950* commence, the amendment proposed to be made by this Act to that Act has no effect.
- (3) A reference in this Act to the *Land Acquisition (Just Terms Compensation) Act 1991* is, pending the commencement of that Act, to be read as a reference to the *Public Works Act 1912*.

### **73, 74 (Repealed)**

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

Schedule 2 has effect.

### **Schedule 1 (Repealed)**

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

(Section 75)

## **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:

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

- (2) Any such provision may, without limitation, make provision for or with respect to the interpretation of references to Hunter Water Corporation Limited or any of its subsidiaries.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) 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 [Water Legislation Amendment \(Drinking Water and Corporate Structure\) Act 1998](#)**

### **2 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 Hunter Water Corporation Limited.

### **3 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 12, 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.

### **4 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.

### **5 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 Corporation or any other person.

### **6 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 (other than the chairman, Managing Director

or staff director) are taken to have been appointed as directors under section 4B (1) (b), unless there are more than six of them (in which case they are eligible for appointment as directors under section 4B (1) (b)).

- (3) The person holding office as staff director of the board of the Company immediately before the commencement of this clause is taken to have been appointed as a director under section 4B (2).

## **7 Managing Director of Company**

- (1) The person holding office as Managing Director of the Company immediately before the appointed day is taken to have been appointed as Chief Executive Officer of the Corporation for the balance of his or her term of office.
- (2) 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.

## **8 Staff of Company**

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

## **9 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.

## **10 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.

## **11 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.

## **12 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.

## **13 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.