

# Sydney Water Catchment Management Act 1998

## No 171

[1998-171]



New South Wales

### Status Information

#### Currency of version

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#### Provisions in force

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

#### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act 2014 No 33](#) (not commenced — to commence on 4.7.2014)
- **See also**  
[Government Sector Employment Legislation Amendment Bill 2013](#)  
[Water Industry Competition Amendment \(Review\) Bill 2014](#)

#### Authorisation

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# Sydney Water Catchment Management Act 1998 No 171



New South Wales

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# Sydney Water Catchment Management Act 1998 No 171



New South Wales

An Act to constitute the Sydney Catchment Authority and to confer and impose on it certain functions with respect to the protection and management of certain catchment areas, with respect to the supply of water to Sydney Water Corporation Limited and other bodies, and with respect to other matters; to make provision for the protection of public health and public safety and for the protection of the environment; to make consequential amendments to the [Water Board \(Corporatisation\) Act 1994](#) and certain other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the [Sydney Water Catchment Management Act 1998](#).

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**area of operations** means:

- (a) in relation to the SCA—the area of operations of the SCA under this Act, or
- (b) in relation to the Sydney Water Corporation—the area of operations of the Sydney Water Corporation under the Sydney Water Act.

**authorised officer** means a person appointed as an authorised officer under section 69F.

**Board** means the Sydney Catchment Authority Board constituted under this Act.

**catchment area** means the inner catchment area or the outer catchment area.

**catchment audit** means an audit conducted under section 42A.

**catchment health**, in relation to the catchment area, means the condition of ecosystems and systems of management (such as sewerage and stormwater systems) in that catchment that protect water quality.

**catchment infrastructure works** means:

- (a) water storages, water mains, or connected or associated works, or
- (b) monitoring devices in, under, over or near any works referred to in paragraph (a),  
or
- (c) any works ancillary or antecedent to any works referred to in paragraph (a) or (b),  
or
- (d) hydro-electric plants or associated infrastructure or works,

and includes anything prescribed by the regulations as being within this definition, but excludes anything prescribed by the regulations as being outside this definition.

**catchment management** means the management of land and water resources in the catchment area.

**Chief Executive** means the Chief Executive of the SCA.

**controlled area** means an area of land for the time being declared under this Act to be a controlled area.

**county council** means a county council under the [Local Government Act 1993](#).

**environmental flow** means a release of water from storage so as to provide a flow of water in a river, stream or other natural waterway that:

- (a) mimics natural seasonal flows, and
- (b) restores and maintains the ecology of the waterway concerned.

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

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

**Fund** means the Sydney Catchment Management Fund referred to in section 24A.

**inner catchment area** means land for the time being declared under this Act to be or to be part of the inner catchment area of the SCA.

**land** includes the following:

- (a) the sea or an arm of the sea,
- (b) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal

or non-tidal,

(c) a river, stream or watercourse, whether tidal or non-tidal,

(d) a building erected on the land.

**lease** includes a licence or permit.

**motor vehicle** means any motor car, motor cycle or other vehicle propelled by any means other than human or animal power.

**operating licence** means the operating licence granted under section 25 or any renewal of it, and as in force for the time being.

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

**outer catchment area** means land for the time being declared under this Act to be or to be part of the outer catchment area of the SCA.

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

(a) is entitled to the land for an estate of freehold in possession, or

(b) is a person to whom the Crown has contracted to sell the land under the [Crown Lands Act 1989](#) or any other Act relating to alienation of land of the Crown, or

(c) is entitled to receive, or receives, or if the land were let to a tenant would receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise,

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

**public authority** includes a corporation that is incorporated by or under an Act, but does not include:

(a) a company within the meaning of the [Corporations Act 2001](#) of the Commonwealth, or

(b) a society within the meaning of the [Co-operation Act 1923](#) or a co-operative within the meaning of the [Co-operatives Act 1992](#), or

(c) an association incorporated under the [Associations Incorporation Act 2009](#), or

(d) a body prescribed by the regulations as not being a public authority for the purposes of this definition.

**SCA** means the Sydney Catchment Authority constituted under this Act.

**special area** means an area of land for the time being declared under this Act to be a special area.

**specified** includes referred to.

**Sydney Water Act** means the [Water Board \(Corporatisation\) Act 1994](#), and includes that Act with any altered citation.

**Sydney Water Corporation** means Sydney Water Corporation Limited referred to in the Sydney Water Act, or, if Sydney Water Corporation is constituted as a corporation under the Sydney Water Act, means Sydney Water Corporation.

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

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

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

**water supply authority** has the same meaning as it has in the [Water Management Act 2000](#).

**works**, in relation to the SCA, includes catchment infrastructure works vested in or under the control of the SCA.

(2) Notes included in this Act do not form part of this Act.

#### **4 Other Acts not affected**

Except so far as is expressly or impliedly provided by this or any other Act, nothing in this Act affects the operation of the [Catchment Management Act 1989](#) or any other Act.

#### **5 Act to bind Crown**

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

## **Part 2 Constitution of Sydney Catchment Authority**

### **6 Constitution of SCA**

(1) There is constituted by this Act a corporation with the corporate name of the Sydney Catchment Authority.

(2) The SCA is, for the purposes of any Act, a statutory body representing the Crown.

## **7 Board**

(1) There is to be a Sydney Catchment Authority Board.

(2) The Board is to consist of:

(a) the Chief Executive, and

(b) not fewer than 4 and not more than 8 members appointed by the Minister.

(3) The members of the Board appointed by the Minister are to be persons who, in the opinion of the Minister, each or together have the following:

(a) qualifications and experience relevant to catchment management and protection,

(b) qualifications and experience relevant to water quality and public health,

(c) qualifications and experience relevant to running a commercial entity,

(d) qualifications and experience relevant to water supply planning and asset management,

(e) practical knowledge of, and experience in, agriculture and industry in the catchment area,

(f) practical knowledge of, and experience in, local government and planning in the catchment area,

(g) such other expertise as the Minister considers necessary to realise the objectives of the SCA.

(4) The Minister may advertise publicly for appointments to the Board.

(5) Schedule 1 contains provisions with respect to the constitution and procedure of the Board.

## **8 Functions of Board**

(1) The Board has the following functions:

(a) determining the policies and long-term strategic plans of the SCA,

(b) endeavouring to ensure that the SCA meets all public health and environmental requirements set out in the operating licence and any relevant instrument,

(c) overseeing the effective, efficient and economical management of the SCA,

(d) preparing:

(i) the annual report of the SCA required under the *Annual Reports (Statutory Bodies) Act 1984*, and

(ii) such reports as the SCA is required to furnish under this Act.

(2) In exercising those functions, the Board has the duty of endeavouring to ensure that the water supplied by the SCA complies with appropriate standards of quality.

## **9 Chief Executive**

(1) The Governor may appoint a Chief Executive of the SCA.

(2) Schedule 2 has effect with respect to the Chief Executive.

## **10 Chief Executive to manage SCA**

(1) The affairs of the SCA are to be managed and controlled by the Chief Executive in accordance with the policies determined by the Board and any other decisions of the Board, but subject to any directions of the Minister under this Act.

(2) Any act, matter or thing done in the name of, or on behalf of, the SCA by the Chief Executive, or with the authority of the Chief Executive, is taken to have been done by the SCA.

## **11 Ministerial directions**

(1) The SCA is subject to the control and direction of the Minister, except in relation to the contents of any report or recommendation made by the SCA.

(2) Subject to this section, the Board and the Chief Executive must ensure that the SCA complies with any direction given to the SCA by the Minister.

(3) If the Board considers that:

(a) the SCA would suffer a significant financial loss as a result of complying with any such direction, and

(b) the direction is not in the commercial interests of the SCA,

the Board may request the Minister to review the direction.

(4) However, a request for a review may not be made on the grounds specified in subsection (3) in relation to a direction given in respect of any alienation, mortgage, charge or demise of land in a special area that is owned by or vested in the SCA.

(5) The Board may also request the Minister to review a direction if the Board considers that compliance with the direction is likely to result in environmental degradation, or that the direction is otherwise inconsistent with the principles of ecologically sustainable development referred to in section 14 (1) (c).

- (6) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines.
- (7) If the Board requests a review, the SCA is not required to comply with the direction until notified of the Minister's decision following the review.
- (8) Following the review the Minister may confirm or revoke a direction of the kind referred to in subsection (3), but the Minister must not confirm the direction unless:
  - (a) the Minister has estimated the financial loss concerned from information supplied by the SCA or from other sources, and
  - (b) the Minister has referred the matter to the Treasurer, and
  - (c) the Treasurer has approved of the financial loss being reimbursed from public revenue.
- (9) The amount to be reimbursed to the SCA is to be paid, from money advanced by the Treasurer or appropriated by Parliament for that purpose, at such times and in such amounts as the Treasurer determines after receiving advice from the Minister on the estimated financial loss incurred by the SCA from time to time.
- (10) For the purposes of this section, the amount of the financial loss that the SCA suffers as a result of complying with a direction includes the amount of expenditure that the SCA incurs, and the amount of revenue that the SCA forgoes, as a result of complying with the direction which it would not otherwise incur or forgo.
- (11) The Minister is to publish a direction given under this section in the Gazette (and is to make it available on the Internet) as soon as practicable after it is given.
- (12) A direction given under this section is of no effect to the extent that it is inconsistent with the terms and conditions of the SCA's operating licence unless the Minister certifies in the direction that it is given on such grounds, specified in the direction and involving urgency, public health or public safety, as justify the direction's prevailing over those terms and conditions.

## **12 (Repealed)**

# **Part 3 Role, objectives and functions of SCA**

## **Division 1 Role and objectives**

### **13 Role**

The role of the SCA is, subject to and in accordance with this Act:

- (a) to manage and protect the catchment areas and catchment infrastructure works, and
- (b) to be a supplier of raw water, and

- (c) to regulate certain activities within or affecting the outer catchment area as well as the inner catchment area.

## **14 Objectives**

- (1) The principal objectives of the SCA are as follows:
  - (a) to ensure that the catchment areas and the catchment infrastructure works are managed and protected so as to promote water quality, the protection of public health and public safety, and the protection of the environment,
  - (b) to ensure that water supplied by it complies with appropriate standards of quality,
  - (c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
  - (d) to manage the SCA's catchment infrastructure works efficiently and economically and in accordance with sound commercial principles.
- (2) In implementing its principal objectives, the SCA has the following special objectives:
  - (a) to minimise risks to human health,
  - (b) to prevent the degradation of the environment.
- (3) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

## **Division 2 Functions**

### **15 General functions**

- (1) The SCA has and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (2) The SCA has the primary function of protecting the quality and quantity of water in catchment areas.
- (3) The SCA cannot employ any staff.

#### **Note—**

Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the SCA to exercise its functions.

### **16 Specific functions**

- (1) The SCA has the following specific functions:
  - (a) to supply water to the Sydney Water Corporation,



- (b) to supply water to water supply authorities, prescribed local councils or prescribed county councils,
  - (b1) to supply water to licensed network operators or licensed retail suppliers within the meaning of the *Water Industry Competition Act 2006*,
  - (c) to supply water to other persons and bodies, but under terms and conditions that prevent the person or body concerned from supplying the water for consumption by others within the State unless the person or body is authorised to do so by or under an Act,
  - (c1) to provide or construct systems or services for supplying water,
  - (c2) to install new works,
  - (c3) to generate and supply hydro-electricity and undertake any associated activities, whether on the SCA's own account or with others,
  - (d) to manage and protect the catchment areas and the catchment infrastructure works vested in or under the control of the SCA,
  - (e) to protect and enhance the quality of water controlled by the SCA,
  - (f) to undertake research on catchments generally, and in particular on the health of the SCA's catchment areas,
  - (g) to undertake an educative role within the community.
- (2) The SCA is required, and has power, to comply with the requirements imposed by or under any other Act in relation to any of its activities.

#### **17 Concurrence and other roles under environmental planning instruments**

- (1) The SCA has such functions as are necessary or convenient to carry out any concurrence or other role conferred or imposed on it by or under any environmental planning instrument in relation to a catchment area.
- (1A) For the purpose of enabling the SCA to exercise the functions conferred on it by this section:
- (a) the SCA has and may exercise the powers conferred on a council under Division 1A of Part 6 of the *Environmental Planning and Assessment Act 1979*, and
  - (b) an authorised officer has and may exercise the powers conferred by that Division on a person authorised by a council under section 118A (1) of that Act, subject to that Division.
- (2) This section does not affect the generality of any other provision of this or any other Act.

## 18 Concurrence and other roles under licensing legislation

- (1) The SCA has such functions as are necessary or convenient to carry out any concurrence or other role conferred or imposed on it by the regulations under this Act in relation to the grant of licences under any Act or instrument under any Act so far as they relate to:
  - (a) activities carried out or proposed to be carried out within a catchment area, or
  - (b) activities carried out or proposed to be carried out outside a catchment area but being of such a nature as affect or may affect a catchment area.
- (2) The regulations under this Act may, on the recommendation of the Minister and with the approval of the Minister administering the Act concerned, make provision for or with respect to:
  - (a) requiring the SCA to be notified of applications for the grant of specified classes of licences, and
  - (b) preventing the grant of specified classes of licences without the concurrence of the SCA.
- (3) Such a concurrence may be given on conditions, including conditions as to the terms and conditions to be included in or otherwise attached to such a licence.
- (4) This section does not affect the generality of any other provision of this or any other Act so far as it confers or imposes functions on the SCA, but otherwise has effect despite anything in any other Act.
- (5) This section does not:
  - (a) authorise the SCA to grant licences, or
  - (b) apply in relation to licences for premises occupied by, or activities carried on by, the SCA.
- (6) In this section:

**grant** includes issue, approve or amend.

**licence** includes consent, permit, authority or any other kind of authorisation (however described).

## 19 Compliance role under other legislation

- (1) The SCA has such functions as are necessary or convenient to carry out any inspectorial, enforcement or other role conferred or imposed on it by the regulations under this Act by reference to powers conferred on other persons or bodies under any Act or instrument under any Act so far as they relate to:

- (a) activities carried out or proposed to be carried out within a catchment area, or
  - (b) activities carried out or proposed to be carried out outside a catchment area but being of such a nature as affect or may affect a catchment area.
- (2) The regulations under this Act may, on the recommendation of the Minister and with the approval of the Minister administering the Act concerned, make provision for or with respect to conferring or imposing on the SCA any such function, and to specifying the effect or consequences of the exercise of any such function.
- (3) The SCA may delegate any such function to a member of staff of the Sydney Catchment Authority Division.
- (4) This section does not affect the generality of any other provision of this or any other Act so far as it confers or imposes functions on the SCA, but otherwise has effect despite anything in any other Act.
- (5) This section does not apply in relation to:
- (a) the grant of licences (as referred to in section 18), or
  - (b) activities carried on by the SCA.

## **Division 3 Area of operations**

### **20 Area of operations**

- (1) The area of operations of the SCA is to be so much of the area of operations that the Sydney Water Corporation had immediately before the commencement of this section as is specified in the initial operating licence of the SCA.
- (2) The Governor may, by order published in the Gazette, vary the area of operations of the SCA.
- (3) Sections 40 and 41 of the *Interpretation Act 1987* apply to an order under this section as if it were a statutory rule to which those sections apply.
- (4) Nothing in this section prevents the operating licence from empowering the SCA to exercise functions in or in respect of an area outside the area of operations of the SCA.
- (5) Nothing in this section affects the area of operations of the Sydney Water Corporation.

### **21 Facilitating provisions of orders**

- (1) An order of the Governor for the purposes of this Division may include such provisions as are necessary or convenient for giving effect to the order, including provisions for or with respect to the following:
- (a) the transfer of staff,

- (b) the transfer or apportionment of assets, rights and liabilities,
  - (c) the delivery or retention of records,
  - (d) the termination, cessation, dissolution or abolition of anything existing before the order takes effect,
  - (e) the preservation or continuance of anything existing before the order takes effect.
- (2) Such an order may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.

### **Division 3A Arrangements for drawing water**

#### **21A Arrangements for drawing water**

- (1) Subject to the operating licence, the SCA has control over all water in its water storages or pipelines.
- (2) Water in the SCA's water storages or pipelines is available for supply by the SCA.
- (3) The SCA may enter into an arrangement with any person to permit that person to draw or take water from the SCA's water storages or pipelines.

### **Division 4 Arrangements with Sydney Water Corporation**

#### **22 Arrangements with Sydney Water Corporation**

- (1) The SCA is required to enter into arrangements with the Sydney Water Corporation regarding the supply of water by the SCA to the Corporation.
- (2) The matters with which the arrangements are to deal are to include the following:
  - (a) the standard of quality of the water supplied,
  - (b) the continuity of water supply,
  - (c) the maintenance of adequate reserves of water by the SCA,
  - (d) subject to this Division, the cost to be paid by the Corporation for the supply of water to it.

- (3) The arrangements may be amended or replaced from time to time.
- (4) The Treasurer is to be consulted about the terms of the arrangements, including amendments and replacements, before their finalisation.
- (5) The terms of the arrangements, including amendments and replacements, have no effect unless or until approved by the Minister.
- (6) The arrangements are to be reviewed as required by:
  - (a) the terms of the arrangements, or
  - (b) the terms of the operating licence, or
  - (c) the Minister.
- (7) The arrangements are to be amended or replaced at times specified by:
  - (a) the terms of the arrangements, or
  - (b) the terms of the operating licence, or
  - (c) the Minister.
- (8) Section 38 (Public exhibition of memoranda of understanding) applies, with the necessary modifications, to arrangements under this section in the same way as it applies to memoranda of understanding.
- (9) Nothing in this Division limits the matters that may be included in the operating licence or limits the terms of the operating licence.

### **23 Negotiations**

- (1) The SCA and the Sydney Water Corporation are required to enter into negotiations for the purpose of entering into, amending or replacing the arrangements as and when required by or under this Division.
- (2) If it appears to the Premier that negotiations are unable to be finalised, the arrangements are to be entered into, amended or replaced in accordance with the procedures determined by the Premier or are taken to be entered into, amended or replaced in such terms as are determined by the Premier.

### **24 Role of Tribunal with respect to arrangements**

- (1) (Repealed)
- (2) An arrangement under this Division is not to be entered into, amended or replaced except after consultation with the Tribunal and after the Tribunal has furnished a report on the proposed arrangement or amendment to the Minister, the SCA and the Sydney Water Corporation.

- (3) In furnishing such a report, the Tribunal is to take into consideration any public submissions made under section 22 (8).
- (4) The Tribunal may investigate the adequacy and operation of the arrangements under this Division at any time, and may furnish a report on any aspect of the arrangements, or their adequacy or operation, to the Minister.
- (5) Section 33 (Presentation of report to Parliament) applies to a report furnished to the Minister under this section in the same way as it applies to a report of the Tribunal presented to the Minister under section 32.
- (6) Without limiting the generality of any provisions of the *Independent Pricing and Regulatory Tribunal Act 1992*, the supply of water by the SCA to the Sydney Water Corporation is capable of being declared to be a government monopoly service within the meaning of that Act.
- (7) The provisions of this Division and of the arrangements have effect subject to the *Independent Pricing and Regulatory Tribunal Act 1992*.

## **Division 5 Financial provisions**

### **24A Sydney Catchment Management Fund**

- (1) There is established a fund called the Sydney Catchment Management Fund (the **Fund**).
- (2) The Fund is to be maintained by the SCA.

### **24B Payments into Fund**

The following amounts are to be paid into the Fund:

- (a) any money appropriated by Parliament for payment into the Fund,
- (b) any money received by the SCA from the supply of water,
  - (b1) any money received by the SCA from the generation and supply of hydro-electricity,
- (c) any money received by the SCA in relation to any lease, licence, permit or easement granted by the SCA in respect of land under its ownership or control,
- (d) any money received by the SCA from the sale of its assets,
- (e) any fees received by the SCA for the services it supplies,
- (f) any penalty, fine or forfeiture recovered in proceedings for an offence against this or any other Act, or against the regulations under this or any other Act, being proceedings instituted by or under the direction of, or for on behalf of, the SCA,

- (g) any money given to the SCA for the express purpose of payment into the Fund,
- (h) the proceeds of the investment of money in the Fund,
- (i) any other money required to be paid into the Fund by or under this or any other Act or law.

#### **24C Payments out of Fund**

Money in the Fund may be applied for any or all of the following purposes:

- (a) capital and recurrent expenditure in relation to the SCA's works,
- (b) carrying out and giving effect to plans of management in accordance with section 50 (including payment of money to the Director-General of the Department of Environment and Climate Change in that connection),
- (c) acquiring land (including an interest in land) as referred to in section 60,
- (d) the provision of financial assistance for the purpose of funding catchment management activities carried out by other persons and bodies, including local councils, but only if those activities are consistent with the SCA's objectives,
- (e) payment of any dividends, tax-equivalents or guarantee fees referred to in section 34 (2) (b), and any dividends of the kind referred to in section 59B of the *Public Finance and Audit Act 1983*,
- (f) the costs incurred by the SCA in maintaining the Fund,
- (g) any other costs and expenses incurred by the SCA in connection with the exercise of its functions.

#### **24D Investment of Fund**

The SCA may invest money in the Fund in any manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*.

#### **24E Fees for services supplied by SCA**

- (1) The SCA may charge, for the supply of any services under this Act or the regulations, such fee as may be prescribed by the regulations for the supply of the service.
- (2) This section does not apply to the supply of water to the Sydney Water Corporation, or to the supply of any other service whose cost is determined or regulated under any arrangement, operating licence, memorandum of understanding or other instrument under this Act.

### **Part 4 Control and accountability of SCA**

## **Division 1 Operating licence**

### **25 Grant of operating licence**

- (1) The Governor may grant an operating licence to enable the SCA, subject to any limitations specified in the operating licence, to provide, construct, operate, manage or maintain systems or services for the purpose of the exercise of any of its functions in accordance with this Act, whether within or outside the area of operations of the SCA.
- (2) Except to the extent to which this Act expressly provides, nothing in the operating licence limits the requirements imposed by or under any other Act or law with respect to the provision, construction, operation, management or maintenance of any system or service referred to in subsection (1).
- (3)-(5) (Repealed)

### **26 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 SCA is required:
  - (a) to provide, construct, operate, manage and maintain efficient and co-ordinated viable systems and services for supplying water, and
  - (b) 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 and other matters determined by the Governor and set out in the operating licence, and
  - (c) to compile indicators of the direct impact of the SCA's activities (including, but not limited to, the impact of energy used and waste generated) on the environment:
    - (i) to enable preparation of an annual report on the SCA's performance, and
    - (ii) to provide information for a year-to-year comparison in relation to the SCA's performance in this area, and
    - (iii) to enable preparation of reports to Parliament as referred to in Division 5.
- (2) The operating licence is to provide for the preparation of an operational audit referred to in Division 2.

### **27 Amendment of operating licence**

The Governor may amend the operating licence.



## **28 Term of operating licence**

- (1) The initial term of the operating licence is to be for a maximum of 5 years, as determined by the Governor.
- (2) After the initial term, the Governor may renew 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.

## **29 Contravention of operating licence**

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

## **29A Contravention of operating licence: action by Tribunal**

- (1) The Tribunal may impose a monetary penalty on the SCA.
- (2) The Tribunal may, instead of imposing a monetary penalty, require the SCA 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 SCA if the cost of that action would exceed the monetary penalty that the Tribunal could impose under this section on the SCA.
- (4) If the Tribunal requires information to be sent to a customer under subsection (2), the SCA 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 SCA or, if the SCA 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 SCA 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 SCA has taken or is likely to take in respect of the contravention and the cost to the SCA 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 SCA, and
  - (b) the SCA 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 29 in respect of the contravention.
- (11) Nothing in this section affects any powers under section 29 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.

## **29B Administrative reviews of certain decisions of Tribunal concerning operating licences**

- (1) The SCA, if aggrieved by a decision of the Tribunal to take action under section 29A in relation to the SCA, may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision.

- (2) Section 53 (Internal reviews) of the *Administrative Decisions Review Act 1997* does not apply to such a decision of the Tribunal.

### **30 Cancellation of operating licence**

- (1) The operating licence may be cancelled by the Governor, but only if:
- (a) the SCA ceases, otherwise than as authorised by the operating licence, to carry out its responsibilities in accordance with the operating licence or any of them in the area of operations of the SCA for any reason, or
  - (b) the SCA:
    - (i) is, in the opinion of the Minister, in material default in compliance with the operating licence, viewed in terms of the operation of the operating licence as a whole, and
    - (ii) has not, within the time specified by the Minister in a notice to the SCA, either rectified the default or shown cause, to the satisfaction of the Minister, why the operating licence should not be cancelled, or
  - (c) the SCA has been convicted on more than 3 occasions within a period of 12 months of criminal offences that are punishable by a fine of at least \$10,000 or, if the SCA were a natural person, penal servitude or imprisonment for 12 months or more.
- (2) A notice under section 29 can be regarded also as a notice for the purposes of subsection (1) (b).
- (3) If the operating licence is cancelled under this section, the Governor may, by order published in the Gazette, vest in the Crown or a public authority (as specified in the order), from a date specified in the order, the assets and rights of the SCA that are specified in the order and that, in the opinion of the Minister, are necessary to enable the Crown or public authority to exercise such of the functions exercisable (or formerly exercisable) by the SCA as appear to be necessary in the public interest.
- (4) An order under this section may provide for:
- (a) the Crown or public authority to assume those liabilities of the SCA 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 SCA.

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

### **30A 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, reporting and informing under section 31 (1) (b) and (3) (a), and
  - (c) the function of advising about penalties or remedial action under section 31 (3) (b), and
  - (d) the function of imposing monetary penalties, or requiring other action to be taken, under section 29A, and
  - (e) such other functions of the Tribunal under this Act as are specified by the regulations for the purposes of this section.
- (2) The Tribunal has the function of making recommendations to the Minister for or with respect to:
- (a) the granting, amendment or cancellation of the operating licence, and
  - (b) the imposition, amendment or cancellation of conditions in relation to the operating licence.
- (3) Part 4B of the *Independent Pricing and Regulatory Tribunal Act 1992* applies in relation to the Tribunal's regulatory functions under this Act.

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

### **31 Functions of Tribunal**

- (1) The functions of the Tribunal under this Division include the following:
- (a) to ensure that the operational audit is prepared in accordance with the operating licence,
  - (b) to monitor, and report to the Minister on, compliance by the SCA with the operating licence,
  - (c) to monitor, and report to the Minister on, compliance by the SCA and by other public authorities with the provisions of the environmental planning instrument that was made pursuant to section 53 before its repeal and that are currently in force.
- (2) The regulations may make provision for or with respect to conferring other functions under this Division on the Tribunal, including, for example, monitoring and reporting on the activities of public authorities in and in relation to the catchment areas.
- (3) The Tribunal must:
- (a) inform the Minister about any failure of the SCA to meet operational standards or

any other requirements imposed on the SCA under the operating licence, and

(b) provide advice to the Minister about any penalties or remedial action required as a result of the SCA's performance under the operating licence.

(4) The Tribunal has such other functions under this Division as may be conferred or imposed on it by the operating licence.

(5) The Tribunal is to report annually to the Minister in accordance with the requirements of this Division.

(6) (Repealed)

### **32 Report on operational audit**

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

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

(1) The Minister is to lay the report (or cause it to be laid) before both Houses of Parliament within one month after the Minister receives the report.

(2) If a House of Parliament is not sitting when the Minister seeks to furnish a report to it, the Minister may present copies of the report to the Clerk of the House concerned.

(3) The report:

(a) on presentation and for all purposes is taken to have been laid before the House, and

(b) may be printed by authority of the Clerk of the House, and

(c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and

(d) is to be recorded:

(i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and

(ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the report by the Clerk.

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

(1) The SCA 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 SCA.

- (2) Without limitation, an operating licence may include terms and conditions relating to the determination of the cost of carrying out the operational audit.

## **Division 3 Statement of financial framework**

### **34 Statement of financial framework**

- (1) The Board is to prepare a statement of financial framework for adoption by the Minister and the Treasurer. The statement of financial framework is to be complied with by and in relation to the SCA. It may be amended or replaced from time to time on the recommendation of the Board.
- (2) The statement of financial framework is to include, but is not limited to:
  - (a) a statement of financial purpose, and
  - (b) provisions for or with respect to the payment by the SCA of dividends, tax-equivalents and guarantee fees, as respectively defined in the statement of financial framework.
- (3) Nothing in this section or any other provision of this Act affects the application of section 59B of the *Public Finance and Audit Act 1983* to the SCA.

## **Division 4 Memoranda of understanding**

### **35 Definition**

In this Division:

***regulatory agencies*** means:

- (a) the Environment Protection Authority and the Director-General of the Ministry of Health, and
- (b) the Chief Executive of the Office of Environment and Heritage, the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services, local councils, county councils, and any persons, bodies or agencies for the time being nominated by order of the Minister communicated to the SCA.

### **36 Requirement to enter into certain memoranda of understanding**

- (1) The SCA is required to enter into memoranda of understanding respectively with the regulatory agencies referred to in paragraph (a) of the definition of ***regulatory agencies*** in section 35. The following subsections of this section apply in relation to such a memorandum of understanding, and do not apply to memoranda of understanding with other regulatory agencies.
- (2) A memorandum of understanding is to be of the nature referred to in the operating licence.

- (3) The SCA is to enter into a memorandum of understanding with each regulatory agency as soon as practicable (but within 6 months) after the SCA is granted the operating licence.
- (4) A memorandum of understanding is to be reviewed, and amended or replaced, at such times and in such circumstances as are agreed on between the SCA and the regulatory agency concerned or as are determined by the Minister.
- (5) If the SCA and a regulatory agency are not able to enter into, or agree on a term of, a memorandum of understanding, the memorandum is to be entered into in accordance with the procedures determined by the Premier or is taken to be entered into in such terms as are determined by the Premier.

### **37 Direction to enter into certain memoranda of understanding**

- (1) The Minister may, from time to time, direct the SCA to enter into memoranda of understanding with such regulatory agencies referred to in paragraph (b) of the definition of the **regulatory agencies** in section 35 as the Minister determines. This section does not apply to a memorandum of understanding referred to in section 36.
- (2) The Minister may specify the matters to be dealt with in a memorandum of understanding and the period (not more than 6 months from the date of the direction) within which the memorandum is to be entered into.
- (3) A memorandum of understanding is to be reviewed, and amended or replaced, at such times and in such circumstances as are agreed on between the SCA and the regulatory agency concerned or as are determined by the Minister.
- (4) If the SCA and a regulatory agency are not able to enter into, or agree on a term of, a memorandum of understanding, the memorandum is to be entered into in accordance with the procedures determined by the Premier or is taken to be entered into in such terms as are determined by the Premier.

### **38 Public exhibition of memoranda of understanding**

- (1) The SCA must give notice of the preparation of each memorandum of understanding to which it is a party.
- (2) The notice is to be given in a newspaper circulating in the area of operations of the SCA and must:
  - (a) specify the address of the place at which copies of the memorandum of understanding may be inspected, and
  - (b) specify the address to which representations concerning the memorandum of understanding may be forwarded.
- (3) Any person may, within 30 days or such longer period as may be specified in the

notice, make representations to the SCA and to the regulatory agency concerned about the memorandum of understanding.

- (4) The SCA and each regulatory agency must, on the expiration of the period referred to in subsection (3), and before entering into the memorandum of understanding, consider any representations made under this section.
- (5) Notice of the execution of a memorandum of understanding is to be published in the Gazette and in a newspaper circulating in the area of operations of the SCA within 14 days after the execution.
- (6) The requirements of this section apply to an amendment to a memorandum of understanding in the same way as they apply to a memorandum of understanding.

## **Division 5 Reports to Parliament**

### **39 Reports**

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



#### **40 Other documents to be presented to Parliament**

- (1) In addition to the reports referred to in section 39, the Minister is to lay (or cause to be laid) before both Houses of Parliament copies of the following documents within the time specified in this section in relation to the document concerned:
  - (a) any order varying the area of operations of the SCA—within 15 days after the order is published in the Gazette,
  - (b) the operating licence (and any amendments to the operating licence)—within 90 days after the licence is granted (or amended),
  - (c) the statement of financial framework referred to in section 34—within 14 days after it is adopted.
  - (d) (Repealed)
- (2) Section 39 (3) and (4) apply to and in respect of a copy of a document referred to in this section in the same way as they apply to a report referred to in section 39 (1).

### **Part 5 Catchment areas**

#### **Division 1 Catchment areas**

##### **41 Declaration of catchment areas**

- (1) The Governor may, by order published in the Gazette, declare an area of land specified in the order to be or to be part of the inner catchment area of the SCA.
- (2) The Governor may, by order published in the Gazette, declare an area of land specified in the order to be or to be part of the outer catchment area of the SCA.

##### **42 Catchment health indicators**

- (1) The Minister must appoint a public authority or other person to be ***the appointed person*** to carry out functions under this section.
- (2) The appointed person must develop and approve catchment health indicators of the catchment health of the catchment area.
- (3) The appointed person must publish the approved catchment health indicators in the Gazette.
- (4) Those indicators may be amended or replaced in the same way as they were originally developed, approved and published.
- (5) The first indicators required under this section must be approved and published before 1 January 2009.

#### **42A Catchment audits**

- (1) The Minister must appoint a public authority or other person (the **appointed auditor**) to carry out functions under this section.
- (2) The appointed auditor must:
  - (a) conduct an audit (a **catchment audit**) of the catchment health of the catchment area, and
  - (b) present a report on that audit to the Minister.
- (3) The catchment audit must assess the state of the catchment area having regard to the catchment health indicators approved under section 42, as in force at the time of the assessment.
- (4) A catchment audit must be conducted, and a report presented to the Minister on that audit, no more than 3 years after the date the 2007 report is presented under section 42 (as in force immediately before its repeal by the [Sydney Water Catchment Management Amendment Act 2007](#)). Subsequent audits must be conducted, and reports must be presented to the Minister on those audits, at intervals of no more than 3 years calculated from the date the 2010 report is presented.
- (5) Section 39 (2)–(4) apply to and in respect of a report presented to the Minister under this section in the same way as it applies to the reports referred to in section 39 (1).
- (6) The Minister is to forward a copy of the report of a catchment audit to the SCA as soon as practicable after the report is received.

#### **42B Incorporation of catchment audit findings**

- (1) The SCA must evaluate the findings of a catchment audit, as stated in the report of the catchment audit, to the extent to which they relate to the activities of the SCA and risks to water quality.
- (2) The SCA must incorporate the findings of a catchment audit, to the extent to which they relate to the activities of the SCA and water quality, into:
  - (a) the SCA's risk framework, and
  - (b) the SCA's programs and activities relating to catchment management.
- (3) This section must be complied with within 6 months after the catchment audit report is received by the Minister.

#### **42C Report concerning adjustments as a result of catchment audit findings**

- (1) The SCA must report to the Minister on the SCA's progress to achieve improvements in catchment health, to prevent degradation of existing catchment health and to

maintain existing catchment health, having regard to the findings of the most recent catchment audit conducted under this Division.

- (2) Such a report must be provided within 2 years after the catchment audit report is received by the Minister.

#### **42D Operation of this Division**

Nothing in this Division:

- (a) prevents the operating licence from including terms and conditions relating to the SCA's activities (including, but not limited to, the SCA's catchment management functions) or requiring reports on those activities, or
- (b) prevents the Tribunal from recommending to the Minister that the SCA's operating licence include terms and conditions relating to the SCA's catchment management functions or requiring reports on those functions.

## **Division 2 Special areas**

### **43 Definitions**

In this Division:

**joint sponsors** means the Chief Executive of the Office of Environment and Heritage and the SCA.

**Ministers** means the Minister and the Minister for the Environment.

**public agency** means the Governor, a Minister, or a public authority.

### **44 Special areas**

- (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land specified in the order to be a special area.

#### **Editorial note—**

For orders under sec 44 (1) see Gazette No 92 of 25.7.2008, p 7326.

- (2) The Minister may not recommend the making of such an order unless the Minister certifies that the Minister is satisfied that the making of the order is necessary for either or both of the following purposes:
  - (a) protecting the quality of stored waters, whether intended for use for drinking or other purposes,
  - (b) maintaining the ecological integrity of an area of land to be declared to be a special area in a manner that is consistent with the SCA's objectives.
- (3) The Minister must cause a copy of an order made under this section, including an

order amending an order, to be tabled in each House of Parliament within 14 sitting days of that House after the order has been published in the Gazette.

- (4) A special area must not be reduced in size, and an order declaring an area of land to be a special area must not be repealed, unless authorised by an Act of Parliament.
- (5) The area of land at Warragamba declared to be a special area by the order published in Gazette No 122 of 4 September 1942 at page 2499, and amended by orders published in Gazette No 1 of 7 January 1944 at page 1 and Gazette No 77 of 4 August 1944 at page 1365, is reduced in size by the excision from that area of the land shown hatched as the area for deproclamation on Map 687\_1.5 entitled "*Area outside of Warragamba Catchment for Deproclamation*", a copy of which is deposited in the head office of the SCA.
- (6) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare that any previous order specified in Schedule 7 is repealed on the date specified in the later order.

#### **45 Restriction on alienation of land in special areas**

- (1) The SCA must not alienate, mortgage, charge or demise land in a special area that is owned by or vested in the SCA unless:
  - (a) to or in favour of the Minister administering the *National Parks and Wildlife Act 1974* (at no cost to that Minister), or
  - (b) authorised by an Act of Parliament.
- (2) As soon as practicable after the commencement of this section, the Minister is to review all the land referred to in clause 5 (1) of Schedule 6 that is owned by or vested in the SCA.
- (3) If, as a result of the review, the Minister determines that the objectives of the SCA would be more effectively attained if the land concerned were vested in the Minister administering the *National Parks and Wildlife Act 1974*, the SCA is to transfer the land under subsection (1) (a) as soon as practicable after the determination is made.
- (4) Nothing in subsection (1) operates:
  - (a) to extinguish or otherwise affect any existing lease or other interest in the land in a special area, or
  - (b) to prevent the renewal of any such lease or other interest, or
  - (c) to prevent the grant of a lease or other interest in the land in accordance with any plan of management prepared in relation to the land under this Act.

#### **46 Crown land in special areas**

- (1) Action may not be taken under the *Crown Lands Act 1989* in relation to land in a special area unless the SCA has given written approval and any conditions to which the approval is subject are complied with.
- (2) The SCA 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.

#### **47 Exercise of functions by public agencies 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 to the SCA.
- (2) On receiving a notice referred to in this section, the SCA may make such representations to the public agency as the SCA thinks fit.
- (3) A public agency may not exercise functions contrary to any such representations unless, before the exercise of the functions, not less than 28 days' notice has been given to the SCA of the functions intended to be exercised.
- (4) If a public agency has functions with regard to a development application or an application for a complying development certificate relating to land within a special area to which an environmental planning instrument applies, the forwarding of the application or a copy of it to the SCA, whether by the public agency or the applicant, is taken also to be the giving of notice for the purposes of this section.
- (5) This section does not apply to a public agency's functions with regard to the making of an environmental planning instrument in relation to land within a special area.
- (6) This section does not apply to a public agency's functions with regard to a development application, if an environmental planning instrument applying in the special area prevents the development application from being determined by the granting of consent without the concurrence of the SCA.

#### **48 Regulations concerning special areas**

- (1) The regulations may make provision for or with respect to special areas, including charges or payments for abstraction of water and the regulation or prohibition of abstracting, using, polluting or contaminating waters or polluting or contaminating land within such areas.
- (2) A regulation made under this Division prevails to the extent of any inconsistency with an instrument made under another Act, other than a SEPP under the *Environmental Planning and Assessment Act 1979*.

#### **49 Plans of management**

- (1) The joint sponsors are jointly required to cause a plan of management to be prepared for each special area as soon as practicable after it has been declared to be a special area.
- (2) When a plan of management has been prepared, the joint sponsors must give notice of the plan in a newspaper circulating throughout New South Wales and must, in that notice:
  - (a) specify the address of the place at which copies of the plan of management may be inspected, and
  - (b) specify the address to which representations concerning the plan of management may be forwarded.
- (3) Any person may, within 30 days or such longer period as may be specified in the notice, make representations to the joint sponsors concerning the plan of management.
- (4) The joint sponsors must, on the expiration of the period referred to in subsection (3), and before submitting the plan of management to the Ministers, consider any representations made under this section.
- (5) The Ministers may adopt a plan of management without alteration or with such alterations as the Ministers think fit or may refer it back to the joint sponsors for further consideration.
- (6) If the Ministers refer a plan of management back for further consideration, the joint sponsors must resubmit it after considering it further and making any appropriate alterations.
- (7) The Ministers may:
  - (a) amend or alter a plan of management from time to time, or
  - (b) cancel a plan of management, or
  - (c) cancel a plan of management and substitute a new plan.
- (8) Before doing any of the things referred to in subsection (7), the Ministers may consult with any person or body (including persons or bodies other than the joint sponsors) that the Ministers think fit.
- (9) Subsections (2)–(4) apply to an amendment or alteration of a plan of management in the same way as they apply to a plan of management.

## **50 Operations under plan of management**

- (1) A plan of management adopted under this Act for a special area must be carried out and given effect to by the joint sponsors.
- (2) Subject to the requirements of any other Act or any instrument under any other Act, no operations are to be undertaken by the joint sponsors in relation to the lands within the special area unless the operations are in accordance with the plan.
- (3) The joint sponsors (together or individually) may engage such contractors (including government agencies) as may be necessary or convenient to assist them in carrying out and giving effect to the plan.

## **Division 3 Controlled areas**

### **51 Controlled areas**

- (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land specified in the order to be a controlled area.
- (2) An order under this section applies to land only while it is owned by or vested in the SCA.

### **52 Regulations concerning controlled areas**

- (1) The regulations may make provision for or with respect to controlled areas, including the regulation or prohibition of abstracting, using, polluting or contaminating waters or polluting or contaminating land within such areas.
- (2) A regulation made under this Division prevails to the extent of any inconsistency with an instrument made under another Act, other than a SEPP under the [Environmental Planning and Assessment Act 1979](#).

## **Division 4**

### **53 (Repealed)**

## **Part 6 Provisions relating to works and land**

### **54 Ownership of works**

- (1) The SCA is the owner of all works installed by the SCA in or on land, in rivers and other waterways and in or on the beds of rivers and waterways and of all works in or on land or in water vested in or transferred to the SCA (whether or not the land is owned by the SCA).
- (2) The SCA 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 SCA, the works are

used in an efficient manner for the purposes for which they were installed.

- (3) The SCA 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*.

## **55 Entry on to land**

- (1) The SCA may, by an authorised officer, enter and occupy land or a building in accordance with this Part 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 SCA 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 ascertain the character and condition of the land or a building to enable the SCA to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect or improve, or do any other thing to, the SCA's systems and services for the purposes of carrying out the terms and conditions of the operating licence,
  - (c) to ascertain whether:
    - (i) an offence against this Act or the regulations has been committed, or
    - (ii) an offence against another Act or regulations under another Act has been committed within a catchment area, being an offence prescribed by the regulations,
  - (d) to find the source of pollution of water in a catchment area and, for this purpose, to dig up and remove material from the land.
- (2) Material that has been excavated from land for the purposes of this section may only be removed from the land by the SCA:
  - (a) if this is necessary for the purpose of ascertaining whether:
    - (i) an offence against this Act or the regulations has been committed, or
    - (ii) an offence against another Act or regulations under another Act has been committed within a catchment area, being an offence prescribed by the regulations, or
  - (b) if the owner of the land has consented to its removal.

## **56 (Repealed)**



## **57 Exercise of powers of entry**

- (1) Before a person enters any land or building under a power conferred by this Part, the SCA or a person must serve on the owner or occupier of the land or building notice in writing of the intention to enter the land or building on a day or days specified in the notice unless:
  - (a) entry to the land or building is made with the consent of the owner or occupier of the land or building, or
  - (b) entry is required urgently and the case is one in which the Board has authorised in writing (either generally or in the particular case) entry without notice, or
  - (c) the giving of notice would defeat the purpose for which the power is to be exercised.
- (2) A power conferred by this Part to enter any land or building may not be exercised unless the person proposing to exercise the power:
  - (a) is in possession of the identification he or she is required to produce on request under section 69H, 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 person's identification if required to do so by the occupier of the land, and
  - (d) uses no more force than is reasonably necessary to effect the entry.
- (3) Nothing in this section authorises the use of force to enter a dwelling-house or any enclosed part of a building occupied as a dwelling or authorises the entry of such premises at night without the consent of the owner or occupier of the premises unless entry is required urgently and the case is one in which the Board has authorised (in writing, and either generally or in the particular case) entry without notice.

## **58 Compensation by SCA for damage**

- (1) The SCA, in exercising its functions under this Part, is to do as little damage as practicable and is, subject to this Part, 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.

## **59 Compensation to SCA for damage**

- (1) Without limiting the provisions referred to in section 62 (1) (c), a person who, without

the consent of the SCA, carries out any activity that causes destruction of, damage to or interference with any work owned by the SCA 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 SCA for all loss or damage suffered by the SCA as a result.

- (2) The SCA is not entitled to compensation both under this section and another provision of this Act for the same destruction, damage or interference.
- (3) A reference in this section to a person extends to any person:
  - (a) who caused the carrying out of the activity, or
  - (b) by whose order or direction the activity was carried out, or
  - (c) who aided, assisted, counselled or procured the carrying out of the activity.
- (4) The SCA may proceed against a person for recovery of its loss or compensation for its damage under this section whether or not the SCA 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.

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

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

#### **61 Approval of infrastructure activities in area of operations**

- (1) In this section:

**infrastructure activity** means any development or other activity of any kind:

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

certifies in the instrument of approval that the carrying out of the activity is:

- (a) required to protect the quality of water supplied by the SCA, and
- (b) required in the interests of public health or public safety, and
- (c) required to be carried out urgently.

(3) If the Minister has given such an approval, the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993* and any instruments in force under either of those Acts do not apply to or in respect of:

- (a) the approval of the Minister to the carrying out of that activity, or
- (b) the carrying out of that activity, or
- (c) the use at any time of the works with which that activity is concerned, or
- (d) the land on which that activity is carried out or proposed to be carried out or on which those works are used or proposed to be used, so far as is relevant to that activity or those works.

## **62 Application of certain provisions**

- (1) The following provisions of the Sydney Water Act apply to and in relation to the SCA:
  - (a) section 42 (Power to open roads),
  - (b) section 43 (Altering position of conduit),
  - (c) section 44 (Protection of works).
- (2) Those provisions so apply with any necessary adaptations and with the adaptations (if any) prescribed by the regulations, and as if:
  - (a) references to the Sydney Water Corporation were references to the SCA, and
  - (b) references to an operating licence were references to the operating licence under this Act.

## **Part 6A Catchment correction notices and catchment protection notices**

### **Division 1 Definitions**

#### **62A Definitions**

In this Part:

***catchment correction notice*** means a notice under Division 2.

**catchment protection notice** means a notice under Division 3.

**compliance cost notice** means a notice under section 62K.

**corrective action**, in relation to a targeted activity, includes the following:

- (a) action to prevent, minimise, remove, disperse, destroy or mitigate any adverse impact on water quality or catchment health resulting or likely to result from the activity,
- (b) ascertaining the nature and extent of the targeted activity and of the actual or likely resulting adverse impact on water quality or catchment health,
- (c) preparing and carrying out a remedial plan of action.

**targeted activity** means an activity in a special area or controlled area that has, or is likely to have, caused damage to, or detrimentally affected, the quality of any water, or the catchment health of any land, in the area concerned.

## Division 2 Catchment correction notices

### 62B Corrective action by occupiers or persons carrying on certain activities

- (1) The SCA may, by notice in writing (a **catchment correction notice**), do either or both of the following:
  - (a) direct an occupier of land on or from which the SCA reasonably suspects that a targeted activity has been carried out or is being carried out,
  - (b) direct a person who is reasonably suspected by the SCA of carrying out or having carried out a targeted activity,to take the corrective action specified in the notice within such period as is specified in the notice.
- (2) The catchment correction notice may require the person to whom the notice is given to furnish reports to the SCA regarding progress on the carrying out of the corrective action.
- (3) If the person given a catchment correction notice complies with the notice but was not the person who carried out the targeted activity, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who carried out the targeted activity.
- (4) A catchment correction notice, or a variation of a catchment correction notice, operates from the day the notice or notice of the variation is given or from such later day as the notice specifies.
- (5) A person who, without reasonable excuse, does not comply with a catchment correction notice given to the person is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

**Note—**

An offence against subsection (5) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64B.

**62C Corrective action by public authorities**

- (1) If the SCA reasonably suspects that a targeted activity has been carried out or is being carried out, the SCA may, by notice in writing, direct a public authority to take such corrective action as is specified in the notice. The public authority is authorised and required to take that action.
- (2) If a public authority reasonably suspects that a targeted activity has been carried out or is being carried out, the public authority may take such corrective action as it considers necessary. The public authority is authorised to take that action, whether or not it is directed to take corrective action under subsection (1).
- (3) Notices may be given, and action may be taken, under this section whether or not a catchment correction notice has been given under section 62B, and (if such a notice has been given) whether or not the period specified in the notice under that section has expired.
- (4) A public authority may take corrective action under this section by itself or by its employees, agents or contractors.
- (5) In this section:

***public authority*** does not include a State owned corporation.

**62D Catchment correction notice may be given orally**

- (1) The SCA may, instead of giving a direction under this Division by notice in writing, cause the direction to be given orally by an authorised officer.
- (2) A direction given orally to a person ceases to have effect on the expiration of the period of 72 hours after the time it was given unless confirmed by the SCA by a written correction notice given to the person within that period.
- (3) A direction given orally has the same effect as a direction given by notice in writing, and is taken to be a catchment correction notice.

### **62E Fee for catchment correction notice**

- (1) The purpose of this section is to enable the SCA to recover the administrative costs of preparing and giving catchment correction notices.
- (2) A person who is given a catchment correction notice under section 62B must within 30 days after the notice is given pay the fee prescribed under section 94 of the *Protection of the Environment Operations Act 1997* to the SCA.
- (3) The SCA may:
  - (a) extend the time for payment of the fee, on the application of the person given the catchment correction notice, or
  - (b) waive payment of the whole or any part of the fee, on the SCA's own initiative or on the application of the person.
- (4) A person who does not pay the fee within the time required under this section is guilty of an offence.

Maximum penalty: 200 penalty units.

## **Division 3 Catchment protection notices**

### **62F Preventive action**

- (1) This section applies when the SCA reasonably suspects that a targeted activity has been, will be or is being carried out on any land in a special area or a controlled area.
- (2) The SCA may, by notice in writing (a **catchment protection notice**), do either or both of the following:
  - (a) direct the occupier of the land,
  - (b) direct the person carrying on the activity,to take such action, as is specified in the notice within such period (if any) as is specified in the notice, to ensure that either the targeted activity is not commenced, is no longer carried on, or if the targeted activity is permitted to be carried on in future, it is carried on in a manner that does not cause damage to, or detrimentally affect, the quality of any water, or the catchment health of any land, in the special area or controlled area.
- (3) The action to be taken may (without limitation) include any of the following:
  - (a) ceasing to carry on or not commencing to carry on an activity,
  - (b) carrying on an activity in a particular manner,
  - (c) carrying on an activity only during particular times,

(d) preparing and carrying out a plan of action to control, prevent or minimise any damage to, or detrimental effect on, the quality of any water, or the catchment health of any land, in the special area or controlled area.

- (4) If the occupier who is given a notice is not the person carrying on the targeted activity, the notice is taken to require the occupier to take all available steps to cause the action to be taken by the person carrying on the targeted activity.
- (5) A catchment protection notice may require the person to whom the notice is given to furnish reports to the SCA regarding progress on carrying out the action required to be taken by the notice.
- (6) A person who does not comply with a catchment protection notice given to the person is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

**Note—**

An offence against subsection (6) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64B.

**62G Action in event of failure to comply**

If a person does not comply with a catchment protection notice given to the person, the SCA may take action to cause the notice to be complied with by itself or by its employees, agents or contractors.

**62H Commencement of operation of catchment protection notice or variation of catchment protection notice**

- (1) A catchment protection notice, or a variation of a catchment protection notice, operates from the day the notice or notice of the variation is given or from such later day as the notice specifies.
- (2) If an appeal is made against a catchment protection notice or the variation of a catchment protection notice and the Land and Environment Court directs that the notice is stayed, the notice or variation does not operate until the stay ceases to have effect or the Land and Environment Court confirms the notice or the appeal is withdrawn, whichever first occurs.

### **62I Fee for catchment protection notice**

- (1) The purpose of this section is to enable the SCA to recover the administrative costs of preparing and giving catchment protection notices.
- (2) A person who is given a catchment protection notice must within 30 days after the notice is given pay the fee prescribed under section 94 of the *Protection of the Environment Operations Act 1997* to the SCA.
- (3) The SCA may:
  - (a) extend the time for payment of the fee, on the application of the person given the notice, or
  - (b) waive payment of the whole or any part of the fee, on the SCA's own initiative or on the application of the person.
- (4) The fee is not payable during the currency of an appeal against the catchment protection notice.
- (5) If the decision of the Land and Environment Court on an appeal does not invalidate the catchment protection notice, the fee is payable within 30 days of the decision.
- (6) A person who does not pay the fee within the time required under this section is guilty of an offence.

Maximum penalty: 200 penalty units.

### **62J Appeals against catchment protection notices**

- (1) A person served with a catchment protection notice may, within 21 days (or such other period as is prescribed by the regulations) after being served with the notice, appeal to the Land and Environment Court against the notice.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the notice appealed against.
- (3) There is no appeal against a decision not to extend the time for complying with a catchment protection notice.
- (4) For the purposes of this section, a **catchment protection notice** includes a notice that varies a catchment protection notice.

## **Division 4 Compliance costs**

### **62K Compliance cost notices**

- (1) The SCA may, by notice in writing, require a person to whom a catchment correction



notice has been given to pay all or any reasonable costs and expenses incurred by the SCA in connection with:

- (a) monitoring action required to be taken by the notice, and
- (b) ensuring that the notice is complied with, and
- (c) any other associated matters.

(2) A public authority that takes corrective action under section 62C may, by notice in writing, require:

- (a) the occupier of the land on or from which the authority reasonably suspects that the targeted activity was carried out, or
- (b) the person who is reasonably suspected by the authority of having carried out the targeted activity,

or both, to pay all or any reasonable costs and expenses incurred by it in connection with the corrective action.

(3) If the SCA takes action under section 62G because a catchment protection notice is not complied with, the SCA may, by notice in writing, require the person to whom the catchment protection notice was given to pay all or any reasonable costs and expenses incurred by it in taking the action.

#### **62L Recovery of amounts**

- (1) The SCA or a public authority may recover any unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.
- (2) If the person given a compliance cost notice complies with the notice but was not the person who carried out the targeted activity, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who carried out the targeted activity.

#### **62M Registration of compliance cost notices in relation to land**

- (1) If a compliance cost notice has been given by the SCA or a public authority to a person, the SCA or the public authority may apply to the Registrar-General for registration of the notice in relation to any land owned by the person.
- (2) An application under this section must define the land to which it relates.
- (3) The Registrar-General must, on application under this section and lodgment of a copy of the compliance cost notice, register the notice in relation to the land in such manner as the Registrar-General thinks fit.
- (4) If the notice relates to land under the provisions of the *Real Property Act 1900*, the

notice is to be registered under that Act.

**62N Charge on land subject to compliance cost notice**

- (1) This section applies where a compliance cost notice is registered under section 62M, on the application of the SCA or a public authority, in relation to particular land owned by a person.
- (2) There is created by force of this section, on the registration of the notice, a charge on the land in relation to which the notice is registered to secure the payment to the SCA or the public authority of the amount specified in the notice.
- (3) Such a charge ceases to have effect in relation to the land:
  - (a) on payment to the SCA or the public authority of the amount concerned, or
  - (b) on the sale or other disposition of the land with the written consent of the SCA or the public authority, or
  - (c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,whichever first occurs.
- (4) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the notice was registered.
- (5) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (3).
- (6) If:
  - (a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and
  - (b) the charge is so registered,a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (3), taken to have notice of the charge.
- (7) The regulations may make provision for or with respect to the removal of a charge under this section.
- (8) The SCA or a public authority may, by notice in writing, require the person to whom the compliance cost notice was given to pay all or any of the reasonable costs and expenses incurred by the SCA or the public authority in respect of the lodgment or registration of the compliance cost notice and the registration of any resulting charge (including the costs of discharging the charge). The SCA or the public authority may

recover any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

## **Division 5 Miscellaneous**

### **62O Multiple notices**

More than one notice under a provision of this Part may be given to the same person.

### **62P Revocation or variation**

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (4) A notice given by the SCA may be revoked only by the SCA and a notice given by a public authority may be revoked only by the public authority.
- (5) A fee is not payable for the variation of a notice under this Part.

### **62Q Obstruction of persons**

A person who wilfully delays or obstructs:

- (a) a person who is carrying out any action in compliance with a catchment correction notice or a catchment protection notice, or another person authorised by the person to carry it out, or
- (b) a public authority that is taking corrective action under section 62C, or any person authorised by the public authority to take corrective action under section 62C,

is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

## **Part 6B Requirements to provide information**

### **62R Power of authorised officers to require answers**

- (1) An authorised officer may require a person whom the authorised officer suspects on

reasonable grounds to have knowledge of matters in respect of determining whether there has been compliance with or a contravention of this Act or the regulations or any notice issued under this Act to answer questions in relation to those matters.

- (2) The SCA may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.
- (4) A person must not:
  - (a) fail or refuse to comply with a requirement under subsection (1) or (2), or
  - (b) in purported compliance with such a requirement, give an answer that is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
  - (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.
- (5) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
  - (6) The place and time at which a person may be required to attend under subsection (5) is to be:
    - (a) a place and time nominated by the person, or
    - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the authorised officer that is reasonable in the circumstances.

## **62S Requirement to provide information and records**

- (1) The SCA may, by notice in writing given to a person, require the person to furnish to it such information or records (or both) as it requires by the notice in connection with determining whether there has been compliance with or a contravention of this Act or the regulations or any notice issued under this Act.
- (2) A person must not:

- (a) fail or refuse to comply with a requirement under subsection (1), or
- (b) in purported compliance with such a requirement, give information, or provide a record, that is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

#### **62T Provisions relating to records**

- (1) A notice under this Part may require a person to furnish only existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (2) The SCA may take copies of any record furnished to it under this Part.
- (3) If any record required to be furnished under this Part is in electronic, mechanical or other form, the notice is taken to require the record to be furnished in written form, unless the notice otherwise provides.

#### **62U Requirement to state name and address or produce driver licence**

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to be offending against this Act or the regulations to state the person's full name and residential address.
- (2) An authorised officer may require the driver of a motor vehicle in the catchment area to produce his or her driver licence and to state his or her full name and residential address.
- (3) An authorised officer may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence under this section to fail to comply with any such request.
- (4) A person must not:
  - (a) fail or refuse to comply with a requirement under subsection (1) or (2), or
  - (b) in purported compliance with such a requirement, state a name that is not the person's name or an address that is not the person's residential address or produce the driver licence of another person.

Maximum penalty: 100 penalty units.

**62V Requirement for owner of motor vehicle and others to give information**

- (1) If the SCA or an authorised officer suspects on reasonable grounds that the driver of a motor vehicle has committed an offence against this Act or the regulations, the SCA or the authorised officer may:
  - (a) require the owner of the vehicle, or the person in whose name it is registered, or the person having the custody of the vehicle, to give information (which must, if so required, be given in the form of a statement in writing, signed by that owner or person) as to the name and residential address of the driver, or
  - (b) require any other person to give any information which is in that other person's power to give and which may lead to the identification of the driver.
- (2) A person must not:
  - (a) fail or refuse to comply with a requirement under subsection (1), or
  - (b) in purported compliance with such a requirement, give any information that is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

- (3) In a prosecution for an offence in respect of a failure or refusal to comply with a requirement under subsection (1) (a), it is a defence if the defendant proves to the satisfaction of the court that the defendant did not know and could not with reasonable diligence have ascertained the name or residential address of the driver concerned, or both, as the case may require.
- (4) If a statement in writing purporting to be furnished under subsection (1) (a) and to contain particulars of the name and residential address of the driver of a motor vehicle at the time of commission of an alleged offence against this Act or the regulations is produced in any court in proceedings against the person named in the statement as the driver for the offence, the statement is, if that person does not appear before the court, evidence without proof of signature that the person was the driver of the vehicle at that time.

**62W Provisions relating to requirements to furnish records, information or answer questions**

- (1) A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on the relevant occasion that a failure to comply is an offence.
- (2) A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.

- (3) However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:
  - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on the relevant occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:
  - (a) that the record or information had to be furnished or the answer had to be given, or
  - (b) that the record or information furnished or answer given might incriminate the person.
- (6) This section extends to a requirement under this Part to state a person's name and address.

#### **62X Revocation or variation**

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (4) A notice may be revoked or varied only by the person who gave it.

### **Part 7 Offences**

#### **63 Illegal diversion of water**

A person must not:

- (a) wrongfully take, use or divert any water that is available for supply by the SCA or that is in any pipe or work used for supply by the SCA, or

- (b) wrongfully alter the index of a meter or prevent a meter from duly registering the quantity of water supplied by the SCA.

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

#### **64 Offence to discharge into works**

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

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

#### **Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 64B.

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

#### **64A Obstruction of authorised officer**

A person must not:

- (a) obstruct, hinder or interfere with an authorised officer in the exercise of the officer's functions under this Act or the regulations, or
- (b) impersonate an authorised officer.

Maximum penalty:

- (a) in the case of a corporation—\$250,000, or
- (b) in the case of an individual—\$120,000.

#### **64B Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an **executive liability offence** is:



- (a) an offence against any of the following provisions of this Act that is committed by a corporation:
    - (i) section 62B (5),
    - (ii) section 62F (6),
    - (iii) section 64 (1), or
  - (b) an offence against the regulations:
    - (i) that is prescribed by the regulations as an offence to which this section applies, and
    - (ii) that is committed by a corporation.
- (2) A person commits an offence against this section if:
- (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal

liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:

**director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

(a) action towards:

- (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
- (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,

(b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,

(c) action towards ensuring that:

- (i) the plant, equipment and other resources, and
- (ii) the structures, work systems and other processes,

relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,

(d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

#### **64C Evidence as to state of mind of corporation**

(1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.

(2) In this section, the **state of mind** of a person includes:

(a) the knowledge, intention, opinion, belief or purpose of the person, and

(b) the person's reasons for the intention, opinion, belief or purpose.

## **65 Penalty notices**

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

## **66 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 SCA 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 SCA in remedying the loss or damage, or
  - (c) the value of water lost to the SCA because of the act or omission.
- (2) Payment of a penalty for an offence against this Act does not affect any right of the SCA to institute any other action or proceeding.

## **67 Persons causing offences**

- (1) A person:
  - (a) who causes the commission of an offence against this Act or the regulations, or
  - (b) by whose order or direction an offence against this Act or the regulations is committed, or
  - (c) who aids, abets, counsels or procures the commission of an offence against this Act or the regulations,is guilty of an offence against this Act or the regulations 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.
- (3) A person does not commit an offence because of this section for any act or omission that is an offence under section 67A.

## **67A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 64B.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or

- (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person:
  - (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

### **68 Disposal of proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before:
  - (a) the Local Court, or
  - (b) the Land and Environment Court in its summary jurisdiction.
- (2) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Act is 200 penalty units or the maximum monetary penalty for the offence, whichever is the lesser.

### **69 Time within which proceedings may be commenced**

- (1) Proceedings for an offence against this Act or the regulations may be commenced

within but not later than 2 years after the date on which the offence is alleged to have been committed.

- (2) Proceedings for an offence against this Act or the regulations may also be commenced within but not later than 2 years after the date on which evidence of the alleged offence first came to the attention of any authorised officer.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of any authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any authorised officer is the date specified in the information or application, unless the contrary is established.
- (4) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (5) In this section:

**authorised officer** means a member of staff of the Sydney Catchment Authority Division who is designated by the SCA as an authorised officer for the purposes of this section or whose official duties are concerned with the enforcement of this Act or the regulations or with the investigation or prosecution of offences or alleged offences against this Act or the regulations, and includes any class of persons prescribed by the regulations.

**evidence** of an offence means evidence of any act or omission constituting the offence.

## Part 7A Evidentiary matters

### 69A Onus of proof of certain matters

In any proceedings under this Act, the onus of proving that a person had a reasonable excuse or lawful excuse (as referred to in any provision of this Act or the regulations) lies with the defendant.

### 69B Proof of certain appointments not required

In any proceedings under this Act, no proof is required (until evidence is given to the contrary) of:

- (a) the appointment of the Chief Executive or any member of the staff of the SCA, or
- (b) the appointment of any authorised officer.

### 69C Documentary evidence generally

Any instrument (including a notice, order or written direction) purporting:

- (a) to be an instrument issued, made or given for the purposes of this Act, and
- (b) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,

is admissible in any proceedings under this Act and, in the absence of evidence to the contrary, is to be taken to be such an instrument and to have been so signed.

#### **69D Certificate evidence of certain matters**

- (1) A document signed by the Chief Executive or an officer of the SCA designated in writing by the SCA for the purposes of this section and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is, in the absence of evidence to the contrary, evidence of the matters so certified.
- (2) The matters referred to in subsection (1) are the following:
  - (a) that an instrument (including a notice, order or written direction), a copy of which is set out in or annexed to the document, being an instrument purporting:
    - (i) to be issued, made or given for the purposes of this Act, and
    - (ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,  
  
was issued, made or given on a specified day,
  - (b) that a person was or was not, at a specified time or during a specified period, an authorised officer,
  - (c) that a person was or was not, at a specified time or during a specified period, a member of staff of the Sydney Catchment Authority Division.

#### **69E Evidence of analysts**

- (1) The SCA may, by instrument in writing, appoint appropriately qualified persons to be analysts for the purposes of this Act.
- (2) A certificate of such an analyst stating the result of an analysis or examination is admissible in evidence in any proceedings under this Act as evidence of the facts stated in the certificate and the correctness of the result of the analysis or examination.
- (3) A certificate of such an analyst that, on receipt of a container containing a sample submitted to the analyst by an authorised officer or any other person, the container was sealed and the seal securing the container was unbroken is admissible in evidence in any proceedings under this Act or the regulations as evidence:

- (a) of the facts stated in the certificate, and
  - (b) that the sample was the same sample as the one obtained by the authorised officer or other person, and
  - (c) that the sample had not been tampered with before it was received by the analyst.
- (4) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, to be taken to be such a certificate.

## **Part 7B Authorised officers**

### **69F Appointment of authorised officers**

The SCA may appoint any person (including a class of persons) as an authorised officer for the purposes of this Act.

### **69G Scope of authority**

- (1) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or for limited purposes only.
- (2) If such authorisation is given subject to conditions, limitations or restrictions or for limited purposes only, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.

### **69H Identification**

- (1) Every authorised officer, who is not a police officer or an authorised officer under the [National Parks and Wildlife Act 1974](#), is to be provided with an identification card as an authorised officer by the SCA.
- (2) In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person affected by the exercise of any such function, produce to the person:
  - (a) in the case of a police officer, the officer's police identification, or
  - (b) in the case of an authorised officer under the [National Parks and Wildlife Act 1974](#), the officer's identification card as an authorised officer under that Act, or
  - (c) in any other case, the authorised officer's identification card issued in accordance with this section.



## **Part 8 Miscellaneous**

### **70 Transfer of staff, assets, rights and liabilities to SCA**

Schedule 3 has effect.

### **71 Service of notices**

- (1) For the purposes of this Act, any notice or other document may be issued or given to a person, or may be served on a person:
  - (a) by delivering it personally to the person, or
  - (b) by delivering it to the place of residence or business of the person and by leaving it there for the person with some other person, or
  - (c) by posting it duly stamped and addressed to the person at the place last shown in the records of the SCA as the person's place of residence or business, or
  - (d) by posting it duly stamped and addressed to the person at the place indicated by the person as an address to which correspondence may be posted (including, for example, a post office box), or
  - (e) by sending it by facsimile or electronic transmission (including, for example, over the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or
  - (f) by leaving it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.
- (2) This section does not affect any other mode of issuing, giving or serving a notice or other document under any other law.

### **72 (Repealed)**

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

Schedule 6 has effect.

### **74 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) A regulation may create an offence punishable by a penalty for a breach of the regulation not exceeding:

- (a) 400 penalty units in the case of an offence by a corporation, or
- (b) 200 penalty units in any other case.

## **75 Review of Act**

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

## **Schedule 1 Constitution and procedure of Board**

(Section 7)

### **1 Definitions**

In this Schedule:

***appointed member*** means a member of the Board other than the Chief Executive.

***Chairperson*** means the Chairperson of the Board.

***member*** means a member of the Board.

### **2 Chairperson of Board**

- (1) Of the appointed members, one is, in and by the member's instrument of appointment as a member or in and by another instrument executed by the Minister, to be appointed as Chairperson of the Board.
- (2) The Minister may remove a member from the office of Chairperson at any time.
- (3) A person who is a member and Chairperson vacates office as Chairperson if the person:
  - (a) is removed from that office by the Minister, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.

### **3 Deputies**

- (1) The Chief Executive may, from time to time, appoint a person to be his or her deputy, and the Chief Executive or the Minister may revoke any such appointment.

- (2) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.
- (3) In the absence of a member, the member's deputy:
  - (a) is, if available, to act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is taken to be a member.
- (4) The deputy of a member who is Chairperson does not have the member's functions as Chairperson.
- (5) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

#### **4 Terms of office of appointed members**

Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **5 Remuneration of appointed members**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **6 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment

of his or her remuneration for their benefit, or

(g) becomes a mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

## **7 Disclosure of pecuniary interests**

(1) If:

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

(a) be present during any deliberation of the Board with respect to the matter, or

(b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the

disclosure relates must not:

(a) be present during any deliberation of the Board for the purpose of making the determination, or

(b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

(7) This clause does not apply to or in respect of an interest of a member (being the provision of goods or services to the member by the SCA) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

## **8 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **9 Effect of certain other Acts**

(1) The *Public Sector Employment and Management Act 2002* does not apply to the appointment of an appointed member, and an appointed member is not, as a member, subject to that Act (except Chapter 5).

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

## **10 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

## **11 Quorum**

The quorum for a meeting of the Board is a majority of the members for the time being.

## **12 Presiding member**

- (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is (subject to subclause (2)) to preside at a meeting of the Board.
- (2) The Chief Executive (if present) is to preside at a meeting of the Board in the absence of the Chairperson.
- (3) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **13 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

## **14 Transaction of business outside meetings or by telephone or other means**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the Board.
- (5) Papers may be circulated among members of the Board for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **15 First meeting**

The Minister is to call the first meeting of the Board in such manner as the Minister thinks fit.

## Schedule 2 Provisions relating to Chief Executive

(Section 9)

### 1 Employment of Chief Executive

The employment of the Chief Executive is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.

### 2 Performance criteria

The performance criteria dealt with in the Chief Executive's contract of employment under the *Public Sector Management Act 1988* are to include criteria that require improvement of the quality of the water in catchment areas.

### 3 Acting Chief Executive

- (1) The Minister may, from time to time, appoint a person to act in the office of Chief Executive during the illness or absence of the Chief Executive, and the person, while so acting, has all the functions of the Chief Executive and is taken to be the Chief Executive.
- (2) The Minister may, at any time, remove any person from an office to which the person was appointed under this clause.
- (3) A person while acting in the office of Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of Chief Executive is taken to be an absence from office of Chief Executive.

## Schedule 3 Transfer of staff, assets, rights and liabilities to SCA

(Section 70)

### 1 Definitions

- (1) In this Schedule:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**Corporation** means the Sydney Water Corporation or any of its subsidiaries.

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

**liabilities** means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

**rights** means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

- (2) In this Schedule, the person or body from which any staff, assets, rights or liabilities are transferred is called the **transferor**, and the person or body to which they are transferred is called the **transferee**.

## **2 Order for transfer of staff, assets, rights and liabilities from Sydney Water Corporation**

- (1) The Governor may, by order in writing, direct that such staff, assets, rights and liabilities of the Corporation:
- (a) as are specified in the order, and
  - (b) as are certified in the order as:
    - (i) relating exclusively or principally to the inner catchment area, or
    - (ii) being appropriate to be transferred to enable the SCA to exercise its functions efficiently and economically,
- be transferred to the SCA or to a subsidiary of the SCA.
- (2) An order under this clause may be made on such terms and conditions as are specified in the order.
- (3) For the purposes of or incidental to the transfer of any staff, assets, rights or liabilities under this clause, the Corporation is, in the exercise of its functions, subject to the control and direction of the Minister.

## **3 Order for transfer of other staff, assets, rights and liabilities**

- (1) The Governor may, by order in writing, direct that such other staff, assets, rights or liabilities used by or attaching to the Corporation for the supply of water and associated purposes, and belonging to the State or an authority of the State:
- (a) as are specified in the order, and
  - (b) as are certified in the order as:
    - (i) relating exclusively or principally to the inner catchment area, or
    - (ii) being appropriate to be transferred to enable the SCA to exercise its functions efficiently and economically,
- be transferred to the SCA or to a subsidiary of the SCA.



- (2) An order under this clause may be made on such terms and conditions as are specified in the order.
- (3) For the purposes of or incidental to the transfer of any staff, assets, rights or liabilities under this clause from an authority of the State, the authority of the State is, in the exercise of its functions, subject to the control and direction of the Minister.

#### **4 Facilitating provisions of orders**

- (1) An order under this Schedule may include such provisions as are necessary or convenient for giving effect to the order, including provisions for or with respect to the following:
  - (a) the transfer of staff,
  - (b) the transfer or apportionment of assets, rights and liabilities,
  - (c) the delivery or retention of records,
  - (d) the termination, cessation, dissolution or abolition of anything existing before the order takes effect,
  - (e) the preservation or continuance of anything existing before the order takes effect.
- (2) Such an order may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.

#### **5 Transfer of staff**

A member of staff who is transferred by an order under this Schedule is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person not been transferred but remained a member of the staff of the transferor.

#### **6 Transfer of assets, rights and liabilities**

When any assets, rights or liabilities are transferred by an order under this Schedule, the following provisions have effect (subject to the order):

- (a) the assets vest in the transferee by virtue of this Schedule and without the need for

any conveyance, transfer, assignment or assurance,

- (b) the rights and liabilities become by virtue of this Schedule the rights and liabilities of the transferee,
- (c) all proceedings relating to the assets, rights and liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities before the transfer by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
- (e) a reference in any Act, instrument or document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to the assets, rights and liabilities, and subject to regulations under clause 1 (1) of Schedule 6) to be read as, or as including, a reference to the transferee.

## **7 Operation of Schedule**

- (1) The operation of this Schedule is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other instrument.
- (3) No attornment to the transferor by a lessee from the transferee is required.
- (4) No compensation is payable to any person or body in connection with a transfer under this Schedule except to the extent (if any) to which the order giving rise to the transfer so provides.
- (5) Subclause (4) does not affect the rights of any member of staff who is the subject of a transfer under this Schedule.
- (6) The operation of this Schedule includes the making of an order under this Schedule.

## **8 Date of transfer**

An order under this Schedule takes effect on the date specified in the order.

## **9 Stamp duty**

Duty is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities by an order under this Schedule, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

## **10 Confirmation of vesting**

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

## **Schedules 4, 5 (Repealed)**

## **Schedule 6 Savings, transitional and other provisions**

(Section 73)

## **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:

*Sydney Water Catchment Management Act 1998*

*National Parks and Wildlife Amendment (Transfer of Special Areas) Act 2001*

*Sydney Water Catchment Management Amendment Act 2007*

*Sydney Water Catchment Management Amendment (Board Members) Act 2012*

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

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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

### **2 Definition**

In this Act:

**former Act** means the Sydney Water Act as in force before the commencement of amendments made to it by this Act.

### **3 References to Sydney Water Corporation**

- (1) Without limiting clause 1, the regulations may provide that a specified reference in any Act, instrument or document of any kind to the Sydney Water Corporation is to be read as a reference to the SCA, either generally or in relation to any class of acts, matters or things.
- (2) Without limiting clause 1, the regulations may provide that a specified reference in any Act, instrument or document of any kind to the Sydney Water Corporation includes a reference to the SCA, either generally or in relation to any class of acts, matters or things.

### **4 References to Sydney Water Act**

- (1) Without limiting clause 1, the regulations may provide that a specified reference in any Act, instrument or document of any kind to the Sydney Water Act or a provision of that Act is to be read as a reference to this Act or a specified provision of this Act, either generally or in relation to any specified class of acts, matters or things.
- (2) Without limiting clause 1, the regulations may provide that a specified reference in any Act, instrument or document of any kind to the Sydney Water Act or a provision of that Act includes a reference to this Act or a specified provision of this Act, either generally or in relation to any specified class of acts, matters or things.

### **5 Special areas and outer catchment areas**

- (1) An area of land within any special area (as referred to in the former Act) immediately before the commencement of section 44 of this Act is taken to be the subject of an order declaring it to be a special area under this Act.
- (2) An area of land within the outer catchment area (as referred to in the former Act) immediately before the commencement of section 41 (2) of this Act is taken to be the subject of an order declaring it to be part of the outer catchment area under this Act.
- (3) An order referred to in this clause is taken to be an order made under the section

concerned, and accordingly may be amended or repealed by an order of the Governor.

## **6 Memoranda of understanding**

A memorandum of understanding entered into by the Sydney Water Corporation under the former Act is, to the extent that it relates to a special area and subject to the regulations and any order under Schedule 3, taken to be a memorandum of understanding entered into by the SCA.

## **7 Plans of management**

- (1) A plan of management in force under the former Act at the commencement of section 49 of this Act is taken to be adopted under that section.
- (2) The Minister may, by order in writing, designate a draft plan of management prepared before the commencement of section 49 as being a plan of management to which this subclause applies.
- (3) A draft plan of management to which subclause (2) applies is taken to be adopted under section 49.

## **8 Environmental planning instruments: concurrence role**

A reference in an environmental planning instrument as in force at the commencement of this clause to the Sydney Water Corporation (including a reference to the Water Board), in the context of the granting of its concurrence to the granting of consent to a development application in relation to lands within a special area, is to be read as a reference to the SCA.

## **Part 3 Provision consequent on enactment of [National Parks and Wildlife Amendment \(Transfer of Special Areas\) Act 2001](#)**

### **9 Operations under plans of management**

Anything done or omitted to be done before the commencement of an amendment made by Schedule 2 [1]-[3] to the [National Parks and Wildlife Amendment \(Transfer of Special Areas\) Act 2001](#) is as valid as it would have been had the amendment been in force when the thing was done or omitted.

## **Part 4 Provisions consequent on enactment of [Sydney Water Catchment Management Amendment Act 2007](#)**

### **10 Definition**

In this Part:

**amending Act** means the [Sydney Water Catchment Management Amendment Act 2007](#).

### **11 Validation: functions**

Anything done or omitted to be done by the SCA, before the commencement of the amendment to section 15 made by the amending Act, that would have been valid if it had been done or omitted after that commencement, is validated.

### **12 Validation: construction and installations**

Anything done or omitted to be done by the SCA to provide or construct systems or services for supplying water, or to install new works, before the commencement of section 16 (1) (c1) or (c2), as inserted by the amending Act, that would have been valid if it had been done or omitted after that commencement, is validated.

### **13 Annual reports under operating licence**

The requirement under section 26 (1) (c) of this Act, as substituted by the amending Act, to make an annual report first applies in respect of the calendar year 2008.

### **14 Memorandum of understanding with Water Administration Ministerial Corporation**

- (1) The memorandum of understanding entered into between the SCA and the Water Administration Ministerial Corporation is of no further effect.
- (2) Any provision of the operating licence referring to the memorandum of understanding with the Water Administration Ministerial Corporation (as referred to in section 36 (2)) is of no effect to the extent to which it applies to such a memorandum of understanding.

### **15 Catchment correction notices and catchment protection notices**

Sections 62B and 62F extend to apply to any targeted activity carried out before the commencement of those sections.

### **16 Disposal of proceedings for offences**

The amendments made to section 68 by the amending Act extend to proceedings for offences alleged to have been committed before the commencement of the amendments, but not if proceedings in respect of the offence concerned had commenced before that commencement.

### **17 Certificates of authority**

A person to whom a certificate of authority had been issued under section 56 that was in force immediately before the repeal of that section by the amending Act is taken to have been appointed as an authorised officer under Part 7B and his or her certificate of authority is taken to be an identification card issued under section 69H.

## **Part 5 Provisions consequent on enactment of [Sydney Water](#)**

## Catchment Management Amendment (Board Members) Act 2012

### 18 Sydney Catchment Authority Board

- (1) On the commencement of the *Sydney Water Catchment Management Amendment (Board Members) Act 2012*, a person who was, immediately before that commencement, a member of the Board appointed by the Minister ceases to hold that office but is eligible (if otherwise qualified) for re-appointment as a member of the Board.
- (2) A person is not entitled to any compensation for ceasing to hold an office because of the operation of this clause.

### Schedule 7 Orders declaring special areas that may be repealed by further order

(Section 44 (6))

The order declaring an area of land at Devine's Weir to be a special area, being an order published in Gazette No 103 of 29 August 1969 at page 3418.

**Editorial note—**

The order was repealed by Gazette No 158 of 19.12.2008, p 12582.

The order declaring an area of land at O'Hare's Creek to be a special area, being an order published in Gazette No 51 of 14 April 1927 at page 1862 and amended by proclamation published in Gazette No 178 of 21 September 1934 at page 3525.

**Editorial note—**

The order was repealed by Gazette No 158 of 19.12.2008, p 12582.

The order declaring an area of land at Penrith to be a special area, being an order published in Gazette No 113 of 8 October 1971 at page 3916.

**Editorial note—**

The order was repealed by Gazette No 158 of 19.12.2008, p 12582.

The order declaring an area of land at Richmond to be a special area, being an order published in Gazette No 113 of 8 October 1971 at page 3916.

**Editorial note—**

The order was repealed by Gazette No 158 of 19.12.2008, p 12582.

The order declaring an area of land at Windsor to be a special area, being an order published in Gazette No 113 of 8 October 1971 at page 3916.

**Editorial note—**

The order was repealed by Gazette No 158 of 19.12.2008, p 12582.

The order declaring an area of land at Woodford to be a special area, being an order published in Gazette No 45 of 15 March 1991 at page 2186.