

# Water Management Act 2000 No 92

[2000-92]



New South Wales

## Status Information

### Currency of version

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

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**
  - Sch 8.30 [2] to this Act (not commenced)
  - [Parliamentary Electorates and Elections Amendment Act 2006 No 68](#) (not commenced)
  - [Central Coast Water Corporation Act 2006 No 105](#) (amended by [Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#) and [Central Coast Water Corporation Amendment Act 2010 No 89](#)), Sch 7.2 [1] [2] and [4] (not commenced)
  - [Water Management Amendment Act 2008 No 73](#) (amended by [Statute Law \(Miscellaneous Provisions\) Act 2012 No 42](#) and [Water Management Amendment Act 2014 No 48](#)), Sch 4 [5] [6] [10] and [11] (not commenced)
  - [Water Management Amendment Act 2010 No 133](#) (amended by [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2011 No 62](#) and [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2015 No 58](#)), Sch 2 [36] [46]–[48] [51]–[59] [62]–[64] [67] [68] [71]–[74] [76] [77] [79] (except to the extent that it inserts the Part heading and the cll entitled “Definitions”, “References to adaptive environmental water conditions” and “Application of new defences”) [82] and [86] (not commenced)
  - [Water Management Amendment Act 2014 No 48](#), Schs 1.5, 1.7, 1.8 [4], 1.9, 1.10 [5]–[7] [15]–[19] [22] [23] [26] and 1.14 [2] (not commenced)
  - [Water Industry Competition Amendment \(Review\) Act 2014 No 57](#) (not commenced)
  - [Dams Safety Act 2015 No 26](#) (not commenced)
  - [Protection of the Environment Operations Amendment \(Enforcement of Gas and Other Petroleum Legislation\) Act 2015 No 42](#) (not commenced — to commence on 1.12.2015)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2015 No 58](#), Schs 1.15 and 3.94 (not commenced — Sch 1.15 to commence on 8.1.2016; Sch 3.94 to commence on 15.1.2016)

### Authorisation

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

File last modified 24 November 2015

# Water Management Act 2000 No 92



New South Wales

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# Water Management Act 2000 No 92



New South Wales

An Act to provide for the protection, conservation and ecologically sustainable development of the water sources of the State, and for other purposes.

## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Water Management Act 2000*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed for the commencement of a single provision of Schedule 7 or 8 for the purpose of commencing the repeals or amendments effected by the provision on different days.

### 3 Objects

The objects of this Act are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations and, in particular:

- (a) to apply the principles of ecologically sustainable development, and
- (b) to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality, and
- (c) to recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including:
  - (i) benefits to the environment, and
  - (ii) benefits to urban communities, agriculture, fisheries, industry and recreation, and
  - (iii) benefits to culture and heritage, and
  - (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water,

- (d) to recognise the role of the community, as a partner with government, in resolving issues relating to the management of water sources,
- (e) to provide for the orderly, efficient and equitable sharing of water from water sources,
- (f) to integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna,
- (g) to encourage the sharing of responsibility for the sustainable and efficient use of water between the Government and water users,
- (h) to encourage best practice in the management and use of water.

#### **4 Interpretation**

- (1) Words and expressions that are defined in the Dictionary at the end of this Act have the meanings set out in that Dictionary.
- (1A) A word or expression (not being a word or expression defined in the Dictionary to this Act) that is used in this Act and that is defined in the [Real Property Act 1900](#) has the same meaning in this Act in relation to an access licence (or holding in an access licence) or dealing in such a licence (or holding) as it has in that Act in relation to land or an estate or interest in land.
- (1B) Subsection (1A) applies except in so far as the context or subject-matter otherwise indicates or requires.
- (2) Notes in the text of this Act do not form part of this Act.

#### **4A Meaning of “overland flow water”**

- (1) In this Act, **overland flow water** means water (including floodwater, rainfall run-off and urban stormwater) that is flowing over or lying on the ground as a result of:
  - (a) rain or any other kinds of precipitation, or
  - (b) rising to the surface from underground, or
  - (c) any other process or action of a kind prescribed by the regulations.
- (2) Water is flowing over the ground for the purposes of subsection (1) even if it flows over the ground by means of artificial structures such as roads, canals or road gutters.
- (3) However, subsection (1) does not include:
  - (a) water that is collected from a roof (including water collected from a roof using a rainwater tank), or
  - (b) water that is flowing over or lying on the bed of a river, lake or estuary, or

- (c) water flowing over or lying on the ground in such circumstances as may be prescribed by the regulations.

## **Chapter 2 Water management planning**

### **Part 1 General**

#### **Division 1 Water management principles**

##### **5 Water management principles**

- (1) The principles set out in this section are the water management principles of this Act.
- (2) Generally:
  - (a) water sources, floodplains and dependent ecosystems (including groundwater and wetlands) should be protected and restored and, where possible, land should not be degraded, and
  - (b) habitats, animals and plants that benefit from water or are potentially affected by managed activities should be protected and (in the case of habitats) restored, and
  - (c) the water quality of all water sources should be protected and, wherever possible, enhanced, and
  - (d) the cumulative impacts of water management licences and approvals and other activities on water sources and their dependent ecosystems, should be considered and minimised, and
  - (e) geographical and other features of indigenous significance should be protected, and
  - (f) geographical and other features of major cultural, heritage or spiritual significance should be protected, and
  - (g) the social and economic benefits to the community should be maximised, and
  - (h) the principles of adaptive management should be applied, which should be responsive to monitoring and improvements in understanding of ecological water requirements.
- (3) In relation to water sharing:
  - (a) sharing of water from a water source must protect the water source and its dependent ecosystems, and
  - (b) sharing of water from a water source must protect basic landholder rights, and
  - (c) sharing or extraction of water under any other right must not prejudice the

principles set out in paragraphs (a) and (b).

(4) In relation to water use:

- (a) water use should avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land should be rehabilitated, and
- (b) water use should be consistent with the maintenance of productivity of land in the long term and should maximise the social and economic benefits to the community, and
- (c) the impacts of water use on other water users should be avoided or minimised.

(5) In relation to drainage management:

- (a) drainage activities should avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land should be rehabilitated, and
- (b) the impacts of drainage activities on other water users should be avoided or minimised.

(6) In relation to floodplain management:

- (a) floodplain management must avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land must be rehabilitated, and
- (b) the impacts of flood works on other water users should be avoided or minimised, and
- (c) the existing and future risk to human life and property arising from occupation of floodplains must be minimised.

(7) In relation to controlled activities:

- (a) the carrying out of controlled activities must avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land must be rehabilitated, and
- (b) the impacts of the carrying out of controlled activities on other water users must be avoided or minimised.

(8) In relation to aquifer interference activities:

- (a) the carrying out of aquifer interference activities must avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land must be rehabilitated, and
- (b) the impacts of the carrying out of aquifer interference activities on other water users must be avoided or minimised.

## **Division 2 State Water Management Outcomes Plan and water source classification**

### **6 State Water Management Outcomes Plan**

- (1) The Governor may, by order published in the Gazette, establish a State Water Management Outcomes Plan for the development, conservation, management and control of the State's water resources in furtherance of the objects of this Act.
- (2) The objects of a State Water Management Outcomes Plan are as follows:
  - (a) to set the over-arching policy context, targets and strategic outcomes for the management of the State's water sources, having regard to:
    - (i) relevant environmental, social and economic considerations, and
    - (ii) the results of any relevant monitoring programs,
  - (b) to promote the water management principles established by this Act,
  - (c) to give effect to any State government policy statement in relation to salinity strategies.
- (3) The State Water Management Outcomes Plan must be consistent with:
  - (a) government obligations arising under any inter-governmental agreement to which the government is a party, such as the Murray-Darling Basin Agreement referred to in the [Murray-Darling Basin Act 1992](#), and
  - (b) government obligations arising in connection with any international agreement to which the government of the Commonwealth is a party, and
  - (c) State government policy, including State government policy in relation to the environmental objectives for water quality and river flow.
- (4) For the purposes of this section, **State government policy** includes such matters as are declared by the regulations to be State government policy.
- (5) The regulations may make provision for or with respect to the public consultation procedures to be complied with in relation to the establishment or amendment of a State Water Management Outcomes Plan.

- (6) A State Water Management Outcomes Plan has effect for the period of 5 years commencing on the date on which it is published in the Gazette.

## 7 Classification of water sources

- (1) The Minister may, by order published in the Gazette, classify water sources for the purposes of this Act.
- (2) Such an order may only be made with the concurrence of the Minister for Climate Change and the Environment.
- (3) Water sources are to be classified as follows:
- (a) as to the extent to which they are at risk (that is, the extent to which harm to the water source or its dependent ecosystems is likely to occur),
  - (b) as to the extent to which they are subject to stress (that is, the extent to which harm to the water source or its dependent ecosystems has occurred or is occurring),
  - (c) as to the extent of their conservation value (that is, the extent to which their intrinsic value merits protection from risk and stress).
- (4) It is the intention of Parliament that, within 12 months after the date of assent to this Act:
- (a) the water sources of the State be classified in accordance with this section, and
  - (b) bulk access regimes be established for such of those water sources as are classified high risk, high stress or high conservation value.
- (5) A bulk access regime referred to in subsection (4) (b) is to be established by means of a Minister's plan made, in the case of a water source that is within a water management area for which a management committee has been established, in consultation with that committee.
- (6) A bulk access regime referred to in subsection (4) (b) has effect for 10 years from the date on which it is established, but may be varied under section 45 as if it had been established by a management plan, in which case section 87 applies accordingly.
- (7) The regulations may prescribe rules in accordance with which water sources are to be classified for the purposes of this Act.

## 8 Environmental water

- (1) For the purposes of this Act, **environmental water** comprises the following:
- (a) water that is committed by management plans for fundamental ecosystem health or other specified environmental purposes, either generally or at specified times or



in specified circumstances, and that cannot to the extent committed be taken or used for any other purpose (**planned environmental water**),

(b) water (**licensed environmental water**) that is:

(i) committed by an adaptive environmental water condition under section 8B, 8C, 8D or 63B, or

(ii) taken or permitted to be taken under a licence of an environmental subcategory, or

(iii) taken or permitted to be taken under a licence of a class prescribed by the regulations for the purposes of this paragraph.

(1A) A management plan is to commit water as planned environmental water in at least 2 of the following ways (whether by 2 separate ways or a combination of 2 ways):

(a) by reference to the commitment of the physical presence of water in the water source,

(b) by reference to the long-term average annual commitment of water as planned environmental water,

(c) by reference to the water that is not committed after the commitments to basic landholder rights and for sharing and extraction under any other rights have been met.

(2) A management plan must contain provisions for the identification, establishment and maintenance of planned environmental water (**environmental water rules**). The environmental water rules relating to a water source do not need to specify that a minimum quantity of water is required to be present in the water source at all times.

(3) Environmental water rules are to be established for all of the water sources in the State as soon as practicable after the commencement of this section.

(4) (Repealed)

#### **8A Planned environmental water**

(1) The Minister may cancel any category or subcategory of licence prescribed by the regulations that is held by the Minister and commit an equivalent amount of water as determined in accordance with the management plan as planned environmental water for the water source to which the licence related.

(2) Planned environmental water committed under this section is to be used for only those purposes specified in the relevant management plan.

(3) Sections 78, 78A and 87 do not apply to the cancellation of an access licence under this section.

**8B Adaptive environmental water through dedication of existing water entitlements**

- (1) The holder of an access licence may request that the Minister impose an adaptive environmental water condition in respect of the whole or a part of the access licence.
- (2) A condition imposed under this section may be amended, and is to be revoked, by the Minister at the request in writing of the holder of the access licence, except as provided by the regulations.

**8C Adaptive environmental water through system improvements**

- (1) The Minister may grant an access licence of a category or subcategory determined by the Minister to the Minister, Local Land Services or another public body, without the need for an application to be made for the licence in accordance with Part 2 of Chapter 3, so long as:
  - (a) works or other actions result in water savings in the system being made in the water source in respect of which the licence is granted, and
  - (b) the share component of the licence is equivalent to the value of water savings in the system made, and
  - (c) an adaptive environmental water condition is imposed on the licence.
- (2) In this section, **system** means that part of a water source to which a management plan applies that is not identified by the plan for commitments to basic landholder rights and for sharing and extraction under any other rights.

**8D Adaptive environmental water conditions after surrender of licences**

- (1) The Minister may keep an access licence surrendered by the holder of the licence or transfer it to Local Land Services or another public body, and may change the licence to a different category or subcategory, if:
  - (a) the share component of the licence is equivalent to the share component of the surrendered licence (subject to the application of any conversion factor prescribed by the access licence dealing principles or the regulations), and
  - (b) an adaptive environmental water condition is or has been imposed on the licence.
- (2) The Minister may cancel an access licence surrendered by the holder of the licence and transfer the share component of the surrendered licence (subject to the application of any conversion factor prescribed by the access licence dealing principles or the regulations) to another licence if an adaptive environmental water condition is or has been imposed on the licence.

**8E General provisions relating to access licences with adaptive environmental water**

**conditions**

- (1) This section applies to access licences that are subject to an adaptive environmental water condition.
- (2) For the purposes of this Act (but subject to section 8B (2)), an adaptive environmental water condition is a mandatory condition.
- (3) The terms of an adaptive environmental water condition imposed in respect of an access licence are to further the objectives of the relevant management plan.
- (4) If the adaptive environmental water condition on an access licence requires the water to be left in the water source for environmental purposes, then the water allocation account is to be debited when the water is available in accordance with the condition.
- (5) If the adaptive environmental water condition requires the environmental water to be taken from the water source then the water allocation account is to be debited when it is taken.
- (6) (Repealed)
- (7) Before imposing an adaptive environmental water condition on an access licence, the Minister is to approve a plan for the implementation of the condition.
- (8) The Minister is to ensure that the plan referred to in subsection (7), and a requirement to comply with the plan, forms part of the adaptive environmental water condition.
- (9) An access licence to which this section applies, or a part of such a licence to which the adaptive environmental water condition concerned is expressed to relate, may be the subject of a dealing in accordance with this Act if the plan approved under subsection (7) so provides.

**8F Auditing of compliance with extraction limits**

- (1) This section applies for the purpose of auditing compliance with the long-term extraction limit (however expressed) under a management plan.
- (2) The long-term extraction limit is taken to be varied by the amount of any change to the amount of water committed as licensed environmental water.
- (3) The variation in the long-term extraction limit is to be determined in accordance with a methodology approved by the Minister and published in the Gazette.
- (4) To avoid doubt, water savings in a system (within the meaning of section 8C) are not to be taken into account when determining the variation.
- (5) Water committed as licensed environmental water is not to be accounted for as extraction.

## **Division 3 General**

### **9 Act to be administered in accordance with water management principles and State Water Management Outcomes Plan**

- (1) It is the duty of all persons exercising functions under this Act:
  - (a) to take all reasonable steps to do so in accordance with, and so as to promote, the water management principles of this Act, and
  - (b) as between the principles for water sharing set out in section 5 (3), to give priority to those principles in the order in which they are set out in that subsection.
- (2) It is the duty of all persons involved in the administration of this Act to exercise their functions under this Act in a manner that gives effect to the State Water Management Outcomes Plan.

### **10 Review of work and activities of Department**

- (1) The Minister is to ensure that the work and activities of the Department are reviewed at intervals of not more than 5 years for the purpose of determining whether they have been effective in giving effect to the water management principles of this Act and the State Water Management Outcomes Plan.
- (2) The results of each review under this section are to be included in the relevant annual report for the Department under the [Annual Reports \(Departments\) Act 1985](#).

## **Part 2 Management committees**

### **11 Constitution of water management areas**

- (1) The Minister may, by order published in the Gazette, constitute any land as a water management area.
- (2) An order under this section must name the area and fix its boundaries.

### **12 Establishment of management committees**

- (1) The Minister may, by order published in the Gazette:
  - (a) establish a management committee to carry out a specific task in relation to water management in a water management area, and
  - (b) set terms of reference in accordance with which the committee is to carry out that task.
- (2) The task for which a management committee is appointed may relate to any aspect of water management, including (without limitation) water sharing, water source protection, floodplain management and drainage management.

- (3) At any time the Minister may, by order published in the Gazette, abolish a management committee, and may do so whether or not it has completed the task for which it was established.
- (4) Nothing in this section prevents the establishment of two or more committees for the same water management area so long as they do not have overlapping functions.

### **13 Membership of committee**

- (1) A management committee consists of at least 12, but not more than 20, members appointed by the Minister, of whom:
  - (a) at least two are to be persons appointed to represent the interests of environmental protection groups, and
  - (b) at least two are to be persons appointed to represent the interests of water user groups, and
  - (c) at least two are to be persons appointed to represent the interests of local councils, and
  - (d) at least one is to be a person nominated by Local Land Services, and
  - (e) at least two are to be Aboriginal persons appointed to represent the interests of Aboriginal persons, and
  - (f) at least one is to be a member of staff of the Department, and
  - (g) at least one is to be a person nominated by the Minister for Climate Change and the Environment, and
  - (h) such other persons as are appointed to represent such interests as the Minister considers require representation, and
  - (i) one is to be a person (not being a member of staff of the Department) who is appointed as an independent chairperson for the committee.
- (2) The regulations may make provision with respect to qualifications for appointment as a member of a management committee.
- (3) The members appointed as referred to in subsection (1) (a)–(e) should, as far as practicable, be persons who reside within the water management area for which the management committee is being constituted.
- (4) Schedule 6 has effect with respect to the constitution and procedure of a management committee.

## **14 Functions of management committees**

- (1) The principal function of a management committee is to carry out the task for which it is appointed.
- (2) The task for which a committee is appointed may include any one or more of the following:
  - (a) to prepare a draft management plan for the whole or any part of the management area or of the water sources in the area,
  - (b) to review a management plan that is in force in the water management area,
  - (c) to investigate such matters affecting the management of the water management area as the Minister refers to it for investigation,
  - (d) to report to the Minister on such matters affecting the management of the water management area as the Minister refers to it for report,
  - (e) to advise the Minister on such matters affecting the management of the water management area as the Minister refers to it for advice.
- (3) It is the duty of a management committee to exercise its functions consistently with the principles of ecologically sustainable development.

## **Part 3 Management plans**

### **Division 1 Preliminary**

#### **15 Preparation of draft management plan**

- (1) The Minister may, by the order by which a management committee is established or by a subsequent order in writing:
  - (a) direct the committee to prepare a draft management plan, and review any related implementation program, on any aspect of water management, including (but not limited to):
    - (i) water sharing, and
    - (ii) water source protection, and
    - (iii) drainage management, and
    - (iv) floodplain management, and
  - (b) set terms of reference in accordance with which such a plan is to be prepared.
- (2) A management committee to which such an order is given is to prepare a draft management plan in accordance with the terms of reference specified in the order.

(3) If the management committee fails to prepare a draft management plan in accordance with its terms of reference, the Minister may make a Minister's plan under section 50 in respect of the matter.

(4) (Repealed)

#### **16 Management plans to be consistent with other instruments**

(1) A management plan must be consistent with:

(a) the State Water Management Outcomes Plan, and

(b) any State environmental planning policy under the *Environmental Planning and Assessment Act 1979*, and

(c) any protection of the environment policy under the *Protection of the Environment Operations Act 1997*, and

(d) any regulation under the *Water NSW Act 2014* or the *Googong Dam Catchment Area Act 1975*, and

(e) State government policy, including State government policy in relation to the environmental objectives for water quality and river flow.

(2) For the purposes of this section, **State government policy** includes such matters as are declared by the regulations to be State government policy.

#### **17 Provisions applicable to all management plans**

A management plan may, in respect of a water management area or water source to which it applies, contain the following kinds of provisions:

(a) provisions with respect to the preservation and enhancement of the quality of water,

(b) provisions with respect to the kinds of monitoring and reporting requirements that should be imposed as conditions of approvals,

(c) provisions with respect to the conditions to which access licences and approvals are to be subject (**mandatory conditions**),

(d) provisions indicating the circumstances in which, the matters in respect of which and the extent to which the management plan may be amended by the Minister during the period for which it is in force,

(e) provisions with respect to such other matters as may be authorised by the regulations.

#### **18 Matters for consideration**

(1) In formulating a draft management plan, the management committee must have due

regard to the socio-economic impacts of the proposals considered for inclusion in the draft plan.

- (1A) In formulating a draft management plan, the management committee must also have due regard to the provisions of any relevant local strategic plan under the *Local Land Services Act 2013*.
- (2) Due regard may also be had, in the formulation of the plan's proposals, to the effect within each water management area or water source to which the plan applies of activities occurring, or likely to occur, outside each such area or water source.

## **Division 2 Water sharing**

### **19 Application of Division**

- (1) This Division applies to the provisions of a management plan to the extent to which they deal with water sharing.
- (2) The water sharing provisions of a management plan may apply to the whole or any part of a water management area, or to the whole or any part of one or more water sources within a water management area.

### **20 Core provisions**

- (1) The water sharing provisions of a management plan for a water management area or water source must deal with the following matters:
- (a) the establishment of environmental water rules for the area or water source,
  - (b) the identification of requirements for water within the area, or from the water source, to satisfy basic landholder rights,
  - (c) the identification of requirements for water for extraction under access licences,
  - (d) the establishment of access licence dealing rules for the area or water source,
  - (e) the establishment of a bulk access regime for the extraction of water under access licences, having regard to the rules referred to in paragraphs (a) and (d) and the requirements referred to in paragraphs (b) and (c).
- (2) The bulk access regime referred to in subsection (1) (e):
- (a) must recognise and be consistent with any limits to the availability of water that are set (whether by the relevant management plan or otherwise) in relation to the water sources to which the regime relates, and
  - (b) must establish rules according to which access licences are to be granted and managed and available water determinations to be made, and



- (c) must recognise the effect of climatic variability on the availability of water, and
  - (d) may establish rules with respect to the priorities according to which water allocations are to be adjusted as a consequence of any reduction in the availability of water, and
  - (e) may contain provisions with respect to the conditions that must (as mandatory conditions) be imposed on access licences under section 66 (1), including conditions providing for the variation, from time to time, of the share and extraction components of access licences, and
  - (f) must be consistent with the water management principles.
- (3) The rules referred to in subsection (2) (d) must comply with the priorities established under section 58.
- (4) The access licence dealing rules established under subsection (1) (d):
- (a) must comply with the access licence dealing principles, and
  - (b) must not deal with any matter for which the access licence dealing principles may make provision under section 71Z (2), and
  - (c) subject to paragraph (b) and the access licence dealing principles, may regulate or prohibit any dealing under Division 4 of Part 2 of Chapter 3.

## **21 Additional provisions**

The water sharing planning provisions of a management plan for a water management area or water source may also deal with the following matters:

- (a) the rates, times and circumstances under which water may be taken from any water source in the area, or the quantity of water that may be taken from any water source in the area or delivered through the area,
- (b) the kinds of water supply works that may be constructed and used in the area,
- (c) the operation of water accounts for the area or water source, such as the carrying over of credits from one accounting period to the next, the maximum credit that may be allowed to accumulate in any account and the withdrawal of water from any account by reason of evaporation or dam spill or in such other circumstances as may be prescribed by the regulations,
- (d) water sharing measures for the protection and enhancement of the quality of water in the water sources in the area or for the restoration or rehabilitation of water sources or their dependent ecosystems,
- (e) measures to give effect to the water management principles and the objects of this Act,

- (f) such other matters as are prescribed by the regulations.

## **Division 3 Water use**

### **22 Application of Division**

- (1) This Division applies to the provisions of a management plan to the extent to which they deal with water use.
- (2) The water use provisions of a management plan may apply to the whole or any part of a water management area.

### **23 Core provisions**

The water use provisions of a management plan for a water management area must deal with the following matters:

- (a) the identification of existing and potential water use practices and related activities,
- (b) the identification of those uses and activities which have adverse impacts, including cumulative impact, on water sources or their dependent ecosystems or on other water users,
- (c) the identification of the occurrence of land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity within the area and any impacts on water sources.

### **24 Additional provisions**

The water use provisions of a management plan for a water management area may also deal with the following matters:

- (a) best practice for water conservation, water efficiency and total water cycle management,
- (b) prevention of off-site impacts of water use,
- (c) requirements for the restoration or rehabilitation of land or water sources or their dependent ecosystems,
- (d) protection of the habitats or pathways of animals and plants,
- (e) the preservation and enhancement of the quality of water of the water sources in the area affected by water use and related practices,
- (f) structural or operational modifications for existing works,
- (g) other measures to give effect to the water management principles and the objects of this Act,

- (h) such other matters as are prescribed by the regulations.

## **Division 4 Drainage management**

### **25 Application of Division**

- (1) This Division applies to the provisions of a management plan to the extent to which they deal with drainage management.
- (2) The drainage management provisions of a management plan may apply to the whole or any part of a water management area.

### **26 Core provisions**

The drainage management provisions of a management plan for a water management area must deal with the following matters:

- (a) the identification of the existing and natural hydrological regimes in the area,
- (b) the identification of existing drainage works in the area and the way they are managed,
- (c) the ecological impacts and impacts on water quality, including cumulative impacts, of the drainage works in the area.

### **27 Additional provisions**

The drainage management provisions of a management plan for a water management area may also deal with the following matters:

- (a) proposals for the construction of new drainage works,
- (b) the modification or removal of existing drainage works,
- (c) restoration or rehabilitation of land, habitats, water sources or their dependent ecosystems,
- (d) the preservation and enhancement of the quality of water of the water sources in the area affected by drainage management,
- (e) other measures to give effect to the water management principles and the objects of this Act,
- (f) such other matters as are prescribed by the regulations.

## **Division 5 Floodplain management**

### **28 Application of Division**

- (1) This Division applies to the provisions of a management plan to the extent to which

they deal with floodplain management.

- (2) The floodplain management provisions of a management plan may apply to the whole or any part of a water management area.

### **29 Core provisions**

The floodplain management provisions of a management plan for a water management area must deal with the following matters:

- (a) identification of the existing and natural flooding regimes in the area, in terms of the frequency, duration, nature and extent of flooding,
- (b) the identification of the ecological benefits of flooding in the area, with particular regard to wetlands and other floodplain ecosystems and groundwater recharge,
- (c) the identification of existing flood works in the area and the way they are managed, their benefits in terms of the protection they give to life and property, and their ecological impacts, including cumulative impacts,
- (d) the risk to life and property from the effects of flooding.

### **30 Additional provisions**

The floodplain management provisions of a management plan for a water management area may also deal with the following matters:

- (a) proposals for the construction of new flood works,
- (b) the modification or removal of existing flood works,
- (c) restoration or rehabilitation of land, water sources or their dependent ecosystems, in particular in relation to the following:
  - (i) the passage, flow and distribution of floodwater,
  - (ii) existing dominant floodways and exits from floodways,
  - (iii) rates of flow, floodwater levels and duration of inundation,
  - (iv) downstream water flows,
  - (v) natural flood regimes, including spatial and temporal variability,
- (d) the control of activities that may affect or be affected by the frequency, duration, nature or extent of flooding within the water management area,
- (e) the preservation and enhancement of the quality of water in the water sources in the area during and after flooding,

- (f) other measures to give effect to the water management principles and the objects of this Act,
- (g) such other matters as are prescribed by the regulations.

## **Division 6 Controlled activities and aquifer interference activities**

### **31 Application of Division**

- (1) This Division applies to the provisions of a management plan to the extent to which they deal with controlled activities and aquifer interference activities.
- (2) The controlled activity and aquifer interference activity provisions of a management plan may apply to the whole or any part of a water management area.

### **32 Core provisions**

The controlled activity and aquifer interference activity planning provisions of a management plan for a water management area must deal with the following matters:

- (a) identification of the nature of any controlled activities or aquifer interference causing impacts, including cumulative impacts, on water sources or their dependent ecosystems, and the extent of those impacts,
- (b) specification of controlled activities or aquifer interferences which are to require controlled activity approvals or aquifer interference approvals in the area.

### **33 Additional provisions**

The controlled activity and aquifer interference activity provisions of a management plan for a water management area may also deal with the following matters:

- (a) the undertaking of work for the purpose of restoring or rehabilitating a water source or its dependent ecosystems,
- (b) protecting, restoring or rehabilitating the habitats or pathways of animals and plants,
- (c) specific controls on activities causing unacceptable impacts,
- (d) the preservation and enhancement of the quality of water in the water sources in the area affected by controlled activities or aquifer interference,
- (e) other measures to give effect to the water management principles and the objects of this Act,
- (f) such other matters as are prescribed by the regulations.

## Division 7 Environmental protection

### 34 Environmental protection provisions

- (1) A management plan for a water management area, or any part of a water management area, may contain the following provisions (***environmental protection provisions***) in respect of any aspect of water management:
  - (a) provisions identifying zones in which development should be controlled in order to minimise any harm to water sources in the area or to minimise any threat to the floodplain management provisions of the plan,
  - (b) provisions identifying development that should be controlled in any such zone,
  - (c) provisions identifying the manner in which any such development should be controlled in any such zone,
  - (d) provisions to which State agencies and local authorities (including local councils) should be subject when taking action and making decisions concerning any such development,
  - (e) provisions requiring development consent to the carrying out of any such development,
  - (f) provisions requiring the Minister's concurrence to the granting of any such development consent,
  - (g) provisions requiring the establishment of action plans to encourage the abandonment of existing uses that cause harm to water sources, and to encourage the carrying out of remedial measures to minimise or alleviate any harm already caused to water sources by the continuance of existing uses.
- (2) In this section, ***control, development, development consent*** and ***existing use*** have the same meanings as they have in the [Environmental Planning and Assessment Act 1979](#).

## Division 8 Procedures for making management plans

### 35 Format of management plan

- (1) A management plan must include the following components:
  - (a) a vision statement,
  - (b) objectives consistent with the vision statement,
  - (c) strategies for reaching those objectives,
  - (d) performance indicators to measure the success of those strategies.

- (2) In the case of a water management area for which an equivalent management plan is already in force, the draft management plan may be in the form of:
  - (a) an amendment to the existing management plan, or
  - (b) a new plan to replace the existing management plan.
- (3) Subject to subsections (1) and (2), the format of a management plan is to be as determined by the Minister.

### **36 Notification of certain persons and bodies**

- (1) In preparing a draft management plan, the following information must be notified to each person or body referred to in subsection (2):
  - (a) the general aims and objectives of the draft plan,
  - (b) a description of the water management area to which the draft plan is intended to apply,
  - (c) such other matters as the Minister thinks fit.
- (2) The persons and bodies to be notified are as follows:
  - (a) each local council within whose area the water management area is located,
  - (b) Local Land Services,
  - (c) each holder of an access licence or approval in respect of land within the water management area,
  - (d) such other persons or bodies as the Minister may determine in relation to the plan.
- (3) Failure to notify a person or body referred to in subsection (2) does not affect the validity of a management plan.
- (4) A person to whom information is notified under this section may make written submissions to the Minister in relation to the preparation of the draft management plan within 28 days (or such longer period as may be determined by the Minister) after the information is notified.

### **37 Reference of draft management plan to Minister**

- (1) After a draft management plan has been prepared, including a draft management plan that has been referred back to it under this section, the management committee must submit the plan to the Minister.
- (2) If the Minister is of the opinion that the draft plan does not comply with the requirements of this Part, the Minister is to refer the draft plan back to the

management committee for further consideration.

(3) This section does not apply to a draft management plan prepared by the Minister.

### **38 Public exhibition of draft management plan**

(1) Once the Minister is satisfied that a draft management plan is suitable for public exhibition, the Minister:

(a) must give public notice of the draft plan, and

(b) must exhibit the draft plan (together with such other information as is appropriate or necessary to enable the draft plan and its implications to be understood) at the places, on the dates and during the times set out in the notice.

(2) The public notice referred to in subsection (1) (a):

(a) must specify the places at which, the dates on which, and the times during which, the draft plan may be inspected by the public, and

(b) must specify a period of at least 40 days during which submissions may be made to the Minister in relation to the plan (the **submission period**), and

(c) must be published in an appropriate newspaper.

(3) In the case of a draft management plan containing environmental protection provisions, the Minister must consult with the Minister for Urban Affairs and Planning before making a decision as to whether the plan is suitable for public exhibition.

### **39 Submissions on draft management plan**

(1) During the submission period, any person may make written submissions to the Minister on the draft management plan.

(2) The Minister must send a copy of each such submission to the management committee by which the plan was prepared.

(3) Subsection (2) does not apply to a draft management plan prepared by the Minister.

### **40 Resubmission of draft management plan to Minister**

(1) As soon as practicable after completing its consideration of any submissions received by it, the management committee must resubmit the draft management plan to the Minister together with the committee's comments on the submissions.

(2) Before making any alterations to the draft management plan, the Minister must consult with the management committee.

(3) This section does not apply to a draft management plan prepared by the Minister.



#### **41 Making of management plan**

- (1) After complying with the requirements of this Part, the Minister:
  - (a) may, by order published on the NSW legislation website, make a management plan in accordance with the draft plan, as finally submitted to the Minister, or
  - (b) may, by order published on the NSW legislation website, make a management plan in accordance with the draft plan, as finally submitted to the Minister, but with such alterations as the Minister thinks fit, or
  - (c) may cause the draft management plan to be re-exhibited (with such alterations as the Minister thinks fit) and resubmitted in accordance with this Part, or
  - (d) may decide not to proceed with the draft management plan.
- (2) Before making a management plan, the Minister must obtain the concurrence of the Minister for Climate Change and the Environment to the making of the plan.
- (3) A management plan commences on the date on which it is published on the NSW legislation website or on such later date as may be specified in the plan.

#### **42 Amendment of management plans**

- (1) A management plan may be amended by a subsequent management plan made in accordance with this Part.
- (2) This section does not limit the operation of Division 9.
- (3) Each management plan specified in Schedule 12 is amended as set out in that Schedule.
- (4) The amendment of a management plan by this or any other Act does not prevent its later amendment or repeal in accordance with this Act.

#### **43 Duration of management plans**

- (1) Subject to section 43A, a management plan has effect for:
  - (a) if the plan commenced on 1 July in any year—10 years from that date, or
  - (b) in any other case—10 years from 1 July next after the date the plan commenced.
- (2) Within the fifth year after it was made, the Minister is to review each management plan (other than provisions dealing with water sharing) for the purpose of ascertaining whether its provisions remain adequate and appropriate for ensuring the effective implementation of the water management principles.
- (3) Such a review is to be conducted in consultation with the Minister for Climate Change and the Environment.

- (4) A new management plan may be made in accordance with this Act to replace an earlier management plan. Any such replacement plan may contain provisions of a savings or transitional nature consequent on the replacement of the plan.

**43A Extension of duration of management plan dealing with water sharing**

- (1) The Minister may, on the recommendation of the Natural Resources Commission and by notice published in the Gazette before its expiry under section 43 or this section, extend a management plan that deals with water sharing for a further period of 10 years after the plan was due to expire.
- (2) More than one such extension of a management plan that deals with water sharing may be made.
- (3) Before deciding whether to extend a management plan that deals with water sharing or to make a new management plan, the Minister is to consider a report of the Natural Resources Commission that reviews (within the previous 5 years) the following:
- (a) the extent to which the water sharing provisions have materially contributed to the achievement, or the failure to achieve, the State priorities for local land services (within the meaning of the *Local Land Services Act 2013*) that relate to natural resource management,
  - (b) whether changes to those provisions are warranted.
- (3A) If a report of the Natural Resources Commission under subsection (3) recommends changes to a management plan that will result in a reduction of water allocations in relation to which compensation might be payable under section 87AA, the Commission is to state in the report whether the purpose of the proposed changes is:
- (a) to restore water to the environment because of natural reductions in inflow to the relevant water source, including but not limited to changes resulting from climate change, drought or bushfires, or
  - (b) to provide additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate.
- (4) For the purposes of a report under subsection (3):
- (a) the Natural Resources Commission is to call for public submissions and to have regard to any duly received, and
  - (b) the Natural Resources Commission is to have regard to any other relevant State-wide and regional government policies or agreements that apply to the catchment management area.
- (5) A report of the Natural Resources Commission under subsection (3) is to be made

public after the decision of the Minister with respect to the extension of the management plan or on the expiration of 6 months after the report is received by the Minister, whichever first occurs.

- (6) If the Minister decides not to extend a management plan under this section, the Minister may, by notice published in the Gazette, extend the existing management plan until the commencement of a replacement management plan or until the second anniversary of the date the plan would otherwise have expired, whichever first occurs.

#### **44 Periodic auditing of management plans**

- (1) The Minister is to ensure that a management plan is audited, at intervals of not more than 5 years, for the purpose of ascertaining whether its provisions are being given effect to.
- (2) An audit under this section is to be carried out by an audit panel appointed by the Minister in consultation with the Water Management Committee where one exists.
- (3) In setting terms of reference for the preparation of a management plan to replace an existing management plan, the Minister must have regard to the results of the most recent audit conducted under this section in relation to the existing management plan.

### **Division 9 Amendment of management plans by Minister**

#### **45 Minister may amend or repeal management plan**

- (1) The Minister may at any time, by order published on the NSW legislation website, amend a management plan:
- (a) if satisfied it is in the public interest to do so, or
  - (b) in such circumstances, in relation to such matters and to such extent as the plan so provides, or
  - (c) if the amendment is required to give effect to a decision of the Land and Environment Court relating to the validity of the plan.
- (2) (Repealed)
- (3) Before amending a management plan, the Minister must obtain the concurrence of the Minister for Climate Change and the Environment to the amendment.
- (4) The date of commencement of a management plan may, but the duration of a management plan may not, be extended by an amendment of the plan under this section.
- (5) The Minister may at any time, by order published on the NSW legislation website, repeal a management plan (other than a management plan that deals with water

sharing).

- (6) The amendment or repeal of a management plan under this section takes effect on the date the order is published on the NSW legislation website or on a later date specified in the order.
- (7) An order under subsection (1) (a) varying a bulk access regime is not to be made in relation to a water management area for which a management committee for water sharing is constituted unless the Minister has consulted with the committee in relation to the proposed amendment.
- (8) A provision of a management plan that authorises the amendment of the plan in accordance with section 42 (2) of this Act is to be construed as a reference to an amendment authorised by subsection (1) (b).

#### **45A Consolidation of management plans**

- (1) The Minister may, by order published on NSW legislation website, consolidate 2 or more management plans by:
  - (a) repealing one or more management plans and amending another management plan to make provision with respect to the matters dealt with by the repealed plan or plans, or
  - (b) amending a management plan to make provision with respect to the matters dealt with by one or more other plans that have expired (or are to expire) by operation of section 43.
- (2) A consolidated management plan may contain provisions of a savings or transitional nature consequent on the consolidation.
- (3) The provisions of Division 9 (Compensation relating to access licences) of Part 2 of Chapter 3 in relation to the consolidation of management plans under this section have effect subject to the following:
  - (a) subject to paragraph (b), the consolidation of the management plans does not affect any right to compensation that the holder of an access licence would have had under section 87 or 87AA had the consolidation not occurred,
  - (b) the commencement of the 10-year period referred to in section 87AA (6) (b) in its application to an expired or repealed plan is to be calculated by reference to the 10-year period commencing on the date on which the expired or repealed plan was due to expire rather than the date on which the plan into which the provisions were consolidated ceases to be in force.
- (4) Section 45 does not limit the circumstances in which the Minister may repeal or amend a management plan under this section (including a management plan that deals with water sharing).

## **Division 10**

**(Repealed)**

## **Division 11 Miscellaneous**

### **46 Making or amendment of management plan**

- (1) If the Minister makes a replacement management plan or amends a management plan and the replacement plan or amendment will result in a reduction of water allocations in relation to which compensation might be payable under section 87AA, the Minister is to include in the order in which the replacement plan or amendment is made, or in another order, a statement as to whether:
  - (a) the purpose of the reduction to water allocations is to restore water to the environment because of natural reductions in inflow to the relevant water source, including but not limited to changes resulting from climate change, drought or bushfires, or
  - (b) the purpose of the reduction to water allocations is to provide additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate, but not if that purpose is also the purpose referred to in paragraph (d), or
  - (c) the reduction to water allocations results from a change in State government policy, or
  - (d) the purpose of the reduction to water allocations is to enable the replacement plan or amended plan, as the case may be, to be accredited under the [Water Act 2007](#) of the Commonwealth.
- (2) A statement referred to in subsection (1):
  - (a) need not be made if the reduction concerned arises from circumstances referred to in section 87AA (3) (a) or (b), and
  - (b) in a case where the reduction is made for more than one of the purposes referred to in subsection (1), is to specify each of the relevant purposes and the extent to which the reduction relates to each of those relevant purposes.

### **47 Validity of management plans and exercise of plan-making functions**

- (1) The validity of a management plan may not be challenged, reviewed, quashed or called into question before any court in any proceedings, other than before the Land and Environment Court in proceedings commenced within the judicial review period.
- (2) The judicial review period in respect of a management plan is:

- (a) the period of 3 months after the date the plan was published on the NSW legislation website, except as provided by paragraph (b), or
- (b) in relation to a provision of the plan that was inserted by an amendment of the plan (other than an amendment under section 45 (1) (c)), the period of 3 months after the date that the amendment was published on the NSW legislation website.

A judicial review period does not arise as a result of the extension of the duration of a management plan.

- (3) The judicial review period cannot be extended by the Land and Environment Court or any other court, despite any other Act or law.
- (4) Without limiting subsection (1), the exercise by a designated person of any plan-making function may not be:
  - (a) challenged, reviewed, quashed or called into question before any court in any proceedings, or
  - (b) restrained, removed or otherwise affected by any proceedings,other than before the Land and Environment Court in proceedings commenced within the judicial review period.
- (5) The provisions of or made under this Act and the rules of natural justice (procedural fairness), so far as they apply to the exercise of any plan-making function, do not place on a designated person any obligation enforceable in a court (other than in the Land and Environment Court in proceedings commenced within the judicial review period).
- (6) Accordingly, no court (other than the Land and Environment Court in proceedings commenced within the judicial review period) has jurisdiction or power to consider any question involving compliance or non-compliance, by a designated person, with those provisions or with those rules so far as they apply to the exercise of any plan-making function.
- (7) This section is not to be construed as applying the rules of natural justice to the exercise of plan-making functions for the purposes of proceedings instituted within the judicial review period.

- (8) In this section:

**court** includes any court of law or administrative review body.

**designated person** means the Minister, a management committee, the Director-General or any person or body assisting or otherwise associated with any of them.

**exercise** of functions includes the purported exercise of functions and the non-

exercise or improper exercise of functions.

**judicial review period**—see subsection (2).

**management plan** includes purported management plan.

**plan-making function** means:

- (a) a function under this Act relating to the making of a management plan (including relating to the amendment, replacement or repeal of a management plan or the extension of the duration of a management plan), or
- (b) a function under section 46 of this Act relating to the statement of the purpose for which any provision of a management plan has been made.

**proceedings** includes:

- (a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and
- (b) without limiting paragraph (a), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the [Supreme Court Act 1970](#).

#### **48 Effect of management plans on exercise of Minister's functions**

When exercising functions under this Act, the Minister must take all reasonable steps to give effect to the provisions of any management plan and, in particular, to ensure that any environmental water rules established by the plan are observed.

#### **49 Consideration of management plans by public authorities**

- (1) When exercising its functions, a public authority must have regard to the provisions of any management plan to the extent to which they apply to the public authority.
- (2) For the purposes of this section, a management plan may be expressed so as to apply:
  - (a) to a specified public authority, to a specified class of public authorities or to public authorities generally, and
  - (b) to a specified function, to a specified class of functions or to functions generally.
- (3) This section neither restricts a public authority's statutory discretions nor authorises a public authority to do anything inconsistent with its statutory or other legal obligations.

#### **49A Suspension of management plans during severe water shortages**

- (1) If satisfied that there is a severe water shortage in relation to a particular water

management area or water source, the Minister may, by order published in the Gazette, suspend the operation of any management plan, either in whole or in part, in relation to that or any other water management area or water source.

- (2) Before suspending the operation of a management plan in relation to a water management area or water source, the Minister must obtain the concurrence of the Minister for Climate Change and the Environment.
- (3) As soon as practicable after an order under this section is published in the Gazette, a copy of the order must be published in an appropriate newspaper.
- (4) An order under this section expires at the end of 30 June following the date on which it is made or, if made on or after 1 April in any year, at the end of 30 June of the following year.
- (5) An order may not be made under this section in relation to a management plan that has, at any time during the previous 12 months, been subject to a prior order under this section unless the Minister is satisfied, for reasons specified in the order, that there is no need for the plan to be amended under Division 9.

## **Part 4 Minister's plans**

### **50 Minister's plan**

- (1) The Minister may, by order published on the NSW legislation website, make a plan (a ***Minister's plan***):
  - (a) for any part of the State that is not within a water management area, or
  - (b) for any water management area or water source, or part of a water management area or water source, for which a management plan is not in force, or
  - (c) for any water management area or water source, or part of a water management area or water source, for which a management plan is in force, but only so as to deal with matters not dealt with by the management plan.
- (1A) A Minister's plan may be made for more than one water management area or water source or for parts of more than one water management area or water source.
- (2) A Minister's plan must in general terms deal with any matters that a management plan is required to deal with, and may also deal with any other matters that a management plan is authorised to deal with, other than matters that are already dealt with by a management plan.
- (2A) Part 3 (except sections 15 and 36–41) applies to a Minister's plan. However, the Minister:
  - (a) may adopt any of the provisions of sections 36–41 in a particular case, and



- (b) may dispense with a particular requirement of Part 3 in the case of a Minister's plan referred to in subsection (1A).
- (3) Before making a Minister's plan, the Minister must obtain the concurrence of the Minister for Climate Change and the Environment to the making of the plan.
- (4) Except to the extent to which this Act otherwise provides, a Minister's plan has the same effect as a management plan.
- (5) The Minister may decide whether to make a Minister's plan or a management plan in respect of any matter (whether or not any draft management plan has been submitted to the Minister).

## **Part 5 Implementation programs**

### **51 Implementation programs**

- (1) The Minister may, by order in writing, establish a program for implementing a management plan or Minister's plan (an ***implementation program***).
- (2) Before establishing the first implementation program for a management plan, the Minister must consult with the management committee by which the plan was prepared.
- (3) An implementation program must set out the means by which the Minister intends that the objectives of the relevant management plan or Minister's plan are to be achieved.
- (4) On establishing an implementation program, the Minister must ensure that:
  - (a) notice of that fact is published (in an appropriate newspaper and in such other manner as the Minister considers appropriate) to persons in the area to which the program relates, and
  - (b) copies of the program (as currently in force) are made available for inspection during normal office hours, free of charge, at suitable locations within the area.
- (5) The Minister is to ensure that the implementation program is reviewed each year for the purpose of determining whether the implementation program is effective in implementing the management plan or Minister's plan to which it relates.
- (6) The results of each review under this section are to be included in the annual report for the Department under the [Annual Reports \(Departments\) Act 1985](#).

## Chapter 3 Water management implementation

### Part 1 Basic landholder rights

#### Division 1 Domestic and stock rights

##### 52 Domestic and stock rights

- (1) Subject to subsection (2), an owner or occupier of a landholding is entitled, without the need for an access licence, water supply work approval or water use approval:
  - (a) to take water from any river, estuary or lake to which the land has frontage or from any aquifer underlying the land, and
  - (b) to construct and use a water supply work for that purpose, and
  - (c) to use the water so taken for domestic consumption and stock watering, but not for any other purpose.
- (2) Subsection (1) does not allow a landholder:
  - (a) to take or use water in contravention of any mandatory guidelines established under section 336B, or
  - (b) to construct a dam or water bore without a water supply work approval, or
  - (c) in the case of the owner or occupier of a landholding arising from a subdivision effected on or after 1 July 2004, to take or use water in contravention of any prohibition or restriction imposed by or under the regulations (including any prohibition or restriction that the Minister is authorised by the regulations to impose), or
  - (d) to carry out a controlled activity without a controlled activity approval.
- (3) In this section:

**domestic consumption**, in relation to land, means consumption for normal household purposes in domestic premises situated on the land.

**stock watering**, in relation to land, means the watering of stock animals being raised on the land, but does not include the use of water in connection with the raising of stock animals on an intensive commercial basis that are housed or kept in feedlots or buildings for all (or a substantial part) of the period during which the stock animals are being raised.

## **Division 2 Harvestable rights**

### **53 Harvestable rights**

- (1) An owner or occupier of a landholding within a harvestable rights area is entitled, without the need for any access licence, water supply work approval or water use approval, to do each of the following in accordance with the harvestable rights order by which the area is constituted:
  - (a) to construct and use one or more water supply works for the purpose of capturing and storing water of a kind specified by the harvestable rights order,
  - (b) to take and use that water.
- (2) One or more water supply works may be constructed and used under subsection (1)
  - (a) for the storage of both water that has been captured in exercise of a harvestable right and other water that has been lawfully taken from a water source if the capacity of the work or works does not exceed the maximum harvestable right volume specified by the harvestable rights order.
- (3) The following provisions apply where the capacity of the water supply work or works by means of which water is to be captured or stored in exercise of a harvestable right exceeds the maximum harvestable right volume specified by the harvestable rights order for works constructed under the authority of this section:
  - (a) an access licence or water use approval is not required for water that is captured or stored by the work or works in exercise of a harvestable right,
  - (b) if water (other than water captured or stored in exercise of a harvestable right) is also captured or stored by the work or works—an access licence and water use approval is required to authorise the taking and use of water from that source for any volume taken and stored in excess of the maximum harvestable right volume unless the water is taken under the authority of a domestic and stock right or native title right,
  - (c) a water supply work approval for the water supply work or works is required despite subsection (1).
- (4) Without limiting subsection (1), a single water supply work may be used by 2 or more landholders regardless of who constructed it if the shared use is permitted by the harvestable rights order.
- (5) This section does not allow a landholder:
  - (a) to supply any other land with water that has been captured and stored in exercise of a harvestable right, or
  - (b) to construct or use a water supply work in a river unless the river is declared by

the relevant harvestable rights order to be a minor stream for the purposes of this Division.

(6) In this section:

**capture**, in relation to a water supply work, includes pumping water for the purposes of storage in another water supply work.

#### **54 Harvestable rights orders**

(1) The Minister, by order published on the NSW legislation website, may:

- (a) constitute any land as a harvestable rights area, and
- (b) name the area that is constituted, and
- (c) fix the boundaries of the area that is constituted.

**Note—**

An order under this section may be amended or repealed by a subsequent order (see section 43 of the [Interpretation Act 1987](#)).

**Editorial note—**

For harvestable rights orders see Gazette No 110 of 1.7.2004, pp 5515, 5517 and Gazette No 40 of 31.3.2006, p 1628.

(2) The order by which a harvestable rights area is constituted must specify:

- (a) the kinds of water (such as overland flow water) that may be captured and stored in the area in exercise of harvestable rights, and
- (b) the method for calculating the maximum harvestable right volume for works constructed or used in exercise of harvestable rights on landholdings in the area by reference to a proportion (not being less than 10%) of the average regional overland flow waters for that area.

(3) Without limiting subsection (2) (b), the kinds of ways in which a maximum harvestable right volume for landholdings in a harvestable rights area may be expressed include by reference to the capacity of water supply works or volumetric limits.

(4) The order may also deal with the following matters:

- (a) the types and locations of water supply works that may be used by a landholder to capture and store water,
- (b) the means by which the maximum capacity of a water supply work that may be constructed or used by a landholder to capture and store water is to be calculated,
- (c) the arrangements that may be made by landholders for the shared use of a water

supply work that straddles their landholdings,

- (d) the method for accounting for water that is captured or stored in the circumstances referred to in section 53 (3),
  - (e) the procedures to be followed for calculating the average overland flow water for a landholding in the area,
  - (f) rules about the purposes for which water may be captured, taken, stored or used,
  - (g) such other matters as are necessary or convenient to give effect to the order.
- (5) For the purpose of calculating any matter under an order under this section, a reference in the order to an area of land is, in the case of a landholding, a reference to the area of the landholding.
- (6) An order under this section may deal with any matter by reference to a map held by the Department.
- (7) Any map that is referred to as provided by subsection (6) is to be available for public inspection, free of charge, by either or both of the following means:
- (a) at the appropriate regional office of the Department for the area to which the relevant order relates, during normal office hours,
  - (b) on the website of the Department or any other website that the Minister considers to be readily accessible by members of the public.

## **Division 3 Native title rights**

### **55 Native title rights**

- (1) A native title holder is entitled, without the need for an access licence, water supply work approval or water use approval, to take and use water in the exercise of native title rights.
- (2) This section does not authorise a native title holder:
  - (a) to construct a dam or water bore without a water supply work approval, or
  - (b) to construct or use a water supply work otherwise than on land that he or she owns.
- (3) The maximum amount of water that can be taken or used by a native title holder in any one year for domestic and traditional purposes is the amount prescribed by the regulations.

## Part 2 Access licences

### Division 1 Preliminary

#### 55A Application of Part

- (1) This Part applies to:
- (a) each part of the State or each water source, and
  - (b) each category or subcategory of access licence that relates to that part of the State or that water source,

that is declared by proclamation to be a part of the State or water source, and category or subcategory of access licence, to which this Part applies.

**Editorial note—**

For declarations proclaimed under this subsection see Gazettes No 110 of 1.7.2004, p 5004; No 120 of 29.9.2006, p 8440; No 127 of 27.10.2006, pp 8906, 8907; No 83 of 29.6.2007, p 3967; No 11 of 31.1.2008, p 213; No 76 of 27.6.2008, p 5871; No 93 of 26.6.2009, p 3581 and No 109 of 31.7.2009, p 4665, and proclamations published on the NSW legislation website: 2010 (342) LW 1.7.2010; 2010 (739) LW 17.12.2010; 2011 (152) LW 3.3.2011; 2011 (153) LW 3.3.2011; 2011 (521) LW 30.9.2011; 2011 (576) LW 11.11.2011; 2011 (677) LW 16.12.2011; 2012 (28) LW 27.1.2012; 2012 (135) LW 30.3.2012; 2012 (231) LW 1.6.2012; 2012 (352) LW 3.8.2012; 2012 (464) LW 14.9.2012 and 2012 (496) LW 4.10.2012.

- (2) Despite subsection (1), specified provisions of this Part may be declared by proclamation to apply to the whole of the State, and apply accordingly.

**Editorial note—**

See Gazette No 263 of 20.12.2002, p 10752 for proclamation applying section 71L (renumbered as section 71Z) to the whole of the State on and from 20 December 2002.

#### 56 Access licences

- (1) An access licence entitles its holder:
- (a) to specified shares in the available water within a specified water management area or from a specified water source (the **share component**), and
  - (b) to take water:
    - (i) at specified times, at specified rates or in specified circumstances, or in any combination of these, and
    - (ii) in specified areas or from specified locations,(the **extraction component**).
- (2) Without limiting subsection (1) (a), the share component of an access licence may be expressed:
- (a) as a specified maximum volume over a specified period, or

- (b) as a specified proportion of the available water, or
  - (c) as a specified proportion of the storage capacity of a specified dam or other storage work and a specified proportion of the inflow to that dam or work, or
  - (d) as a specified number of units.
- (3) Shares in available water may be assigned generally or to specified categories of access licence.
- (4) In the case of a local water utility licence, its share component is to be expressed as a specified volume per year.
- (4A) Without limiting subsection (1) (b), the extraction component of an access licence may authorise the taking of water from a water source specified in the share component of the licence and from another water source not so specified if those water sources are vertically abutting (either wholly or partly) water sources.
- (4B) In the circumstances referred to in subsection (4A), the water source specified in the share component of the access licence is to be the water source that is the main source for the extraction of water by the holder of the licence.
- (5) For the purposes of this Act, an access licence may also be referred to as a **water access licence** or a **WAL**.
- (6) (Repealed)

**Note—**

An access licence:

- (a) does not confer a right on any person to use water for any particular purpose (that right is conferred by a water use approval), and
- (b) does not confer a right on any person to construct or use a water supply work (that right is conferred by a water supply work approval).

**57 Categories of licence**

- (1) There are the following categories of access licences:
- (a) regulated river (high security) access licences,
  - (b) regulated river (general security) access licences,
  - (c) regulated river (conveyance) access licences,
  - (d) unregulated river access licences,
  - (e) aquifer access licences,

- (f) estuarine water access licences,
- (g) coastal water access licences,
- (h) supplementary water access licences,
- (i) major utility access licences,
- (j) local water utility access licences,
- (k) domestic and stock access licences,
- (k1) floodplain harvesting (regulated river) access licences,
- (k2) floodplain harvesting (unregulated river) access licences,
- (l) such other categories of access licence as may be prescribed by the regulations.

(2) Subcategories of any category of access licence may be prescribed by the regulations.

**57A Special provisions relating to floodplain harvesting access licences**

- (1) The regulations may make provision for or with respect to the conversion of actual or proposed floodplain water usage by landholders into any of the following categories or subcategories of floodplain harvesting access licences (**replacement floodplain harvesting access licences**):
  - (a) floodplain harvesting (regulated river) access licences,
  - (b) floodplain harvesting (unregulated river) access licences,
  - (c) any other categories or subcategories of floodplain harvesting access licences prescribed for the purposes of section 57 (1) (l) or (2).
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
  - (a) the circumstances in which actual or proposed floodplain water usage by landholders will give rise to replacement floodplain harvesting access licences,
  - (b) the terms and conditions of replacement floodplain harvesting access licences,
  - (c) the share components of replacement floodplain harvesting access licences (including the process for the determination of such share components),
  - (d) the determination of applications for approvals for flood works or other works (whether made under this Act or the [Water Act 1912](#)) in connection with floodplains in respect of which replacement floodplain harvesting access licences will arise,



(e) the establishment, functions and procedure of advisory committees to provide advice to the Minister on matters in connection with any scheme prescribed by the regulations for the creation of replacement floodplain harvesting access licences (including providing for the application of section 397 to the acts or omissions of such committees or their members).

(3) Regulations made for the purposes of this section have effect despite any provisions of this Act (including Schedule 10) that are specified by the regulations.

(4) A floodplain harvesting (regulated river) access licence, or other category or subcategory of floodplain harvesting access licence, that nominates a regulated river water source is taken to authorise the taking of water from the floodplain for the river and, accordingly, any water taken under that licence from that floodplain is to be treated as having been taken from the regulated river water source for the purposes of this Act or any management plan that applies to the river.

**Note—**

For example, the taking of water from a floodplain under a floodplain harvesting (regulated river) access licence otherwise than in accordance with the water allocation for the licence will be an offence under section 60C even though it was not directly taken from the regulated river to which the licence relates.

(5) In this section:

**floodplain water usage** by landholders means the taking or use of water by landholders (whether or not under an approval, licence or other authority) from land that is, or is to become, a floodplain.

**Note—**

The Dictionary defines **floodplain** to mean land declared by the regulations to be a floodplain.

## **58 Priorities between different categories of licence**

(1) For the purposes of this Act, the following priorities are to be observed in relation to access licences:

(a) local water utility access licences, major utility access licences and domestic and stock access licences have priority over all other access licences,

(b) regulated river (high security) access licences have priority over all other access licences (other than those referred to in paragraph (a)),

(c) access licences (other than those referred to in paragraphs (a), (b) and (d)) have priority between themselves as prescribed by the regulations,

(d) supplementary water access licences have priority below all other licences.

(2) If one access licence (the **higher priority licence**) has priority over another access licence (the **lower priority licence**), then if the water allocations under them have to be diminished, the water allocations of the higher priority licence are to be diminished

at a lesser rate than the water allocations of the lower priority licence.

- (3) In relation to the water management area or water source to which it applies, a management plan may provide for different rules of priority to those established by subsection (1).
- (4) If a management plan so provides for different rules of priority, those different rules are taken to have been established by this section.

## **59 Available water determinations**

- (1) From time to time, the Minister may, by order in writing, make either or both of the following determinations (an **available water determination**):
  - (a) a determination as to the availability of water for one or more categories or subcategories of access licences in relation to one or more specified water management areas or water sources,
  - (b) while an order is in force under section 49A (1), a determination as to the availability of water for one or more individual access licences in relation to one or more specified water management areas or water sources.
- (1A) An available water determination that is made in relation to a particular category of access licence applies to all subcategories of that category except to the extent to which it otherwise provides.
- (2) The regulations may make provision for or with respect to the manner in which an available water determination is to be notified.
- (3) If the extraction component of an access licence authorises the taking of water from a water source specified in the share component of the licence and from another water source not so specified and those water sources are vertically abutting (either wholly or partly) water sources, the available water determinations that apply to the licence are those made in relation to the water source specified in the share component of the licence.
- (4) If the Minister consents to the amendment of an access licence to enable water to be taken by a nominated water supply work located in some other water management area or water source than that to which the licence relates, the available water determinations applicable to water taken by means of the work are those made in relation to the relevant category or subcategory of access licence in relation to that other water management area or water source.

## **60 Rules of distribution applicable to making of available water determinations**

- (1) Except while an order under section 49A is in force, the following rules of distribution apply to the making of an available water determination of a type referred to in section 59 (1) (a):

- (a) the rules of priority established by section 58,
  - (b) the provisions of any relevant bulk access regime,
  - (c) the provisions of any relevant management plan,
  - (d) the provisions of any relevant implementation program.
- (2) (Repealed)
- (3) While an order under section 49A is in force, the following rules of distribution apply to the making of an available water determination:
- (a) first priority is to be given to:
    - (i) the taking of water for domestic purposes by persons exercising basic landholder rights, and
    - (ii) the taking of water for domestic purposes or essential town services authorised by an access licence,
  - (b) second priority is to be given to the needs of the environment,
  - (c) third priority is to be given to:
    - (i) the taking of water for stock purposes by persons exercising basic landholder rights, and
    - (ii) in the case of regulated rivers, the taking of water for purposes (other than domestic purposes) authorised by a regulated river (high security) access licence, and
    - (iii) the taking of water for the purposes of supply of commercial and industrial activities authorised by a major utility access licence or local water utility access licence, subject to the water made available being in accordance with any drought management strategy established by the Minister for that purpose, and
    - (iv) the taking of water for the purposes of electricity generation authorised by a major utility access licence, and
    - (v) the taking of water for purposes authorised by a domestic and stock access licence or by persons exercising any other water rights in relation to stock, and
    - (vi) the taking of water for purposes authorised by a conveyance access licence in connection with the supply of water for any other purpose or need referred to in this paragraph,
  - (d) fourth priority is to be given to the taking of water for purposes authorised by any

other category or subcategory of access licence.

(4) Nothing in this section gives rise to a claim for compensation under Division 9.

## **Division 1A Offences**

### **60A Taking water without, or otherwise than authorised by, an access licence**

(1) A person:

- (a) who takes water from a water source to which this Part applies, and
- (b) who does not hold an access licence for that water source, and
- (c) who intentionally or negligently takes that water without obtaining an access licence for that water source,

is guilty of an offence.

Tier 1 penalty.

(2) A person:

- (a) who takes water from a water source to which this Part applies, and
- (b) who does not hold an access licence for that water source,

is guilty of an offence.

Tier 2 penalty.

(3) A holder of an access licence:

- (a) who takes water from a water source to which this Part applies otherwise than as authorised by the licence, and
- (b) who intentionally or negligently takes that water without obtaining an access licence that authorises the taking of that water,

is guilty of an offence.

Tier 1 penalty.

(4) A holder of an access licence who takes water from a water source to which this Part applies otherwise than as authorised by the licence is guilty of an offence.

Tier 2 penalty.

(5) Without limiting subsections (3) and (4), a person takes water otherwise than as authorised by an access licence if the person takes water while the licence is suspended.

- (6) Without limiting subsections (3), (4) and (5), a person takes water otherwise than as authorised by a supplementary water access licence if the person takes water otherwise than in such circumstances as may be authorised by provisions of the relevant management plan that are made for the purposes of section 70.
- (7) It is a defence to a prosecution under this section in relation to the taking of water from a water source to which this Part applies if the accused person establishes that the water was taken:
- (a) by means of a nominated water supply work for that water source, or
  - (b) by means of a water supply work that, at all material times, was nominated in relation to the interstate equivalent of an access licence,
- and was otherwise taken in accordance with the terms and conditions of the access licence in connection with which it is nominated.
- (8) The defence established by subsection (7) (b) is not available unless the Minister has been duly notified that the relevant water supply work has been nominated as referred to in that paragraph.

**60B Contravention of terms and conditions of access licence**

- (1) A person (other than the holder) who takes water pursuant to an access licence is guilty of an offence if the person contravenes any term or condition of the licence.
- Tier 2 penalty.
- (2) If any term or condition of an access licence is contravened by any person, each holder of the access licence is guilty of an offence.
- Tier 2 penalty.
- (3) It is a defence to a prosecution under subsection (2) if the accused person establishes:
- (a) that the contravention of the term or condition was caused by another person, and
  - (b) that the other person was not associated with the holder at the time the term or condition was contravened, and
  - (c) that the holder took all reasonable steps to prevent the contravention of the term or condition.

A person is associated with the holder for the purposes of this subsection (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the holder.

**60C Taking water for which there is no, or insufficient, water allocation**

- (1) **Offences involving allocations under a single access licence** A person who takes water from a water source to which this Part applies otherwise than in accordance with the water allocation for the access licence by which the taking of water from that water source is authorised and:
- (a) who intentionally or negligently fails to ascertain whether the taking of water is in accordance with the water allocation, or
  - (b) who knows or has reasonable cause to believe that the taking of the water is not in accordance with the water allocation,
- is guilty of an offence.

Tier 1 penalty.

- (2) A person who takes water from a water source to which this Part applies otherwise than in accordance with the water allocation for the access licence by which the taking of water from that water source is authorised is guilty of an offence.

Tier 2 penalty.

- (3) If a person who has the control or management of a water supply work takes water by means of that work in contravention of subsection (2), and the water supply work is nominated in relation to an access licence held by some other person, both persons are taken to have contravened that subsection.
- (4) Either person referred to in subsection (3) may be proceeded against and convicted for an offence under subsection (2), as the case requires, whether or not the other person has been proceeded against or convicted for such an offence.

- (5) **Offences involving allocations under 2 or more access licences** A holder of 2 or more access licences that nominate the same water supply work to take water from one or more water sources under this Part:

- (a) who intentionally takes water by means of that work from the source or sources concerned in excess of the combined water allocations for the access licences, or
- (b) who knows or has reasonable cause to believe that the taking of the water from the source or sources concerned is in excess of the combined water allocations for the access licences,

is guilty of an offence.

Tier 1 penalty.

- (6) A holder of 2 or more access licences that nominate the same water supply work to take water from one or more water sources under this Part is guilty of an offence if the

holder takes water by means of that work from the source or sources concerned in excess of the combined water allocations for the access licences.

Tier 2 penalty.

- (7) A holder of 2 or more access licences that authorise the holder to take water from the same water source under this Part:
- (a) who intentionally takes water from that water source in excess of the combined water allocations for the access licences, or
  - (b) who knows or has reasonable cause to believe that the taking of the water from that source is in excess of the combined water allocations for the access licences,
- is guilty of an offence.

Tier 1 penalty.

- (8) A holder of 2 or more access licences that authorise the holder to take water from the same water source under this Part is guilty of an offence if the holder takes water from that source in excess of the combined water allocations for the access licences in relation to that source.

Tier 2 penalty.

- (9) If a person who has the control or management of a water supply work takes water by means of that work in contravention of subsection (6), and the water supply work is nominated in relation to an access licence held by some other person, both persons are taken to have contravened that subsection.
- (10) Either person referred to in subsection (9) may be proceeded against and convicted for an offence under subsection (6), as the case requires, whether or not the other person has been proceeded against or convicted for such an offence.

#### **60D Taking water otherwise than by a nominated water supply work**

A person who takes water from a water source to which this Part applies otherwise than by means of a nominated water supply work for that water source is guilty of an offence.

Tier 2 penalty.

#### **60E Liability of occupier of premises for certain offences**

- (1) The occupier of premises at or from which water is taken in contravention of a provision of this Division is taken to have contravened that provision unless it is established that:
- (a) the water was taken by another person, and
  - (b) the other person was not associated with the occupier at the time the water was

taken, and

(c) the occupier took all reasonable steps to prevent the water being taken.

A person is associated with the occupier for the purposes of paragraph (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the occupier.

(2) Subsection (1) does not prevent proceedings being taken under this Act against the person who actually committed the offence.

#### **60F General defence**

(1) It is a defence to a prosecution under this Division in relation to a Tier 1 offence if the accused person establishes:

(a) that the commission of the offence was due to causes over which the person had no control, and

(b) that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) It is a defence to a prosecution under this Division in relation to the taking of water from a water source to which this Part applies if the accused person establishes:

(a) that the water was taken pursuant to a basic landholder right, a consent given under section 71V or an order under section 85A, or

(b) that the person was exempt, pursuant to this Act or the regulations, from any requirement for an access licence in relation to the taking of water from that water source.

(3) This Division does not prevent a person from taking water pursuant to an entitlement in force under the [Water Act 1912](#), where **entitlement** has the same meaning as it has in Schedule 10.

#### **60G Minister may charge for water illegally taken**

(1) If satisfied on the balance of probabilities that a person has taken water from a water source to which this Part applies in contravention of this Division, the Minister may do either or both of the following:

(a) impose on the person a charge for water taken (which may include a penalty component) not exceeding 5 times the value of the water so taken, as determined in accordance with the regulations,

(b) if the person holds an access licence, order that any water allocations credited or to be credited to the water allocation account for the licence be debited up to 5 times the quantity of the water so taken.



- (2) Action under this section may not be taken against a person unless the Minister:
- (a) has given written notice to the person that the Minister proposes to take such action, and
  - (b) has given the person a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and
  - (c) has taken any such submissions into consideration.

#### **60H Application of Division in relation to interstate licences**

In this Division, a reference to an access licence includes a reference to any licence of a similar nature (however described):

- (a) that is granted under the law of another State or Territory, and
- (b) that is declared by the regulations to have the same effect as an access licence for the purposes of this Division.

#### **60I Access licence required for water used in mining activities**

- (1) A person who takes water in the course of carrying out a mining activity is, for the purposes of this Act, taking water from a water source.
- (2) Without limiting the generality of subsection (1), a person **takes water in the course of carrying out a mining activity** if, as a result of or in connection with, the activity or a past mining activity carried out by the person, water is removed or diverted from a water source (whether or not water is returned to that water source) or water is re-located from one part of an aquifer to another part of an aquifer.
- (3) To avoid doubt, a person who takes water in the course of carrying out a mining activity as referred to in subsection (2) is required to hold an access licence authorising the taking of that water.
- (4) In this section:

**mineral** has the same meaning as it has in the [Mining Act 1992](#).

**mineral exploration** means prospecting pursuant to an assessment lease, exploration licence, mineral claim, mining lease or opal prospecting licence under the [Mining Act 1992](#).

**mining** means the winning or removal of materials by methods such as excavating, dredging, drilling or tunnelling for the purpose of obtaining minerals or petroleum, and includes:

- (a) the construction, commissioning, operation and decommissioning of associated works, and

(b) the stockpiling, processing, treatment and transportation of materials extracted, and

(c) the rehabilitation of land affected by mining.

**mining activity** means any of the following:

(a) mining,

(b) mineral exploration,

(c) petroleum exploration.

**petroleum** has the same meaning as it has in the [Petroleum \(Onshore\) Act 1991](#).

**petroleum exploration** means prospecting pursuant to a petroleum title under the [Petroleum \(Onshore\) Act 1991](#).

(5) This section does not limit any other provision of this Act.

## Division 2 Granting of access licences

### 61 Applications for granting of access licences

(1) A person may apply to the Minister for an access licence if:

(a) the application is for a specific purpose access licence in circumstances where:

(i) the regulations provide, or a relevant management plan provides, that an application for the licence may be made, and

(ii) the application does not contravene any restriction on the making of such an application contained in a relevant management plan, or

(b) the application is for an access licence with a zero share component (as referred to in section 63 (5)), or

(c) the person has acquired the right to apply for the licence under section 65.

(2) (Repealed)

(3) In the case of an application under subsection (1) for an access licence:

(a) for water in an area that is not within a water management area, or

(b) for water in a water management area for which there is no water sharing management plan in force,

the Minister must cause the application to be advertised in accordance with the regulations.

- (4) (Repealed)
- (5) The Minister:
  - (a) may require an applicant for an access licence to provide additional information within a specified time if of the opinion that additional information would be relevant to consideration of the application, and
  - (b) may delay consideration of the application until the information is provided or, if the information is not provided within the time specified, may refuse to consider the application.
- (6) The Minister may refuse to accept an application for an access licence if it appears to the Minister that the application is incomplete.
- (7) An applicant for an access licence may, by notice in writing to the Minister, amend or withdraw the application for the access licence at any time before the application is determined.

## **62 Objections to granting of access licences**

- (1) Any person may, in accordance with the regulations, object to the granting of an access licence:
  - (a) for water in an area that is not within a water management area, or
  - (b) for water in a water management area for which there is no water sharing management plan in force.
- (2) The Minister must inform the applicant for the access licence of the grounds of any objection to the granting of the licence and must allow the applicant a specified time within which to make a written response to the Minister in relation to the objection.
- (3) The Minister:
  - (a) may require an objector or applicant to provide additional information within a specified time if of the opinion that additional information would be relevant to consideration of the objection or response, and
  - (b) may delay consideration of the objection or response until the information is provided or, if the information is not provided within the time specified, may refuse to consider the objection or response.
- (4) If there is a deficiency in an objection or response, the Minister may notify the objector or applicant accordingly and allow further time to enable the deficiency to be rectified.
- (5) Before making a decision on an application for an access licence in respect of which any objection has been made, the Minister must endeavour to resolve the issues

raised by the objection by means of consultation with the applicant and the objector, with a view to reaching agreement on the matters raised by the objection.

- (6) For the purpose of reaching such an agreement, the Minister may propose that the matters raised by the objection be dealt with by way of mediation or neutral evaluation involving an independent mediator or evaluator selected by agreement between the applicant, the objector and the Minister.
- (7) An application or objection may be dismissed by the Minister if the applicant or objector, as the case may be, fails to participate in any mediation or neutral evaluation proceedings referred to in subsection (6).

### **63 Determination of applications**

- (1) The Minister may determine an application for an access licence by granting or refusing to grant the licence.
  - (1A) An access licence may be granted unconditionally or subject to such conditions as are required or permitted to be imposed under Division 3.
- (2) An access licence is not to be granted unless the Minister is satisfied that:
  - (a) the application has been made as provided by section 61 (1) (a), (b) or (c), and
  - (b) adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source as a consequence of water being taken from the water source under the licence.
- (3) Despite subsection (1):
  - (a) a local water utility access licence may only be granted to a local water utility, and
  - (b) a major utility access licence may only be granted to a major utility.
  - (c) (Repealed)
- (4) An access licence must specify:
  - (a) in relation to its share component, the water management area or water source to which it relates, and
  - (b) in relation to its extraction component, the times, rates or circumstances in which, and the areas or locations from which, water may be taken under the licence.
- (5) An access licence may be issued with a zero share component or zero extraction component (or both) but, even if it is issued with a zero share component, must still specify the water management area or water source to which it relates.
- (6) Two or more co-holders of an access licence granted under this section are taken to

hold the access licence:

- (a) as provided by the application for the access licence, or
- (b) if the application makes no such provision, as tenants in common with the entitlements conferred by the licence under section 56 apportioned equally between the tenants.

(7) An access licence is to be in such form as the Minister may determine.

(8)-(10) (Repealed)

### **63A Commonwealth and other access licences arising from arrangements**

- (1) The Minister may grant an access licence to the Commonwealth, or a person nominated by the Commonwealth, at the Minister's discretion, if the Minister is satisfied that:
  - (a) the licence is required in order to give effect to an agreement or other arrangement (including, but not limited to, a funding agreement or arrangement) entered into by or on behalf of the State, and
  - (b) the licence is to form part of the Commonwealth environmental water holdings within the meaning of the [Water Act 2007](#) of the Commonwealth.
- (2) Sections 61 and 63 (1) and (2) do not apply to an access licence granted under this section.

### **63B Licences arising out of State arrangements or agreements**

- (1) The Minister may grant an access licence to the State or a public authority prescribed by the regulations, at the Minister's discretion, if the Minister is satisfied that the licence is required in order to give effect to an agreement or other arrangement (including, but not limited to, a funding agreement or arrangement) entered into by or on behalf of the State.
- (2) A licence granted by the Minister under this section:
  - (a) may be granted subject to an adaptive environmental water condition, or
  - (b) may be a licence of an environmental subcategory, or
  - (c) may be for water taken or permitted to be taken under a licence of a class prescribed by the regulations for environmental purposes.
- (3) Sections 61 and 63 (1) and (2) do not apply to an access licence granted under this section.

#### **64 Notice of decision**

- (1) After determining an application under this Division, the Minister must cause notice of the determination to be given to the applicant and, if the application relates to:
  - (a) an area that is not within a water management area, or
  - (b) a water management area for which there is no water sharing management plan in force,to each person who has made an objection in connection with the application.
- (2) (Repealed)
- (3) A notification under subsection (1) must be given within 7 days of the determination.

#### **65 Controlled allocation of access licences**

- (1) The Minister may, by order published in the Gazette, declare that the right to apply for an access licence for a specified water management area or water source is to be acquired by auction, tender or other means specified in the order.
- (2) An order under this section:
  - (a) may relate to one or more particular access licences, or a particular class of access licences or all access licences, for a specified water management area or water source (or part of such an area or source), and
  - (b) may specify a limited period for which such an access licence is to have effect, and
  - (c) may set a minimum price for the acquisition of the right to apply for the access licence or licences concerned, and
  - (d) may set a fee for participation in the auction, tender or other means specified by the order with respect to the access licence or licences concerned.
- (3) For the avoidance of doubt, the Independent Pricing and Regulatory Tribunal does not have jurisdiction under the [Independent Pricing and Regulatory Tribunal Act 1992](#) to investigate or determine minimum prices for the purposes of this section.
- (4) (Repealed)

### **Division 3 Conditions, duration and amendment of access licences**

#### **Note—**

An access licence may be amended under section 71S, on application of the licence holder, so as to change the extraction component of the licence. The share component of an access licence may be changed, on application of the licence holder, under section 71R.

## 66 Conditions of access licence generally

- (1) An access licence is subject to such conditions as the Minister may from time to time impose:
  - (a) which must include such conditions as are required to be imposed on the licence by this Act or by any relevant management plan (**mandatory conditions**), and
  - (b) which may include such other conditions, such as:
    - (i) conditions to give effect to any agreement between an applicant and objector under section 62 (5), and
    - (ii) conditions relating to the protection of the environment, as the Minister thinks fit (**discretionary conditions**).
- (1A) Mandatory conditions do not have effect in relation to an access licence unless they are included in the terms of the licence.
- (2) A mandatory condition prevails over a discretionary condition to the extent of any inconsistency between them.

### Note—

If a management plan or Minister's plan is replaced or amended during the term of an access licence, the mandatory conditions applying to the access licence may vary.

- (2A) When granting a specific purpose access licence, the Minister is to impose a condition on the licence so as to ensure that the licence is used for the purpose for which it is granted. Such a condition may limit the operation of the licence to a particular location.
- (3) At the end of each 5-year period, the Minister is to vary each local water utility licence so as to reflect any variation in population, together with any variation in associated commercial activities, that has occurred during that period in the area in which domestic water is supplied under the licence.
- (3A) In subsection (3), **associated commercial activities** means activities within the following categories recognised in the *Australian and New Zealand Standard Industry Classification* (ANZSIC), 1993 edition (Australian Bureau of Statistics publication, Catalogue No 1292.0):
  - (a) construction (category E),
  - (b) wholesale trade (category F),
  - (c) retail trade (category G),
  - (d) accommodation, cafes and restaurants (category H),

- (e) communication services (category J),
  - (f) finance and insurance (category K),
  - (g) property and business services (category L),
  - (h) government administration and defence (category M),
  - (i) education (category N),
  - (j) health and community services (category O),
  - (k) cultural and recreational services (category P),
  - (l) personal and other services (category Q).
- (4) On the application of a local water utility, the Minister may at any time increase the utility's entitlement to water under a local water utility licence so as to reflect any rapid growth of population within the utility's area requiring an immediate increase in the availability of water for supply by that utility.

#### **66A Imposition of conditions on granting of access licence**

A condition that is imposed when an access licence is granted takes effect on the day on which the licence takes effect.

#### **67 Imposition of conditions after access licence is granted**

- (1) The Minister may impose discretionary conditions on an access licence after it has been granted, but only if the Minister:
- (a) has given written notice to the holder of the access licence that the Minister proposes to impose such conditions, and
  - (b) has given the holder of the access licence a reasonable opportunity to make submissions to the Minister with respect to the proposed conditions, and
  - (c) has taken any such submissions into consideration.
- (2) Subsection (1) does not apply to conditions imposed on an access licence:
- (a) at the request of the holder of the access licence, or
  - (b) as a result of action taken under section 66 (3), or
  - (c) when the access licence is amended under section 68B, or
  - (d) in connection with a dealing under Division 4.
- (3) Mandatory conditions of an access licence may be imposed, amended, revoked or suspended by the Minister whenever it is necessary to do so in order to enable



compliance with or to give effect to this Act, the regulations or a relevant management plan.

- (4) The Minister must cause written notice of any conditions imposed, amended, revoked or suspended under this section to be served on the holder of the access licence concerned.
- (5) A condition imposed or a change referred to in subsection (4) takes effect on the day on which the notice referred to in that subsection is served on the holder of the access licence or on such later day as may be specified in the notice in that regard.
- (6) The regulations may make provision for or with respect to the manner in which written notices may be given for the purposes of this section.

### **68 Revocation of conditions**

The Minister may at any time revoke any discretionary conditions to which an access licence is subject, whether or not on the application of the holder of the access licence.

### **68A Amendment of share or extraction components of access licences by Minister**

- (1) The Minister may amend the share component or extraction component of an access licence in accordance with this Act or the relevant management plan.
  - (1A) The Minister may amend the share component or extraction component (or both) of an access licence so as to alter the water management area or water source to which the share component of the licence relates, or the locations from which water may be taken in accordance with the extraction component of the licence.
  - (1B) An amendment may only be made under subsection (1A) if:
    - (a) the amendment is for the purpose of enabling the holder of the licence to take water from a different water source to that authorised by the licence because erroneous location data has resulted in the holder taking water from that different source, and
    - (b) at the time at which the granting of the access licence was recorded in the Access Register, an access licence could have been granted to the holder authorising the taking of water from that different water source.
- (2) The Minister must cause written notice of an amendment of an access licence under this section to be served on the holder of the licence and any security holder in relation to the licence.
- (3) An amendment under this section has no effect until it is recorded in the Access Register.

#### **Note—**

The holder of an access licence that is amended in accordance with this section may be entitled to compensation under section 87.

**68B Increase of share components of Commonwealth and other access licences arising from arrangements**

- (1) The Minister may amend an access licence held by the Commonwealth (or a person nominated by the Commonwealth), at the Minister's discretion, by increasing the share component of the licence if the Minister is satisfied that:
  - (a) the amendment is required in order to give effect to an agreement or other arrangement (including, but not limited to, a funding agreement or arrangement) entered into by or on behalf of the State, and
  - (b) the licence forms part of the Commonwealth environmental water holdings within the meaning of the *Water Act 2007* of the Commonwealth.
- (2) The Minister may amend an access licence held by the State (or a public authority prescribed by the regulations), at the Minister's discretion, by increasing the share component of the licence if:
  - (a) the Minister is satisfied that the amendment is required in order to give effect to an agreement or other arrangement (including, but not limited to, a funding agreement or arrangement) entered into by or on behalf of the State, and
  - (b) the licence:
    - (i) is subject to an adaptive environmental water condition, or
    - (ii) is of an environmental subcategory, or
    - (iii) is for water taken or permitted to be taken under a licence of a class prescribed by the regulations for environmental purposes.

**69 Duration of access licence**

An access licence ceases to be in force on the date that the cancellation of the licence is recorded in the Access Register.

**70 Special provisions with respect to supplementary water**

A management plan may make provision for or with respect to the circumstances in which the taking of water pursuant to supplementary water access licences is authorised within the whole or any part of a water management area or specified water sources.

**Division 3A Water Access Licence Register**

**Subdivision 1 Keeping of the Access Register**

## **71 Water Access Licence Register**

- (1) The Minister is to keep a Water Access Licence Register for the purposes of this Act (the **Access Register**).
- (2) In the Access Register, there is to be a division recording the matters specified in section 71A (1) (the **General Division**) and a division recording the matters specified in section 71A (2) (the **Assignment Division**).
- (3) The Access Register is to be kept in the form and manner determined by the Minister.
- (4) Without limiting subsection (3), the Access Register may be kept in the form of a computer record.

### **71A Dealings and other matters that must be recorded in the Access Register**

- (1) The following matters relating to an access licence (including a replacement access licence) or a holding in an access licence must be recorded in the General Division of the Access Register:
  - (a) Ministerial action in relation to the licence or holding,
  - (b) any general dealing in the licence or holding,
  - (c) any dealing on default in relation to the licence or holding,
  - (d) any caveat lodged in relation to the licence or holding,
  - (e) any security interest held over the licence or holding,
  - (f) any devolution of the licence or holding as referred to in section 72,
  - (g) any alteration in co-holder's tenancy arrangements in relation to the licence or holding, as referred to in section 73,
  - (h) any other matter prescribed by the regulations.
- (2) The following matters are to be recorded in the Assignment Division of the Access Register in such manner as the Minister considers appropriate:
  - (a) any assignment dealing in an access licence,
  - (b) any other matter prescribed by the regulations.

### **71B When matters required to be recorded in General Division of Access Register have effect**

- (1) Subject to this section, any matter required to be recorded in the General Division of the Access Register:
  - (a) has no effect unless it is so recorded, and

(b) takes effect on being recorded.

- (2) An assignment dealing in relation to an access licence takes effect when details of the assignment are entered in the water allocation account for the access licence.
- (3) If an application for the extension of a term transfer under section 71N is received before the expiry of the term transfer, the extension is to be recorded in the Access Register as taking effect from the end of the current term of the term transfer.

### **71C Provisions with respect to registration of dealings, security interests, caveats and other matters in the Access Register**

Schedule 1A has effect.

## **Subdivision 2 Registration of security interests**

### **71D Creation of registered security interests by recording in Access Register**

- (1) A registered security interest over an access licence (or a holding in an access licence that is held as a tenancy in common) is created by:
  - (a) execution of an instrument in the approved form evidencing the existence of a security interest over the licence or holding, and
  - (b) registering the security interest by recording it in the Access Register in accordance with Part 1 of Schedule 1A.

#### **Note—**

A security interest has no effect until recorded in the Access Register—see sections 71A (1) (e) and 71B.

- (2) Subsection (1) does not apply to:
  - (a) a specific purpose access licence, or
  - (b) a security interest referred to in clause 19 of Schedule 10.

#### **Note—**

Clause 19 of Schedule 10 makes provision for the registration of security interests in access licences arising from entitlements under former legislation.

- (3) For the purposes of Chapter 7 of the *Duties Act 1997*:
  - (a) a registered security interest over an access licence or holding in an access licence is taken to be a security by way of mortgage or charge over property wholly or partly in New South Wales, and
  - (b) the liability date is the date on which the registered security interest is first recorded in the Access Register,except as provided by the regulations.

### Subdivision 3 Registration of caveats

#### 71E Minister may register caveats

- (1) The Minister may, on the application in the approved form of an affected person, record a caveat on an access licence (or holding in an access licence) in the Access Register in such manner as appears to the Minister to be appropriate.
- (2) Without limiting subsection (1), the Minister may (whether or not on the application of an affected person) record a caveat in the Access Register:
  - (a) on behalf of any person with a legal disability or on behalf of the Crown, or
  - (b) if it appears to the Minister that any error has been made by misdescription or otherwise in relation to an access licence, or to prevent any fraud or improper dealing with a licence.

- (3) In this section:

**affected person**, in relation to an access licence or holding in an access licence, means the following:

- (a) the holder or a co-holder of the licence or holding,
- (b) a holder of a security interest over the licence or holding (whether or not registered),
- (c) a party to a dealing, or prospective dealing, in the licence or holding,
- (d) a person entitled, or claiming to be entitled, to be registered as a holder or co-holder of the licence or holding by devolution as referred to in section 72,
- (e) any other person of a class prescribed by the regulations.

#### 71F Effect of a caveat

- (1) A caveat on an access licence (or holding in an access licence) prohibits the recording in the Access Register of any general dealing, security interest or change in co-holder's tenancy arrangements in relation to the licence or holding that interferes with the entitlements or rights in respect of the licence or holding claimed by the person by or on whose behalf the caveat is lodged (the **caveator**).
- (2) A caveat on an access licence or holding in an access licence does not affect the recording in the Access Register of any Ministerial action, devolution, assignment dealing or dealing on default in relation to the licence or holding.
- (3) Subsection (1) does not prohibit the registration of any matter if:
  - (a) the caveator consents to the registration, or

- (b) a court of competent jurisdiction orders the registration, or makes an order that by necessary implication requires it, despite the caveat, or
  - (c) the matter is required to be registered expressly or by necessary implication by any enactment of the State or the Commonwealth, or
  - (d) in such other circumstances as are prescribed by the regulations.
- (4) Subsection (1) does not prohibit registration of any matter in relation to the access licence or holding in an access licence the subject of a caveat if the matter was lodged for registration before the caveat was lodged.

**Note—**

Part 2 of Schedule 1A contains further provisions with respect to caveats.

## **Subdivision 4 Miscellaneous**

### **71G Minister may require production of access licence certificate before recording matters in Access Register**

The Minister may require the access licence certificate for an access licence to be produced to the Minister before the Minister records any dealing, security interest or changes to co-holder's tenancy arrangements under the licence in the Access Register.

### **71H Searches of the Access Register**

- (1) The Minister may, on application made by a person in the approved form for a search of any information recorded in the Access Register, cause:
  - (a) a search to be made of the Access Register, and
  - (b) a certificate of the result of the search to be issued to the person.
- (2) The search is to be authenticated in such manner as the Minister considers appropriate.
- (3) The Minister is not required to cause a search to be carried out, or a certificate to be issued, under this section, unless:
  - (a) the approved fee (if any) for the search or certificate has been paid, or
  - (b) the Minister is satisfied that the fee will be paid in accordance with arrangements approved by the Minister.

### **71I Correction and amendment of Access Register**

The Minister may, on such evidence as the Minister considers sufficient, correct an error, omission or defect, or amend for any other reason, any recording in the Access Register.

### **71J Access to the Access Register**

- (1) The Minister is to make the information recorded in the Access Register available to any member of the public at the times and in the manner and on payment of the fee (if any) approved by the Minister.
- (2) The information may be made available in accordance with such conditions as are determined by the Minister.
- (3) The conditions may:
  - (a) require the payment, whether on a periodic or other basis, of fees and charges, and
  - (b) restrict access to information in the Access Register or any part of the Register.

### **71K Minister to supply reasons for certain decisions in relation to Access Register**

- (1) A person who is dissatisfied with any decision of the Minister in relation to the keeping of the Access Register may apply to the Minister for a copy of the Minister's reasons for the decision.
- (2) It is the Minister's duty to provide the person with those reasons.

## **Division 4 Dealings with access licences**

### **71L How does a dealing take effect?**

- (1) **General dealings requiring consent** A general dealing in an access licence or holding in an access licence that requires the Minister's consent takes effect as follows:
  - (a) application is made to the Minister in the approved form, and accompanied by the approved fee, for consent to the dealing,
  - (b) the Minister grants consent, but only if:
    - (i) the dealing complies with section 71Y (General) and with the other provisions of this Division that are applicable to the dealing, and
    - (ii) in the case of an access licence that is co-held—each co-holder of the licence has (subject to sections 71M and 71N) consented to the application,
  - (c) if an access licence or holding in an access licence is subject to a registered security interest, the security holder consents to the recording of the dealing in the Access Register,
  - (d) application is made to the Minister in accordance with subsection (2) to record the dealing in the Access Register,
  - (e) the dealing takes effect on registration (subject to and in accordance with this Act)

in the Access Register.

- (2) An application to record a dealing requiring the Minister's consent in the Access Register must be lodged with the Minister within 6 months (or such other period as is prescribed by the regulations) after consent is granted. Consent is taken to be revoked if an application is not lodged within that period.
- (3) **Dealings on default and general dealings not requiring consent** A dealing on default or general dealing in an access licence or holding in an access licence that does not require the Minister's consent takes effect as follows:
  - (a) in the case of a general dealing in an access licence that is co-held—each co-holder of the licence has (subject to sections 71M and 71N) consented to the recording of the dealing in the Access Register,
  - (b) in the case of a general dealing in an access licence or holding in an access licence that is the subject of a registered security interest—consent to the recording of the dealing in the Access Register is obtained from the security holder,
  - (c) in the case of a dealing in default in an access licence or holding in an access licence—the dealing complies with section 71X (1),
  - (d) the dealing on default or general dealing complies with any other provisions of this Division that are applicable to the dealing,
  - (e) an application is made to the Minister to record the dealing in the Access Register,
  - (f) the dealing takes effect on registration (subject to and in accordance with this Act) in the Access Register.
- (4) **Assignment dealings** An assignment dealing in an access licence takes effect as follows:
  - (a) an application is made to the Minister in the approved form for consent to the dealing,
  - (b) if the Minister grants consent, details of the assignment are entered in the water allocation account for the access licence and the dealing takes effect on that entry.

**71M Transfer of access licences** (cf former s 71A)

- (1) Access licences may be transferred in accordance with this section.
- (2) A local water utility access licence may be transferred only if the transferee is a local water utility.
- (3) A major utility access licence may be transferred only if the transferee is a major utility.



- (4) The consent of the Minister is required before:
  - (a) the transfer of an access licence of a category or subcategory prescribed by the regulations, or
  - (b) the transfer of an access licence in circumstances prescribed by the regulations.
- (5) The consent of the proposed transferee is required before the transfer of any access licence.
- (6) Two or more co-holders of an access licence that is transferred under this section are taken to hold the licence in the way recorded in the Access Register.
- (7) This section applies to the transfer of a holding in an access licence in the same way as it applies to the transfer of an access licence held by a single person. However, holdings in access licences may be transferred only if the co-holders hold as tenants in common.
- (8) A person who is the holder of a holding in an access licence may transfer it without the consent of any other persons who are co-holders of the access licence concerned.

#### **71N Term transfers of entitlements under access licences**

- (1) This section applies to access licences except local water utility access licences and major utility access licences.
- (2) The holder of an access licence to which this section applies (the **actual holder of the licence**) may transfer the water entitlements conferred by the licence to another person for a specified period of not less than 6 months (a **term transfer**).
- (3) The consent of the proposed transferee to the term transfer is required.
- (4) The consent of the Minister is required before:
  - (a) the term transfer of an access licence of a category or subcategory prescribed by the regulations, or
  - (b) the term transfer of an access licence in circumstances prescribed by the regulations.
- (5) During the period for which a term transfer has effect, the transferee is taken to be the holder of the access licence concerned in relation to any water entitlements (to the exclusion of the actual holder of the licence) for the following purposes:
  - (a) any entitlements conferred by the licence on the holder of the licence,
  - (b) the payment of fees and charges under the licence,
  - (c) compliance with the terms and conditions of the licence,

- (d) compliance with any order or direction issued under this Act with which the holder of the licence must comply,
  - (e) Division 1A of this Part,
  - (f) an application under section 71W (Access licence may nominate water supply works) or 71T (Assignment of water allocations between access licences),
  - (g) any other purpose prescribed by the regulations.
- (6) The period for which a term transfer is in force may be reduced with the consent of the transferee.
- (7) Despite subsection (6), the Minister may consent to a reduction of the period of a term transfer without the consent of the transferee if satisfied that the transferee has failed to comply with any obligations imposed on the transferee under subsection (5).
- (7A) The period for which a term transfer has effect may be extended, with the consent of the transferee, while the term transfer remains in force.
- (8) During the period for which a term transfer is in force, the actual holder of the licence is entitled to apply in accordance with this Act for registration of any dealing with respect to the licence, but, in the case of a dealing other than a dealing under section 71M, only with the written consent of the transferee.
- (9) This section applies to a term transfer of such water entitlements as are conferred by a holding in an access licence in the same way as it applies to the transfer of the whole of the water entitlements conferred by an access licence. In so applying this section, a reference in this section to the holder of an access licence is to be read as the holder of the holding in the access licence.
- (10) However, holdings in access licences may be the subject of a term transfer only if the co-holders hold as tenants in common.
- (11) A person who holds a holding in an access licence may transfer such water entitlements as are conferred by the holding without the consent of any of the other co-holders of the access licence.

**710 Conversion of access licence to new category** (cf former s 71B)

- (1) On the application of the holder of an access licence, the Minister may consent to the cancellation of the licence and the grant of a new licence of a different category or subcategory.
- (2) Subsection (1) does not apply to a local water utility access licence or to a supplementary water access licence.
- (3) An access licence arising under this section may only be granted:

- (a) subject to the mandatory conditions applicable to the category or subcategory of licence to which it belongs, and
  - (b) for a period no greater than the residue of the period for which the cancelled access licence would have had effect if it had not been cancelled.
- (4) An access licence arising under this section may only be granted in relation to the same water management area or water source as the cancelled access licence.
- (5) Any interests that subsisted in the cancelled access licence, as in force immediately before it was cancelled, become equivalent interests in the new access licence.
- (6) (Repealed)

**71P Subdivision and consolidation of access licences** (cf former s 71C)

- (1) On the application of the holder of the access licence or access licences concerned, the Minister may consent:
- (a) to the subdivision of an access licence—by cancelling the licence and granting two or more access licences in its place, or
  - (b) to the consolidation of two or more access licences that relate to the same water management area or water source and are of the same category or subcategory—by cancelling the licences and granting a single licence in their place.
- (2) Access licences arising from a subdivision referred to in subsection (1) (a) may only be granted:
- (a) with combined share components and combined extraction components no greater than the corresponding components of the cancelled access licence, and
  - (b) subject to the same mandatory conditions as those to which the cancelled access licence was subject, and
  - (c) for a period no greater than the residue of the period for which the cancelled access licence would have had effect if it had not been cancelled.
- (3) Access licences arising from a consolidation referred to in subsection (1) (b) may only be granted:
- (a) with combined share components and combined extraction components no greater than the sum of the corresponding components of the cancelled access licences, and
  - (b) subject to conditions consistent with those to which the cancelled access licences were subject, and

- (c) for a period no greater than the residue of the period for which the earliest expiring of the cancelled access licences would have had effect if they had not been cancelled.
- (4) An access licence arising from a subdivision or consolidation may only be granted in relation to the same water management area or water source as the cancelled access licence or licences.
- (5) Any interests that subsisted in the cancelled access licences, as in force immediately before they were cancelled, become equivalent interests in the new access licences.
- (6) (Repealed)

**71Q Assignment of rights under access licence** (cf former s 71D)

- (1) On the application of the holder or holders of two or more access licences of the same category with respect to the same water management area or water source, the Minister may consent to the assignment of rights between the access licences concerned by:
  - (a) reduction of the share or extraction component, or both, of one or some of the licences, and
  - (b) a corresponding increase in the share or extraction component, or both, of the others.
- (2)-(4) (Repealed)
- (5) This section does not authorise the reduction of the share or extraction component, or both, of a local water utility access licence.
- (6) An access licence whose share or extraction component is varied under this section is to be made subject to the mandatory conditions applicable to an access licence with a share or extraction component as so varied.
- (7) An access licence is not cancelled merely because, as a result of an assignment under this section, it has a zero share component or zero extraction component (or both) for the time being.

**71R Amendment of share component of access licence** (cf former s 71E)

- (1) On the application of the holder of an access licence, the Minister may consent to the cancellation of the access licence and the grant of a new access licence with a share component specifying a different water source or water management area.
- (2) Subsection (1) does not apply to a local water utility access licence or supplementary water access licence.
- (3) An access licence arising under this section may only be granted:

- (a) subject to the mandatory conditions applicable to an access licence of the same category or subcategory for the water management area or water source specified in its share component, and
  - (b) for a period no greater than the residue of the period for which the cancelled access licence would have had effect if it had not been cancelled.
- (4) Any interests that subsisted in the cancelled access licence, as in force immediately before it was cancelled, become equivalent interests in the new access licence.
- (5) (Repealed)

**71S Amendment of extraction component of access licence** (cf former s 71F)

- (1) On the application of the holder of an access licence, the Minister may consent to the amendment of the extraction component of the licence so as:
- (a) to vary the times, rates or circumstances specified in the licence with respect to the taking of water under the licence, or
  - (b) to vary the areas or locations specified in the licence as the areas or locations from which water may be taken under the licence.
- (2) The area or location arising from a variation referred to in subsection (1) (b) must relate to the same water management area or water source as that to which the original area or location related.
- (3) An access licence that is amended under this section is subject to the mandatory conditions applicable to the licence as so amended.
- (4) The Minister may, by order published in the Gazette, declare that the right to apply for an amendment of the extraction component of an access licence for a specified water management area or water source is to be acquired by auction, tender or other means specified in the order.

**71T Assignment of water allocations between access licences** (cf former s 71G)

- (1) Water allocations may be assigned from one access licence to another in accordance with this section.
- (2) The holders of two or more access licences may apply to the Minister for consent to the assignment of water allocations between the water allocation accounts for their respective access licences.
- (3) Such an application may only be made with respect to water allocations currently credited to the water allocation account for the access licence from which water allocations are to be assigned.
- (4) On completing an assignment to which consent has been given under this section, the

parties to the assignment must cause notice of that fact to be given to the Minister.

(5) (Repealed)

**71U Interstate transfer of access licences** (cf former s 71H)

- (1) The Minister may enter into an agreement with a Minister of any other State or Territory for the interstate transfer of access licences and their corresponding interstate equivalents.
- (2) On an application made pursuant to such an agreement, the Minister may consent to the grant or cancellation of an access licence to give effect to such a transfer.
- (3) In respect of each access licence arising under this section, the Minister:
  - (a) must impose on the licence such mandatory conditions as any relevant management plan may require to be imposed on the licence, and
  - (b) (Repealed)
- (4) The provisions of section 63 (4), (5), (6) and (7) apply to an access licence arising under this section in the same way as they apply to an access licence granted under section 63.

**71V Interstate assignment of water allocations** (cf former s 71I)

- (1) The Minister may enter into an agreement with a Minister of any other State or Territory for the interstate assignment of water allocations and their corresponding interstate equivalents.
- (2) On an application made pursuant to such an agreement, the Minister may consent to the crediting of water allocations to the water allocation account for an access licence, or the debiting of water allocations from the water allocation account for an access licence, to give effect to such an assignment.
- (3) Such an application may only be made with respect to water allocations currently credited to the water allocation account for the access licence from which water allocations are to be assigned.

**71W Access licence may nominate water supply works** (cf former s 71J)

- (1) On the application of the holder of an access licence, the Minister may consent to the amendment of the licence so as:
  - (a) to nominate a specified water supply work, or group of water supply works, as a work or group of works by means of which water allocations under the licence may be taken, or
  - (b) to withdraw any such nomination.

- (2) The water supply work or group of water supply works nominated must be in one or more of the following:
  - (a) the same water management area or water source as the access licence concerned,
  - (b) a NSW water tagging zone,
  - (c) an interstate water tagging zone in another State or Territory if the operation of the work or works is lawful in that zone and an arrangement is in place (as referred to in section 391A) between the Minister and a Minister of the other State or Territory.
- (3) For the avoidance of doubt, a water supply work or group of water supply works may be nominated under this section even though no approval is required to be held in relation to the work or works under this Act.

- (4) In this section:

**interstate water tagging zone** means an interstate water tagging zone established by the access licence dealing principles.

**NSW water tagging zone** means a NSW water tagging zone established by the access licence dealing principles.

#### **71X Dealings on default**

- (1) A security holder (or a receiver referred to in section 115A of the [Conveyancing Act 1919](#)) may transfer the access licence or holding in an access licence over which the security interest is held under this section if:
  - (a) default is made in the payment of any debt or performance of any other obligation under a contract or other legally enforceable arrangement secured by the security interest, and
  - (b) notice is served, in accordance with the regulations, on the holder or co-holder of the licence who is in default (the **defaulter**), on any other person having a registered security interest (whether or not having less priority), or who has registered a caveat, over the licence or holding and on the Minister, and
  - (c) the defaulter fails, for a period of not less than 30 days after service of the notice, to rectify the default, and
  - (d) the security holder or receiver offers the licence or holding for sale, and
  - (e) the security holder or receiver takes all reasonable steps to secure the highest possible amount by the sale, and
  - (f) application is made to the Minister in the approved form, to record the transfer of

the licence or holding in the Access Register to give effect to the sale, or, if the security holder is unable to realise the money secured by the security interest by sale after taking all reasonable steps to do so, to record the transfer of the licence or holding to the security holder in the Access Register.

- (2) The purchase money from a sale under this section is to be applied as follows:
  - (a) firstly, in payment of any outstanding fees, charges or civil penalties incurred in respect of the licence or holding,
  - (b) secondly, in payment of the expenses of the sale and costs of the transfer,
  - (c) thirdly, in payment of money then due or owing to any holders of registered security interests over the licence or holding in order of their priority,
  - (d) fourthly, in payment of any residue to the defaulter.
- (3) For the purposes of a transfer under this section, the security holder is taken to be the holder or co-holder of the licence and, accordingly:
  - (a) the security holder may do any thing necessary to effect the transfer and may give any discharge to the transferee that could be given by the holder or co-holder of the licence, and
  - (b) the transferee need make no enquiry in relation to the sale that the purchaser would not be required to make of the holder or co-holder of the licence.
- (4) On registration of the transfer, the licence or holding is held by the transferee freed and discharged from the registered security interest and any other registered security interest over the licence or holding of less priority. Otherwise the transferee holds the licence or holding with an equivalent interest in the licence or holding to the interest held by the defaulter and subject to the same conditions and obligations (including the payment of any outstanding fees, charges or civil penalties incurred in respect of the licence or holding) to which the defaulter would, but for the transfer, be subject under this Act.
- (5) An affected person may apply, in accordance with rules of court, to the Land and Environment Court for an order prohibiting the registration of the transfer of an access licence or holding in an access licence under this section. The Court may make such an order if it is satisfied that the security holder or receiver has failed to comply with the requirements of subsection (1) or (2) with respect to the transfer of the licence or holding.
- (6) If a security holder or receiver fails to comply with the requirements of subsection (1) or (2) with respect to the transfer of an access licence or holding in an access licence under this section, the security holder is liable to pay to any affected person who suffers pecuniary loss that is attributable to that failure compensation with respect to



that loss.

(7) The compensation is recoverable in proceedings in the Land and Environment Court by the person who claims to have sustained the loss.

(8) In this section:

**affected person**, in relation to the transfer of an access licence or holding in an access licence under this section, means any person on whom notice is required to be served under subsection (1) (b), or who is entitled to purchase money from a sale under subsection (2), in relation to the transfer.

**71Y General** (cf former s 71K)

(1) An application for the Minister's consent to a general dealing, dealing on default or assignment under section 71T or 71V is to be dealt with in accordance with:

(a) the water management principles, and

(b) the access licence dealing principles, and

(c) the access licence dealing rules established by any relevant management plan.

(2) Subsection (1) does not require a dealing to be dealt with in accordance with the access licence dealing rules established by a relevant management plan to the extent to which the rules are suspended by an order in force under section 49A.

(3) In the case of an application under section 71R:

(a) the management plan for the water management area or water source to which the share component of the licence currently relates, and

(b) the management plan for the water management area or water source to which the share component of the licence is intended to relate if the application is granted,

are each relevant management plans.

(4) Except to the extent to which the regulations so provide, Division 2 does not apply to or in respect of an application under this Division.

(5) Subject to the regulations, notice of the Minister's determination of an application under this Division is to be given to the applicant or applicants as soon as practicable after the determination is made.

(6) The Minister may, if the Minister thinks it appropriate, deal with 2 or more related dealings under this Act at the same time, and in the same application, as if they comprised one dealing.

**71Z Access licence dealing principles** (cf former s 71L)

- (1) The Minister may, by order published on the NSW legislation website, establish access licence dealing principles:
  - (a) to regulate or prohibit the kinds of access licence dealing rules that may be established by a management plan, and
  - (b) to regulate or prohibit the kinds of dealings that may be effected under this Division, and
  - (c) to establish conversion factors applicable to the share components of access licences in respect of which dealings are effected under this Division.
- (2) The access licence dealing principles may include provisions relating to any or all of the following:
  - (a) the establishment of interstate water tagging zones for the purposes of section 71W,
  - (b) the establishment of NSW water tagging zones for the purposes of section 71W,
  - (c) the criteria to be considered for the granting of an application in circumstances referred to in section 71W (2) (b) or (c).
- (3) The access licence dealing principles prevail over the access licence dealing rules to the extent of any inconsistency.

**71ZA (Repealed)**

**Division 4A Devolution of, and tenancy arrangements and other matters relating to, access licences**

**72 Devolution of access licences**

- (1) A person to whom an access licence or holding in an access licence has devolved by operation of law may apply to the Minister in the approved form to be recorded in the Access Register as the holder or a co-holder of the licence or holding.
- (2) Without limiting subsection (1), such an application may be made:
  - (a) by an executor, administrator or other person claiming to be entitled to be registered on the death, will or intestacy of the holder or co-holder of the licence or holding, or otherwise, as the holder or co-holder, or
  - (b) by or on behalf of a person who was a co-holder as joint tenant of an access licence or holding in an access licence on the death of a person recorded in the Access Register with the person as a co-holder as joint tenant of the licence or holding, or

(c) by or on behalf of a person that a court has ordered is to be recorded in the Access Register as the holder or co-holder of the licence or holding.

- (3) The application must be supported by such evidence of the applicant's entitlement to be recorded in the Access Register as a holder or co-holder as the Minister may require.
- (4) The Minister is to record the person as the holder or co-holder of the licence or holding:
  - (a) if satisfied that the applicant is entitled to be recorded in the Access Register as the holder or co-holder, and
  - (b) if nothing recorded in the Access Register prevents the registration.
- (5) This section applies to 2 or more persons to whom rights have devolved in the same way as it applies to a single person to whom rights have devolved.

#### **72A Special provisions relating to co-holdings in access licences**

- (1) Subject to sections 71M, 71N and 74, any dealing in relation to an access licence held by co-holders, and any application for the Minister's consent to such a dealing, requires the consent of all of the co-holders (a **co-holder's consent**).
- (2) A co-holder of an access licence may, in accordance with the regulations:
  - (a) appoint another co-holder (the first co-holder's **nominee**), to give, on his or her behalf, any co-holder's consent required by subsection (1) in relation to an application for the Minister's consent to a dealing, and
  - (b) revoke any appointment that the co-holder has made under paragraph (a).
- (3) The same person may be nominee for more than one co-holder.
- (4) Any co-holder's consent given by the co-holder's nominee in relation to an application for the Minister's consent to a dealing in an access licence is taken to have been given by the co-holder.
- (5) The revocation of a nominee's appointment under subsection (2) (b) does not affect any co-holder's consent given by the nominee before the revocation took effect.

#### **73 Changes in co-holder's tenancy arrangements**

- (1) A co-holder of an access licence (whether held as joint tenant or tenant in common) may apply to the Minister in the approved form to record an alteration in the way in which the licence is held by the co-holders (the **co-holder's tenancy arrangement**) in the Access Register.
- (2) The alteration to the co-holder's tenancy arrangement takes effect when it is recorded

in the Access Register.

- (3) The Minister must not record the alteration unless:
  - (a) each co-holder of the licence that is affected by the alteration has consented to it being recorded, and
  - (b) any holder of a security interest over the licence or a holding in the licence that is affected by the alteration has consented to it being recorded.
- (4) Subsection (3) (a) does not apply where a joint tenant unilaterally wishes to sever a joint tenancy by relinquishing the joint tenancy.
- (5) The Minister may require an applicant to verify any information provided for the purposes of this section by statutory declaration.

#### **74 Exit from co-held access licence**

- (1) On the application of one or more of the co-holders of an access licence (***the original access licence***), the Minister may consent to the extinguishment of the holdings of one or more co-holders in the licence and the granting of a new access licence in accordance with Schedule 1B.
- (2) If the Minister extinguishes holdings in the original licence and grants a new access licence under subsection (1), the Minister is to reduce the entitlements under the original access licence to the extent necessary to reflect the entitlements conferred by the new licence.
- (3) An application may not be made under subsection (1) without the consent in writing of all of the co-holders of the access licence concerned or of co-holders who hold a majority share of the holdings under the licence.
- (4) On the application of one or more co-holders of an access licence, the Supreme Court may, if it considers it just and equitable to do so, order that the consent referred to in subsection (3) need not be obtained and may make ancillary orders for the purposes of this section.
- (5) When determining such an application where the water supply work nominated by the access licence concerned is shared by some or all of the co-holders of the licence, the Supreme Court is to take into consideration the likely effect that the taking of action under subsection (1) would have on the use of that work and the co-holders who have the benefit of it.
- (6) This section does not apply to an access licence if:
  - (a) there is any money due under this Act in respect of the access licence, including any civil penalties imposed under this Act, or

- (b) the co-holders hold the licence as joint tenants, or
- (c) the access licence dealing principles or the access licence dealing rules prevent an application being made under this section.

(7) Schedule 1B has effect.

## **Division 5 Water return flows**

### **75 Water return flow rules**

- (1) The regulations may establish water return flow rules for the purposes of this Division.
- (2) Such a regulation may not be made except with the concurrence of the Minister for Climate Change and the Environment.

### **76 Water allocations may be credited**

- (1) Water allocations that have been used by the holder of a prescribed access licence may be regained in accordance with this section.
- (2) The holder of a prescribed access licence may apply to the Minister for used water allocations to be recredited to the water allocation account for the licence.
- (3) An application under this section is to be dealt with in accordance with the water return flow rules.
- (4) In this section:

***prescribed access licence*** means an access licence of a category or subcategory prescribed by the regulations for the purposes of this section.

## **Division 6 Surrender, suspension, cancellation and compulsory acquisition of access licences**

### **77 Surrender of access licences**

- (1) The holder of an access licence may surrender the licence at any time by notice in writing sent to the Minister.
- (2) In the case of an access licence in respect of which any third party interest is entered on the Access Register of access licences, the notice of surrender must be accompanied by documentary evidence that the holder of that interest consents to the licence being surrendered.
- (3) If the notice of surrender of an access licence provides that the surrender is not to take effect until after a date specified in the notice, the Minister is not to record the surrender under section 71A in the Access Register before that date.

- (4) Without limiting section 77A or 78, the Minister may:
  - (a) cancel a surrendered access licence, or
  - (b) record in the Access Register that the Minister is the holder of the surrendered access licence.
- (5) Subsection (4) (b) does not prevent the Minister from subsequently dealing with a surrendered access licence in any manner that a holder of the licence may deal with it (for example, transferring the licence).

**77A Cancellation of access licences that can no longer be used or are no longer required**

- (1) The Minister is to cancel a supplementary water access licence when the relevant management plan ceases to make provision for the extraction of water under such an access licence unless the access licence is a regulated river supplementary water access licence.
- (2) The Minister is to cancel a specific purpose access licence if the Minister is of the opinion that the purpose for which the licence was granted no longer exists.
- (2A) Subsection (2) does not apply to an access licence in relation to which action is taken by the Minister under section 8D.
- (3) The regulations may prescribe criteria which the Minister is to consider when determining under subsection (2) whether the purpose for which a specific purpose access licence was granted no longer exists.
- (4) The Minister is to cancel an access licence of a category prescribed by regulations referred to in section 57 (1) (I) (other than a specific purpose access licence) if the regulations prescribe the period for which such a licence is to have effect and the period has expired.
- (5) The Minister is to cancel an access licence if the period for which the licence is to have effect was specified in an order under section 65 and the period has expired.
- (6) The Minister may cancel any access licence of which the Minister is the holder.

**78 Suspension and cancellation of access licences**

- (1) The Minister may suspend or cancel an access licence on any one or more of the following grounds:
  - (a) that the holder of the licence has failed to comply with any term or condition to which the licence is subject,
  - (b) that the holder of the licence has been convicted of an offence against this Act or the regulations,

- (c) if any fees, charges or civil penalties in respect of the licence have not been paid, whether or not those fees, charges or civil penalties were incurred by the current holder of the licence,
  - (d) that the holder of the licence has failed to comply with any direction given to the holder under this Act in connection with the licence,
  - (e) that the licence was granted as a result of false, misleading or materially inaccurate information supplied by or on behalf of the applicant.
- (2) Instead of or in addition to suspending or cancelling an access licence, the Minister may order a major utility or local water utility to pay to the Minister a civil penalty of an amount not exceeding \$500,000 and a further civil penalty of an amount not exceeding \$20,000 for each day that the circumstances giving rise to the initial civil penalty continue to exist.
- (3) During any period of suspension of an access licence:
- (a) the holder of the licence is not authorised by the licence to order or take any water credited to the water allocation account for the licence, and
  - (b) the holder of the licence is not entitled to apply for the registration of any dealing with respect to the licence, and
  - (c) appropriate water allocations continue to accrue to the water allocation account for the licence, and
  - (d) fees and charges payable under this Act in respect of the licence will continue to apply.
- (4) (Repealed)

**78A Notification of intention to suspend, cancel or require payment of penalty**

- (1) Action under section 77A or 78 may not be taken in relation to an access licence unless the Minister:
- (a) has given written notice to the holder of the access licence, and if there are security holders in relation to the access licence to those security holders, that the Minister proposes to take such action, and
  - (b) has given any such person that has been notified a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and
  - (c) has taken any such submissions into consideration.
- (2) Subsection (1) (b) and (c) do not apply to the cancellation of an access licence under section 77A (1), (4), (5) or (6).

- (3) Despite subsection (1), a security holder is not entitled to make a submission in relation to the proposed suspension or cancellation of an access licence other than a submission to the effect that the security holder is prepared to make arrangements satisfactory to the Minister for the payment of any outstanding fee, charge or civil penalty if such payment would result in the Minister not proceeding with the suspension or cancellation.

## **79 Compulsory acquisition of access licences**

- (1) The Minister may, by notice in writing served on their holders, compulsorily acquire access licences if of the opinion that, in the special circumstances of the case, the public interest requires their compulsory acquisition.
- (2) A person from whom an access licence is compulsorily acquired under subsection (1) is entitled to compensation from the State for the market value of the licence as at the time it was compulsorily acquired.
- (3) The amount of compensation payable is to be determined by agreement between the Minister and the person entitled to compensation or, if agreement cannot be reached, is to be determined by the Valuer-General.
- (4) A person who is dissatisfied with the amount of compensation offered to the person under this section, or with any delay in the payment of compensation, may appeal to the Land and Environment Court.
- (5) The regulations may make provision for or with respect to the payment of compensation under this section.
- (6) Nothing in this section prevents the Ministerial Corporation from acquiring an access licence by way of transfer.
- (7) For the avoidance of doubt, it is declared that a reduction of the water entitlements and allocations under an access licence as a consequence of a variation in the mandatory conditions of the licence does not constitute the compulsory acquisition of an access licence or any part of an access licence.

## **Divisions 7, 8**

### **80-83A (Repealed)**

## **Division 8A Register of available water determinations and accounting for water**

### **84 Register of available water determinations**

- (1) The Minister is to cause a register to be kept of each available water determination made under section 59.



- (2) The regulations may make provision for or with respect to the form in which such a register is to be kept and the particulars that are to be recorded in such a register.
- (3) The register must be made available for public inspection during normal business hours at such places as may be prescribed by the regulations.

#### **85 Keeping of water allocation accounts**

- (1) For each access licence, the Minister is to cause an account to be kept of:
  - (a) the water allocations that are acquired under section 71T or 71V in relation to the water allocation account for the licence or otherwise credited from time to time to the water allocation account for the licence, and
  - (b) the water allocations that are taken or assigned under section 71T or 71V or otherwise debited or withdrawn from time to time in relation to the water allocation account for the licence, and
  - (c) the water allocations that are recredited to the water allocation account for the licence from time to time under section 76.
- (2) Water allocations are to be credited to the water allocation account for an access licence in accordance with any relevant available water determination.
- (3) Despite subsection (2), an amount of water may be credited to the water allocation account for an access licence as a result of arrangements made with the Minister for the early release of water by Snowy Hydro Limited. However, the same amount of water as is so credited is to be debited subsequently in accordance with the directions of the Minister.
- (4) The first amount of water to be credited to the water allocation account of an access licence granted part of the way through an accounting period is to bear the same proportion to the amount of available water that would be allocated to the licence if it had existed for the whole of the accounting period as the part of the accounting period remaining when the licence was granted bears to the whole of the accounting period.
- (5) Water allocations in a water allocation account may be withdrawn by the Minister to the extent provided by the relevant management plan, as referred to in section 21 (c).
- (6) The regulations may make provision for or with respect to the form in which a water allocation account is to be kept under this section and the particulars that are to be recorded in such a water allocation account.

#### **85A Authorisation to take water from uncontrolled flows**

- (1) This section applies to a water source in respect of which a management plan makes provision for the taking of water from uncontrolled flows.

(2) The management plan may make provision for or with respect to the circumstances in which the holders of regulated river (high security) access licences or regulated river (general security) access licences, or both, that relate to a water source to which this section applies are authorised to take water from the water source that has not been credited to the water allocation accounts of those licences.

(3)-(7) (Repealed)

## **85B (Repealed)**

## **Division 9 Compensation relating to access licences**

### **86 Definitions**

In this Division:

**compensation** includes damages or any other form of monetary compensation.

**the Crown** means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes any officer, employee or agent of the Crown.

### **87 Compensation payable in certain circumstances for reductions in water allocations arising during initial period for which management plan is in force**

(1) A holder of an access licence (other than a supplementary water access licence that is not a regulated river supplementary water access licence) whose water allocations are reduced as a consequence of the variation of a bulk access regime may claim compensation for loss suffered by the holder as a consequence of that reduction.

(2) Despite subsection (1), compensation may not be claimed if the variation of the bulk access regime results from:

(a) (Repealed)

(a1) a management plan that is made following the expiry of the management plan that established the bulk access regime, or

(b) a management plan that has been made on the basis of a draft management plan prepared by a management committee, and is in the form in which it was finally submitted to the Minister by the committee, as referred to in section 41 (1) (a), or

(c) an amendment of a management plan by the Minister under section 45 that is authorised by the plan or that is required to give effect to a decision of the Land and Environment Court relating to the validity of the plan, or

(d) an amendment made by an Act to a management plan.

(3) The regulations may make provision for or with respect to the manner and form in which such a claim is to be made.

- (4) The Minister may determine whether or not compensation should be paid and, if so, the amount of any such compensation and the manner and timing of any such payments.
- (5) The amount of any such compensation is to be determined on the advice of the Valuer-General.
- (6) In formulating advice for the Minister, the Valuer-General is to have regard to the market value of the water foregone to the claimant for compensation as a consequence of the variation of the bulk access regime.
- (7) A person who is dissatisfied with the amount of compensation offered to the person under this section, or with any delay in the payment of compensation, may appeal to the Land and Environment Court.
- (8) Payment of compensation under this section is to be made out of the Consolidated Fund which is, to the extent necessary, appropriated accordingly.
- (9) Despite the other provisions of this section, compensation may be claimed under this section only in respect of a reduction in water allocations occurring during the period for which the first management plan that established the bulk access regime concerned is in force (excluding any period for which that plan is extended under section 43A (1)).

**87AA Compensation payable in certain circumstances for reductions in water allocations arising after initial period that management plan is in force**

- (1) This section applies to the following categories and subcategories of access licence:
  - (a) regulated river (high security) access licences,
  - (b) regulated river (general security) access licences,
  - (c) Murrumbidgee Irrigation (conveyance) access licences,
  - (d) Coleambally Irrigation (conveyance) access licences,
  - (e) unregulated river access licences,
  - (f) aquifer access licences,
    - (f1) floodplain harvesting (regulated river) access licences,
    - (f2) floodplain harvesting (unregulated river) access licences,
    - (f3) regulated river supplementary water access licences,
  - (g) any other category or subcategory of access licence that is prescribed by the regulations (other than excluded supplementary water access licences or specific

purpose access licences).

- (2) A holder of an access licence to which this section applies whose water allocations are reduced because of a change to provisions of the relevant management plan dealing with water sharing is entitled to compensation as assessed by the Minister in accordance with subsections (5) and (6).
- (3) Despite subsection (2), the holder of an access licence is not entitled to compensation under this section if:
  - (a) the reduction in water allocations occurred while the first management plan (excluding any period for which that plan was extended under section 43A (1)) was in force, or
  - (b) the reduction in water allocations occurred as a result of an amendment of a management plan by the Minister under section 45 that is authorised by the plan or that is required to give effect to a decision of the Land and Environment Court relating to the validity of the plan, or
  - (c) the reduction in water allocations is for the purpose of restoring water to the environment because of natural reductions in inflow to the water source, including but not limited to changes resulting from climate change, drought or bushfires.
- (4) A reference in subsection (2) to a change in the provisions of a management plan includes a change between the provisions of the management plan concerned and provisions of the management plan that it replaced.
- (5) Compensation is payable to the holder of an access licence whose water allocations are reduced because of a change in the provisions of a management plan as a result of an amendment that is specified under section 46 (1) (c) by the Minister as due to a change in State government policy.
- (6) Compensation is payable as follows for a reduction in water allocations that is specified under section 46 (1) (b) by the Minister as being for the purpose of providing additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate:
  - (a) no compensation is payable for reductions of 3% or less,
  - (b) compensation is payable for reductions of more than 3% over any 10-year period commencing on or after the expiration of the period for which the first management plan for the relevant area was in force (including any period for which that plan was extended under section 43A (1)),
  - (c) only one third of the compensation payable for a reduction of more than 3% but not more than 6% over any applicable 10-year period is liable to be paid under this

section,

(d) only one half of the compensation payable for a reduction of more than 6% over any applicable 10-year period is liable to be paid under this section.

(7) The regulations may make provision for or with respect to the following:

(a) the basis on which reductions in water allocations are to be calculated or the method of determining such reductions for the purposes of this section,

(b) the basis on which compensation is to be calculated or the method for calculating the payment of compensation for the purposes of this section,

(c) the manner and time of payment of compensation.

(8) This section has effect in relation to water sources that are Basin water resources only while there is in force an agreement between the State and the Commonwealth (separate from the agreement referred to in subsection (8A)) for or with respect to supplementing the payment of compensation under this section.

(8A) This section has effect in relation to water sources that are not Basin water resources only while there is in force an agreement between the State and the Commonwealth (separate from the agreement referred to in subsection (8)) for or with respect to supplementing the payment of compensation under this section.

(9) Despite any other provision of this section, no compensation is payable under this section in respect of a reduction in water allocations of a kind referred to in subsection (6) if the Commonwealth has not provided funding in respect of that reduction to meet its obligations under the agreements referred to in subsections (8) and (8A).

(10) A person may appeal to the Land and Environment Court on the ground that the person is entitled to the payment of compensation under this section but has not been determined as being entitled to any compensation.

(11) In this section:

***excluded supplementary water access licence*** means a supplementary water access licence other than a regulated river supplementary water access licence.

**87AB Compensation is not payable in relation to certain conduct**

(1) Compensation is not payable by or on behalf of the Crown in respect of any relevant conduct in relation to a management plan.

(2) In this section, ***relevant conduct***, in relation to a management plan, means an act or omission occurring before the commencement of the management plan in respect of the content, effect or State government policy concerning the management plan, including the following:

- (a) any act or omission, whether unconscionable, misleading, deceptive or otherwise,
- (b) a representation of any kind, whether made verbally or in writing and whether negligent, false, misleading or otherwise.

(3) This section has effect despite section 87.

(4) In this section, a reference to a management plan includes a reference to an amendment of a management plan.

#### **87AC No compensation payable for reductions in water allocations under certain replacement management plans**

The holder of an access licence is not entitled to any compensation in respect of reductions in water allocations for the access licence resulting from provisions included in a management plan that replaces another management plan if the replaced management plan authorised the inclusion of amendments containing provisions of that kind in the replaced management plan.

#### **87A No compensation payable in relation to access licence**

No compensation is payable by or on behalf of the Crown to any person who suffers loss or damage because of any of the following:

- (a) the suspension or cancellation of an access licence,
- (b) any error, misdescription or omission in the Access Register,
- (c) the registration in the Access Register of any person as the holder of an access licence or a security interest in an access licence,
- (d) the registration of a caveat in the Access Register.

### **Division 10 Miscellaneous**

#### **87B Access licence certificate**

- (1) The Minister may from time to time issue a certificate in the approved form in respect of an access licence (an **access licence certificate**).
- (2) If the Minister issues an access licence certificate, the Minister must cancel, wholly or partially as the case requires, any access licence certificate superseded by the new certificate that is available to the Minister. For that purpose, the Minister may require production to the Minister of the superseded certificate.
- (3) If an access licence certificate is lost, mislaid or destroyed, the person to whom it was issued (or a person having legal authority to act on the person's behalf) may apply in the approved form to the Minister for the issue of a new access licence certificate.

- (4) The application is to be supported by such evidence as the Minister may require.
- (5) The Minister may, if satisfied that an access licence certificate has been lost, mislaid or destroyed, issue a new access licence certificate or new access licence certificates for the licence or holding in an access licence to which the lost, mislaid or destroyed certificate relates and may record in the Access Register that the new certificate or certificates have been issued.

### **87C Offences with respect to the Access Register**

- (1) A person must not:
  - (a) fraudulently obtain, or assist in fraudulently obtaining:
    - (i) the issue or delivery of an access licence certificate, or
    - (ii) a recording in the Access Register, or
    - (iii) any alteration in any instrument or approved form issued by the Minister, or
  - (b) fraudulently use, or assist in fraudulently using, any approved form issued by the Minister, or
  - (c) by any false statement or misrepresentation obtain, or attempt to obtain, an access licence certificate or instrument evidencing any matter that may be recorded in the Access Register.

Tier 2 penalty.

- (2) Any recording in the Access Register obtained in contravention of this section is void as between all parties to the fraud.

### **88 Regulations**

- (1) The regulations may make provision for or with respect to the following matters:
  - (a) the procedures to be followed in relation to the making of applications under this Part,
  - (b) the procedures to be followed in relation to the granting and transfer of access licences,
  - (c) the procedures to be followed in relation to the transfer of water allocations in the water allocation account for an access licence,
  - (d) the procedures to be followed in relation to the recrediting of water allocations in the water allocation account for an access licence,
  - (e) the recording of any dealing, caveat, security interest, devolution, change in co-holder's tenancy arrangements or other matter in relation to an access licence or

holding in an access licence in the Access Register.

- (2) Without limiting subsection (1) (e), the regulations may, for the purposes of this Part, apply, adopt or incorporate, whether with or without modification, any provision of the *Real Property Act 1900* or the regulations made under that Act.
- (3) The regulations may exclude a specified class of licence granted under this Act from the operation of section 11 (1) (h) of the *Duties Act 1997*.

## **Part 3 Approvals**

### **Division 1 Preliminary**

#### **88A Application of Part**

- (1) This Part applies to:
  - (a) each part of the State or each water source, and
  - (b) each type or kind of approval that relates to that part of the State or that water source,

that is declared by proclamation to be a part of the State or water source, and type or kind of approval, to which this Part applies.

#### **Editorial note—**

For declarations proclaimed under this subsection see Gazettes No 110 of 1.7.2004, p 5004; No 120 of 29.9.2006, p 8441; No 127 of 27.10.2006, pp 8906, 8907; No 83 of 29.6.2007, p 3967; No 10 of 25.1.2008, p 151; No 11 of 31.1.2008, p 213; No 76 of 27.6.2008, p 5871; No 93 of 26.6.2009, p 3581 and No 109 of 31.7.2009, p 4665, and proclamations published on the NSW legislation website: 2010 (342) LW 1.7.2010; 2010 (739) LW 17.12.2010; 2011 (104) LW 28.2.2011; 2011 (152) LW 3.3.2011; 2011 (153) LW 3.3.2011; 2011 (521) LW 30.9.2011; 2011 (576) LW 11.11.2011; 2011 (677) LW 16.12.2011; 2012 (28) LW 27.1.2012; 2012 (135) LW 30.3.2012; 2012 (231) LW 1.6.2012; 2012 (352) LW 3.8.2012; 2012 (464) LW 14.9.2012; 2012 (496) LW 4.10.2012 and 2015 (558) LW 18.9.2015.

- (2) Despite subsection (1), specified provisions of this Part may be declared by proclamation to apply to the whole of the State, and apply accordingly.

#### **89 Water use approvals**

- (1) A water use approval confers a right on its holder to use water for a particular purpose at a particular location.
- (2) A water use approval may authorise the use within New South Wales of water taken from a water source outside New South Wales.

#### **90 Water management work approvals**

- (1) There are three kinds of water management work approvals, namely, water supply work approvals, drainage work approvals and flood work approvals.



- (2) A water supply work approval authorises its holder to construct and use a specified water supply work at a specified location.
- (3) A drainage work approval confers a right on its holder to construct and use a specified drainage work at a specified location.
- (4) A flood work approval confers a right on its holder to construct and use a specified flood work at a specified location.

## **91 Activity approvals**

- (1) There are two kinds of activity approvals, namely, controlled activity approvals and aquifer interference approvals.
- (2) A controlled activity approval confers a right on its holder to carry out a specified controlled activity at a specified location in, on or under waterfront land.
- (3) An aquifer interference approval confers a right on its holder to carry out one or more specified aquifer interference activities at a specified location, or in a specified area, in the course of carrying out specified activities.

### **Note—**

Examples of where an aquifer interference approval may be needed include mining operations, road construction and any other large scale activity that involves excavation.

## **Division 1A Offences**

### **91A Using water without, or otherwise than as authorised by, a water use approval**

- (1) A person:
  - (a) who uses water from a water source to which this Part applies, and
  - (b) who does not hold a water use approval for that use,is guilty of an offence.  
Tier 2 penalty.
- (2) A holder of a water use approval who uses water from a water source to which this Part applies:
  - (a) otherwise than as authorised by the approval, or
  - (b) if an access licence specifies or restricts the purposes for which the water may be used, otherwise than as authorised by the licence,is guilty of an offence.  
Tier 2 penalty.

- (3) Without limiting subsection (2), a person uses water otherwise than as authorised by a water use approval if the person uses water while the approval is suspended.
- (4) It is a defence to a prosecution under subsection (1) if the accused person establishes that the water was used pursuant to a basic landholder right.
- (5) It is a defence to a prosecution under subsection (2) if the accused person establishes:
  - (a) that the contravention of the subsection was caused by another person, and
  - (b) that the other person was not associated with the accused person at the time the subsection was contravened, and
  - (c) that the accused person took all reasonable steps to prevent the commission of the offence.

A person is associated with the accused person for the purposes of this subsection (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the accused person.

**91B Constructing or using water supply work without, or otherwise than as authorised by, a water supply work approval**

- (1) A person:
  - (a) who constructs or uses a water supply work, and
  - (b) who does not hold a water supply work approval for that work,is guilty of an offence.  
Tier 2 penalty.
- (2) A holder of a water supply work approval who constructs or uses a water supply work otherwise than as authorised by the approval is guilty of an offence.  
Tier 2 penalty.
- (3) Without limiting subsection (2), a person constructs or uses a water supply work otherwise than as authorised by a water supply work approval if the person constructs or uses such a work while the approval is suspended.
- (4) This section does not prevent a person from constructing or using a drainage work or flood work in accordance with a drainage work approval or flood work approval.
- (5) It is a defence to a prosecution under subsection (1) if the accused person establishes that the water supply work was constructed or used pursuant to a basic landholder right.

**91C Constructing or using drainage work without, or otherwise than as authorised by, a drainage work approval**

(1) A person:

- (a) who constructs or uses a drainage work, and
- (b) who does not hold a drainage work approval for that work,

is guilty of an offence.

Tier 2 penalty.

(2) The holder of a drainage work approval who constructs or uses a drainage work otherwise than as authorised by the approval is guilty of an offence.

Tier 2 penalty.

(3) Without limiting subsection (2), a person constructs or uses a drainage work otherwise than as authorised by a drainage work approval if the person constructs or uses such a work while the approval is suspended.

(4) This section does not prevent a person from constructing or using a water supply work or flood work in accordance with a water supply work approval or flood work approval.

**91D Constructing or using flood work without, or otherwise than as authorised by, a flood work approval**

(1) A person:

- (a) who constructs or uses a flood work, and
- (b) who does not hold a flood work approval for that work,

is guilty of an offence.

Tier 2 penalty.

(2) The holder of a flood work approval who constructs or uses a flood work in or in the vicinity of a river or lake, or within a floodplain, otherwise than as authorised by the approval is guilty of an offence.

Tier 2 penalty.

(3) Without limiting subsection (2), a person constructs or uses a flood work otherwise than as authorised by a flood work approval if the person constructs or uses such a work while the approval is suspended.

(4) This section does not prevent a person from constructing or using a water supply work or drainage work in accordance with a water supply work approval or drainage work approval.

**91E Carrying out controlled activity without, or otherwise than as authorised by, a controlled activity approval**

(1) A person:

- (a) who carries out a controlled activity in, on or under waterfront land, and
- (b) who does not hold a controlled activity approval for that activity,

is guilty of an offence.

Tier 2 penalty.

(2) The holder of a controlled activity approval who carries out a controlled activity in, on or under waterfront land otherwise than as authorised by the approval is guilty of an offence.

Tier 2 penalty.

(3) Without limiting subsection (2), a person carries out a controlled activity otherwise than as authorised by a controlled activity approval if the person carries out such an activity while the approval is suspended.

(4) This section does not prevent a person:

- (a) from constructing and using a water management work in accordance with a water management work approval, or
- (b) from carrying out an aquifer interference activity in accordance with an aquifer interference approval.

**91F Carrying out aquifer interference activity without, or otherwise than as authorised by, an aquifer interference approval**

(1) A person:

- (a) who carries out an aquifer interference activity, and
- (b) who does not hold an aquifer interference approval for that activity,

is guilty of an offence.

Tier 2 penalty.

(2) The holder of an aquifer interference approval who carries out an aquifer interference activity otherwise than as authorised by the approval is guilty of an offence.

Tier 2 penalty.

(3) Without limiting subsection (2), a person carries out an aquifer interference activity otherwise than as authorised by an aquifer interference approval if the person carries

out such an activity while the approval is suspended.

(4) This section does not prevent a person:

- (a) from constructing and using a water management work in accordance with a water management work approval, or
- (b) from carrying out a controlled activity in accordance with a controlled activity approval, or
- (c) from using a building or work that has been erected or carried out in accordance with a controlled activity approval.

### **91G Contravention of terms and conditions of approval**

(1) A person (other than the holder) who uses water, constructs or uses a water management work or carries out a controlled activity or an aquifer interference activity, pursuant to an approval is guilty of an offence if the person contravenes any term or condition of the approval.

Tier 2 penalty.

(2) If any term or condition of an approval is contravened by any person, each holder of the approval is guilty of an offence.

Tier 2 penalty.

(3) It is a defence to a prosecution under subsection (2) if the accused person establishes:

- (a) that the contravention of the term or condition was caused by another person, and
- (b) that the other person was not associated with the holder at the time the term or condition was contravened, and
- (c) that the holder took all reasonable steps to prevent the contravention of the term or condition.

A person is associated with the holder for the purposes of this subsection (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the holder.

### **91H Failure to install or maintain metering equipment**

(1) A person is guilty of an offence if the person fails to install any metering equipment that, pursuant to:

- (a) the conditions of an access licence or approval, or

(b) a direction under section 326,

the person is required to install in connection with a water supply work or drainage work.

Tier 2 penalty.

- (2) A person is guilty of an offence if the person fails to ensure the proper operation of any metering equipment that has been installed in connection with a water supply work or drainage work.

Tier 2 penalty.

### **91I Taking water when metering equipment not working**

- (1) A person who takes water from a water source to which this Part applies by means of a metered work while its metering equipment is not operating properly or is not operating and:

- (a) who intentionally or negligently fails to ascertain whether the metering equipment is not operating properly or is operating, or
- (b) who knows or has reasonable cause to believe that the metering equipment is not operating properly or is not operating,

is guilty of an offence.

Tier 1 penalty.

- (2) A person who takes water from a water source to which this Part applies by means of a metered work while its metering equipment is not operating properly or is not operating is guilty of an offence.

Tier 2 penalty.

- (3) Subsection (2) does not apply if:

- (a) the person is authorised by the Minister in writing to take water by means of a metered work while its metering equipment is not operating properly or is not operating, and
- (b) the water is taken in accordance with any conditions specified in the authorisation and any requirements prescribed by the regulations for the purposes of this subsection.

- (4) In this section, ***metered work*** means a water management work in connection with which metering equipment has been installed.

### **91J Failure to keep metering records**

A person is guilty of an offence if the person fails to keep metering records that the person is required under this Act to keep with respect to any metering equipment that has been installed in connection with a water supply work or drainage work.

Tier 2 penalty.

### **91K Meter tampering**

(1) A person is guilty of an offence if the person interferes with, damages, destroys or disconnects any metering equipment that has been installed in connection with a water supply work or drainage work, and does so intentionally or recklessly.

Tier 1 penalty.

(2) A person is guilty of an offence if the person interferes with, damages, destroys or disconnects any metering equipment that has been installed in connection with a water supply work or drainage work.

Tier 2 penalty.

(3) Without limiting subsections (1) and (2), a person interferes with metering equipment if the person unseals any sealed component of the equipment, blocks any part of the equipment, attaches to the equipment any device that is likely to affect the operation of the equipment or disconnects the equipment from its source of power.

(4) This section does not apply to anything:

(a) that a duly qualified person, or a person specified under section 326 (2A), does to metering equipment (other than metering equipment that may only be maintained, repaired, modified or replaced by the Ministerial Corporation or Water NSW) for the sole purpose of maintaining, repairing or replacing the equipment, or

(b) that is done to metering equipment by or with the written authority of the Ministerial Corporation or Water NSW or the [Water NSW Act 2014](#), or

(c) that is done to metering equipment by or on behalf of the holder of the water supply work approval or drainage work approval solely for the purposes of complying with any requirements of regulations made under this Division.

(5) In this section, **duly qualified person** means a person who has such qualifications, skills and experience as are prescribed by the regulations.

### **91L Liability of occupier of premises for certain offences**

(1) The occupier of premises at which:

(a) a water management work has been constructed or used in contravention of a

provision of this Division, or

(b) a controlled activity or aquifer interference activity has been carried out in contravention of a provision of this Division,

is taken to have contravened that provision.

(2) However, subsection (1) does not apply if it is established that:

(a) the work was constructed or used, or the activity was carried out, by a person other than the occupier, and

(b) the other person was not associated with the occupier at the time the work was constructed or used or the activity was carried out, and

(c) the occupier took all reasonable steps to prevent the work being constructed or used or the activity being carried out.

A person is associated with the occupier for the purposes of paragraph (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the occupier.

(3) Subsection (1) does not prevent proceedings being taken under this Act against the person who actually committed the offence.

### **91M General defence**

(1) It is a defence to a prosecution under this Division in relation to a Tier 1 offence if the accused person establishes:

(a) that the commission of the offence was due to causes over which the person had no control, and

(b) that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) It is a defence to a prosecution under this Division in relation to the doing of anything without an approval if the accused person establishes that the person was exempt, pursuant to this Act or the regulations, from any requirement for an approval in relation to the doing of that thing.

(3) This Division does not prevent a person from doing anything pursuant to an entitlement in force under the [Water Act 1912](#), where **entitlement** has the same meaning as it has in Schedule 10.

### **91N Corporations not required to hold approvals**

Nothing in sections 91A–91D requires the Ministerial Corporation or Water NSW to obtain an approval for the construction or use of metering equipment.



## **Division 2 Applications for and granting of approvals**

### **92 Applications for approvals**

- (1) Subject to any embargo, any person may apply for an approval.
- (2) An application for an approval must be made to the Minister in accordance with the regulations.
- (3) The regulations may require the application to be accompanied by a management program for the land to which the application relates.
- (4) An application may relate to more than one approval, whether of the same or of a different kind, unless the Minister requires a separate application to be made in relation to one or more of them.
- (5) The Minister:
  - (a) may require an applicant for an approval to provide additional information within a specified time if of the opinion that additional information would be relevant to consideration of the application, and
  - (b) may delay consideration of the application until the information is provided or, if the information is not provided within the time specified, may refuse to consider the application.
- (6) The Minister may refuse to accept an application for an approval if it appears to the Minister that the application is incomplete.
- (7) The regulations may require any application, or any specified class of applications, to be advertised.
- (8) An applicant for an approval may, by notice in writing to the Minister, amend or withdraw the application for the approval at any time before the application is determined.

**Note—**

Approvals are listed in section 91 of the [Environmental Planning and Assessment Act 1979](#). Development that requires an approval is consequently integrated development for the purposes of that Act.

### **93 Objections to applications for approvals**

- (1) Any person may, in accordance with the regulations, object to the granting of an approval that has been advertised pursuant to section 92.
- (2) The Minister must inform the applicant for an approval of the grounds of any objection to the granting of the approval and must allow the applicant a specified time within which to make a written response to the Minister in relation to the objection.

(3) The Minister:

- (a) may require an objector or applicant to provide additional information within a specified time if of the opinion that additional information would be relevant to consideration of the objection or response, and
- (b) may delay consideration of the objection or response until the information is provided or, if the information is not provided within the time specified, may refuse to consider the objection or response.

(4) If there is a deficiency in an objection or response, the Minister may notify the objector or applicant accordingly and allow further time to enable the deficiency to be rectified.

(5) Before making a decision on an application for the approval in respect of which any objection has been made, the Minister must endeavour to resolve the issues raised by the objection by means of consultation with the applicant and the objector, with a view to reaching agreement on the matters raised by the objection.

(6) For the purpose of reaching such an agreement, the Minister may propose that the matters raised by the objection be dealt with by way of mediation or neutral evaluation involving an independent mediator or evaluator appointed by agreement between the applicant, the objector and the Minister.

(7) The costs of any such mediation or neutral evaluation are to be paid for by the Minister.

(8) An application or objection may be dismissed by the Minister if the applicant or objector, as the case may be, fails to participate in any mediation or neutral evaluation proceedings referred to in subsection (6).

**94 Determination of applications affected by reviews by Planning Assessment Commission**

(1) This section applies to any application for an approval in respect of which the Planning Assessment Commission has given notice of a review under the *Environmental Planning and Assessment Act 1979* to the Minister before the Minister makes a decision on the application.

(2) The Minister:

(a) must refer to the Planning Assessment Commission:

- (i) the application (including any information furnished in relation to the application), and
- (ii) any objection to the application (including any information furnished in relation to the objection),

whether the application or objection is made or lodged before or after the notice is received, and

(b) must defer making any decision on the application until it receives the Commission's report under the *Environmental Planning and Assessment Act 1979*.

(3) In making a decision on the application, the Minister must have regard to the findings and recommendations contained in the Commission's report under the *Environmental Planning and Assessment Act 1979*.

(4) (Repealed)

### **95 Determination of applications**

(1) After considering an application and all matters relevant to the application, the Minister is to determine the application:

(a) by granting the approval to which the application relates, or

(b) by refusing the application.

#### **Note—**

Section 99A enables the Minister to grant combined approvals at the time an application is granted for one or more of the approvals concerned or subsequently.

(1A) An approval may be granted unconditionally or subject to such conditions as are required or permitted to be imposed under Division 3.

(2) (Repealed)

(3) An approval may not be granted in contravention of the provisions of any relevant management plan.

(4) An approval is to be in such form as the Minister may determine.

(5) An approval takes effect on the day on which notice of the decision to grant the approval has been given to the applicant.

### **96 Matters affecting consideration of applications**

In considering whether or not to grant an approval, the Minister must take into account:

(a) such matters as are prescribed by the regulations, and

(b) such other matters as the Minister considers to be relevant.

### **97 Grounds of refusal of certain applications**

(1) A water use approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be

done to any water source, or its dependent ecosystems, as a consequence of the proposed use of water on the land in respect of which the approval is to be granted.

- (2) A water management work approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source, or its dependent ecosystems, as a consequence of the construction or use of the proposed water management work.
- (3) (Repealed)
- (4) A controlled activity approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to any waterfront land as a consequence of the carrying out of the proposed controlled activity.
- (5) A water management work approval for a water management work that is, or is proposed to be, situated on land not owned by the applicant is not to be granted unless the Minister is satisfied:
  - (a) that the applicant is likely to become the owner of the land within a reasonable time, or
  - (b) that the land is subject to an easement that authorises the construction and use of such a work for the benefit of the applicant's land, or
  - (c) that the applicant is otherwise entitled (whether under this or any other Act or under an agreement applying to the land) to construct and use such a work.
- (6) An aquifer interference approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to the aquifer, or its dependent ecosystems, as a consequence of its being interfered with in the course of the activities to which the approval relates.

## 98 Notice of decision

After determining an application under this Division, the Minister must cause notice of the determination to be given to the applicant and, if the application relates to an approval that has been advertised pursuant to section 92, to each person who has made an objection to the Minister in connection with the application.

## 99 Procedures in relation to integrated development

- (1) In this section, **consent authority**, **development consent** and **integrated development** have the same meanings as they have in the [Environmental Planning and Assessment Act 1979](#).
- (2) The provisions of this Act with respect to the advertising of an application for an approval do not apply if the application relates to integrated development.

- (3) If a consent authority grants development consent to integrated development, either as a consequence of having obtained the general terms of any approval proposed to be issued by the Minister or as a consequence of the Minister having failed to inform the consent authority as to whether or not an approval will be granted:
  - (a) no person has any right to lodge an objection under this Act to the granting of the approval, and
  - (b) no person has any right under this Act to appeal to the Land and Environment Court against the granting of the approval.
- (4) Subsection (3) (b) does not affect any right of appeal to which an objector may be entitled under section 98 of the *Environmental Planning and Assessment Act 1979*.

### **99A Granting of combined approvals**

- (1) The Minister may, on application or on the Minister's own motion, grant 2 or more approvals by means of a single approval document (a **combined approval**).
- (2) A combined approval may be granted:
  - (a) at the time an application for one or more of the approvals is granted, or
  - (b) by amending an existing approval (whether or not a combined approval) to include additional approvals.

#### **Note—**

Section 92 (4) provides that an application may relate to more than one approval, whether of the same or of a different kind, unless the Minister requires a separate application to be made in relation to one or more of them.

- (3) A combined approval that is granted by amending an existing approval must provide for a common expiry date for all of the approvals.
- (4) A combined approval may:
  - (a) deal with approvals with respect to the same or different kinds of approvals or the same or different kinds of uses, works or activities, and
  - (b) provide for common terms and conditions, or different terms and conditions, for some or all of the approvals granted.
- (5) A combined approval is taken to have effect for the purposes of this Act as if it were:
  - (a) to the extent it contains an approval for water use—a water use approval, or
  - (b) to the extent it contains an approval for the construction and use of a water supply work—a water supply work approval, or
  - (c) to the extent that it contains an approval for the construction and use of a

drainage work—a drainage work approval, or

(d) to the extent that it contains an approval for the construction and use of a flood work—a flood work approval, or

(e) to the extent that it contains approval for the carrying out of a controlled activity—a controlled activity approval, or

(f) to the extent that it contains approval for the carrying out of an aquifer interference activity—an aquifer interference approval.

(6) Each approval granted by means of a combined approval takes effect as provided by section 95 (5).

(7) Section 98 (Notice of decision) does not apply with respect to a determination to grant a combined approval that is made on the Minister's own motion.

(8) Nothing in this section:

(a) permits the Minister to grant an approval, or to impose or alter terms or conditions of an approval, by means of a combined approval otherwise than in accordance with the requirements of this Act for that kind of approval, or

(b) limits any right of appeal against a decision made with respect to each kind of approval granted.

### **Division 3 Conditions and duration of approvals**

#### **100 Conditions of approval generally**

(1) An approval is subject to such conditions as the Minister may from time to time impose:

(a) which must include such conditions as are required to be imposed on the approval by this Act or by any relevant management plan (***mandatory conditions***), and

(b) which may include such other conditions, such as:

(i) conditions to give effect to any agreement between an applicant and objector under section 93 (5), and

(ii) conditions relating to the protection of the environment,

as the Minister thinks fit (***discretionary conditions***).

(1A) Mandatory conditions do not have effect in relation to an approval unless they are included in the terms of the approval.

(2) A mandatory condition prevails over a discretionary condition to the extent of any inconsistency between them.

- (3) Without limiting the types of conditions relating to the protection of the environment that the Minister may impose under this section on a water management work approval, those conditions may include conditions relating to any or all of the following matters:
- (a) the undertaking of an investigation of the environmental impact of cold water releases and the options for mitigation of that impact,
  - (b) the preparation of a program to mitigate the impact of cold water releases and the obtaining of approval to the program from the Minister,
  - (c) the implementation of the program,
  - (d) the monitoring and reporting on actions taken to implement the program and the impact of those actions on the environment,
  - (e) the carrying out of new works or the making of alterations to existing works, or both,
  - (f) the method of operation of water management works.

**Note—**

If a management plan or Minister's plan is replaced or amended during the term of an approval, the mandatory conditions applying to the approval may vary.

**100A Imposition of conditions on granting of approval**

A condition that is imposed when an approval is granted takes effect on the day on which the approval takes effect.

**101 Conditions of approval for joint schemes**

- (1) This section applies to a water management work approval granted in relation to a joint scheme, that is, a scheme under which landholders of different parcels of land hold a single water management work approval for a water management work located on, passing through or otherwise benefiting or affecting those parcels.
- (2) A water management work approval for a water management work the subject of a joint scheme is subject to such conditions as the regulations require and to such other conditions as the landholders concerned agree.
- (3) A regulation referred to in subsection (2) may impose conditions, in relation to the rights and duties of the landholders concerned in the joint scheme, with respect to the following matters:
  - (a) the granting of access to the work,
  - (b) the operation of the work,

- (c) the apportionment of water supplied by means of the work,
- (d) the apportionment of the cost of constructing and maintaining the work,
- (e) the apportionment of such other costs with respect to work as are prescribed by the regulations,
- (f) the exclusion of land from the joint scheme.

### **102 Imposition or change of conditions after approval is granted**

- (1) The Minister may impose discretionary conditions on an approval after it has been granted, or may amend a discretionary condition, but only if the Minister:
  - (a) has given written notice to the holder of the approval that the Minister proposes to impose such conditions or make such an amendment, and
  - (b) has given the holder of the approval a reasonable opportunity to make submissions to the Minister with respect to the proposed conditions or amendment, and
  - (c) has taken any such submissions into consideration.
- (2) Subsection (1) does not apply to conditions imposed on an approval, or an amendment made, at the request of or with the consent of the holder of the approval.
- (3) Mandatory conditions of an approval may be imposed, amended, revoked or suspended by the Minister whenever it is necessary to do so in order to enable compliance with or to give effect to this Act, the regulations or a relevant management plan.
- (4) The Minister must cause written notice of any conditions imposed, amended, revoked or suspended under this section to be served on the holder of the approval concerned.
- (5) A condition imposed or a change referred to in subsection (4) takes effect on the day on which the notice referred to in that subsection is served on the holder of the approval or on such later day as may be specified in the notice in that regard.
- (6) The regulations may make provision for or with respect to the manner in which written notices may be given for the purposes of this section.

### **103 Revocation of conditions**

The Minister may at any time revoke any discretionary conditions to which an approval is subject, whether or not on the application of the holder of the approval.

### **104 Duration of approval**

- (1) Subject to this section, an approval has effect for such period as is specified in the



approval (being a period not exceeding 10 years) or, if the period of the approval is extended under section 105, that extended period.

- (2) An approval granted to a major utility or a local water utility has effect for a period of 20 years or, if that 20-year period is extended under section 105, that extended period.
- (3) A water supply work approval for a water bore that is used solely for accessing water to which the holder is entitled as a basic landholder right (other than water from the Great Artesian Basin) has effect until it is cancelled.
- (4) If an application for extension of an approval is lodged before the approval expires, the term of the expiring approval is extended until:
  - (a) the date of the final decision on the application, or
  - (b) a date fixed by the Minister for the approval,whichever is the later date.
- (5) If:
  - (a) an approval expires without an application for its extension being made, and
  - (b) an application for its extension is subsequently made by the former holder of an approval and is accompanied by a statutory declaration of the reasons for the delay in making the application, and
  - (c) the reasons are accepted by the Minister,the term of the approval is taken to have been extended, and the application may be dealt with, as if the application had been made before the approval expired.

### **105 Extension of approvals**

- (1) The holder of an approval may, in accordance with the regulations, apply for an extension of the period for which the approval has effect.
- (2) A period for which an approval has effect may be extended more than once under this section, but each extension may not exceed the period for which an approval of that type could have originally been granted.
- (3) An application for an extension must be granted unless:
  - (a) the relevant management plan provides, or the regulations provide, that an extension of such an approval must be assessed as if it were an application for a new approval, or
  - (b) the application is required to be refused under subsection (4).

- (4) An application for an extension must be refused if:
- (a) in the case of a water use approval, the applicant has not certified that the extension is necessary because the particular purpose for which the approval was granted still exists, or
  - (b) in the case of a water management work approval, the Minister is not satisfied that the applicant complies with section 97 (5), or
  - (c) the applicant has not certified that the terms and conditions of the approval have been complied with.
- (5) If assessment of an application for extension of an approval (the **original approval**) is required, the provisions of section 92 (2)–(6) apply to the application and the application is to be assessed as if the application were an application for the granting of a new approval to authorise:
- (a) in the case of a water use approval, the continuing use of the water for the particular purpose and at the particular location specified in the original approval, or
  - (b) in the case of a water management work approval, the continuing maintenance and use of the work to which the original approval relates, or
  - (c) in the case of an activity approval, the continuing carrying out of the activity to which the original approval relates in the same location or area specified in the original approval.

#### **106 Land benefited by approval**

- (1) An approval is taken to be held by, and for the benefit of, each successive landholder for the time being of the land specified in the approval as the land benefited by the approval.
- (2) While the approval is in force, each such landholder:
- (a) is under a duty to comply with the conditions to which the approval is subject, and
  - (b) is entitled to commence and maintain legal proceedings against any co-holder of the approval with respect to that co-holder's failure to comply with those conditions.
- (3) For the purposes of this section, a major utility, local water utility, irrigation corporation, private irrigation board, private drainage board or private water trust is taken to be a landholder of land in respect of which a water use approval or water management work approval held by it is in force.
- (4) This section does not apply in such circumstances, or to such types or kinds of

approvals, as may be prescribed by the regulations.

## **Division 4 Amendment, surrender, suspension and cancellation of approvals**

### **107 Amendment of approvals**

- (1) On the application of the holder of an approval, the Minister may amend the approval.
- (2) Without limiting subsection (1), an approval may be amended to alter, add to or reduce any of the uses, works, activities or land to which the approval relates.
- (3) An amendment of an approval must not result in the approval relating to any additional land, or authorising the extension, construction or use of a water management work on any additional land, unless the additional land adjoins the land to which the unamended approval relates and is lawfully occupied by the holder of the approval.
- (4) Subsection (3) does not apply to an amendment to an approval in respect of a joint scheme (referred to in section 101 (1)) that results in the approval applying to additional land.
- (5) If the granting of an application under this section would result in the approval concerned relating to additional uses, works, activities or land, the application is to be advertised, assessed and determined in accordance with this Part in the same way as an application for a new approval, but only in relation to the additional uses, works, activities or land.
- (6) In considering any application under this section, the Minister is to have regard to any order of the Supreme Court under section 74 that affects the matters covered by the application.

### **108 Surrender of approvals**

- (1) The holder of an approval may surrender the approval at any time by notice in writing sent to the Minister.
- (2) The surrender takes effect on the date on which the notice is received by the Minister or such later date as is specified in the notice.

### **109 Suspension and cancellation of approvals**

- (1) The Minister may suspend or cancel an approval (or any part of an approval) on any one or more of the following grounds:
  - (a) that the holder of the approval has failed to comply with any term or condition to which the approval is subject,

- (b) that the holder of the approval has been convicted of an offence against:
    - (i) this Act or the regulations, or
    - (ii) the *Plumbing and Drainage Act 2011* or the regulations under that Act,
  - (c) that the holder of the approval has failed to make due payment with respect to any fee or charge that is payable under this Act in relation to the approval,
  - (c1) in the case of an approval granted in relation to a water supply work, if:
    - (i) the holder of the approval is also the holder of an access licence for which the water supply work has been nominated under section 71W (Access licence may nominate water supply works), and
    - (ii) the holder of the access licence has failed to make due payment with respect to any fees, charges or civil penalties that are payable in respect of the licence (whether or not those fees, charges or civil penalties were incurred by the current holder of the approval),
  - (c2) in the case of an approval granted in relation to a water supply work referred to in section 104 (3), if:
    - (i) the holder of the approval cannot, on the written request of the Minister, demonstrate that the water bore the subject of the approval is being maintained in accordance with the conditions of the approval, or
    - (ii) the water bore has been decommissioned,
  - (d) in the case of an approval granted in relation to a water management work, the holder of the approval has failed to comply with any direction given to the holder under this Act in connection with the work,
  - (e) that the approval was granted as a result of false, misleading or materially inaccurate information supplied by or on behalf of the applicant.
- (2) Instead of or in addition to suspending or cancelling an approval, the Minister may order a major utility to pay to the Minister a civil penalty not exceeding \$500,000 and, in the case of a continuing offence, a further penalty not exceeding \$20,000 for each day for which the offence continues.
- (2A) If the Minister suspends or cancels a part of an approval, the Minister may amend the approval so as to give effect to that suspension or cancellation.
- (3) Action under this section may not be taken in relation to an approval unless the Minister:
- (a) has given written notice to the holder of the approval that the Minister proposes to take such action, and

- (b) has given the holder of the approval a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and
- (c) has taken any such submissions into consideration.

## **Division 5 Embargoes on applications for approvals**

### **110 Temporary embargo**

- (1) The Minister may, by order published in the Gazette, declare an embargo on the making of applications for approvals with respect to any water management area.
- (1A) Such an order may apply to the whole of a water management area or to any specified part of a water management area, and to approvals generally or to any specified type or kind of approvals.
- (2) An order under this section may relate to all applications, to applications of a specified kind or to all applications other than applications of a specified kind.
- (3) As soon as practicable after an order under this section is published in the Gazette, notice of the order must be published in an appropriate newspaper.
- (4) An order under this section takes effect at the beginning of the date on which it is published in the Gazette and, unless sooner revoked, expires at the end of 2 years after that date.

### **111 Permanent embargo**

- (1) The Governor may, by proclamation published in the Gazette, declare an embargo on the making of applications for approvals with respect to any water management area.
- (1A) Such a proclamation may apply to the whole of a water management area or to any specified part of a water management area, and to approvals generally or to any specified type or kind of approvals.
- (2) A proclamation under this section may relate to all applications, to applications of a specified kind or to all applications other than applications of a specified kind.
- (3) As soon as practicable after a proclamation under this section is published in the Gazette, notice of the proclamation must be published in an appropriate newspaper.
- (4) A proclamation under this section takes effect at the beginning of the date on which it is published in the Gazette and continues in force until it is revoked by a further proclamation so published.

### **112 Operation of embargo**

- (1) An embargo applies to any application for an approval made on or after the date on which the embargo took effect, other than:

- (a) an application to amend an application made before that date, or
  - (b) an application for the extension of the period for which an approval has effect, or
  - (c) any other application of a kind prescribed by the regulations.
- (2) An application to which an embargo applies is a nullity and is not revived merely because the embargo is subsequently revoked.

## **Division 6 Registers**

### **113 Register of approvals**

- (1) The Minister is to cause a register to be kept of:
- (a) every application for an approval that is duly made under this Act, and
  - (b) every approval that is granted, extended, amended, surrendered, suspended or cancelled under this Act, and
  - (c) every agreement entered into by landholders under section 101 (2).
- (2) The regulations may make provision for or with respect to the form in which such a register is to be kept and the particulars that are to be recorded in such a register.
- (3) The register must be made available for public inspection during normal business hours at such places as may be prescribed by the regulations.

## **Part 4 Finance**

### **114 Minister may impose fees and charges**

- (1) The Minister may impose fees and charges for the purposes of this Act.

**Note—**

Under the *Independent Pricing and Regulatory Tribunal Act 1992*, any fees and charges imposed by the Minister under this section cannot exceed any relevant determination made by the Independent Pricing and Regulatory Tribunal.

- (2) The Minister may waive or reduce any such fee or charge in a particular case or class of cases if the Minister is of the opinion that the circumstances warrant it.

### **115 (Repealed)**

## Chapter 4 Joint private works

### Part 1 Irrigation corporations

#### Division 1 Preliminary

##### 116 Application of Part

This Part applies to all irrigation corporations under the former *Irrigation Corporations Act 1994* that were in existence immediately before the repeal of that Act, but does not authorise the establishment of any new irrigation corporations.

##### 117 Definitions

In this Part:

**area of operations** of an irrigation corporation means the area of land comprising the areas and districts specified in Schedule 1 in relation to the corporation, being areas and districts constituted under the former *Irrigation Act 1912* and Part 6 of the former *Water Act 1912*, including any land included in its area of operations under Division 4 but excluding any land excluded from its area of operations under Division 5 of this Part.

**irrigation corporation** means a corporation named in Schedule 1.

**operating licence** means an operating licence referred to in section 122.

##### 118 Requirements for access licences and approvals

Nothing in this Part authorises an irrigation corporation or landholder to do anything for which this Act requires an access licence or approval unless the irrigation corporation or landholder holds an appropriate access licence or approval.

#### Division 2 Irrigation corporations

##### 119 Assets of irrigation corporations

- (1) An irrigation corporation is the owner of all water management works installed in or on land by the corporation (whether or not the land is owned by the corporation).
- (2) The provisions of Part 5 and section 88 of the *Irrigation Corporations Act 1994*, as in force immediately before their repeal, continue to apply for the purpose of enabling the Ministerial Corporation to transfer to an irrigation corporation any of its assets, rights and liabilities with respect to an irrigation scheme area with which the irrigation corporation was formerly connected.

##### 120 Entry on to land

- (1) An irrigation corporation may, by its employees and agents, enter land within its area of operations for any one or more of the following purposes:

- (a) to install, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that the corporation considers are necessary or appropriate to any of its water management works or to construct new water management works and, for these purposes, to carry out any work on, below or above the surface of the land,
  - (b) to read a meter that:
    - (i) measures water supplied by the corporation, or
    - (ii) monitors drainage for quantity or quality or both,
  - (c) to find the source of pollution of water within the area of operations of the corporation,
  - (d) to ascertain whether a water supply contract or other contract for the provision of services by the corporation is being breached,
  - (e) to rectify defective or improper work that has not been rectified by a customer in accordance with a notice served by the corporation on the customer under a water supply contract or other contract,
  - (f) to ascertain the character and condition of the land or any building on the land, or the condition and location of any pipe, sewer, drain, channel or fitting or other work used in connection with the land or building, so as to enable the corporation:
    - (i) to install, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect or improve its systems and services, or
    - (ii) to construct new water management works,in accordance with the obligations imposed on it by its operating licence,
  - (g) to carry out any investigation or inspection, take levels, drill test bore-holes, make surveys and marks, and fix pegs and stakes, for the purpose of determining the site of any proposed water management work.
- (2) An irrigation corporation must ensure that as little damage as possible is caused by the exercise of powers under this section and must repair any damage caused or pay compensation for the damage.
- (3) The powers of entry conferred by this section are not to be exercised for a purpose referred to in subsection (1) (a), (f) or (g) without prior notice to the occupier of the land.
- (4) A person must not threaten, hinder, obstruct or delay any person in the exercise of an irrigation corporation's functions under this section.

Tier 2 penalty.



### **121 Ceasing to be an irrigation corporation**

- (1) A corporation ceases to be an irrigation corporation if its particulars are removed from Schedule 1.
- (2) The Governor may remove an irrigation corporation's particulars from Schedule 1 by proclamation published on the NSW legislation website, but only:
  - (a) on application made by the irrigation corporation to the Minister, or
  - (b) if the irrigation corporation ceases to exist.
- (3) The Governor may by proclamation published on the NSW legislation website amend Schedule 1 so as to reflect a change in an irrigation corporation's name.
- (4) The regulations may make provision, not inconsistent with the *Corporations Act 2001* of the Commonwealth, for or with respect to any matters that are consequential on a corporation ceasing to be an irrigation corporation.

## **Division 3 Operating licences**

### **122 Authority conferred by operating licence**

The operating licence for an irrigation corporation authorises the corporation to carry on the business of supplying water provided to it by the Ministerial Corporation and to exercise its functions under this Part.

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

- (1) An operating licence is subject to the terms and conditions determined by the Governor.
- (2) Examples of terms and conditions that may be included are as follows:
  - (a) a requirement that the irrigation corporation will (in accordance with any applicable management program and the corporation's business plan) provide, construct, maintain, manage and operate:
    - (i) efficient, co-ordinated and commercially viable systems and services for supplying water from both surface and subsurface sources, and
    - (ii) surface and subsurface drainage networks that have sufficient capacity having regard to specified factors, including the amount of water supplied by the corporation to users,
  - (b) a requirement that the irrigation corporation must be the holder of all relevant licences or other authorities,
  - (c) a requirement that the irrigation corporation is to comply with the provisions of

any applicable management program, either in all respects or in certain respects,

- (d) a requirement that, in supplying water to its members, the irrigation corporation is to give priority to certain councils or other local water utilities for domestic water supply,
- (e) a requirement as to how the irrigation corporation is to spend and otherwise deal with any money provided to it out of money appropriated from the Consolidated Fund or other public money.

- (3) An operating licence may be amended only in the manner specified in the operating licence.
- (4) Despite subsection (3), the Minister may amend an irrigation corporation's operating licence so as to give effect to matters agreed to by or on behalf of the State pursuant to, or in connection with, the National Water Initiative.
- (5) In determining the terms of the amendment, the Minister must have regard to any submissions made by the irrigation corporation.
- (6) In this section, **National Water Initiative** means the Intergovernmental Agreement on a National Water Initiative between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory (as amended from time to time).

#### **124 Term of operating licence**

- (1) An operating licence has effect for the period specified in the licence in that regard, but may be renewed at the end of that period.
- (2) An operating licence may be renewed even if its term has expired.
- (3) The Governor may refuse an application for the renewal of an operating licence on such grounds as the Governor considers appropriate.

#### **125 Contravention of operating licence**

- (1) If, in the opinion of the Minister, an irrigation corporation contravenes an operating licence, the Governor may direct that one of the following is to apply:
  - (a) a letter of reprimand by the Minister is to be served on the irrigation corporation,
  - (b) the Minister is to cause a notice to be served on the irrigation corporation requiring it to rectify the contravention within a specified period.
- (2) If, in the opinion of the Minister, an irrigation corporation continues to contravene an operating licence after the issue of a letter under subsection (1) (a) or fails to rectify a contravention as required by a notice under subsection (1) (b), the Governor may do

either or both of the following:

- (a) the Governor may direct that the irrigation corporation is to pay a monetary penalty of an amount (not exceeding \$150,000) to be determined by the Governor,
  - (b) the Governor may cancel the operating licence.
- (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) An operating licence may make provision for advice to be furnished to the Minister in connection with the exercise of the Minister's functions under this section.
- (5) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Crown.

#### **126 Cancellation of operating licence**

- (1) An operating licence may be cancelled by the Governor, but only:
- (a) if the irrigation corporation fails or ceases to hold a relevant licence or other authority, or
  - (b) if the irrigation corporation is, in the opinion of the Minister, in material default in compliance with the operating licence, viewed in terms of the operation of the operating licence as a whole, or
  - (c) if the irrigation corporation is an externally-administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (d) if the irrigation corporation has been convicted of a criminal offence that is punishable by a fine of at least \$10,000 or, if the corporation were a natural person, imprisonment for 12 months or more, or
  - (e) in the circumstances set out in section 125 (2).
- (2) An operating licence may not be cancelled on the ground referred to in subsection (1) (a) if an appeal against a decision not to renew or to cancel the relevant licence or other authority has been made but not determined or withdrawn.
- (3) Subsection (1) (d) does not apply where the offence is unconnected with the functions of the irrigation corporation relating to the supply or drainage of water.

#### **127 Irrigation corporation may make arrangements with subsidiaries**

- (1) An irrigation corporation may arrange, whether by an agency agreement or in any other way (except by assignment), for a subsidiary of the irrigation corporation to

exercise any or all of the irrigation corporation's functions under this Part or under an operating licence.

- (2) The Minister may treat any act or omission of the subsidiary of an irrigation corporation as an act or omission of the irrigation corporation for the purpose of determining:
  - (a) whether the irrigation corporation has contravened its operating licence, or
  - (b) whether the licence should be suspended or cancelled,but only if the irrigation corporation has made arrangements for the exercise of functions by the subsidiary.
- (3) In this section, **subsidiary** means a corporation that is a subsidiary of a corporation as determined in accordance with the [Corporations Act 2001](#) of the Commonwealth or any other applicable law.

## **Division 4 Inclusion of land within irrigation corporation's area of operations**

### **128 Applications to include land within area of operations**

- (1) An application for the inclusion of land within an irrigation corporation's area of operations may be made to the Minister by means of a joint application made by the corporation and by the owner or owners of the land concerned.
- (2) The application must identify the land proposed to be included in the corporation's area of operations.
- (3) The procedures for making and advertising an application are to be as prescribed by the regulations.

### **129 Objections to inclusion of land within area of operations**

- (1) Any person may object to the inclusion of land within the proposed extension of an irrigation corporation's area of operations.
- (2) The procedures for making an objection are to be as prescribed by the regulations.

### **130 Inclusion of land in area of operations**

- (1) The Minister may determine an application for the inclusion of land within an irrigation corporation's area of operations by granting or refusing the application.
- (2) If the Minister grants the application, the Minister must, by order published in the Gazette, include the land within the irrigation corporation's area of operations.

### **131 (Repealed)**

## **Division 5 Exclusion of land from irrigation corporation's area of operations**

### **132 Applications to exclude land from area of operations**

- (1) An application for the exclusion of land from an irrigation corporation's area of operations may be made to the Minister by means of a joint application made by the corporation and by the owner or owners of the land concerned.
- (2) The application must identify the land proposed to be excluded from the corporation's area of operations.
- (3) The procedures for making and advertising an application are to be as prescribed by the regulations.

### **133 Objections to exclusion of land from area of operations**

- (1) Any person may object to the proposed exclusion of land from an irrigation corporation's area of operations.
- (2) The procedures for making an objection are to be as prescribed by the regulations.

### **134 Exclusion of land from area of operations**

- (1) The Minister may determine an application for the exclusion of land from an irrigation corporation's area of operations by granting or refusing the application.
- (2) If the Minister grants the application, the Minister must, by order published in the Gazette, exclude the land from the irrigation corporation's area of operations.

### **135 (Repealed)**

## **Division 6 Miscellaneous**

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

On a change of ownership of land, the new landholder of the land is liable to an irrigation corporation for the amount of any charges levied by the irrigation corporation in relation to the land and unpaid by the previous landholder as if the new landholder had entered into a contract with the irrigation corporation for the supply of the service or services to which the unpaid charges relate.

### **137 Indemnities**

- (1) A person does not have any right or claim to relief of any kind whatever in any legal or other proceeding against an irrigation corporation or officer or employee of an irrigation corporation in respect of any nuisance connected with or in any way arising out of:

- (a) the design, construction, alteration, maintenance, non-maintenance, operation, repair, disrepair or non-repair of a water management work owned or controlled by the irrigation corporation, or
  - (b) the destruction or damage, or partial destruction or partial damage, by flood, storm, tempest or otherwise of a water management work owned or controlled by the irrigation corporation, or
  - (c) the exercise, in respect of a water management work owned or controlled by the irrigation corporation, by the irrigation corporation of any function conferred or imposed on the irrigation corporation under this or any other Act.
- (2) Section 733 of the *Local Government Act 1993* applies to and in respect of an irrigation corporation in the same way as it applies to and in respect of a council.

### **138 Register of licences, audits and management programs**

- (1) The Ministerial Corporation must maintain at its head office a register containing copies of the following:
- (a) operating licences,
  - (b) audit reports,
  - (c) applicable management programs,
  - (d) recommendations of the Minister to the Governor under this Part.
- (2) The register must be made available for public inspection during normal business hours.
- (3) Any person may obtain a copy of any information on the register on payment of the reasonable cost of providing the copy.

## **Part 2 Private irrigation districts**

### **Division 1 Preliminary**

#### **139 Application of Part**

This Part applies to all private districts under the former *Private Irrigation Districts Act 1973* that were in existence immediately before the repeal of that Act, and also authorises the establishment of further private irrigation districts.

#### **140 Definitions**

In this Part:

***irrigated holding*** means a holding in respect of which water is supplied by a private

irrigation board for irrigation.

**landholder's water entitlement** means the part of the share component of a private irrigation board's access licence that is available to a landholder of an irrigated holding within the private irrigation district.

**new holding** means each part of an original holding that, after subdivision, is separately owned.

**non-irrigated holding** means a holding in respect of which water is supplied by a private irrigation board for domestic and stock use only.

**original holding** means a holding in a private irrigation district, being a holding:

- (a) in existence at the date of constitution of that district, or
- (b) comprising lands added to that district under Division 2,

but does not include any holding, or any part of a holding, that has become a new holding or that has been excised from the private irrigation district under Division 2.

**private irrigation board**, in relation to a private irrigation district, means the board of management for that district elected under Division 3.

**private irrigation district** means a private water supply district or a private water supply and irrigation district constituted under Division 2.

#### **141 Requirements for access licences and approvals**

Nothing in this Part authorises a private irrigation board or landholder to do anything for which this Act requires an access licence or approval unless the private irrigation board or landholder holds an appropriate access licence or approval.

### **Division 2 Private irrigation districts**

#### **142 Petition**

- (1) Any persons who are landholders of lands that are being worked as 3 or more holdings may lodge with the Minister a petition for the constitution of those lands:
  - (a) as a private water supply district, or
  - (b) as a private water supply and irrigation district.
- (2) The petition:
  - (a) must contain the names, addresses and occupations of all of the petitioners and be signed by all of the petitioners, and
  - (b) must be accompanied by plans showing:

- (i) the location of the lands proposed to be supplied with water, in relation to the river, estuary or lake from which water is proposed to be obtained, and
    - (ii) the lands on which a water supply work is proposed to be constructed or located in connection with the proposed water supply, and the site on those lands of that proposed water supply work, and
  - (c) must be accompanied by:
    - (i) particulars of the title of the lands within the proposed private irrigation district, and
    - (ii) particulars of the area of land within the proposed private irrigation district owned by each petitioner, and
    - (iii) an estimate of the quantity of water proposed to be taken annually for the purposes of the proposed private irrigation district, and
    - (iv) particulars of any water use approval under which any lands within the proposed private irrigation district are, at the date of lodgment of the petition, authorised to be irrigated, and
  - (d) must contain the names, addresses and occupations of the landholders of the lands referred to in paragraph (b) (ii) and be accompanied by separate particulars of the title of those lands.
- (3) The Minister may cause a notice containing particulars of the petition to be published in the Gazette and in an appropriate newspaper.
- (4) Such a notice may not be published unless:
- (a) the Minister is satisfied that the establishment of a private irrigation district in accordance with the petition would be of benefit to the landholders of land within the proposed private irrigation district, and
  - (b) the Minister has had regard to the *Competition Principles Agreement*, and
  - (c) the Premier has concurred in the publication of the notice.
- (5) In this section, **Competition Principles Agreement** means the agreement of that name between the Commonwealth, the States and the Territories that was entered into, for and on behalf of New South Wales, on 11 April 1995.

### **143 Constitution of private irrigation districts**

- (1) If a supplementary petition in relation to, or an objection to, a petition under section 142 is not duly lodged, the Governor may, by proclamation in the Gazette, constitute the lands described in the petition:



- (a) as a private water supply district, or
  - (b) as a private water supply and irrigation district,
- whichever was requested in the petition.

(2) If a supplementary petition in relation to, or an objection to, a petition under section 142 is so lodged but the Minister recommends the granting of the petition (whether with respect to all of the lands described in the petition or some only of them), the Governor may, by proclamation in the Gazette, constitute the lands to which the recommendation relates:

- (a) as a private water supply district, or
  - (b) as a private water supply and irrigation district,
- whichever was requested in the petition.

(3) A proclamation under this section:

- (a) must assign a name to the private irrigation district and a corporate name to the private irrigation board, and
- (b) must define the boundaries of the private irrigation district, and
- (c) must specify at which office of the Ministerial Corporation a plan of the private irrigation district is exhibited, and
- (d) must fix a time and place for the first election of the members of the private irrigation board.

#### **144 Addition of lands to private irrigation districts**

(1) A landholder of lands adjacent to or near a private irrigation district may lodge with the Minister a petition for the addition of those lands to the private irrigation district.

(2) The petition:

- (a) must specify the name, address and occupation of the petitioner and must be signed by the petitioner, and
- (b) must be accompanied by plans showing:
  - (i) the location of the additional lands proposed to be supplied with water, in relation to the river, estuary or lake from which water is proposed to be obtained, and
  - (ii) the lands on which any additional water supply work is proposed to be constructed or located in connection with the proposed water supply, and the site on those lands of that proposed additional water supply work, and

- (c) must be accompanied by:
    - (i) particulars of the title and the area of the additional lands, and
    - (ii) an estimate of the quantity of water proposed to be taken annually by the petitioner for the purposes of those lands, and
    - (iii) particulars of any water use approval under which those lands are, at the date of lodgment of the petition, authorised to be irrigated, and
  - (d) if:
    - (i) the private irrigation district has been constituted as a private water supply and irrigation district, and
    - (ii) the petitioner seeks a supply of water for irrigation,  
must be accompanied by a statement by the private irrigation board as to whether, and to what extent, the landholders within the private irrigation district have agreed to reduced allocations of water so as to permit an allocation of water being made to the additional lands, and
  - (e) must contain the names, addresses and occupations of the landholders of the lands referred to in paragraph (b) (ii) and be accompanied by separate particulars of the title of those lands.
- (3) The Minister must consider any petition lodged under this section and may cause a notice containing particulars of the petition to be published in the Gazette and an appropriate newspaper.

#### **145 Alteration of private irrigation district**

- (1) If an objection to a petition under section 144 is not duly lodged or an objection is duly lodged but the Minister recommends the granting of the petition, the Governor may, by proclamation in the Gazette, redefine the boundaries of the private irrigation district to which the petition relates by adding to that district the lands referred to in the petition.
- (2) If additional lands have been added to a private irrigation board's district under this section, the board:
  - (a) must, if an appropriate agreement has been made, redetermine the quantity of water to be allocated for domestic and stock use and for irrigation to each holding (including any holding in the additional lands) that is supplied or to be supplied with water for irrigation, and
  - (b) must, in respect of the holding in the additional lands, assess the rates and charges for water for the period or year, as the case may be, current at the date of

the addition of those additional lands to the private irrigation district.

- (3) The assessment of rates and charges referred to in subsection (2) (b) must be made on the basis of the rates and charges fixed in respect of that period or year, the rates and charges so assessed being proportionate to the portion of the period or year during which those additional lands are added to the private irrigation district.

#### **146 Excision of lands from private irrigation districts**

- (1) A landholder of lands within a private irrigation district may make application to the Land and Environment Court, as prescribed by rules of court, for an order that the landholder's lands be excised from that district.
- (2) Notice, in the prescribed form, of the application must be given by the landholder to the private irrigation board on the lodging of the application in the Land and Environment Court.
- (3) A private irrigation board and all persons whose interests appear to the Land and Environment Court to be affected by the application may attend the hearing of, and be heard in support of, or in opposition to, the application.
- (4) The Land and Environment Court must hear and determine the application but must not grant the application unless it is satisfied that there are exceptional circumstances that warrant the granting of the application.
- (5) The decision of the Land and Environment Court is final and may:
  - (a) if the decision is in favour of the applicant, include an order that any water supply works that are situated on the excised lands are to be works of which the private irrigation board has the control, use and maintenance, and
  - (b) embody such terms and conditions as to the Court seem just.
- (6) If the decision of the Land and Environment Court is that the application be granted, the private irrigation district is, subject to this Part, taken to have been altered by excising therefrom the lands referred to in the application.
- (7) The excision of any lands from a private irrigation district under this section does not affect the liability of any person for any rates or charges levied or leviable in respect of those lands while they were in the private irrigation district.

#### **147 Supplementary petitions and objections**

- (1) Within a period of 28 days after the publication of the notice of a petition for the constitution of a private irrigation district:
  - (a) a person who is the landholder of lands that the person desires to be included in the district to which that notice relates may lodge with the Minister a

supplementary petition for the inclusion in that district of lands owned by the person that are being worked as a separate property, or

- (b) any person may lodge with the Minister an objection in writing to the petition referred to in the notice on the ground that the granting of that petition would adversely affect the person's interests.
- (2) Within a period of 28 days after the publication of the notice of a petition for the addition of lands to a private irrigation district:
- (a) the private irrigation board for the district to which that notice relates may lodge with the Minister an objection in writing to the petition referred to in the notice, or
  - (b) any person may lodge with the Minister an objection in writing to the granting of that petition on the ground that the granting of that petition would adversely affect the person's interests.
- (3) A person may not lodge an objection on the ground that the person's interests would, if the petition were granted, be adversely affected for reasons relating to the quantity of water available from the river, estuary or lake from which it is proposed to take water for the purposes of the proposed private irrigation district, and any objection lodged on that ground is not to be entertained.
- (4) A supplementary petition:
- (a) must contain the name, address and occupation of the supplementary petitioner, and
  - (b) must be accompanied by plans showing:
    - (i) the location of the lands that the supplementary petitioner desires to be included in the proposed district, and
    - (ii) the lands on which any additional water supply work to be used for the taking of water for the use of the lands that the petitioner desires to be included in the proposed district is proposed to be constructed or is located and the site on those lands of that water supply work, and
  - (c) must be accompanied by particulars of the title and area of the lands referred to in paragraph (b) (i) and of any water use approval under which those lands are, at the date of lodgment of the supplementary petition, authorised to be irrigated, and
  - (d) must contain the names, addresses and occupations of the landholders of the lands referred to in paragraph (b) (ii) and be accompanied by separate particulars of the title of those lands.
- (5) An objection must be in writing and must state particulars of the grounds of objection.

- (6) If a supplementary petition or an objection has been lodged with the Minister, the Minister must, after consultation with the petitioner or objector, make a recommendation with respect to the petition or objection.

### **Division 3 Private irrigation boards**

#### **148 Private irrigation boards**

- (1) For each private irrigation district there is to be a board of management.
- (2) Each board is a corporation under the corporate name assigned to it by the proclamation by which its private irrigation district is constituted.
- (3) A board is to consist of such number of members, being not less than 3 nor more than 10:
  - (a) in the case of the first board elected for a private irrigation district, as may be determined by the Minister, and
  - (b) in the case of any subsequent board elected for a private irrigation district, as may be determined before the election by the board for that private irrigation district.
- (4) The regulations may make provision for or with respect to:
  - (a) the conduct of elections for the members of a board, and
  - (b) other matters concerning the constitution and procedure of a board.

#### **149 Election of members of private irrigation boards**

- (1) An election of the members of a private irrigation board must be held on the day and at the time fixed by the proclamation by which it is constituted and thereafter:
  - (a) if the third anniversary of the declaration of the poll for the previous election of members of that board is a Saturday, on that Saturday, or
  - (b) in any other case, on the Saturday preceding or following the third anniversary of the declaration of the poll for the previous election of members of that board.
- (2) A corporation that is a member of a private irrigation board must authorise an individual to represent it as a member of the board.
- (3) Subject to this Division, the members of a private irrigation board hold office until the date of the declaration of the poll for the next election.

#### **149A Filling of casual vacancies**

The Governor may, by proclamation in the Gazette, appoint a person (being eligible for election) to fill any casual vacancy in the membership of a private irrigation board and to

hold office until the date of declaration of the poll for the next election to be held for the board under section 149.

**150 Removal of members of private irrigation board from office and appointment of administrator**

- (1) The Governor may, by proclamation in the Gazette, remove all the members of a private irrigation board from office:
  - (a) if there are not sufficient members of the board to form a quorum, or
  - (b) if, in the opinion of the Governor, the board has failed or neglected to make or levy rates or charges required by this Part, or otherwise to exercise its functions under this Part.
- (2) (Repealed)
- (3) If the Governor has removed the members of a private irrigation board from office, the Governor may, in the proclamation removing the members from office or in a subsequent proclamation in the Gazette, appoint an administrator for the board.
- (4) An administrator so appointed has and may exercise all of the functions of a private irrigation board and is entitled to be paid, out of the funds of the board, such remuneration as the Governor may determine.
- (5) If the members of a private irrigation board have been removed from office, the Minister may, and if the board's term of office has more than 12 months to run, must, by notice in the Gazette, order that an election of members be held on a day specified in the order.
- (6) The day so specified must be a day not more than 6 months after the date of removal of the members from office and not less than 4 weeks after the date on which the notification is published in the Gazette.
- (7) Any member elected at an election held under this section is to hold office until the time when the terms of office of the members of a private irrigation board who have been removed from office would but for their removal have expired and no longer, but is eligible for re-election if otherwise qualified.
- (8) On sufficient members of a private irrigation board, by election or appointment under this section, taking office to form a quorum, the functions of the administrator cease.
- (9) If the members of a private irrigation board have been removed from office because of the board's failure or neglect as referred to in subsection (1) (b), each of those members is ineligible for election at an election ordered under this section or, if no such election is ordered, at the next election of members of the board, unless the Minister is satisfied that the failure or neglect took place without the member's knowledge or consent and, by instrument in writing, declares that the member is

eligible for election at any such election.

### **151 Abolition of private irrigation districts**

The Governor may, by proclamation published in the Gazette, abolish any private irrigation district for which a private irrigation board has not been elected.

### **152 Winding-up of private irrigation boards**

(1) If the Governor:

- (a) is of the opinion that a private irrigation board has ceased to function satisfactorily, or
- (b) is satisfied that a private irrigation board has made a request to the Minister that it be wound up,

the Governor may order that the board be wound up.

- (2) An order under subsection (1) must be published in the Gazette and must appoint a liquidator for the private irrigation board.
- (3) A winding up of a private irrigation board under this section commences on the publication of the order in the Gazette.
- (4) The regulations may make provision for or with respect to the winding up of a private irrigation board and for the disposal of any residual assets of the board.
- (5) If the Governor is satisfied that the winding up of a private irrigation board has been completed under this section, the Governor may, by proclamation published in the Gazette, abolish the board.

### **153 Employees**

- (1) Each private irrigation board may from time to time employ such persons as may be necessary to assist it in the exercise of its functions.
- (2) A person who has ceased to be a member of a private irrigation board is not eligible to be employed by the board until 6 months have elapsed after the person's so ceasing to be a member.
- (3) All employees of a private irrigation board are subject to the control and governance of the board and to the provisions of any by-laws made by the board in that behalf.
- (4) A private irrigation board may fix wages and conditions of employment of its employees if they are not fixed in accordance with the provisions of any other Act.

## **Division 4 Construction and taking over of works**

### **154 Authorised sites**

For the purposes of this Division, a site is an **authorised site** for a water supply work if:

- (a) it is the site shown on the plans that accompanied:
  - (i) the petition for the constitution of the district, or
  - (ii) any subsequent petition for the addition of lands to the district,as the site of any work proposed to be constructed as a water supply work, or is that site as varied by the Minister as a consequence of any objection to the petition, or
- (b) it is the site on which the Governor has authorised the construction or taking over of a water supply work, or
- (c) it is the site of any works of which a private irrigation board has the control, use and maintenance under this Division.

### **155 Construction, maintenance and operation of water supply works**

- (1) A private irrigation board may construct, maintain and operate any water supply work that is located on an authorised site for that work.
- (2) A private irrigation board must not exercise its powers under this section in respect of any authorised site on which are situated any existing works unless it has taken over the control, use and maintenance of those works under this Division.
- (3) For the purpose of exercising its powers under this section, a private irrigation board may enter any authorised site (not being an authorised site situated on lands that belong to, or are under the care, control or management of a public authority) and take or remove, and use, any extractive material.

### **156 Private irrigation board may apply to take over water supply works**

- (1) A private irrigation board may apply to the Minister for authority to take over any water supply work that is located on an authorised site for that work.
- (2) The application:
  - (a) must contain the names, addresses and occupations of the landholders of the lands on which the water supply work referred to in the application is or are proposed to be constructed or is or are located, and
  - (b) must be accompanied by:
    - (i) a plan showing those lands and the site on those lands of that water supply work, and



(ii) particulars of the title of those lands.

- (3) The Minister must consider any such application, and may cause a notice containing particulars of the application to be published in the Gazette and in an appropriate newspaper.

### **157 Objections to applications**

- (1) Within 28 days after the publication of the relevant notice, any person may lodge with the Minister an objection in writing to the granting of the application referred to in the notice on the ground that the granting of the application would adversely affect the person's interests.
- (2) A person may not make an objection on the ground that the person's interests would, if the petition were granted, be adversely affected for reasons relating to the quantity of water available from the river, estuary or lake from which it is proposed to take water by means of the proposed water supply work, and any objection made on that ground is not to be entertained.
- (3) An objection must state particulars of the grounds of objection.
- (4) If an objection is lodged with the Minister, the Minister must, after consultation with the objector, make a recommendation with respect to the objection.

### **158 Governor may authorise construction or taking over of water supply work**

If an objection to an application is not duly lodged, or is duly lodged but the Minister recommends that the application be granted, the Governor may, by proclamation in the Gazette, authorise the construction or taking over of the water supply work on the site concerned.

### **159 Taking over works**

- (1) A private irrigation board may serve a notice in writing on the landholder of any lands on which is situated any water supply work on an authorised site informing the landholder that the board proposes to take over the work.
- (2) The control and management of the work specified in the notice vests in the private irrigation board on and from the day specified in the notice.
- (3) A private irrigation board must not serve such a notice after the expiration of 12 months after the constitution of the private irrigation district.
- (4) A private irrigation board must not serve such a notice on any person in respect of a work that belongs to, or is under the control or management of, a public authority.

### **160 Transfer of lands**

- (1) A private irrigation board, by notice in writing served, within 12 months after the

constitution of the private irrigation district, on the landholder of any lands:

- (a) that, immediately before the constitution of the private irrigation district, were vested in the landholder as a trustee of lands supplied with water under a single water supply work approval, and
- (b) that on the constitution of the private irrigation district formed the whole or part of the private irrigation district,

may require the landholder to transfer the lands so vested to the board within such period as may be specified in the notice.

- (2) If a notice is served on a landholder under this section in respect of any land, the land is taken to be held by the landholder as a trustee for the private irrigation board by which the notice was served.

### **161 Power of entry**

- (1) A private irrigation board may, by its employees or agents, at any reasonable time enter any lands and thereon carry out any investigation or inspection, take levels, drill test bore-holes, make surveys and marks and fix pegs or stakes for the purpose of determining the site of any proposed water supply work.
- (2) A private irrigation board may, by its employees or agents, enter any lands on which is situated an authorised site for the purpose of constructing or maintaining water supply works.

## **Division 5 Compensation**

### **162 No compensation for surveys on land within private irrigation district**

- (1) A person is not entitled to compensation by reason of:
  - (a) any water supply works becoming works of which a private irrigation board has the control, use or maintenance, or
  - (b) the exercise by a private irrigation board of any of the powers of entry conferred on it by this Part on any lands within the private irrigation district of that board.
- (2) Subsection (1) (a) has effect subject to any terms and conditions embodied in a decision of the Land and Environment Court.

### **163 Compensation for surveys on lands outside private irrigation district**

Compensation is payable by a private irrigation board for all damage sustained by any person as a result of a board's exercise of its power to carry out surveys on lands outside its private irrigation district.

#### **164 Compensation where private irrigation board constructs or takes over works**

- (1) Compensation assessed in accordance with this Division is payable if a private irrigation board exercises its powers to construct or take over any water supply works.
- (2) Compensation is not payable by a private irrigation board in respect of the repair, operation or maintenance of any water supply work except in relation to damage caused by negligence and except where, in repairing, operating or maintaining any such work or works, the board causes damage to any lands outside its private irrigation district.
- (3) If immediately before the control and management of any water supply work becomes vested in a private irrigation board under this Part there was in force a legally binding agreement or arrangement between the person who then had the control and management of the work and some other landholder of land in the board's private irrigation district (being an agreement or arrangement under which that other person was entitled to exercise any powers in relation to that work):
  - (a) that agreement or arrangement is taken to be an agreement or arrangement between that board and that other person, and
  - (b) any compensation to which that other person may be entitled under this Division must be assessed, having regard to his or her obligations under that agreement or arrangement.

#### **165 Determination of amount of compensation**

If compensation is payable under this Division, the amount of compensation must be determined:

- (a) by agreement between the private irrigation board and the person entitled to claim compensation, or
- (b) if such an agreement has not been reached, by the Land and Environment Court in accordance with the provisions of this Division.

#### **166 Recovery of compensation**

Any amount payable to a claimant as compensation in accordance with this Division may be recovered from the private irrigation board as a debt in any court of competent jurisdiction.

### **Division 6 Rates and charges for water**

#### **167 Fixing of rates and charges**

- (1) As soon as practicable after 1 July in each year, a private irrigation board:
  - (a) must fix a rate per hectare, for all holdings within its private irrigation district, so

as to produce a total amount sufficient to meet the estimated liabilities of that board during that year and any outstanding liabilities of that board, and

- (b) must fix a rate per hectare for water, or a charge for the quantity of water, to be supplied during that year for domestic and stock purposes to all holdings within the private irrigation district, and
- (c) in the case of a board constituted for a private water supply and irrigation district:
  - (i) must determine the total quantity of water that it proposes to supply to all holdings for the purpose of irrigation during that year, and
  - (ii) must fix the charges in respect of the quantities of water allocated under Division 7 for that purpose in respect of all holdings within the district.

(2) The rates and charges referred to in subsection (1) (b) and (c) must be fixed so as to produce in the year for which they are fixed the amount estimated by the private irrigation board as being required in that year:

- (a) to defray the cost of constructing, maintaining and operating its water supply works, and
- (b) to pay the interest on and repay the capital of any loans raised by the board, and
- (c) to meet any outstanding liabilities of the board and the costs and expenses of administering the private irrigation district and of doing all such things as the board may lawfully do.

### **168 Special rates and charges and termination charges**

(1) For the purpose of raising money:

- (a) for the fulfilment of any contract, or
  - (b) for the payment of any debt that may be due or become due by the board, or
  - (c) for any other purpose for which the board is authorised to exercise its functions,
- a private irrigation board may from time to time fix a special rate per hectare to be paid in respect of all holdings in its private irrigation district.

(2) A private irrigation board may also fix special charges in respect of:

- (a) the quantities of water allocated for the purpose of irrigation, or
  - (b) the quantities of water determined for domestic and stock purposes,
- in respect of all holdings in its private irrigation district.

(3) In addition to any other charge that it may fix under this Part, a private irrigation

board may fix termination charges payable by a landholder or former landholder in connection with the board ceasing to supply water to the landholder or former landholder (whether because of the transformation of the landholder's water entitlement to an access licence or otherwise).

**169 Assessment and levying of rates and charges**

- (1) Rates fixed by a private irrigation board must be assessed, and must be levied as prescribed, in respect of the area of each holding within its private irrigation district.
- (2) Charges fixed by a private irrigation board for a private water supply and irrigation district must be assessed, and must be levied as prescribed, in respect of:
  - (a) the quantity of water allocated for irrigation by the board under Division 7, or
  - (b) the quantity of water determined by the board for domestic and stock purposes, in respect of each holding within the district.

**170 Assessment of rates and charges**

- (1) As soon as practicable after fixing any rates and charges, a private irrigation board must assess and levy the rates and charges.
- (2) If a private irrigation board at any time finds it has made an error in the assessment of any rates or charges for water in respect of any holding or landholder, the board may re-assess the rates or charges in respect of the holding or landholder affected and if it does so:
  - (a) must refund any amounts overpaid, and
  - (b) may levy any additional amount found to be due.

**171 Provision for determining areas of holdings**

For the purposes of fixing, assessing and levying rates under this Division, a holding that has an area equal to a number of hectares and a remaining fraction of a hectare is taken to have an area in hectares equal to one more than that number.

**172 Liability for rates and charges for water**

- (1) All amounts due and payable under this Division in respect of rates or charges are payable to the private irrigation board by the landholder of the holding in respect of which they were levied, and must be paid whether water is or is not taken by the landholder.
- (2) Rates and charges are due and payable to and recoverable by a private irrigation board on the expiration of one month after service of notice of the rates or charges.

- (3) If more than one person is an owner of the land, the rates or charges may be levied on any one or more of those persons, and a private irrigation board may recover the rates or charges from any person on whom they are so levied, but nothing in this subsection entitles the board to recover more than the full amount of the rates or charges.
- (4) If the land is owned jointly by two or more landholders, they are jointly and severally liable to the private irrigation board for the rates or charges, but as between themselves they are each liable only for such part of the rates or charges as is proportionate to their interests in the land.
- (5) If any such landholder pays to the private irrigation board more than his or her proportionate part, the landholder may recover the excess from the other or others.
- (6) If any land in a holding reverts to the Crown during any year for which rates or charges are or are to be assessed, the person who immediately before the reversion was the landholder of the land is liable for payment of only that part of the rates or charges proportionate to the part of the year for which the land was held by the person, and any excess payment by the person must be refunded to the person.

### **173 Charge on land**

- (1) Rates and charges under this Division, and any costs awarded to a private irrigation board by any court in proceedings for the recovery of any such rates and charges, are a charge on the land in respect of which the rates and charges have been levied.
- (2) A charge created by subsection (1) has no effect as against a purchaser in good faith for value who at the time of purchase made due inquiry but had no notice of the liability.
- (3) For the purposes of subsection (2), a purchaser is not taken to have made due inquiry unless the purchaser obtained a certificate from the private irrigation board as to the amount, if any, due in respect of rates, charges or costs.
- (4) The provisions of this section have effect despite anything contained in section 42 of the [Real Property Act 1900](#).

### **174 Abandonment of rates**

Rates and charges may be abandoned or written off in accordance with the by-laws made by the private irrigation board but only on the certificate of the auditor of the board that the abandonment or writing off is in accordance with the by-laws and on the unanimous resolution of the board.

### **175 Assessment book**

- (1) Each private irrigation board must cause to be kept a book or record (in this Part

referred to as the **assessment book**) in which must be recorded the following:

- (a) the name, address and occupation of each landholder of land within the private irrigation district,
  - (b) particulars of the area of each parcel of land owned by each such landholder,
  - (c) particulars identifying the separate holdings within the private irrigation district,
  - (d) particulars of the total area of land owned by all landholders,
  - (e) in the case of a board for a private water supply and irrigation district:
    - (i) particulars of the quantity of water last allocated by the board to each irrigated holding within the district, and
    - (ii) particulars of the quantity of water last determined by the board for domestic and stock purposes in respect of each such holding,
  - (f) such particulars relating to the fixing, assessing and levying of rates and charges as may be prescribed.
- (2) A private irrigation board may from time to time rectify any errors or omissions in the assessment book.

## **Division 7 Supply of water**

### **176 Determination of allocation**

As soon as practicable after it is elected, the first board for a private water supply and irrigation district must determine the quantity of water, if any, to be allocated for irrigation to each holding within the private irrigation district.

### **177 Supply of water**

At the times fixed by it, a private irrigation board:

- (a) must supply water for domestic and stock purposes (in such quantities as it may determine):
  - (i) to the boundary of each holding within its private irrigation district, and
  - (ii) to such other points as may be agreed on by the board and the landholder of the holding, and
- (b) in the case of a board for a private water supply and irrigation district, must supply water for irrigation (in the quantities allocated by it under this Division):
  - (i) to the boundary of each holding within its private irrigation district for which an allocation of water for irrigation has been made by the board, and

- (ii) to such other points as may be agreed on by the board and the landholder of the holding.

### **178 Discontinuance or reduction of supply of water**

A private irrigation board may at any time refuse to deliver water to any holding or may discontinue any delivery of water to a holding:

- (a) in the case of a holding for which it has made an allocation of water for irrigation:
  - (i) if the land to be irrigated is not in its opinion properly prepared for irrigation or on which the ditches or channels to be used for the distribution of water within the holding are in the opinion of the board inadequate or in a bad state of repair, or
  - (ii) if the water is for the irrigation of grasses or pastures that are not sown grasses or improved pastures, or
- (b) if any rates or charges for water in respect of the holding are, and have been for a period of 2 months or more after the due date of payment, unpaid, or
- (c) if the landholder of the holding does not comply with any requirement specified in a notice given to the landholder under this Division, or
- (d) if the water is being used for a purpose that is not authorised by a water use approval.

### **179 Circumstances in which private irrigation board not obliged to supply water**

- (1) Nothing in this Part requires a private irrigation board to supply water to any land or landholder if, by reason of drought, accident or otherwise, the board is of the opinion that it is impracticable to do so.
- (2) Unless the private irrigation board otherwise determines, any failure to deliver water to a holding does not relieve the landholder of the holding of any liability for payment of rates and charges, and rates and charges continue to be leviable in respect of the holding despite any such failure.

### **180 Landholders may be required to provide distribution works**

A private irrigation board may, by notice in writing given to the landholder of any holding, require the landholder:

- (a) to provide on his or her holding:
  - (i) water delivery systems of such a size and capacity as will enable water to be delivered to his or her land at not less than such rate of delivery as the board may stipulate in the notice, and
  - (ii) water storage works, in such locations and of such nature and extent as the board may stipulate in the notice, for the water to be supplied by it for domestic and



stock purposes, and

- (b) to maintain, continuously and effectively, any water delivery systems referred to in paragraph (a) (i) so that water may be carried or passed at not less than the rate so stipulated.

### **181 Sale of surplus water**

If the full quantity of water to be supplied under this Division has been supplied or, despite any sales made under this section, will be supplied, a private irrigation board may, subject to the conditions of any water supply work approval held by it, agree to sell by measure to the landholder of any holding water from the works of the private irrigation district subject to such terms and conditions as may be agreed to by the board and that landholder.

## **Division 8 Effect of new subdivisions**

### **182 Supply of water for domestic and stock purposes to new holdings resulting from subdivisions**

- (1) If a holding, whether an irrigated or non-irrigated holding, is subdivided, a new holding resulting from the subdivision is not entitled to a supply of water for domestic and stock purposes from a private irrigation board's water supply works until a date determined by the board (not being a date earlier than the date on which the board became aware of the disposition of that new holding).
- (2) If rates for a period or year ending on 30 June, being the period or year during which the date specified by a private irrigation board under subsection (1) occurred, have not, before the date so specified, been levied in respect of the holding that was subdivided, the board must levy the rates for the whole of that period or year in respect of each of the new holdings that resulted from the subdivision, and that was disposed of.

### **183 Supply of water for irrigation purposes to a new holding resulting from a subdivision**

- (1) If an irrigated holding is subdivided and any new holdings are thereby created, the private irrigation board must, subject to subsection (2), allocate to such of the new holdings as the landholder of the subdivided holding nominates the whole of the quantity of water last allocated to the holding that was subdivided.
- (2) If the landholder nominates more than one new holding to which the quantity of water is to be allocated, the private irrigation board may allocate the water to those holdings in such proportions as it determines.
- (3) A private irrigation board may allocate to such of the new holdings as the board determines the quantity of water last allocated to the subdivided holding if:
  - (a) the landholder of the subdivided holding fails to make a nomination within the

time specified by the board in a notice sent by post to the landholder at the landholder's last known address, or

- (b) a holding nominated by the landholder does not contain land capable of being irrigated from the works of the private irrigation district or to which, in the opinion of the board, it is impracticable to convey water for irrigation from those works, or
  - (c) a holding nominated by the landholder is too small to justify an allocation of water, or
  - (d) the allocation of water in the manner nominated is otherwise detrimental to the administration of the private irrigation district concerned.
- (4) If a private irrigation board makes an allocation under subsection (3), it is to notify the landholder of the subdivided holding and the landholder of each new holding of the allocation.
- (5) An allocation of water to a new holding made under this section has effect on and from a date to be specified in the instrument by which the allocation is made (not being a date earlier than the date on which the private irrigation board became aware of the first disposition of any of the new holdings resulting from the subdivision).
- (6) The landholder of a new holding resulting from a subdivision referred to in subsection (1) is not entitled to an allocation of water by the private irrigation board for irrigation purposes otherwise than in accordance with this section.
- (7) If the charges for water have not been levied for the current year for the subdivided holding, the private irrigation board must levy the charges for the whole of that year in respect of the new holding to which the water previously allocated to the subdivided holding has been allocated in accordance with this section.

#### **184 Additional works required as a result of subdivision**

- (1) The person who, immediately before the disposition of a new holding resulting from a subdivision, was the landholder of the holding (the **previous landholder**) must construct at his or her own cost such works as are necessary to provide:
- (a) means of conveying water to the new holding from the private irrigation board's water supply works and, if an allocation of water is made to the new holding for irrigation, means of measuring the water so supplied, and
  - (b) means of access from roads to any works of the private irrigation district or any works provided for the purposes of paragraph (a) if that access would not be available except by crossing a channel of the private irrigation district, and
  - (c) means of access across a channel of the private irrigation district to the new holding if that means of access is required by reason of the subdivision.

- (2) All works to be constructed under subsection (1):
  - (a) in respect of the supply of water to a new non-irrigated holding, must be constructed before the new holding is disposed of or within such period after the disposition of the new holding as the private irrigation board may in any particular case allow, and
  - (b) in respect of the supply of water to a new irrigated holding, must be constructed within such period as the private irrigation board may, by notice in writing, have notified to the landholder of the holding that was subdivided.
- (3) All works constructed or to be constructed under subsection (1) must be constructed in accordance with the approval in writing of the private irrigation board in respect of location, design, form, dimensions and construction.
- (4) At the request of the previous landholder, a private irrigation board may undertake, at the landholder's cost, the construction of any works required by this section.
- (5) A private irrigation board may construct such works as have not been constructed by the previous landholder, and any costs and expenses (including any compensation paid or payable by the board under Division 5 by reason of the construction of the works) are payable to the board either by the previous landholder or by the new landholder, as the board may determine.
- (6) If any part of the costs and expenses referred to in subsection (5) is recovered by the private irrigation board from the new landholder, the new landholder may recover from the previous landholder the whole or that part of those costs or expenses, as the case may be.
- (7) On their completion, the control and management of any works constructed under this section is vested in the private irrigation board.

## **Division 9 Meetings of landholders**

### **185 General meeting**

- (1) The chairperson of a private irrigation board may, at any time, convene a general meeting of landholders of land within the board's private irrigation district.
- (2) A private irrigation board must, within 21 days after the receipt of a requisition signed by not less than one-fifth in number of the landholders of the holdings in the private irrigation district, convene a general meeting of those landholders.
- (3) Seven days' notice of every general meeting must be sent to every landholder at the address shown in the private irrigation board's assessment book informing the landholder of the time and place of the general meeting.

### **186 Voting rights**

- (1) A corporation may, by any person authorised by it in writing, attend general meetings and vote.
- (2) If there is more than one landholder of any holding, each landholder may attend general meetings but only one of them may vote.

## **Division 10 Finance**

### **187 Books of account**

Each private irrigation board must cause to be kept, in relation to its funds, proper books of account that must be audited as often as the board considers it advisable so to do, but at least once in every year, by a registered company auditor (within the meaning of the [Corporations Act 2001](#) of the Commonwealth).

### **188 Accounts to be rendered**

Each private irrigation board must as soon as practicable, and in any case before 31 October in each year, forward to the Minister a copy of the income and expenditure account, balance sheet and rate account as last audited, together with a copy of the certificate of audit relating to them.

### **189 Banking of money**

- (1) All money received by or on account of a private irrigation board must be paid into a bank or authorised deposit-taking institution chosen by the board.
- (2) Every payment of \$2.00 or more by or on behalf of a private irrigation board must be by cheque on the bank or authorised deposit-taking institution drawn and countersigned as prescribed by the regulations.
- (3) Payments of less than \$2.00 may be made out of a petty cash fund, replenished from time to time by cheque drawn and countersigned as prescribed by the regulations.

### **190 Temporary accommodation**

- (1) For the temporary accommodation of a private irrigation board it may obtain advances by way of overdraft of current account in any one or more banks or authorised deposit-taking institutions on the security of the income of the board.
- (2) The amount of any such overdraft must be limited to:
  - (a) one-half of the income of the private irrigation board as shown by the last audited accounts, or
  - (b) if there are no audited accounts, one-half of the income of the private irrigation board estimated by the board in respect of the year commencing on 1 July

immediately preceding the date on which the overdraft is proposed to be obtained.

- (3) No greater amount may be borrowed under this section than the amount stated in a certificate of the auditor of the private irrigation board as being the sum that may be borrowed within the limits imposed by this section.

## **Division 10A Transformation of water entitlements**

### **190A Water entitlements of landholders**

- (1) A private irrigation board must, if requested to do so in writing by a landholder of an irrigated holding to which water is supplied by the board, determine the landholder's water entitlement.
- (2) A board must have regard to the following matters when determining the landholder's water entitlement:
  - (a) the nature of agricultural activities on the land,
  - (b) the amount of water currently supplied to the landholder,
  - (c) any present or past water sharing arrangements applicable to the landholder,
  - (d) any other matter it considers relevant,
  - (e) any other matter prescribed by the regulations.
- (3) A determination may specify the different parts of the landholder's water entitlement that are available to the landholder for different purposes.
- (4) A determination must be in writing and comply with the requirements prescribed by the regulations. Notice of a determination must be given in writing by the board to the landholder.
- (5) A determination may be varied or redetermined only on a further application made by the landholder within 3 months of the determination or in the circumstances prescribed by the regulations.
- (6) A person must not participate in a determination of a landholder's water entitlement if the person or a member of the person's immediate family (within the meaning of the regulations) has an interest in the entitlement.

### **190B Transformation of landholder's water entitlement**

- (1) A private irrigation board may make an application under Division 4 of Part 2 of Chapter 3 for the purpose of wholly or partly transforming a landholder's water entitlement into an access licence under this Act.

- (2) On transformation of the whole or part of a landholder's water entitlement to an access licence:
  - (a) the landholder is not entitled to vote (as a member of the private irrigation board or as a landholder within the private irrigation district) on any matter relating to the transformation of one or more other landholders' water entitlements or the supply of water to landholders who have not transformed their water entitlements, and
  - (b) the board may continue to exercise functions in relation to any works that are located on the landholding for which it exercised functions immediately before the transformation (whether or not the board is to deliver the landholders' water entitlement under the access licence or the landholding remains in the private irrigation district).
- (3) If the whole of a landholder's water entitlement is transformed and the landholder does not have a right to the delivery of that water by the board:
  - (a) the landholder is not entitled to vote as a landholder within the private irrigation district, and
  - (b) the board must not fix rates and charges in respect of the landholder's landholding for that water (other than termination charges).
- (4) The regulations may make provision for or with respect to:
  - (a) other circumstances in which a landholder whose landholder's water entitlement has been transformed ceases to be a voting member, and
  - (b) the voting rights of landholders who have partially transformed their landholders' water entitlements.
- (5) A board may require a landholder to provide security as a condition of consent to transformation of the whole or part of the landholder's water entitlement, subject to the regulations.
- (6) Without limiting subsection (5), the following kinds of security may be required by a board:
  - (a) a charge over a part of an irrigation right that is not transformed,
  - (b) a charge over an access licence or other entitlement to water acquired by the person and resulting from the transformation,
  - (c) a guarantee by an authorised deposit-taking institution,
  - (d) a deposit lodged with the board.
- (7) In addition to any other charges it may fix under this Part, a board may fix the

following charges:

- (a) (Repealed)
- (b) charges payable by a landholder for the delivery of water after transformation of the whole or part of the landholder's water entitlement.

## **Division 11 Miscellaneous**

### **191 Delegation**

A private irrigation board may by instrument in writing delegate:

- (a) to any member of the board, or
  - (b) to any employee of the board,
- any of its functions, other than this power of delegation.

### **192 Assessment book admissible as evidence**

In any legal proceedings for the recovery of rates or charges:

- (a) a private irrigation board's assessment book, or
- (b) any document purporting to contain a copy of any part of a private irrigation board's assessment book that is certified as a true copy by the chairperson of the private irrigation board, or by a person authorised by the chairperson in that regard,

is admissible in evidence.

### **193 Service of notice of proceedings on a private irrigation board**

Any document required to be served on a private irrigation board may be served:

- (a) by leaving it with some person apparently employed by the board at the office of the board, or
- (b) by posting it to the board at its office.

### **194 Recovery of rates**

Any rates, charges or money due to a private irrigation board under this Part may be recovered as a debt in a court of competent jurisdiction.

### **195 Amendment of proclamations**

Any proclamation under this Part may be amended by a further proclamation for the purpose of correcting any error in the earlier proclamation.

## **196 By-laws**

- (1) A private irrigation board may, with the approval of the Governor, make by-laws not inconsistent with this Act or the regulations for or with respect to the following:
  - (a) the convening and holding of general meetings of landholders,
  - (b) the appointment by a landholder of a proxy for voting purposes,
  - (c) the supply of water for domestic and stock purposes or for irrigation,
  - (d) the provision of storages on holdings for water supplied from the water supply works of the board for domestic and stock purposes,
  - (e) the methods of measuring water supplied,
  - (f) the sale of water to landholders,
  - (g) regulating the use of the water supply works of the board,
  - (h) the prevention of waste of water,
  - (i) the fixing, assessing and levying of rates and charges for water,
  - (j) the class of case in which, and the circumstances in which, rates and charges may be abandoned or written off,
  - (k) the accounts of the board,
  - (l) the collection and banking of money, and the signing and countersigning of cheques,
  - (m) the books and records of the board,
  - (n) the access of members of the board to documents and books of the board,
  - (o) fees for any service provided by the board,
  - (p) the form of any notice or other document to be prepared, issued or received in accordance with this Part or any regulations of the board,
  - (q) any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) A by-law may create an offence punishable by a penalty not exceeding 0.5 penalty units.



## Part 3 Private drainage boards

### Division 1 Preliminary

#### 197 Application of Part

This Part applies to all drainage unions under the former *Drainage Act 1939* that were in existence immediately before the repeal of that Act, but does not authorise the establishment of any new drainage unions.

#### 198 Definitions

In this Part:

**director** means director of a private drainage board.

**drain** includes a natural watercourse.

**drainage district** means the area in respect of which a drainage union is constituted, having boundaries as varied from time to time in accordance with this Part.

**private drainage board** means board of directors of a drainage union.

#### 199 Requirements for access licences and approvals

Nothing in this Part authorises a private drainage board or landholder to do anything for which this Act requires an access licence or approval unless the private drainage board or landholder holds an appropriate access licence or approval.

### Division 2 Private drainage boards

#### 200 Private drainage boards

Each private drainage board is a corporation under the corporate name by which it was constituted.

#### 201 Appointment and election of directors

- (1) A private drainage board is to have not less than 3, and not more than 7, directors.
- (2) If any Crown lands are included in the private drainage board's district, one of the directors is to be appointed by the Minister (the **appointed director**).
- (3) The remaining directors (the **elected directors**) are to be elected by landholders within the drainage district.
- (4) The regulations may make provision for or with respect to:
  - (a) the conduct of elections for the elected directors of a private drainage board, and

- (b) other matters concerning the constitution and procedure of a private drainage board.

## **202 Functions of private drainage boards**

- (1) A private drainage board has the following functions:
  - (a) to prepare, review and implement a management program for its drainage district,
  - (b) to maintain in a state of efficiency the drainage works under its charge, and renew such drainage works if necessary,
  - (c) to construct, alter, or extend any drainage works in accordance with any authority and consent given under this Part,
  - (d) to make, levy and collect rates,
  - (e) to appoint such officers and employees as may be required,
  - (f) to institute legal proceedings for the recovery of outstanding rates or other amounts,
  - (g) to keep the prescribed books and accounts,
  - (h) to manage the affairs of the drainage union,
  - (i) to do such acts as may be necessary or desirable for carrying out the purposes of this Part.
- (2) No drainage works affecting navigable waters (within the meaning of the *Protection of the Environment Operations Act 1997*) are to be commenced without the approval of the Governor.

## **203 Entry on lands**

- (1) A private drainage board or any person authorised by it may enter any land within or outside its drainage district:
  - (a) for the purpose of making inspections or surveys, and
  - (b) for the purpose of constructing, maintaining and effecting extensions and alterations to the drainage works, and
  - (c) for any other purpose in the exercise of its powers and duties.
- (2) The private drainage board must make full compensation for damage occasioned to any land in the exercise of its powers and duties under this Part.

#### **204 Extension of drainage works**

A private drainage board is to carry out such extensions of drainage works as are authorised by a majority of votes cast at a general meeting at which a quorum is present.

#### **205 Amendment of boundaries**

- (1) The boundaries of a drainage district may from time to time, on application by the private drainage board, be amended by the Governor.
- (2) Any such application must contain particulars of the lands proposed to be added to or excised from the drainage district, and that have or are capable of being increased in value or that have decreased in value respectively by reason of the operations of the private drainage board.
- (3) The Minister must cause notice of any such application to be published in an appropriate newspaper.
- (4) The notice must:
  - (a) give particulars of the lands proposed to be added to or excised from the drainage district, and
  - (b) appoint a time (not being earlier than 8 weeks after the date of publication of the notice) and place at which objections may be lodged.
- (5) After expiration of the appointed time and on consideration of any objection lodged the Minister may recommend and the Governor may approve an application with such modification, if any, as the Minister, on investigation, may recommend.
- (6) The approval of the Governor, and particulars of the alterations made in the boundaries of the drainage district, must be notified by the Minister in the Gazette.
- (7) As from the date of publication of such notification, the boundaries of the drainage district are taken to be altered accordingly.

### **Division 3 Finance**

#### **206 Rates**

- (1) A private drainage board may, in respect of each landholding within its area of operations, fix, assess and levy rates in order to provide funds to enable it to exercise its functions.
- (2) Rates levied by a private drainage board are payable by the persons, and at the times, prescribed by the regulations.
- (3) A private drainage board may impose a charge for a service provided by it otherwise than by means of a drainage management work.

- (4) A private drainage board is to keep the records prescribed by the regulations in connection with the rates fixed, assessed and levied by it.

### **207 Annual estimates**

For each year commencing 1 January, the private drainage board must cause an estimate to be made of the amount required for that year for the following purposes:

- (a) construction, maintenance, extension and alteration of drainage works,
- (b) payment to the Treasurer of any amounts due or becoming due,
- (c) repayment of loans, and payment of interest thereon,
- (d) defraying costs of administration,
- (e) meeting all other expenditure whatsoever in carrying out its powers, authorities, duties and functions,
- (f) the preparation and implementation of management programs.

### **208 Irregularities**

If for any reason any rate is not made within or by the time prescribed by or under this Part, or if any irregularity in making or levying any rate affects or may be considered to affect the validity of any rate, the Governor may extend the time for the making of the rate, and may authorise the doing by the private drainage board of such acts as may be necessary to cure the irregularity and to validate the rate.

### **209 Rate book**

- (1) Every rate must be entered in a rate book which must be in the prescribed form.
- (2) An alteration or amendment in the rate book may be made in respect of any rate by altering such of the particulars entered therein as may be prescribed.
- (3) An alteration or amendment in the rate-book has effect on adoption by the private drainage board as though made when the rate was made.
- (4) An alteration or amendment in the rate-book made in conformity with a resolution of the private drainage board must be made in the prescribed manner.

### **210 Due date**

Every rate becomes due and payable to and recoverable by the private drainage board on the expiration of one month after service of the rate notice.

### **211 Liability of owner**

Except where this Part otherwise expressly provides, every rate is to be paid to the private

drainage board by the owner of the land in respect of which the rate is levied.

### **212 Liability of current owner**

- (1) If a private drainage board is for any reason unable to recover any amount owing by way of rates from the owner of any land, the private drainage board may serve on any tenant of that land a notice requiring that any rent then due or thereafter to become due by the tenant in respect of the land be paid by the tenant as it falls due to the board in liquidation of the amount owing.
- (2) In default of payment of rent, the private drainage board may recover from the tenant of the land the amount owing as a debt in any court of competent jurisdiction.
- (3) Any payment to the private drainage board under this section constitutes a valid discharge to the payer for such rent as against all other persons.
- (4) Nothing in this section applies to a person who is a tenant for or on behalf the Crown, as an officer or employee of the Crown or as an employee of a local council.

### **213 Lessees of land owned by the Crown**

- (1) If the land is owned by the Crown and is held by any person under a lease from the Crown, the rate must be paid to the private drainage board by the holder of the lease.
- (2) If the land is held under a lease from the Crown by two or more persons successively in the same year, the private drainage board may do any of the following:
  - (a) it may make such adjustment (if any) of the rate, whether paid or unpaid, as it thinks proper between such persons,
  - (b) it may recover from each of such persons that person's proportion of the rate as fixed by the adjustment,
  - (c) it may make any refund in accordance with the adjustment,
  - (d) it may write off any amount in respect of the interval between those persons' holdings.

## **Division 4 Effect of new subdivisions**

### **214 Connections to new holdings resulting from subdivisions**

- (1) If a holding is subdivided, a new holding resulting from the subdivision is not entitled to be connected to a private drainage board's drainage works until a date determined by the board (not being a date earlier than the date on which the board became aware of the disposition of that new holding).
- (2) If rates for a period or year ending on 30 June, being the period or year during which the date determined by the board under subsection (1) occurred, have not, before the

date so determined, been levied in respect of the holding that was subdivided, the board must levy the rates for the whole of that period or year in respect of each of the new holdings that resulted from the subdivision, and that was disposed of.

### **215 Additional works required as a result of subdivision**

- (1) The person who, immediately before the disposition of a new holding resulting from a subdivision of land within a private drainage board's drainage district, was the landholder of the holding (the **previous landholder**) must construct at his or her own cost such works as are necessary to provide:
  - (a) means of conveying water to the board's drainage works from the new holding, and
  - (b) means of access from roads to any works of the board or any works provided for the purposes of paragraph (a) if that access would not be available except by crossing a channel of the drainage district, and
  - (c) means of access across a channel of the drainage district to the new holding if that means of access is required by reason of the subdivision.
- (2) All works to be constructed under subsection (1) must be constructed before the new holding is disposed of or within such period after the disposition of the new holding as the board may in any particular case allow.
- (3) All works constructed or to be constructed under subsection (1) must be constructed in accordance with the approval in writing of the board in respect of location, design, form, dimensions and construction.
- (4) At the request of the previous landholder, the board may undertake, at the landholder's cost, the construction of any works required by this section.
- (5) The board may construct such works as have not been constructed by the previous landholder, and any costs and expenses are payable to the board either by the previous landholder or by the new landholder, as the board may determine.
- (6) If any part of the costs and expenses referred to in subsection (5) is recovered by the board from the new landholder, the new landholder may recover from the previous landholder the whole or that part of those costs or expenses, as the case may be.
- (7) On their completion, the control and management of any works constructed under this section is vested in the board.

## **Division 5 Miscellaneous**

### **216 Dissolution**

- (1) When all amounts due by the private drainage board of any drainage union have been

repaid, the landholders (being not less than one-third in number of those within the drainage district) may present a petition to the Governor for the dissolution of the union.

- (2) The Governor may notify such petition in an appropriate newspaper, and if no sufficient cause to the contrary is shown by other landholders within the drainage district, may proclaim that the union is dissolved.
- (3) (Repealed)
- (4) The regulations may make provision for or with respect to the winding up of a private drainage board and for the disposal of any residual assets of the board.
- (5) If the Governor is satisfied that the winding up of a private drainage board has been completed under this section, the Governor may, by proclamation published in the Gazette, abolish the board.

### **217 Debts**

Any rate, charge, fee, or money due to a private drainage board under the provisions of this Part or of any regulation under this Part may be recovered as a debt or liquidated demand in any court of competent jurisdiction.

### **218 Accounts**

- (1) The accounts of a private drainage board must be audited once every year.
- (2) A private drainage board must each year publish in an appropriate newspaper a statement of the receipts and payments or alternatively of the income and expenditure for the next preceding year, certified under the hands of the chairperson of the board or manager and the auditor, or forward a copy of such statement to each landholder of land within the drainage district.
- (3) The private drainage board must forward a copy of the statement to the Minister.

### **219 Regulations**

The regulations may make provisions for or with respect to the following matters:

- (a) the appointment, payment and dismissal of officers and employees of a drainage board,
- (b) the making and levying of rates and the time within which rates must be made,
- (c) the keeping of accounts of private drainage boards,
- (d) the qualifications to be held by auditors appointed by a private drainage board.

## Part 4 Private water trusts

### Division 1 Preliminary

#### 220 Application of Part

This Part applies to all private water trusts under Part 3 of the former [Water Act 1912](#) that were in existence immediately before the repeal of that Part, but does not authorise the establishment of any new private water trusts.

#### 221 Definitions

In this Part:

**landholder's water entitlement** means the part of the share component of an access licence held by or on behalf of a private water trust that is available to a landholder for irrigation.

**member**, in relation to a private water trust, means a member appointed or elected under section 223.

**private water trust** means a trust constituted under Part 3 of the former [Water Act 1912](#).

**ratepayer** means person paying rates in respect of land within a water supply district.

**water supply district** means the district in respect of which a private water trust is constituted.

#### 222 Requirements for access licences and approvals

Nothing in this Part authorises a private water trust or landholder to do anything for which this Act requires an access licence or approval unless the private water trust or landholder holds an appropriate access licence or approval.

### Division 2 Private water trusts

#### 223 Appointment and election of members

- (1) For private water trusts with 3 members, 1 is to be appointed by the Minister, and 2 are to be elected.
- (2) For private trusts with 5 members, 2 are to be appointed by the Minister, and 3 are to be elected.
- (3) One of the members appointed by the Minister is to be appointed as chairperson.
- (4) The regulations may make provision for or with respect to:
  - (a) the conduct of elections for the elected members of a private water trust, and



(b) other matters concerning the constitution and procedure of a trust.

#### **224 Alteration of water supply districts**

- (1) If two-thirds of the landholders of lands within any area sign and forward to the Minister a petition that such area be included in a water supply district, the Minister must, unless of the opinion that the petition should be refused, refer the petition to the members of the private water trust for the district.
- (2) On receipt from the members of notice that the proposed alteration has been approved by a special general meeting of the voters of the trust, of which at least 14 days' notice has been given in the prescribed manner, the Minister may, by notification in the Gazette, alter the boundaries of the district accordingly.

#### **225 Removal of land from water supply district**

- (1) If any lands within a water supply district have not benefited from the water management works of the private water trust for a continuous period of 3 years or more and the landholder of such lands applies to the Minister for the lands to be excised from the water supply district, the Minister must refer the application to the members of the private water trust for the district.
- (2) The members must refer the question of the proposed excision of the lands from the water supply district to a special general meeting of the voters of the trust (of which at least 14 days' notice has been given in the prescribed manner) and must convey to the Minister the decision of the voters.
- (3) The members must also advise the Minister as to:
  - (a) the reasons why such lands have not so benefited or have ceased so to benefit, and
  - (b) the practicability or otherwise of extending or improving the water management works of the trust so as to benefit the said lands, and
  - (c) the effect that the granting of the request would have on the general administration and finances of the trust.
- (4) The Minister is then to decide whether or not the whole or any part of the lands referred to in the request are to be excised from the water supply district.
- (5) The Minister may, by notification in the Gazette, excise such lands from the water supply district and on the publication of such notification the water supply district is taken to be altered accordingly.

#### **226 Union of trusts**

On the joint application of members of any two adjoining water supply districts, duly

approved by a majority of the voters of each district at separate special general meetings (of which at least 14 days' notice has been given in the prescribed manner), the Minister may, by notification in the Gazette, transfer any part of one water supply district to the other water supply district.

## **Division 3 Functions of members**

### **227 Duties of members**

The members of a private water trust have the function of maintaining and administering the trust's works.

### **228 Powers and duties of members**

- (1) The members of a private water trust have and may exercise the following functions:
  - (a) to establish and maintain a management program for the water supply district,
  - (b) to maintain in a state of efficiency the water management works under their charge and renew such works if necessary,
  - (c) to fix and levy rates to provide for the maintenance, renewal and management of such water management works, and for interest, charges, and a sinking fund,
  - (d) to keep proper accounts of all money received and paid,
  - (e) to pay to the Treasury, at such times as may be fixed by the Minister, the interest and charges payable by them, and if necessary make due provision for a sinking fund,
  - (f) to appoint, with the approval of the Minister, such officers or employees as may be required,
  - (g) to borrow money, but only as provided in this section.
- (2) A loan by way of limited overdraft may be obtained for the purpose of meeting necessary legitimate expenditure prior to the collection of rates or for the purpose of carrying out urgent works of renewal, or replacement, or other emergency, for which sufficient funds are not immediately available.
- (3) On application by the members of a private water trust the Minister may issue a certificate of limit of overdraft, in which must be named the purpose in respect of which the loan may be obtained and the limit of amount to be borrowed.
- (4) The sum to be stated in the certificate as the limit of the overdraft is in the discretion of the Minister, but must not exceed the estimated amount required for the purpose mentioned therein plus 10% of such amount.
- (5) The loan is subject to any conditions inserted by the Minister in the certificate, and

the money borrowed is taken to be secured on the income of the trust and must be repaid within the time fixed in the certificate.

- (6) All sums received on account of a trust's sinking fund must be carried by the Treasurer to a special account, to be called "The Water Supply Loan Redemption Fund", and all other sums to the Consolidated Fund.
- (7) The members of a private water trust may on application by any ratepayer defer or suspend payment of rates by the ratepayer for such period or periods and on such terms and conditions as the Minister may approve.

## **229 Supply of water**

- (1) The members of a private water trust may for the more beneficial use or efficient distribution of the water supplied by the trust's water supply works:
  - (a) cease to supply water through any portion of the works in the water supply district or to any lands within such district, or
  - (b) deviate the course of a water supply work or otherwise alter in any way the works in the water supply district.
- (2) Before taking any such action, the members must obtain the written consent of any ratepayer:
  - (a) whose benefit from those works will be diminished by the action of the members, or
  - (b) the supply of water or means of supply of water to whose lands will be affected, and must also obtain the written approval of the Minister of the members' proposed action.
- (3) The members of a private water trust may cut off or withhold the supply of water to any land:
  - (a) if any meter used to measure such supply or any outlet is out of repair or, in the opinion of the members, unsatisfactory for the expeditious or effective supply of water to such land, or
  - (b) if, in the opinion of the members, such course is necessary owing to drought or any accident or other unavoidable cause, or
  - (c) if the landholder or person requiring a supply of water neglects to comply with the lawful requirements of the members as to the installation of outlets or meters or instruments for measuring the quantity of water, or
  - (d) if the landholder or person requiring a supply of water neglects to comply with any lawful requirements of the members to repair or alter water connections, outlets,

channels, ditches, pipes, fittings or appliances connected to the water management works under the control of the members, or

- (e) if the landholder of the land fails to take such steps as may be necessary to ensure compliance with any order or public notice of the members requiring consumers of water to economise its use in time of drought or scarcity of supply, or
- (f) if any rates fixed and levied in respect of the land are, after the due date of payment, unpaid and approval to the supply of water to the land being cut off or withheld is given:
  - (i) if the trust was constituted by 3 members, by the chairperson of the trust and all the elected members, or
  - (ii) if the trust was constituted by 5 members, by the chairperson of the trust and a majority of the elected members.

(4) If the Minister:

- (a) reduces or discontinues the supply of water to the members of a private water trust, or
- (b) directs the members of a private water trust:
  - (i) to reduce the quantity of water being taken or diverted by them from any water source, or
  - (ii) to discontinue the taking or diverting of water from a water source,

the members may reduce or cut off or withhold the supply of water to any land.

- (5) The cutting off or withholding or reduction of the supply of water by the members of a private water trust under this section does not affect the liability of the ratepayer in respect of the rates on the land the supply of water to which has been cut off, withheld or reduced.

### **230 Power of members to enter and inspect**

In the exercise of their functions, by themselves or their officers, the members of a private water trust may enter any land within the water supply district and make any inspection or survey they consider necessary, and effect repairs or alterations to any water management works, but in so doing must avoid, as far as practicable, causing any loss, injury or damage.

### **231 No compensation**

No compensation is payable in connection with a private water trust's exercise of its functions under this Part.

## Division 4 Rating

### 232 Rates

- (1) For the purpose of providing money in connection with the exercise of their functions under this Part, the members of a private water trust may fix and levy rates on the lands within the water supply district as follows:
  - (a) in connection with the supply of water for stock purposes:
    - (i) a rate per hectare of the land benefited by the water management works must be fixed, or
    - (ii) if water is supplied down a natural channel, a rate per kilometre of the lands so benefited, measured according to the frontage to the channel, may be fixed,  
  
which rate may vary in proportion to the benefit received,
  - (b) in connection with the supply of water for domestic purposes, a rate for each separate holding in the water supply district must be fixed, which rate may vary in proportion to the benefit received,
  - (c) in connection with the construction and maintenance of flood works, a rate per hectare of the land benefited by the works must be fixed, which rate may vary:
    - (i) according to the distance of the land from works for the prevention of floods or the control of flood waters, and
    - (ii) in proportion to the benefit received,
  - (d) in connection with irrigation, a rate must be levied on the land within the water supply district:
    - (i) that is suitable for production under irrigation, and
    - (ii) that is accessible to the works of the trust by means of recognised methods of irrigation.
- (2) If land is liable for rates under subsection (1) (d), the members of a private water trust may, in fixing the rate, fix different amounts for different parts of the land, having regard to:
  - (a) the fact that any such part is or is not actually used for production under irrigation, or
  - (b) the type of production under irrigation for which any such part is used.
- (3) In any case for which this section does not provide, a rate per hectare of the land

benefited, directly or indirectly, by the works must be fixed yearly, and must, as far as practicable, be in proportion to the benefit received.

- (4) In the case of a supply for more than one purpose, separate rates may be fixed, calculated on the basis set out for each such purpose.
- (5) All rates are a charge on the land in respect of which they are levied and are payable by the landholder.
- (6) Any landholder aggrieved by the amount of a rate may appeal to the Local Court, which must hear and determine the matter, and may confirm or vary such amount.
- (7) If in any such appeal the Local Court reduces the amount at which the appellant is rated, it must increase the other ratings of the trust in such amounts as it thinks just, if it considers such course necessary, in order to secure that the total amount to be received by the trust for rates is not to be diminished by the reduction.
- (8) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

### **233 Supplementary rating powers**

- (1) If the members of a private water trust are unable to meet the cost of administration or of an extension or improvement of the works under their control or other liability, they may in writing petition the Minister to approve an increase in the maximum rate that may be assessed by them, and must set out in such petition the reasons for their request.
- (2) The Minister must inform the members whether or not the Minister is prepared to grant their petition and, if so, must inform them of the maximum rate that the Minister is prepared to approve.
- (3) The members must submit the proposed increase in maximum rate that the Minister is prepared to approve to a special general meeting of the voters of the trust (of which at least 14 days' notice has been given in the prescribed manner).
- (4) The members must report to the Minister whether an affirmative or negative vote has been carried at the meeting.
- (5) If an affirmative vote has been cast the Minister must grant the petition of the members by notification sent to them and published in the Gazette, and thereafter the members may assess rates to the maximum approved by the Minister.

### **234 Surplus water**

When a private water trust has any surplus water that is not required for the purpose for which the trust was constituted, the trust may sell the water, by measure or otherwise:

- (a) to any ratepayer for any other purpose, or
- (b) if no ratepayer requires it, to any other person.

### **235 Accounts**

- (1) The members of a private water trust must submit to the Minister once every year, and at such other times as the Minister may direct, an audited statement of the accounts of the trust.
- (2) The Minister may, if of opinion that the audited statement is defective or unsatisfactory, appoint an auditor to prepare a proper statement of accounts, at the cost of the trust.

## **Division 5 Effect of new subdivisions**

### **236 Supply of water to new holdings resulting from subdivisions**

- (1) If a holding is subdivided, a new holding resulting from the subdivision is not entitled to a supply of water from a private water trust's water supply works until a date determined by the trust (not being a date earlier than the date on which the board became aware of the disposition of that new holding).
- (2) If rates for a period or year ending on 30 June, being the period or year during which the date determined by the trust under subsection (1) occurred, have not, before the date so determined, been levied in respect of the holding that was subdivided, the trust must levy the rates for the whole of that period or year in respect of each of the new holdings that resulted from the subdivision, and that was disposed of.

### **237 Additional works required as a result of subdivision**

- (1) The person who, immediately before the disposition of a new holding resulting from a subdivision of land within a private water trust's water supply district, was the landholder of the holding (the **previous landholder**) must construct at his or her own cost such works as are necessary to provide:
  - (a) means of conveying water to the new holding from the trust's water supply works, and
  - (b) means of access from roads to any works of the trust or any works provided for the purposes of paragraph (a) if that access would not be available except by crossing a channel of the water supply district, and
  - (c) means of access across a channel of the water supply district to the new holding if that means of access is required by reason of the subdivision.
- (2) All works to be constructed under subsection (1) must be constructed before the new holding is disposed of or within such period after the disposition of the new holding as

the trust may in any particular case allow.

- (3) All works constructed or to be constructed under subsection (1) must be constructed in accordance with the approval in writing of the trust in respect of location, design, form, dimensions and construction.
- (4) At the request of the previous landholder, the trust may undertake, at the landholder's cost, the construction of any works required by this section.
- (5) The trust may construct such works as have not been constructed by the previous landholder, and any costs and expenses are payable to the trust either by the previous landholder or by the new landholder, as the trust may determine.
- (6) If any part of the costs and expenses referred to in subsection (5) is recovered by the trust from the new landholder, the new landholder may recover from the previous landholder the whole or that part of those costs or expenses, as the case may be.
- (7) On their completion, the control and management of any works constructed under this section is vested in the trust.

## **Division 5A Water entitlements**

### **237A Water entitlements of landholders**

- (1) The members of a private water trust must, if requested to do so in writing by a landholder of a landholding within the water supply district of the trust to which water is supplied by the trust for irrigation, determine the landholder's water entitlement.
- (2) The members of the trust must have regard to the following matters when determining the landholder's water entitlement:
  - (a) the nature of agricultural activities on the land,
  - (b) the amount of water currently supplied to the landholder,
  - (c) any present or past water sharing arrangements applicable to the landholder,
  - (d) any other matter they consider relevant,
  - (e) any other matter prescribed by the regulations.
- (3) A determination may specify the different parts of the landholder's water entitlement that are available to the landholder for different purposes.
- (4) A determination must be in writing and comply with the requirements prescribed by the regulations. Notice of a determination must be given in writing by the members of the trust to the landholder.
- (5) A determination may be varied or redetermined only on a further application made by



the landholder within 3 months of the determination or in the circumstances prescribed by the regulations.

- (6) A person must not participate in a determination of a landholder's water entitlement if the person or a member of the person's immediate family (within the meaning of the regulations) has an interest in the entitlement.

**237B Transformation of landholder's water entitlement**

- (1) The holders of an access licence for the water supply district of a private water trust may make an application under Division 4 of Part 2 of Chapter 3 for the purpose of wholly or partly transforming a landholder's water entitlement into an access licence under this Act.
- (2) On transformation of the whole or part of a landholder's water entitlement to an access licence:
- (a) the landholder is not entitled to vote (as a member of the trust or as a voting member in the water supply district) on any matter relating to the transformation of one or more other landholders' water entitlements or the supply of water to landholders who have not transformed their water entitlements, and
  - (b) the members of the trust and the trust may continue to exercise functions in relation to any works that are located on the landholding for which they exercised functions immediately before the transformation (whether or not the trust is to deliver the landholders' water entitlement under the access licence or the landholding remains in the water supply district of the trust).
- (3) If the whole of a landholder's water entitlement is transformed and the landholder does not have a right to the delivery of that water by the trust:
- (a) the landholder is not entitled to vote as a landholder within the water supply district of the trust, and
  - (b) the trust must not fix rates and charges in respect of the landholder's landholding for that water (other than termination charges).
- (4) The regulations may make provision for or with respect to:
- (a) other circumstances in which a landholder whose landholder's water entitlement has been transformed ceases to be a voting member in the water supply district of the trust, and
  - (b) the voting rights of landholders who have partially transformed their landholders' water entitlements.
- (5) The members of a trust may require a landholder to provide security as a condition of consent to transformation of the whole or part of the landholder's water entitlement,

subject to the regulations.

- (6) Without limiting subsection (5), the following kinds of security may be required by the members of a trust:
  - (a) a charge over a part of an irrigation right that is not transformed,
  - (b) a charge over an access licence or other entitlement to water acquired by the person and resulting from the transformation,
  - (c) a guarantee by an authorised deposit-taking institution,
  - (d) a deposit lodged with the trust.
- (7) In addition to any other charges it may fix under this Part, the members of a trust may fix the following charges:
  - (a) (Repealed)
  - (b) charges payable by a landholder for the delivery of water after transformation of the whole or part of the landholder's water entitlement.

## **Division 6 Miscellaneous**

### **238 Minister may remove members and Governor may dissolve trust**

- (1) In the event of any delay in the election of members of a private water trust or in the event of any default by members of a private water trust in the discharge of their duties under this Part or of the ratepayers failing to elect members, or the required number of members, the Minister may, by notification in the Gazette:
  - (a) remove a member or members from office, and direct the election of another member or other members, or
  - (b) remove a member or members (if any) and assume all of the functions of the members, and may appoint a manager of the affairs of the trust.
- (2) The Minister may at any time direct the election of members of a private water trust, and on such election all of the functions of the members are revested in the members.
- (3) (Repealed)
- (4) The regulations may make provision for or with respect to the winding up of a private water trust and for the disposal of any residual assets of the trust.
- (5) If the Governor is satisfied that the winding up of a private water trust has been completed under this section, the Governor may, by proclamation published in the Gazette, abolish the trust.

### **238A Termination charges**

In addition to any other charge that they may fix under this Part, the members of a private irrigation trust may fix termination charges payable by a landholder or former landholder in connection with the trust ceasing to supply water to the landholder or former landholder (whether because of the transformation of the landholder's water entitlement to an access licence or otherwise).

### **239 Regulations**

The regulations may make provision for or with respect to the following matters:

- (a) the election of members of a private water trust and the making and revision of the rolls of voters, and the mode of voting,
- (b) the intervals within which meetings of members of a private water trust must be held,
- (c) the procedure at such meetings,
- (d) the appointment, payment, and dismissal of officers and employees of a private water trust,
- (e) the fixing and notifying of rates,
- (f) the hearing of appeals,
- (g) prescribing the method or methods to be adopted to determine the quantity of water for which payment is to be made by the trust,
- (h) the keeping of the accounts of private water trusts,
- (i) regulating the payment to the Crown of interest and charges by private water trusts,
- (j) regulating special meetings of voters of a private water trust in pursuance of this Part.

## **Chapter 5 Public works**

### **Part 1**

**240-252 (Repealed)**

### **Part 2 Hunter Valley flood mitigation works**

#### **Division 1 Preliminary**

##### **253 Application of Part**

This Part applies to and in respect of land in the Hunter Valley.

## 254 Definitions

In this Part:

**Hunter River** includes all tributaries that, directly or indirectly, flow into the Hunter River, and includes the estuary of the Hunter River and all arms and branches of that estuary.

**Hunter Valley** means the catchment area of the Hunter River, and includes the land shown on the plan marked "DWR PLA No 20/2551" held by the Department, and also includes such other land as is declared by the regulations to form part of the Hunter Valley.

**levee bank** means a levee bank designed or intended for the purpose of or that could or might have the effect of excluding or partially excluding the waters of the Hunter River or waters overflowing from the Hunter River from any land.

**protective works** means works for the protection of any works vested in or otherwise under the control of a public authority:

- (a) against flooding by waters overflowing from the Hunter River, or
- (b) against the effects of any such flooding, or
- (c) against the effects of river bank erosion.

**tree** includes sapling and shrub.

## Division 2 Powers of Minister

### 255 Restriction on use of lands adjacent to levee banks

(1) If a levee bank has been constructed adjacent to the Hunter River, the Minister may, by notice in writing to:

- (a) the landholder of the land on which the levee bank has been constructed, or
- (b) the landholder of any land adjacent to the levee bank, or
- (c) the landholder of the whole or any part of the land lying between the levee bank and the Hunter River,

impose such conditions and restrictions on the use of such levee bank or land as the Minister considers necessary or desirable to ensure the stability of the levee bank and in the interests of flood prevention or mitigation within the Hunter Valley generally.

- (2) The Minister may in the like manner revoke or vary any notice given in pursuance of this section.
- (3) If any landholder to whom such a notice has been given contravenes any condition or restriction imposed by the notice, the Minister:

- (a) may authorise any person to enter the land to which such notice relates, and to take such remedial measures on that land as the Minister considers necessary, and
  - (b) may recover any cost incurred in so doing from the landholder in any court of competent jurisdiction as a debt due and owing to the Crown.
- (4) If under this section conditions or restrictions on the use of any levee bank or land are imposed by the Minister, the landholder of the levee bank or land is entitled to claim and be paid compensation for any loss sustained by reason of those conditions or restrictions.

## **256 Construction of fences, structures and flood works**

- (1) A person must not:
- (a) construct any building, fence or structure in, on, or adjacent to, a levee bank, or
  - (b) construct a flood work on a floodplain,
- except with the consent of the Minister.
- Tier 2 penalty.
- (2) The Minister's consent may be given unconditionally or subject to conditions.
- (3) An authorised officer:
- (a) may enter any lands on which any building, fence or flood work has been constructed otherwise than in accordance with the Minister's consent, and
  - (b) may take such measures as are necessary to demolish or remove the building, fence or flood work or to render the flood work ineffective.
- (4) The costs incurred by an authorised officer under this section are recoverable from the landholder as a debt in a court of competent jurisdiction.
- (5) The Minister may, by notice published in the Gazette, exclude any lands from a floodplain.
- (6) In this section, **floodplain** means any lands declared to be within the floodplain of the Hunter River by a proclamation in force under section 16 of the former *Hunter Valley Flood Mitigation Act 1956*, other than lands excluded from the floodplain by a notice published under this section.

## **Division 3 Finance**

### **257 Accounts to be kept in Special Deposits Account**

There is to be established in the Special Deposits Account an account to be called the

“Hunter Valley Flood Mitigation Account”.

**258 Allocation of money**

- (1) Within the Hunter Valley Flood Mitigation Account is to be kept an account to be called the “Hunter Valley Flood Mitigation Working Account”, in this Part referred to as the **Working Account**.
- (2) Any amount paid to the Minister by Local Land Services is to be paid into the Working Account, from which account may be made, in such manner as the Treasurer determines, any payments that the Minister is required to make under or for the purposes of this Part.

**259 Cost of works generally**

- (1) This section applies to all flood works that are constructed or maintained by the Minister, other than those for which Local Land Services is liable to make contribution under some other provision of this Division.
- (2) Local Land Services is liable to contribute one-quarter of the cost to the Minister of constructing and maintaining any flood work to which this section applies.

**260 Cost of works to protect towns and villages**

- (1) This section applies to all flood works constructed or maintained by the Minister for the purpose of protecting a town or village from flooding, being works that have been constructed at the request or with the concurrence of the local council within whose area the town or village is situated.
- (2) Of the cost to the Minister of constructing and maintaining any flood work to which this section applies:
  - (a) the local council is liable to contribute such percentage (not exceeding 12%) as the Minister may determine, and
  - (b) Local Land Services is liable to contribute one-quarter of the balance.

**261 Cost of protective works**

- (1) Of the cost to the Minister of constructing and maintaining any protective works:
  - (a) the public authority whose works are protected by the protective works is liable to contribute such percentage as the Minister may determine, and
  - (b) Local Land Services is liable to contribute one-quarter of the balance.
- (2) The Minister may pay to any public authority that constructs or maintains any protective works such amount as the Minister considers appropriate towards the cost to the public authority of so doing.

- (3) Local Land Services is liable to pay to the Minister one-quarter of any amount paid to a public authority under subsection (2).

#### **262 Annual contribution to works program by Local Land Services**

- (1) Local Land Services is liable to pay to the Minister in each financial year:
  - (a) one-quarter of the estimated cost of constructing any flood works that the Minister proposes to construct during that financial year, and
  - (b) one-quarter of the estimated cost of maintaining any flood works that the Minister proposes to maintain during that financial year.
- (2) The following amounts are to be deducted from the estimated costs for the purpose of calculating Local Land Services' liability under this section:
  - (a) any contribution to those costs for which a local council will be liable under this Division,
  - (b) any amount that Local Land Services has paid to the Minister under this section during the previous financial year but that remained unexpended at the end of that year.
- (3) Any estimates are to be made by the Minister whose decision is final.

#### **263 Consultation with Local Land Services as to works program**

- (1) Before the beginning of each financial year or as soon as practicable thereafter, the Minister must submit to Local Land Services a program of the flood works that the Minister proposes to construct or maintain during that year.
- (2) Such a program must be consistent with any management plan that applies to the land on which the works or proposed works are situated.
- (3) Such a program must be accompanied by a statement setting out the following particulars:
  - (a) the estimated cost of constructing any work,
  - (b) the estimated annual cost of maintaining any work,
  - (c) the amount for which Local Land Services will be liable,
  - (d) such other particulars as may be prescribed by the regulations.

#### **264 Consultation with local council as to works program**

- (1) This section applies to all flood works constructed or maintained by the Minister for the purpose of protecting a town or village from flooding, being works that have been constructed at the request or with the concurrence of the local council within whose

area the town or village is situated.

- (2) Before the beginning of each financial year or as soon as practicable thereafter, the Minister must submit to the local council concerned a program of the flood works that the Minister proposes to construct or maintain during that year.
- (3) Such a program must be consistent with any management plan that applies to the land on which the works or proposed works are situated.
- (4) Such a program must be accompanied by a statement setting out the following particulars:
  - (a) the estimated cost of constructing any work,
  - (b) the estimated annual cost of maintaining any work,
  - (c) the percentage that the Minister has determined that the council should contribute to the cost of the construction and maintenance of the work,
  - (d) the amount for which the council will be liable,
  - (e) such other particulars as may be prescribed by the regulations.
- (5) Any estimates are to be made by the Minister whose decision is final.
- (6) When the work has been completed, the Minister must notify the local council of the actual cost of the work.
- (7) If the amount paid by the local council in respect of the work is more than the amount for which the council is liable, the Minister must repay to the council the amount of such excess.
- (8) If the amount paid by the local council in respect of the work is less than the amount for which the council is liable, the council must pay to the Minister the amount of the shortfall.
- (9) Any amount paid to the Minister by a local council under this section is to be paid into the Hunter Valley Flood Mitigation Working Account.

## **265 Payment of contribution towards maintenance by a local council**

- (1) A local council that is liable to contribute to the cost of maintenance of any flood work must pay to the Minister in each financial year the same percentage of the estimated cost of maintenance as the council is liable to contribute to the actual cost of maintenance of that work.
- (2) In calculating the local council's liability under this subsection in respect of any financial year there is to be deducted any amount that the council has paid to the Minister in respect of any flood work during any previous financial year and that



remained unexpended at the end of the immediately preceding financial year.

(3) Any estimate is to be made by the Minister whose decision is final.

#### **266 Consultation with local council as to maintenance program**

(1) Before the beginning of each financial year, the Minister must furnish the local council with a statement setting out the following particulars:

(a) the amount that the council will be liable to pay under this Division for that financial year,

(b) such other particulars as may be prescribed by the regulations.

(2) The local council must pay to the Minister the amount referred to in subsection (1) (a).

(3) Any such amount is to be paid into the Hunter Valley Flood Mitigation Working Account.

#### **267 Urgent maintenance works**

(1) If in the opinion of the Minister it becomes necessary to carry out urgent maintenance on any flood work, the Minister may carry out the maintenance, despite maintenance not having been included in any program of works or any statement furnished to a local council.

(2) When the maintenance has been completed, the Minister must determine the total amount paid in respect of such maintenance and notify any local council affected by the work and Local Land Services of the respective amounts that they are required to contribute in accordance with this Division.

(3) Any money paid to the Minister under this section is to be paid into the Hunter Valley Flood Mitigation Working Account.

#### **268 Payments to be duly made**

Any amount that is payable to the Minister under this Division:

(a) by Local Land Services, or

(b) by a local council, or

(c) by any other public authority,

is payable at such times, and in such instalments, as the Minister may determine.

## **Division 4 Miscellaneous**

### **269 Works to protect public and local government works to be approved by Minister**

- (1) A public authority must not construct any protective works unless the Minister has approved of the site, nature, dimensions and design of the works.
- (2) In giving approval, the Minister may require such amendment of the site, nature, dimensions or design of the protective works as the Minister considers necessary, and the public authority must comply with that requirement accordingly.
- (3) The Minister may by notice in writing require the public authority by which any protective works have been constructed to take specified measures for the proper upkeep, preservation and maintenance of the protective works.
- (4) The public authority must comply with the requirements specified in the notice in such manner and within such time as is so specified.
- (5) If a public authority fails to comply with the terms of the notice, the Minister:
  - (a) may authorise any person to enter the land on which the protective works are located and carry out the measures specified in such notice, and
  - (b) may recover any cost incurred in so doing from the public authority in any court of competent jurisdiction as a debt due to the Crown.

### **270 Major floodgates to be maintained and operated by local councils**

- (1) If in the opinion of the Minister any floodgate operates for the protection of lands other than lands owned by one landholder or a small localised group of landholders, the Minister may by notice in writing to the local council declare the floodgate to be a major floodgate.
- (2) It is the duty of the local council:
  - (a) to keep any major floodgate at all times in a good and proper state of repair and working order, and
  - (b) to maintain and operate it in accordance with any directions that may from time to time be given by the Minister.
- (3) If the local council fails to perform that duty, the Minister:
  - (a) may authorise any person to enter the land on which the major floodgate is located and to take such measures as to the maintenance, operation or repair of the floodgate as the Minister considers necessary, and
  - (b) may recover any cost incurred in so doing from the council in any court of competent jurisdiction as a debt due to the Crown.

### **271 Maintenance of minor floodgates**

- (1) In this section, **minor floodgate** means any floodgate that is not a major floodgate.
- (2) It is the duty of each landholder for the protection of whose land a minor floodgate operates to keep the floodgate at all times in a good and proper state of repair and working order.
- (3) If any such landholder fails to perform that duty, the Minister may by notice in writing direct the landholder to take such measures as to the maintenance, operation or repair of the floodgate as may be specified in the notice.
- (4) If any landholder fails to comply with the terms of the notice, the Minister:
  - (a) may authorise any person to enter the land on which the minor floodgate is located and to take such measures as to the maintenance, operation or repair of the floodgate as the Minister considers necessary, and
  - (b) may recover any cost incurred in so doing from the landholder in any court of competent jurisdiction as a debt due to the Crown.
- (5) In the case of multiple landholders, the liability imposed on them under this section is joint and several but, as between themselves, each is liable only for such share of the liability as bears the same proportion to the total liability as the area of the person's land for the protection of which the floodgate operates bears to the total area of land for the protection of which the floodgate operates.
- (6) If any landholder pays to the Minister more than the person's share of the total liability the landholder may recover the excess by way of contribution from the others.

### **272 Application of [Public Works Act 1912](#)**

Sections 91–95 of the [Public Works Act 1912](#) do not apply to any works constructed under this Part.

### **273 Evidence of cost of works**

If the Minister is empowered to recover any cost incurred in carrying out any work or measure, a certificate by the Minister of the amount of such cost is evidence of that cost.

## **Part 3**

### **274–280 (Repealed)**

## **Chapter 6 Public utilities**

### **Part 1 Major utilities**

#### **281 Major utilities**

- (1) This Part applies to each body referred to in Schedule 2 (referred to as a **major utility**).
- (2) The Governor may by proclamation published on the NSW legislation website amend Schedule 2 so as:
  - (a) to add the corporate name of any body that is to become a major utility for the purposes of this Part, or
  - (b) to vary the name of any major utility as a consequence of any change in its corporate name, or
  - (c) to omit the corporate name of any body.

#### **282 Review of activities of major utilities**

- (1) The activities of a major utility under this Act:
  - (a) may be reviewed at any time, and
  - (b) must be reviewed:
    - (i) before the end of the 6 month period following the date on which its first approval was granted under section 95, and
    - (ii) before the end of each 5 year period following the date on which its current approval was granted.
- (2) For the purpose of conducting such a review, the Minister must cause notice to be published:
  - (a) in the Gazette, and
  - (b) in an appropriate newspaper,inviting written submissions from interested persons in relation to the activities of the major utility during the period under review.

## Part 2 Water supply authorities

### Division 1 Preliminary

#### 283 Definitions

In this Part:

**area of operations** of a water supply authority means the area of operations prescribed by the regulations in relation to that authority.

**charging year**, in relation to a water supply authority, means:

- (a) the period of 12 months declared by an order in force under Division 6 to be the charging year for the water supply authority, or
- (b) if the charging year is changed under that Division by a further order, the period between the end of one charging year and the beginning of the next.

**development area** means an area of land declared by an order in force under Division 6 to be a development area.

**drainage area** means an area of land declared by an order in force under Division 6 to be a drainage area.

**drainage service** means that part of drainage pipework up to its point of connection to a water supply authority's drainage system.

**drainage service pipe** means a pipe connecting a drainage service to a water supply authority's drainage system, and includes the plumbing fittings connected to the pipe.

**floodplain** means an area of land declared by an order in force under Division 6 to be a floodplain.

**meter** includes any measuring device.

**plumbing fitting** includes any pipe, apparatus or fixture used for plumbing work.

**plumbing work** means work comprising or affecting:

- (a) a water supply service pipe or its connection (whether directly or indirectly) with a water supply authority's water supply system, or
- (b) a sewerage service pipe or its connection (whether directly or indirectly) with a water supply authority's sewerage system, or
- (c) a drainage service pipe or its connection (whether directly or indirectly) with a water supply authority's drainage system.

**river management area** means an area of land declared by an order in force under

Division 6 to be a river management area.

**service charge** means any of the following:

- (a) a water service charge,
- (b) a sewerage service charge,
- (c) a drainage service charge,
- (d) a loan service charge,
- (e) a developmental works service charge,
- (f) a flood mitigation service charge,
- (g) a river management service charge, or
- (h) a special industry service charge,

that may be levied under Division 6.

**sewage work** means a work (such as a pump, pipe or channel) that is constructed or used for the purpose of removing sewage or other waste matter from land, including a reticulated system of such works, and includes:

- (a) all associated pipes, valves, pumps and other equipment, and
- (b) all sewage treatment or sewage processing plants and their outfalls and drainage beds,

but does not include any work declared by the regulations not to be a sewage work.

**sewerage service** means that part of sewerage pipework, including all sanitary fixtures, up to its point of connection to a water supply authority's sewerage system.

**sewerage service pipe** means a pipe connecting a sewerage service to a water supply authority's sewerage system, and includes the plumbing fittings connected to the pipe.

**special area** means an area of land declared under Division 4 to be a special area.

**special industry** means an industry declared by an order in force under Division 6 to be a special industry.

**water management work** means a water supply work, drainage work, sewage work or flood work, and includes a work in the nature of a water supply work (being a work that receives water from a water supply work under the control or management of a water supply authority).

**water supply service** means that part of water supply pipework from its point of

connection to a water supply authority's water supply system up to and including its outlet valves.

**water supply service pipe** means a pipe connecting a water supply service to a water supply authority's water supply system, and includes the plumbing fittings connected to the pipe.

**water supply work** includes any work that receives water from a water supply work under the control or management of a water supply authority.

#### **284 Requirements for access licences and approvals**

Nothing in this Part authorises a water supply authority to do anything for which this Act requires an access licence or approval unless the water supply authority holds an appropriate access licence or approval.

### **Division 2 Water supply authorities**

#### **285 Water supply authorities**

- (1) The corporations listed in Schedule 3 are water supply authorities.
- (2) A corporation listed in Part 1 of Schedule 3 is, for the purposes of any Act, a statutory body representing the Crown.
- (3) A corporation listed in Part 1 of Schedule 3 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 such a corporation to exercise its functions.

#### **286 Constitution of water supply authorities**

- (1) The Governor may, by proclamation published on the NSW legislation website:
  - (a) name a water supply authority proposed to be constituted under this section, and
  - (b) specify the number of members, the qualification for each member and whether or not the member is a full-time member or a part-time member, and
  - (c) amend Schedule 3 by adding the name of the water supply authority to Part 1 of that Schedule.
- (2) The members are to be appointed by the Governor and, on their appointment, the water supply authority is constituted as a corporation.
- (3) The corporate name for the water supply authority is the name of the water supply authority stated in the proclamation.
- (4) On a change of area of operations or functions for a water supply authority listed in

Part 1 of Schedule 3, the Governor may, by proclamation published in the Gazette, do either or both of the following:

- (a) change the number of part-time members of the water supply authority,
- (b) change the qualifications for part-time members of the water supply authority.

(5) A change referred to in subsection (4) does not affect the identity of the water supply authority.

### **287 Statutory body may be water supply authority**

- (1) The Governor may, by proclamation published on the NSW legislation website with the consent of the Minister administering the Act by or under which a statutory body is constituted, amend Schedule 3 by adding the name of the statutory body to Part 2 of that Schedule.
- (2) On the addition of the name of a statutory body to Part 2 of Schedule 3, it becomes a water supply authority but still has its other functions.

### **288 Provisions relating to constitution and procedure of water supply authorities**

- (1) Part 1 of Schedule 5 has effect with respect to the members of the water supply authorities listed in Part 1 of Schedule 3.
- (2) Part 2 of Schedule 5 has effect with respect to the Australian Inland Energy Water Infrastructure.
- (3) Part 3 of Schedule 5 has effect with respect to the Cobar Water Board.
- (4) Parts 2 and 3 of Schedule 5 do not affect the operation of the other provisions of this Part in relation to the water supply authorities to which those Parts relate.

### **289 Area of operations**

- (1) The area of operations of a water supply authority is such as may be prescribed by the regulations for the water supply authority.
- (2) If a regulation so provides, a water supply authority has, and may exercise, in its area of operations or a specified part of its area of operations:
  - (a) only such of the functions of a water supply authority as are specified in the regulation, or
  - (b) all functions of a water supply authority other than functions specified in the regulation.
- (3) A regulation made for the purposes of subsection (2) may make provision for or with respect to:



- (a) matters affecting revenue, assets, rights, liabilities and employees of a water supply authority, and
  - (b) procedures to be adopted for the purposes of paragraph (a).
- (4) Within the area of operations of a water supply authority, a function under this Part may be exercised only by the water supply authority unless:
- (a) the function is exercisable by the Minister, or
  - (b) the function is exercised by Local Land Services under the *Local Land Services Act 2013*, or
  - (c) with the consent of the Minister, the function is exercised by another Minister, by the delegate of another Minister or by a statutory body, or
  - (d) this Part provides otherwise.
- (5) With the consent of the Minister, a water supply authority may exercise a function outside its area of operations.
- (6) Until a regulation is made for the purposes of subsection (1), the area of operations of a water supply authority is the same as it was immediately before the commencement of this Part.

**290 (Repealed)**

**291 Delegation**

A water supply authority may delegate to a person the exercise of any of its functions, other than this power of delegation.

**Division 3 Functions of water supply authorities**

**292 Functions of water supply authority**

- (1) A water supply authority has the following functions:
- (a) subject to the Minister's approval, to construct, maintain and operate water management works and other associated works,
  - (b) to conduct research, collect information and develop technology in relation to water management,
  - (c) to do anything for the purpose of enabling the objects of this Act to be attained.
- (2) A water supply authority may exercise its functions within and beyond its area of operations.
- (2A) A water supply authority must not exercise any function beyond its area of

operations in such a way as to limit its capacity to exercise that function within that area.

- (3) It is the duty of a water supply authority to exercise its functions consistently with the principles of ecologically sustainable development.

### **293 Exercise of functions by a water supply authority**

- (1) A water supply authority:
- (a) has and may exercise the functions conferred or imposed on it by or under this or any other Act, and
  - (b) in the exercise of its functions (except in relation to the contents of a report or recommendation made by it) is subject to the control and direction of the Minister.
- (1A) Subsection (1) (b) does not apply to a water supply authority listed in Part 3 of Schedule 3.
- (2) If a function conferred or imposed on a water supply authority by this Part is inconsistent with a function conferred or imposed on the water supply authority by or under another Act, this Part prevails.

### **294 Commercial operations**

- (1) With the approval of the Governor, a water supply authority may enter into commercial operations with respect to:
- (a) any services developed in connection with the exercise of its functions, or
  - (b) any products or by-products (including intellectual property) resulting from the exercise of its functions, or
  - (c) such other matters as may be prescribed by the regulations.
- (2) With the approval of the Governor, a water supply authority may form, or join in forming, a company, partnership or trust for the purpose of exercising its functions under this Part.

### **295 Assistance to statutory body**

A water supply authority may, at the request of a statutory body and with the consent of the Minister, exercise any of the functions of the statutory body in a part of its area of operations in respect of which the statutory body may exercise different functions, even if, but for the request, the water supply authority would not have exercised the function.

### **296 Entry on land to read meters or carry out works**

- (1) A water supply authority may, by its employees and agents:

- (a) enter and occupy land and there exercise any of its functions, including the carrying out of any work on, below or above the surface of the land, and
  - (b) divert water from, or alter the course of, a stream, and
  - (c) impound or take water on, in or under the surface of any land.
- (2) The power conferred by this section is sufficient authority for an employee or agent to enter and occupy land or any part of a building (except an enclosed part occupied as a separate dwelling) in the exercise of a water supply authority's functions during daylight for the purpose of:
- (a) reading a meter, or
  - (b) ascertaining whether trade waste is present or is being (or has recently been) discharged to a work of the authority, or
  - (c) making a valuation,
- unless the employee or agent is refused access by the lawful occupier of the land.
- (3) A water supply authority may, in accordance with the regulations, attach a ventilating shaft, pipe or tube for a sewer to the wall of a building.
- (4) A water supply authority may remove or use anything dug up or obtained in the exercise of its powers under this section.
- (5) A water supply authority:
- (a) must do as little damage as practicable in exercising its powers under this section, and
  - (b) must compensate all persons who suffer damage by the exercise of the powers, in relation to the land entered.
- (6) Compensation may be made by reinstatement or repair, by construction of works or by payment.
- (7) If a water supply authority provides a sewer, compensation is required only if:
- (a) the sewer causes injury to, or interference with, a building or other structure, or
  - (b) a manhole or main ventilator is constructed on the land.
- (8) A claim for compensation:
- (a) is ineffective unless made in writing not later than 6 months after the damage was suffered, and

- (b) in the absence of agreement on the compensation, must be dealt with as if it were a claim for compensation for the acquisition of land for public purposes under the *Public Works Act 1912*.

## **297 Entry on land for inspections**

- (1) A water supply authority may at any time, by its employees or agents, enter any land (except an enclosed part occupied as a separate dwelling) for the purpose of finding out:
  - (a) the character and condition of the land or building, or
  - (b) the condition or location of any water management work used in connection with the land or building, or
  - (c) whether any use, consumption, waste, misuse or undue consumption of water supplied by a water supply authority is occurring, or
  - (d) whether any offence against this Act has been, or is being, committed.
- (2) A water supply authority must not exercise the powers conferred by subsection (1) unless:
  - (a) reasonable written notice of its intention to do so has first been given to the landholder of the land, building or dwelling-house, or
  - (b) it authorises the entry after forming the opinion that the giving of the notice would cause undue delay.
- (3) Reasonable force may be used to enter land, or a building other than a dwelling-house, under this section.
- (4) If the powers of entry under this section are exercised:
  - (a) without notice being given, or
  - (b) by force,the water supply authority must, without delay, notify such persons as it considers appropriate of the action taken.
- (5) The water supply authority may, by notice in writing given to the landholder of the land or building, require all defective or improper work discovered on an inspection to be repaired, altered or removed within 24 hours or such longer period as is stated in the notice.
- (6) If a notice under subsection (5) is not complied with, the water supply authority may, by its employees and agents, enter the land, building or dwelling-house and repair, alter or remove the defective or improper work.

- (7) If a notice is given under subsection (5):
- (a) the costs and expenses of the entry and inspection by the water supply authority, and
  - (b) if the notice is not complied with, the costs and expenses of the water supply authority in acting under subsection (6),
- are recoverable from the landholder as a service charge.
- (8) If, on an inspection under this section:
- (a) no defective or improper work is discovered, and
  - (b) no waste, misuse or undue consumption of water supplied by the water supply authority is occurring, and
  - (c) no offence against this Act is discovered,
- the water supply authority must make good any damage or disturbance caused by it for the purposes of the inspection.
- (9) In exercising its powers under this section, a water supply authority must do as little damage as practicable.

#### **298 Power to break up roads**

- (1) A water supply authority may, on giving reasonable notice to persons likely to be affected, open and break up:
- (a) the soil and pavement of a public road or public reserve, and
  - (b) any sewer, drain or tunnel in or under a public road or public reserve,
- for the purpose of exercising its functions.
- (2) The statutory body having the control and management of a public road or public reserve may, as prescribed by the regulations, require a water supply authority to comply with conditions in exercising its powers under subsection (1), including conditions for restoration of the surface and removal of rubbish.
- (3) If a public road or public reserve is damaged by a leakage from, or a bursting of, a water supply authority's water main or sewer main, the statutory body having the control and management of the public road or public reserve may require the water supply authority to make good the damage without delay.
- (4) If a water supply authority fails:
- (a) to comply with a condition in force under subsection (2), or

(b) to comply with a requirement under subsection (3),

the statutory body affected by the failure may remedy it and recover the cost of doing so as a debt owed to the statutory body by the water supply authority.

### **299 Altering position of conduits**

(1) If:

(a) a water supply authority, in order to exercise its functions, needs an alteration to be made in the position of a conduit owned by another person, and

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

the water supply authority may serve on the person a written notice that complies with subsection (2).

(2) A notice must:

(a) specify the alteration needed, and

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

(c) include an undertaking by the water supply authority to pay the reasonable cost of the alteration.

(3) If the alteration is not made as required by the notice, the water supply authority may make the alteration in such a manner as not to damage the conduit permanently or adversely affect its operation on completion of the alteration.

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

### **300 Obstruction of works**

(1) If a person places a structure or other thing in or near a water supply authority's water management work in such a manner as to interfere with the work, the water supply authority may:

(a) demolish and remove the structure or other thing, and

(b) repair the work, and

(c) recover the cost of doing so as a debt owing to the water supply authority by the person who placed the structure or other thing there.

(2) A water supply authority may apply for and obtain an injunction to prevent a structure

or other thing being placed as referred to in subsection (1).

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

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

### **301A Power to give directions**

- (1) Without limiting Part 1 of Chapter 7, the Minister's power to give directions under that Part may be exercised in relation to a water supply authority's sewage work as if it were a water management work within the meaning of that Part.
- (2) An appeal lies to the Land and Environment Court against the Minister's decision to give such a direction in the same way as it lies against the Minister's decision to give a direction under Part 1 of Chapter 7.

## **Division 4 Special areas**

### **302 Special areas**

- (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land described in the order to be a special area for a water supply authority.
- (2) The Minister may recommend an order only if of the opinion that the exercise of the State's water rights could be adversely affected unless the order is made.

### **303 Crown land in special areas**

- (1) Action may not be taken under the [Crown Lands Act 1989](#) in respect of land within a special area for a water supply authority unless:
  - (a) a water supply authority has given its approval in writing, and
  - (b) any conditions to which the approval is subject are complied with.
- (2) A water supply authority may, in a special area, exercise the functions of a trustee

appointed under Part 5 of the *Crown Lands Act 1989* without being appointed as such.

### **304 Exercise of certain functions in special areas**

- (1) A public agency may not, in relation to land within a special area for a water supply authority, exercise functions other than functions under this Part unless notice is first given, as prescribed by the regulations, to the water supply authority.
- (2) On receipt of such a notice, the water supply authority may make such representations to the public agency as it thinks fit.
- (3) A public agency may not exercise functions contrary to any such representations made by a water supply authority unless:
  - (a) at least 14 days' notice has been given to the water supply authority of the functions intended to be exercised, and
  - (b) that period has expired without the matter being referred to the Minister as a dispute for determination.
- (4) In this section, **public agency** means:
  - (a) the Governor, or
  - (b) a Minister of the Crown, or
  - (c) a statutory body.

## **Division 5 Developer contributions to the construction of works**

### **305 Application for certificate of compliance**

- (1) A person may apply to a water supply authority for a certificate of compliance for development carried out, or proposed to be carried out, within the water supply authority's area.
- (2) An application must be accompanied by such information as the regulations may prescribe.

### **306 Authority may impose certain requirements before granting certificate of compliance**

- (1) This section applies to such kinds of development as are prescribed by the regulations for the purposes of this section.
- (2) As a precondition to granting a certificate of compliance for development, a water supply authority may, by notice in writing served on the applicant, require the applicant to do either or both of the following:
  - (a) to pay a specified amount to the water supply authority by way of contribution towards the cost of such water management works as are specified in the notice,



being existing works or projected works, or both,

(b) to construct water management works to serve the development.

(3) In calculating an amount for the purposes of subsection (2) (a):

(a) the value of existing water management works and the estimated cost of projected water management works may be taken into consideration, and

(b) the amount of any government subsidy or similar payment is not to be deducted from the relevant value or cost of the water management works, and

(c) consideration is to be given to any guidelines issued for the time being for the purposes of this section by the Minister.

(4) If a water supply authority imposes a requirement under this section on the Crown, the Crown may request the Minister for Urban Affairs and Planning to determine whether such a requirement should be imposed and, if so, in what terms.

(5) The determination made by the Minister for Urban Affairs and Planning in response to such a request is final and is taken to be the determination of the water supply authority.

(6) Any water management works constructed in compliance with a requirement under this section are the property of the water supply authority.

### **307 Granting of certificates of compliance**

(1) A water supply authority must grant a certificate of compliance for development:

(a) within 60 days after an application for the granting of such a certificate is made, or

(b) if, within that period, the water supply authority imposes a requirement on the applicant under this Division, as soon as it is satisfied that the requirement has been complied with.

(2) A water supply authority may be satisfied that a requirement under this Division has been complied with if the applicant lodges with the water supply authority such security for compliance with the requirement as the water supply authority may approve.

(3) If a water supply authority fails or refuses to give a compliance certificate within the period of 60 days after an application is duly made in that regard, the applicant may appeal to the Land and Environment Court, within 12 months after the expiration of that period, against the failure or refusal.

## **Division 6 Finance**

### **308 Orders for purpose of service charges**

- (1) The Governor may, by order published in the Gazette, declare any land described in the order to be a development area for the purposes of this Part.
- (2) The Minister may, by order published in the Gazette, declare any land described in the order to be a drainage area, floodplain or river management area for the purposes of this Part.
- (3) The Minister may, by order published in the Gazette, declare any industry specified in the order to be a special industry for the purposes of this Part.
- (4) The Minister may, by order published in the Gazette, declare a period of 12 months to be the charging year for a water supply authority.

### **309 Connections**

- (1) On a water supply authority's water main or a sewer main becoming available for connection, the water supply authority may:
  - (a) publish in the Gazette notice of its availability, and
  - (b) give such other notices as may be prescribed.
- (2) A landholder of land to which a notice under subsection (1) (a) relates becomes liable:
  - (a) in the case of a water main, to payment of water service charges after the expiration of 21 days from publication of the notice, or
  - (b) in the case of a sewer main, to payment of sewerage service charges after the expiration of 21 days from publication of the notice.
- (3) If a landholder does not make a connection to the water supply authority's water main or sewer main before becoming liable under subsection (2), the water supply authority may make the connection at the expense of the landholder.
- (4) Any amount due to a water supply authority for a connection made under subsection (3) is a charge on the land connected and may be recovered as a debt owed to the water supply authority by the landholder of the land.
- (5) If a landholder of land fails:
  - (a) to connect the land to a water supply authority's water main or sewer main before becoming liable under subsection (2), or
  - (b) to do any work that by this Part is required to be done by the landholder,the occupier of the land may make the connection or do the work and, in accordance

with subsection (6), recover the cost from the landholder.

- (6) An amount (including interest) recoverable under subsection (5) by an occupier from a landholder may be recovered:
  - (a) by deducting it from any rent from time to time payable to the landholder by the occupier, or
  - (b) as a debt owed to the occupier by the landholder.
- (7) Any person desiring to connect premises with a water supply authority's water main or sewer main may (subject to such conditions as may be imposed by law) open up the surface and soil of any road or way, public or private, or any footpath or public reserve to the extent required to make the connection.
- (8) Nothing in this section requires a water supply authority to allow a person to connect premises with the water supply authority's water main or sewer main.

**310 Authority may levy service charges and impose fees and other charges**

- (1) A water supply authority may, in accordance with this Part, levy the following service charges on land within its area of operations:
  - (a) water service charges,
  - (b) sewerage service charges,
  - (c) drainage service charges,
  - (d) loan service charges,
  - (e) developmental works service charges,
  - (f) flood mitigation service charges,
  - (g) river management service charges,
  - (h) special industry service charges.
- (2) A water supply authority may, in accordance with the regulations, impose fees and charges for any service or thing supplied or provided by it in the exercise of its functions under this Part.
- (3) Without limiting subsection (2), a water supply authority may impose fees and charges with respect to discharges into its sewerage system.

**311 Land in respect of which a water supply authority may levy service charges**

- (1) A water supply authority may only levy water service charges on land:

- (a) to which water is supplied, or
  - (b) to which, in the opinion of the water supply authority, it is reasonably practicable for water to be supplied,
- from one of the water supply authority's water mains.
- (2) A water supply authority may only levy sewerage service charges on land:
- (a) from which sewage is discharged, or
  - (b) from which, in the opinion of the water supply authority, it is reasonably practicable for sewage to be discharged,
- into one of the water supply authority's sewer mains.
- (3) A water supply authority may only levy drainage service charges on land that is within a drainage area.
- (4) A water supply authority may only levy developmental works service charges on land within a development area.
- (5) A water supply authority may only levy flood mitigation service charges on land within a floodplain.
- (6) A water supply authority may only levy river management service charges on land within a river management area.
- (7) A water supply authority may only levy special industry service charges on land on which a special industry is conducted.

### **312 Certain land exempt from service charges**

- (1) A water supply authority may not levy service charges in respect of the lands described in Schedule 4.
- (2) Subsection (1) does not apply to the following land:
- (a) land that is within a public reserve or park that is the subject of a lease, licence or other authority under which a person carries on a trade or business,
  - (b) land that is vested in the Crown or a public body leased to any person for private purposes,
  - (c) land that is used or occupied by the Crown in connection with an undertaking declared by the Governor by proclamation published in the Gazette to be an industrial undertaking for the purposes of this section.

### **313 Classification of lands**

- (1) The regulations must specify the factor or factors according to which a water supply authority may classify land for the purpose of levying service charges.
- (2) Without limiting the generality of subsection (1), the regulations may specify that a water supply authority may classify land according to any one or more of the following factors:
  - (a) the purpose for which the land is actually being used,
  - (b) the intensity with which the land is being used for that purpose,
  - (c) the purposes for which the land is capable of being used,
  - (d) the nature and extent of the water or sewerage services connected to the land.
- (3) For the purposes of subsection (2) (c), land is not capable of being used for a purpose if the use of the land for that purpose would be in contravention of:
  - (a) the *Environmental Planning and Assessment Act 1979*, or
  - (b) any environmental planning instrument in force under that Act, or
  - (c) any other Act or law relating to the use of land.

### **314 Basis of levying service charges**

The regulations must specify the basis or bases according to which a water supply authority may levy service charges.

### **315 Determinations by water supply authority**

- (1) Not later than 1 month before the beginning of each charging year a water supply authority must, in accordance with the regulations, determine the following matters for that charging year:
  - (a) the amount of money that it proposes to raise by way of service charges levied on land within its area of operations,
  - (b) the factor or factors according to which land within its area of operations is to be classified for the purposes of levying service charges,
  - (c) the basis or bases according to which service charges are to be levied,
  - (d) the rate at which service charges are to be levied on, or the maximum or minimum service charges that are to be applicable to, land within its area of operations.
- (2) In making a determination under this section, a water supply authority may have

regard to the following:

- (a) its estimation of the degree of benefit that accrues to land in respect of each service for which a charge is to be levied,
- (b) its estimation of the degree to which each service is or may be used in relation to land in respect of which a charge is to be levied,
- (c) its estimation of the cost involved in the construction, maintenance and operation of each service for which a charge is to be levied,
- (d) such other matters as it considers relevant to the levying of charges for each such service.

(3) A determination under this section:

- (a) is required to be approved by the Minister and does not have effect unless it is so approved, and
- (b) must be published in the Gazette before the commencement of the charging year to which it relates, and
- (c) takes effect on the commencement of the charging year to which it relates.

(4) A determination does not fail merely because it is not published in the Gazette before the commencement of the charging year to which it relates but, in that event, no person is liable for payment of the service charges to which the determination relates until the determination is published in the Gazette.

(5) A service charge determined under this section is levied on publication of the determination in the Gazette.

(6) If, for any reason:

- (a) a determination under this section is not made before the charging year to which it relates, or
- (b) there is any irregularity or alleged irregularity in the making of any such determination,

the Governor may extend the time for making the determination (whether or not that time has expired) and may authorise the water supply authority concerned to do anything necessary to cure any irregularity and to make a valid determination.

### **316 Assessment of service charges**

(1) A water supply authority:

- (a) must classify each parcel of land within its area of operations in respect of which a

service charge is to be levied, and

- (b) must assess the service charges payable for each such parcel of land, in accordance with its determination under this Division.
- (2) After it makes an assessment under this section, a water supply authority must, in accordance with the regulations, cause a notice to be served on the landholder of each parcel of land in respect of which a service charge has been levied.
- (3) Such a notice must include information as to the following:
  - (a) the factor or factors according to which the parcel of land has been classified for the purposes of the levying of service charges,
  - (b) the basis or bases according to which service charges have been levied in respect of the parcel of land,
  - (c) if service charges have been levied on the basis of the value of the parcel of land, the value of the parcel on which those service charges have been levied,
  - (d) the rate at which service charges have been levied on, or the maximum or minimum service charges that are applicable to, the parcel of land,
  - (e) the amounts payable in respect of each service charge that has been levied in respect of the parcel of land.
- (4) On service of such a notice, the landholder of the land to which the notice relates becomes liable for payment of the service charges specified in the notice.

### **317 Re-assessment of service charges**

- (1) This section applies to any land in respect of which a service charge has been levied on the basis of the value of the land.
- (2) If a water supply authority becomes aware that the value (as calculated in accordance with this Division) of any parcel of land in respect of which it has levied a service charge for any charging year differs from the value (as so calculated) as at the date on which the service charge was originally assessed, the water supply authority may re-assess the service charge on the basis of the different value.
- (3) A service charge may only be re-assessed as from the date from which the revised calculation of the value of the land has effect.
- (4) After it makes a re-assessment under this section, a water supply authority must, in accordance with the regulations, cause a notice to be served on the landholder of the parcel of land in respect of which the re-assessment has been made.
- (5) Such a notice must specify:

- (a) the revised calculation of the value of the land, and
  - (b) the date from which the revised calculation of the value of the land has effect, and
  - (c) the revised assessment of the amounts payable in respect of each service charge that has been levied on that land.
- (6) On service of such a notice, the service charges for which the landholder of the land to which the notice relates is liable are varied in accordance with the terms of the notice.

## **Division 7 Miscellaneous**

### **318 Acquisition and divesting of land**

- (1) A water supply authority may acquire land (or an interest in land) for the purposes of this Part by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be for an authorised work and the water supply authority is, in relation to that authorised work, taken to be the Constructing Authority.
- (3) Part 3 of the *Public Works Act 1912* does not apply in respect of works constructed under this Part.
- (4) With the consent of the local council concerned, the Governor may, by proclamation published in the Gazette, vest in a local council the estate or interest of a water supply authority in any land on which is situated a work of the water supply authority (whether wholly or partly completed).

### **318A Exposure of underground pipes**

A person must not, except in an emergency or with lawful excuse, open any ground so as to expose a water supply authority's pipe or other work unless the person has given the water supply authority at least 2 days' written notice of his or her intention to do so.

Tier 2 penalty.

### **318B Unlicensed plumbing work**

A person must not do any kind of plumbing work unless the person:

- (a) holds an endorsed contractor licence or a supervisor certificate under the *Home Building Act 1989* that authorises the holder to do that kind of work, or
- (b) does the work under the immediate supervision of the holder of such a licence or certificate, or



- (c) holds a tradesperson certificate under the *Home Building Act 1989* that authorises the holder to do that kind of work under supervision, and does the work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).

Tier 3 penalty.

### **319 Compensation for interference or damage**

(1) If:

- (a) a person does, or causes to be done, any work that interferes with, or damages, any property of a water supply authority, and

- (b) there was reasonable cause to believe that the interference or damage would result from the doing of the work,

the person is liable to compensate the water supply authority for the interference or damage.

(2) A water supply authority is not entitled to compensation both under this section and another provision of this Part for the same interference or damage.

### **320 Efficiency review**

(1) The Minister may appoint a person to investigate and review the efficiency of a water supply authority in exercising its functions.

(2) A water supply authority must bear the costs of an investigation and review under this section that is requested by it.

(3) This section does not apply to a water supply authority listed in Part 3 of Schedule 3.

### **321 Appointment of administrator**

(1) If a water supply authority refuses or fails to comply with a direction or requirement given or made by the Minister in relation to this Part, the Minister may, by order published in the Gazette:

- (a) in the case of a water supply authority listed in Part 1 of Schedule 3, appoint an administrator to exercise all the functions, or specified functions, of the water supply authority, or

- (b) in the case of a statutory body listed in Part 2 of Schedule 3, with the consent of the Minister administering the Act by which the statutory body is constituted, appoint an administrator to exercise all the functions, or specified functions, of the water supply authority under this Part.

(2) An administrator has, during his or her term of office and to the exclusion of the water supply authority, the functions the administrator was appointed to exercise.

- (3) Regulations may be made for or with respect to:
- (a) the accommodation (if any) to be provided at the offices of a water supply authority for the administrator and his or her assistants, and
  - (b) requiring the employees of a water supply authority to assist, and to refrain from obstructing, the administrator in the exercise of his or her functions.
- (4) This section does not apply to a water supply authority listed in Part 3 of Schedule 3.

### **322 Regulations**

- (1) The regulations may make provision for or with respect to the following matters:
- (a) fees and charges, including charges for the supply of water,
  - (b) the imposition of water use restrictions,
  - (c) (Repealed)
  - (d) the carrying out of plumbing work,
  - (e) the planning and management of water supply, sewerage and drainage systems,
  - (f) the design and construction of water supply, sewerage and drainage systems,
  - (g) the establishment and enforcement of customer service standards,
  - (h) the regulation and prohibition of discharges into sewerage and drainage systems,
  - (i) the waiver, reduction, deferral and refund of fees, service charges and other charges,
  - (j) the control and management of special areas.
- (2) A regulation made for or with respect to a special area prevails to the extent of any inconsistency with a statutory instrument made under another Act, other than a SEPP made under the [Environmental Planning and Assessment Act 1979](#).
- (3) If any requirement with respect to plumbing work imposed by the regulations is inconsistent with the requirements imposed by the [Plumbing and Drainage Act 2011](#) or the regulations under that Act with respect to the same work, that Act and any regulations under that Act prevail to the extent of the inconsistency.

## **Chapter 7 Enforcement**

### **Part 1 Directions to landholder and other persons**

#### **Division 1 Preliminary**

### 323 Definitions

(1) In this Part:

**landholder**, in relation to land, includes any person having the care, control or management of the land.

**specified measures** include measures that involve doing, or refraining from doing, any act.

(2) In this Part:

(a) a power to direct a person to take specified measures includes a power to direct in what circumstances, in what order and in what manner those measures are to be taken, and

(b) a reference to a water management work of any kind includes a reference to a corresponding kind of work to which Part 2, 5 or 8 of the [Water Act 1912](#) extends, and

(b1) a reference to an approval or an access licence includes a reference to an entitlement (within the meaning of clause 2 of Schedule 10) that confers a corresponding authority, and

(c) a reference to this Act or the regulations extends to the [Water Act 1912](#) and the regulations under that Act.

(3) For the purpose of applying this Part to the [Water Act 1912](#) and the regulations under that Act, references to this Act in section 390 of this Act, and in the definition of **authorised officer** in the Dictionary to this Act, extend to the [Water Act 1912](#) and the regulations under that Act.

## Division 2 Conservation of water

### 324 Temporary water restrictions

(1) If satisfied that it is necessary to do so in the public interest (such as to cope with a water shortage or threat to public health or safety), the Minister may, by order in writing, direct that, for a specified period, the taking of water from a specified water source is prohibited, or is subject to specified restrictions, as the case requires.

(2) If satisfied that it is necessary to do so:

(a) to maintain or protect water levels in an aquifer, or

(b) to maintain, protect or improve the quality of water in an aquifer, or

(c) to prevent land subsidence or compaction in an aquifer, or

(d) to protect groundwater-dependent ecosystems, or

(e) to maintain pressure, or to ensure pressure recovery, in an aquifer,

the Minister may, by order in writing, direct that, within a specified area and for a specified period, the taking of water from that aquifer, or from any other aquifer that is above, below or adjacent to that aquifer, is prohibited, or is subject to specified restrictions, as the case requires.

- (3) The Minister must cause a copy of an order under this section to be published in the Gazette and notice of the order to be published in an appropriate newspaper.
- (4) If satisfied that circumstances require publication of an order under subsection (1) or (2) sooner than can be achieved under subsection (3), the Minister may, prior to its publication under that subsection, cause notice of the order to be broadcast by a television or radio station transmitting to the part or parts of the State within which the water source is situated.
- (5) An order under this section takes effect when it is first published or broadcast in accordance with subsection (3) or (4), as the case may be, or at such later date or time as may be specified in the order.
- (6) Unless sooner repealed, an order under this section ceases to have effect on the expiry of the period specified in the order.
- (7) In the event of any inconsistency between an order under this section and any other provision of this Act relating to the distribution, sharing or taking of water (including any order made, or any condition imposed on an access licence or approval, under this Act), the order under this section prevails to the extent of the inconsistency.
- (8) Nothing in this section gives rise to a claim for compensation under Division 9 of Part 2 of Chapter 3.

### **325 Directions concerning waste of water**

The Minister may, by order in writing served on a landholder, direct the landholder to take specified measures to ensure that:

(a) water taken and used under the authority of:

(i) a domestic and stock right, or

(ii) a domestic and stock access licence,

is taken and used in accordance with the mandatory guidelines established under section 336B, and

(b) water taken and used under the authority of:

- (i) a domestic and stock right, or
  - (ii) a domestic and stock access licence,
- is beneficially used, and is not wasted or improperly used, and
- (c) water taken by means of a water supply work situated on the land, or used under the authority of a water use approval applying to the land, is beneficially used, and is not wasted or improperly used.

### **326 Directions to install and maintain metering equipment**

- (1) The Minister may, by order in writing served on:
  - (a) a landholder on whose land is situated a water supply work, or
  - (b) any person having the control and management of such a work,direct the landholder or person to take specified measures to install, replace or to properly maintain metering equipment for use in connection with that work.
- (2) Unless the direction otherwise specifies, a direction to take specified measures to install or replace metering equipment is taken to include:
  - (a) a direction that the equipment be properly maintained, and
  - (b) a direction that the equipment not be used unless it is properly sealed.
- (2A) A direction under this section may specify the only person or persons who may install, replace, maintain or seal metering equipment.
- (3) Metering equipment is properly maintained and properly sealed only if it is maintained and sealed by a duly qualified person or a person specified under subsection (2A).
- (4) In this section, **duly qualified person** means a person who has such qualifications, skills and experience as are prescribed by the regulations.

## **Division 3 Unlawful works and activities**

### **327 Stop work order regarding unlawful construction or use of water management work**

- (1) This section applies to a water management work that, in the Minister's opinion, is being constructed or used, or is about to be constructed or used, in contravention of this Act.
- (2) The Minister may, by order in writing served on any person having control or management of the water management work, direct the person to take specified measures:
  - (a) to prohibit or discontinue its construction or use, or

(b) to construct or use the work only as specified.

(3) Without limiting subsection (2), the landholder on whose land the water management work is situated, or is proposed to be situated, is taken to have control and management of the work.

### **328 Stop work order regarding unlawful controlled activity or aquifer interference activity**

(1) This section applies to a controlled activity or aquifer interference activity that, in the Minister's opinion, is being carried out, or is about to be carried out, in contravention of this Act.

(2) The Minister may, by order in writing served on any person carrying out the controlled activity or aquifer interference activity, direct the person to take specified measures:

(a) to prohibit or discontinue that activity, or

(b) to carry out that activity only as specified.

(3) Without limiting subsection (2), the landholder on whose land a controlled activity or aquifer interference activity is being carried out, or is proposed to be carried out, is taken to be carrying out that activity.

### **329 Removal of unlawful water management works**

(1) This section applies to a water management work for which no water management work approval is in force.

(2) The Minister may, by order in writing served on any person having control or management of the work, direct the person to take specified measures to demolish, remove, modify or dismantle the work or otherwise render it ineffective.

(3) Such a direction may be given even if the work is not being used or is not capable of being used.

(4) Such a direction may not be given in relation to a water supply work that is being used solely:

(a) to take water from a water source pursuant to a landholder's domestic and stock rights, or

(b) to capture and store overland flow water pursuant to a landholder's harvestable rights.

(5) Without limiting subsection (2), the landholder on whose land the work is situated is taken to have control and management of the work.

## **Division 4 Temporary stop work orders**

### **330 Temporary stop work order to protect public interest**

(1) If satisfied that the public interest so requires, the Minister may, by order in writing served on:

- (a) a landholder on whose land is situated a water management work, or
- (b) any person having the control or management of such a work, or
- (c) any person by whom a controlled activity or aquifer interference activity is being carried out,

direct that, for a specified period, the use of that work, or the carrying out of that activity, is prohibited, or is subject to specified restrictions or specified measures, as the case requires.

(2) Such a direction may be given in relation to a flood work only so as to regulate the use of those parts of the work (including, without limitation, sluices and flood gates) as are capable of being operated to influence the flow of water.

## **Division 5 Protection of public health, public safety and the environment**

### **331 Directions to holders of basic landholder rights**

The Minister may, by order in writing served on:

- (a) a landholder on whose land is situated a water supply work that is being used:
  - (i) to take water from a water source pursuant to the landholder's domestic and stock rights, or
  - (ii) to capture and store overland flow water pursuant to the landholder's harvestable rights, or
- (b) any person having the control or management of such a work,

direct the landholder or person to take specified measures to protect the environment, to preserve basic landholder rights or to overcome a threat to public health.

### **332 Directions concerning damage caused by straying stock**

The Minister may, by order in writing served on any landholder, direct the landholder to take specified measures:

- (a) to prevent stock from straying from the landholder's land into or onto a water management work that is owned by, or is under the control or management of, the Ministerial Corporation, or
- (b) to repair any damage caused to any such water management work as a consequence

of stock having strayed from the landholder's land.

### **333 Directions to protect water sources**

(1) This section applies if the Minister is of the opinion that:

- (a) the construction or use of a water management work, or
- (b) a controlled activity or aquifer interference activity,

is having, has had, or is likely to have, an adverse effect on a water source or waterfront land.

(2) The Minister may, by order in writing served on:

- (a) the person having control or management of the water management work, or
- (b) the person who has carried out, is carrying out or proposes to carry out the controlled activity or aquifer interference activity,

direct the person to take specified measures to prevent, minimise or mitigate any adverse effect on the water source or waterfront land as a consequence of the construction or use of the work or the carrying out of the activity.

(3) Without limiting subsection (2), the measures that may be specified in a direction under this section include:

- (a) a direction to repair any damage caused by the construction or use of the water management work or the carrying out of the controlled activity or aquifer interference activity, and
- (b) a direction to rehabilitate any water source or waterfront land that has been adversely affected by the construction or use of the water management work or the carrying out of the controlled activity or aquifer interference activity, and
- (c) a direction to ensure that the construction or use of the water management work, or the carrying out of the controlled activity or aquifer interference activity, will not in future adversely affect any water source or waterfront land.

(4) Without limiting subsection (2):

- (a) the person who, at the time of the construction or use of a water management work to which this section applies, was the landholder on whose land the work was situated is taken to have control and management of the work, and
- (b) the landholder on whose land a water management work is situated, or is proposed to be situated, is taken to have control and management of the work, and



- (c) the person who, at the time a controlled activity or aquifer interference activity to which this section applies, was the landholder on whose land the activity was carried out is taken to be carrying out the activity, and
- (d) the landholder on whose land a controlled activity or aquifer interference activity is carried out, or is proposed to be carried out, is taken to be carrying out the activity.

### **334 Directions to prepare reports**

- (1) A direction served on a person under this Part may require the person to prepare, and submit to the Minister, reports as to any of the following:
  - (a) the measures the person proposes to take for the purpose of complying with the direction,
  - (b) the progress made by the person in implementing any such measures.
- (2) The direction may also prohibit the person from implementing any such measures until they have been approved by the Minister.

## **Division 6 Enforcement by Land and Environment Court**

### **335 Land and Environment Court may grant injunctions**

On the application of the Minister, the Land and Environment Court may grant an injunction directing any person to whom a direction has been given under this Part to comply with the direction.

### **336 Restraint of breaches of this Act**

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations.
- (2) Any such proceedings may be brought whether or not proceedings have been instituted for an offence against this Act or the regulations.
- (3) Any such proceedings may be brought whether or not any right of the person has been or may be infringed by or as a consequence of the breach.
- (4) Any such proceedings may be brought by a person on the person's own behalf or on behalf of another person (with their consent), or of a body corporate or unincorporate (with the consent of its committee or other controlling body), having like or common interests in those proceedings.
- (5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

(6) If the Land and Environment Court is satisfied that a breach has been committed or that a breach will, unless restrained by the order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.

(7) In this section, **breach** includes a threatened or apprehended breach.

## **Division 7 General**

### **336A Remedial measures may be taken by Minister**

- (1) If a person fails to take the measures specified in a direction under this Part, the Minister may authorise any other person to take those measures.
- (2) The amount of any costs and expenses incurred by the authorised person as a result of the taking of those measures is recoverable in a court of competent jurisdiction as a debt due to the Ministerial Corporation from the person on whom the direction was served.

### **336B Mandatory guidelines**

- (1) The Minister may, by order published on the NSW legislation website, establish mandatory guidelines with respect to the taking and use of water for domestic consumption and stock watering by landholders or other persons authorised to take and use water for either or both of those purposes under:
  - (a) a domestic and stock right, or
  - (b) a domestic and stock access licence.
- (2) Before establishing any guidelines under this section, the Minister must prepare draft guidelines.
- (3) The Minister:
  - (a) must give public notice of the draft guidelines, and
  - (b) must exhibit the draft guidelines (together with such other information as is appropriate or necessary to enable the draft guidelines and their implications to be understood) at the places, on the dates and during the times set out in the notice.
- (4) The public notice referred to in subsection (3) (a):
  - (a) must specify the places at which, the dates on which, and the times during which, the draft guidelines may be inspected by the public, and
  - (b) must specify a period of at least 40 days during which submissions may be made to the Minister in relation to the guidelines (the **submission period**), and

- (c) must be published in an appropriate newspaper.
- (5) During the submission period, any person may make written submissions to the Minister on the draft guidelines.
- (6) After complying with the requirements of this section, the Minister:
  - (a) may establish guidelines under this section in accordance with the draft guidelines, or
  - (b) may establish guidelines under this section in accordance with the draft guidelines, but with such alterations as the Minister thinks fit, or
  - (c) may decide not to proceed with the draft guidelines.
- (7) The Minister is to cause:
  - (a) a copy of any guidelines established under this section as in force from time to time to be published on the Department's internet site, and
  - (b) copies of the guidelines as in force from time to time to be made available for inspection by members of the public during ordinary business hours at such places as the Minister directs.
- (8) A failure to comply with subsection (7) does not affect the validity of any guidelines established under this section.
- (9) In this section:
  - domestic consumption***, in relation to land, includes (but is not limited to) domestic consumption within the meaning of section 52.

***stock watering***, in relation to land, includes (but is not limited to) stock watering within the meaning of section 52.

### **336C Contravention of certain directions**

- (1) A person who fails to comply with a direction under this Part is guilty of an offence.  
Tier 2 penalty.
- (2) For the avoidance of doubt, a person fails to comply with a direction under this Part if the direction requires compliance within a specified period and the direction is not fully complied with within that period.

### **336D Prior notice of direction not required**

The Minister is not required to notify any person who may be affected by a direction under this Part before giving the direction.

## Part 2 Other enforcement powers

### Division 1 Preliminary

#### 337 Purposes for which powers under Part may be exercised

- (1) Powers may be exercised under this Part for any of the following purposes:
  - (a) for determining whether there has been compliance with or a contravention of this Act or the regulations or any access licence, approval, notice or requirement issued or made under this Act,
  - (b) for obtaining information or records for purposes connected with the administration of this Act,
  - (c) generally for administering this Act and protecting the environment.
- (2) In this Part, a reference to this Act or the regulations extends to the [Water Act 1912](#) and the regulations under that Act.
- (3) For the purpose of applying this Part to the [Water Act 1912](#) and the regulations under that Act, references to this Act in section 390 of this Act, and in the definition of **authorised officer** in the Dictionary to this Act, extend to the [Water Act 1912](#) and the regulations under that Act.

#### 337A Effect on other functions

Nothing in this Part affects any function under any other provision of this Act or under any other Act.

#### 337B Extended meaning of “occupier”

In this Part, **occupier**, in relation to land, includes any person having the care, control or management of the land.

### Division 2 Powers to require information or records

#### 338 Application of Division

This Division applies whether or not a power of entry under Division 3 is being or has been exercised.

#### 338A Powers of authorised officers to require information and records

- (1) The Minister may, by notice in writing given to a person, require the person to furnish to the Minister such information or records (or both) as he or she may require for the purposes of this Act.
- (2) An authorised officer may, by notice in writing given to a person, require the person to

furnish to the officer such information or records (or both) as he or she may require for the purposes of this Act.

- (3) A notice under this Division must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (4) A notice under this Division may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (5) The person to whom any record is furnished under this Division may take copies of it.
- (6) If any record required to be furnished under this Division is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

**338B 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 which information is reasonably required for the purposes of this Act to answer questions in relation to those matters.
- (2) The Minister 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) 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.
- (5) The place and time at which a person may be required to attend under subsection (4) is to be:
  - (a) a place or 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.

**338C Recording of evidence**

- (1) An authorised officer may cause any questions and answers to questions given under this Division to be recorded if the officer has informed the person who is to be

questioned that the record is to be made.

- (2) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the authorised officer.
- (3) A copy of any such record must be provided by the authorised officer to the person who is questioned as soon as practicable after it is made.
- (4) A record may be made under this section despite the provisions of any other law.

### **338D Power of authorised officers to demand name and address**

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have committed, or to be committing, an offence against this Act or the regulations to state his or her full name and residential address.
- (2) 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 to fail to comply with any such request.
- (3) A person who, being required to do so under this section:
  - (a) refuses to state his or her name or residential address, or
  - (b) states a name or residential address that in the opinion of the authorised officer is false,

may without any other warrant than this Act be apprehended by the authorised officer and taken before a Magistrate or court officer to be dealt with according to law.

- (4) A Magistrate or court officer before whom a person is taken under subsection (3) may make a bail decision under the [Bail Act 2013](#) in respect of the person.
- (5) If the person has not been charged with an offence, the [Bail Act 2013](#) applies as if the person were accused of an offence.
- (6) For the purpose of applying the [Bail Act 2013](#), a court officer has the same functions as an authorised justice under that Act.
- (7) In this section:

***court officer*** means an authorised officer under the [Criminal Procedure Act 1986](#).

## **Division 3 Powers of entry and search of premises**

### **339 Powers of authorised officers to enter premises**

- (1) An authorised officer may enter any premises at any reasonable time.
- (2) A power to enter premises conferred by this Act authorises entry by foot, by vehicle,

vessel or aircraft or by any other means.

- (3) Entry may be effected under this Act by an authorised officer with the aid of such police officers as the authorised officer considers necessary and with the use of reasonable force.
- (4) Entry may be effected to any premises with the authority of a search warrant under section 339C.

**339A Entry into residential premises only with permission or warrant**

This Division does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under section 339C.

**339B Powers of authorised officers to do things at premises**

- (1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).
- (2) An authorised officer may do any or all of the following:
  - (a) examine and inspect any works,
  - (b) take and remove samples,
  - (c) make such examinations, inquiries and tests as the authorised officer considers necessary,
  - (d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
  - (e) require records to be produced for inspection,
  - (f) examine and inspect any records,
  - (g) copy any records,
  - (h) seize anything that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations,
  - (i) for the purposes of paragraph (h), direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier,
  - (j) do any other thing the authorised officer is empowered to do under this Part.
- (3) The power to seize anything connected with an offence includes a power to seize:

- (a) a thing with respect to which the offence has been committed, and
- (b) a thing that will afford evidence of the commission of the offence, and
- (c) a thing that was used for the purpose of committing the offence.

(4) In this section, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

### **339C Search warrants**

(1) An authorised officer under this Act may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant if the authorised officer under this Act believes on reasonable grounds that:

- (a) a provision of this Act or the regulations is being or has been contravened at any premises, or
- (b) there is in or on any premises matter or a thing that is connected with an offence under this Act or the regulations.

(2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer under this Act named in the warrant:

- (a) to enter the premises, and
- (b) to exercise any function of an authorised officer under this Division.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) In this section:

**matter or a thing** connected with an offence means:

- (a) a matter or a thing with respect to which the offence has been committed, or
- (b) a matter or a thing that will afford evidence of the commission of an offence, or
- (c) a matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.

**offence** includes an offence that there are reasonable grounds for believing has been, or is to be, committed.



### **339D Authorised officers may request assistance**

A person may accompany an authorised officer and take all reasonable steps to assist an authorised officer in the exercise of the authorised officer's functions under this Division if the authorised officer is of the opinion that the person is capable of providing assistance to the authorised officer in the exercise of those functions.

### **339E Assistance to be given to authorised officers**

- (1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Division in connection with any premises.
- (2) The Minister may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.
- (3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

### **339F Care to be taken**

In the exercise of a power of entering or searching premises under this Division, the authorised officer must do as little damage as possible.

### **339G Compensation**

The Minister must compensate all interested parties for any damage caused by the authorised officer in exercising a power of entering premises (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the authorised officer in the exercise of the power of entry.

## **Division 4 General**

### **340 Identification**

- (1) Every authorised officer is to be provided with evidence of his or her authority as an authorised officer.
- (2) In the course of exercising the functions of an authorised officer, the officer must, if requested to do so by any person affected by the exercise of any such function, produce to the person the officer's evidence of authority.

### **340A Offences**

- (1) A person must not, without lawful excuse, neglect or fail to comply with a requirement made of the person under this Part.

Tier 2 penalty.

- (2) A person must not furnish any information or do any other thing in purported compliance with a requirement made under this Part, knowing that it is false or misleading in a material respect.

Tier 2 penalty.

- (3) A person must not threaten, hinder, obstruct or delay an authorised officer in the exercise of the authorised officer's powers under this Part.

Tier 2 penalty.

- (4) A person must not impersonate an authorised officer.

Tier 2 penalty.

**340B 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 that 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 that 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.

#### **340C 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 only be revoked or varied by the Minister or by the person who gave it.

#### **340D Extraterritorial application**

An order, direction or notice may be given under this Chapter to a person in respect of a matter even though the person is outside the State or the matter occurs or is located outside the State, so long as the matter affects a matter to which this Act relates.

### **Part 3 Offences**

#### **341 (Repealed)**

#### **342 Destruction, damage and interference with certain works**

(1) A person must not destroy, damage or interfere with:

(a) any work that is owned by, or is under the control and management of, the Minister, the Ministerial Corporation, a water supply authority, an irrigation corporation, a private irrigation board, a private drainage board or a private water trust, or

(b) any mark, peg, stake or level fixed for the purposes of this Act.

Tier 2 penalty.

(2) A person must not deposit anything in any work that is owned by, or is under the control and management of, the Minister, the Ministerial Corporation, a water supply authority, an irrigation corporation, a private irrigation board, a private drainage board or a private water trust.

Tier 2 penalty.

(3) A person is not guilty of an offence against this section if the person establishes that the act giving rise to the alleged offence was done with lawful authority.

### **343 Taking water from public or private works**

- (1) A person must not take water from any water supply work that is owned by, or is under the control and management of, the Minister, the Ministerial Corporation, a water supply authority, an irrigation corporation, a private irrigation board, a private drainage board or a private water trust, except with the authority of the Minister, that corporation, board, authority or trust.

Tier 2 penalty.

- (2) A person is not guilty of an offence against this section if the person establishes that the act giving rise to the alleged offence was done with lawful authority.
- (3) In subsection (1), a reference to a water supply work, in relation to a water supply authority, is a reference to a water supply work within the meaning of Part 2 of Chapter 6.

### **344 False or misleading information**

A person must not, in or in connection with any application under this Act or the regulations, make a statement that the person knows to be false or misleading in a material particular.

Tier 2 penalty.

### **345 Harm to aquifers and waterfront land**

- (1) A person who harms an aquifer or waterfront land, and does so intentionally or negligently, is guilty of an offence.

Tier 1 penalty.

- (2) A person who harms an aquifer or waterfront land is guilty of an offence.

Tier 2 penalty.

- (3) It is a defence to a prosecution under this section if the accused person establishes that the conduct that harmed the aquifer or waterfront land:

(a) was essential for the carrying out of:

- (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (ii) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
- (iii) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or

- (iv) a project approved under Part 3A of that Act, or
- (v) infrastructure approved under Part 5.1 of that Act, or
- (b) was authorised to be done by or under the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or
- (c) was authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

(4) In this section, **harm**, in relation to an aquifer or waterfront land, means any act or omission that adversely affects, the capacity of the aquifer or waterfront land to hold or carry water.

### **346 Unlicensed bore drilling**

A person must not construct a water bore otherwise than in accordance with a bore driller's licence that is held by that person and that authorises the person to construct water bores.

Tier 2 penalty.

### **347 Ancillary offences**

A person who:

- (a) causes or permits the commission of an offence against this Act or the regulations, or
- (b) aids, abets, counsels or procures another person to commit an offence against this Act or the regulations, or
- (c) attempts to commit an offence against this Act or the regulations, or
- (d) conspires to commit an offence against this Act or the regulations,

is guilty of that offence and liable to the penalty prescribed by this Act or the regulations in relation to that offence.

### **347A-352 (Repealed)**

## **Part 3A Court orders in connection with offences**

### **353 Operation of Part**

- (1) This Part applies where a court finds a person guilty of an offence against this Act.
- (2) In this Part:

**harm to the environment** includes harm to any water source or to any waterfront

land.

**the court** means the court that finds the offence proved.

**the offender** means the person who is found to have committed the offence.

### **353A Orders generally**

- (1) One or more orders may be made under this Part against the offender.
- (2) Orders may be made under this Part in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

### **353B Orders for restoration and prevention**

The court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow):

- (a) to prevent, control, abate or mitigate any harm to the environment caused by the commission of the offence, or
- (b) to make good any resulting environmental damage, or
- (c) to prevent the continuance or recurrence of the offence.

### **353C Orders for costs, expenses and compensation at time offence proved**

- (1) The court may, if it appears to the court that:
  - (a) a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.

- (2) The Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the jurisdictional limit of the Local Court under the [Civil Procedure Act 2005](#).

### **353D Recovery of costs, expenses and compensation after offence proved**

- (1) If, after the court finds the offence proved:
  - (a) a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

the public authority or person may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.

- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

### **353E Orders regarding costs and expenses of investigation**

- (1) The court may, if it appears to the court that the Minister has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Minister the costs and expenses so incurred in such amount as is fixed by the order.

- (2) In this section:

**costs and expenses**, in relation to the investigation of an offence, means the costs and expenses:

- (a) in taking any sample or conducting any inspection, test, measurement or analysis, or
  - (b) of transporting, storing or disposing of evidence,
- during the investigation of the offence.

### **353F Orders regarding monetary benefits**

- (1) The Land and Environment Court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) The amount of an additional penalty for an offence is not subject to any maximum

amount of penalty provided elsewhere by or under this Act.

(3) In this section:

**monetary benefits** means monetary, financial or economic benefits.

**the court** does not include the Local Court.

### **353G Additional orders**

(1) The court may do any one or more of the following:

(a) it may order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its environmental and other consequences and any other orders made against the offender,

(b) it may order the offender to carry out, or contribute a specified amount to the cost of carrying out, a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,

(c) it may order the offender to attend, or cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court.

(2) The Local Court is not authorised to make an order referred to in subsection (1) (b) or (c).

(3) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.

(4) If the offender fails to comply with an order under subsection (1) (a), the prosecutor or a person authorised by the prosecutor may take action to carry out the order.

(5) The reasonable cost of taking action referred to in subsection (4) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.

### **353H Offence**

A person who fails to comply with an order under this Part (except an order under section 353C, 353D or 353E) is guilty of an offence.

Tier 2 penalty.

## **Part 4 Recovery of rates, charges and other money**

### **Division 1 Recovery of rates, charges and other amounts by charging authorities**



### **354 Definition**

In this Part, **charging authority** means the Minister, an irrigation corporation, a private irrigation board, a private drainage board, a private water trust or a water supply authority.

### **355 Certain rates and charges to be a charge on land**

- (1) A rate or charge imposed on the owner of any land is a charge on the land to which the charge relates.
- (2) A charge imposed for a service or thing supplied or provided in connection with a specific parcel of land is a charge on the land.
- (3) The provisions of this section have effect despite anything contained in section 42 of the [Real Property Act 1900](#).

### **356 Interest on rates and charges**

A charging authority may charge interest on overdue rates and charges at a rate not exceeding the rate of interest payable for the time being on an unpaid judgment of the Supreme Court.

### **357 Recovery of rates, charges and other money**

- (1) Any rate or charge or other money due to a charging authority under this Act may be recovered in any court of competent jurisdiction as if it were a debt due to the charging authority.
- (2) An unsatisfied judgment or order of any court for the recovery of any rate or charge from any person is not a bar to its recovery from any other person who is liable under this Act for its payment.

### **358 Joint owners**

- (1) If land is owned or held jointly by two or more persons, such persons are jointly and severally liable to the charging authority for the rate, but as between themselves each are only be liable for such part of the rate as is proportionate to his or her interest in the land.
- (2) If any of such persons pays to the charging authority more than his or her proportionate part, he or she may recover the excess by way of contribution from the others.

### **359 Sale of land for unpaid rates and charges**

- (1) This section applies to rates and charges imposed under this Act by the Minister or by a water supply authority.

- (2) The provisions of Division 5 of Part 2 of Chapter 17 of the *Local Government Act 1993* apply to land in respect of which a rate or charge (being a rate or charge that is, by virtue of this Part, a charge on land) remains unpaid in the same way as they apply to land in respect of which rates and charges under that Act remain unpaid.
- (3) For the purpose of applying the provisions of Division 5 of Part 2 of Chapter 17 of the *Local Government Act 1993* to land in respect of which a rate or charge remains unpaid:
  - (a) a reference in those provisions to a council is to be read as a reference to the Minister or to a water supply authority, as the case requires, and
  - (b) a reference to a general manager or public officer is to be read as a reference to the Director-General or to the principal officer of a water supply authority, as the case requires, and
  - (c) a reference to a member of staff of a council is to be read as a reference to a member of staff of the Department or to an employee of a water supply authority, as the case requires, and
  - (d) a reference to a rating authority is to be read as including a reference to a council.

### **360 Certificate as to amount due**

- (1) A charging authority must, on written application being made to it and payment of the fee determined by it, issue to the applicant a certificate:
  - (a) containing particulars of any amounts payable to the authority in respect of a parcel of separately assessed land, or
  - (b) to the effect that there are no such amounts.
- (2) An application for a certificate must:
  - (a) specify the name and address of the applicant, and
  - (b) identify the land to which the application relates.
- (3) Such a certificate is conclusive proof, in favour of a purchaser in good faith and for value of the land to which the certificate relates that, at the date of its issue, no amounts were payable to the charging authority in respect of that land other than such amounts as are specified in the certificate.

### **361 Liability where an estate or interest is transferred**

- (1) A person who disposes of his or her estate or interest in any land in respect of which any rates or charges have been or may be levied remains liable for rates or charges to the same extent as if the person had not disposed of his or her estate or interest in the land, if the rates or charges are levied either:

- (a) before the person disposed of his or her estate or interest in the land, or
  - (b) before the person has given to the charging authority the prescribed notice of disposal.
- (2) If any person who disposes of land to another person pays any amount to the charging authority in respect of rates or charges levied after the land disposed of but before the prescribed notice is given to the authority, the person by whom the amount was paid may recover the amount from the person to whom the land was disposed.
- (3) As between an owner of land and any other person from or to whom the owner derives or disposes of his or her estate or interest in the land, rates or charges under this Act are to be considered as accruing from day to day and are apportionable accordingly.

### **362 Liability where a person becomes entitled to an estate or interest**

- (1) An owner of land is liable for all arrears of rates and charges owing by any previous owner of the land, despite the fact that the new owner acquired the land after the rates or charges were levied.
- (2) If any person who becomes an owner of land pays to the charging authority any rates or charges in respect of that land that were levied before the person became the owner, the person may recover from the previous owner such part of the rates or charges as was levied in respect of the period during which the previous owner was the owner of the land.

## **Division 2 Provisions relating to access licences**

### **362A Joint owners**

- (1) If an access licence is co-held by two or more co-holders, those co-holders are jointly and severally liable to the Minister for the fees, charges and civil penalties relating to the licence, but as between themselves each are only liable for such part of those fees, charges and civil penalties as is proportionate to his or her interest in the licence.
- (2) If any of those co-holders pays to the Minister more than his or her proportionate part, he or she may recover the excess by way of contribution from the others.

### **362B Certificate as to charges outstanding in relation to access licences**

- (1) The Minister may, in relation to any access licence, issue a certificate to the effect that, as at the date on which the certificate is issued:
- (a) a specified amount is payable in relation to the access licence pursuant to fees, charges and civil penalties imposed under this Act, or

(b) no amount is so payable.

- (2) Such a certificate is conclusive proof that, as at the date on which it was issued, no amounts were payable in respect of the access licence other than such amounts as are specified in the certificate.

### **362C Unpaid fees, charges and civil penalties**

- (1) Any civil penalty imposed by the Minister under this Act that remains unpaid is recoverable in any court of competent jurisdiction as a debt due to the Crown.
- (2) If a fee, charge or civil penalty imposed by the Minister under this Act relates to an access licence, the fee, charge or civil penalty may be recovered from the holder of the licence who incurred the fee, charge or penalty or the holder of the licence for the time being.
- (3) Despite subsection (2), if a person surrenders an access licence, any fee, charge or civil penalty imposed by the Minister under this Act that relates to the licence may be recovered from that person.

## **Part 5 Legal proceedings and appeals**

### **Division 1 Legal proceedings**

#### **363 Offences by corporations**

- (1) If a corporation commits an offence against this Act or the regulations:
- (a) each person who is a director of the corporation, and
  - (b) each person who is concerned in the management of the corporation,
- is taken to have committed the same offence if the person knowingly authorised or permitted the act or omission constituting the offence.
- (2) A person may be proceeded against and convicted under this section whether or not the corporation has been proceeded against or convicted.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation.

#### **363A Offences by joint holders of access licence or approval**

- (1) If an offence against this Act or the regulations arises in relation to an access licence or approval, each co-holder of the licence or approval is taken to have committed the offence.
- (2) A co-holder of a licence or approval is not guilty of such an offence if the co-holder establishes that:

- (a) the offence was committed by some other person (whether or not another co-holder of the licence or approval), and
  - (b) the other person was not associated with the co-holder at the time the offence was committed, and
  - (c) the co-holder took all reasonable steps to prevent the offence from being committed.
- (3) A person is associated with a co-holder of a licence or approval for the purposes of subsection (2) (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the co-holder.
- (4) A person may, under this section, be proceeded against and convicted for an offence whether or not any other person has been proceeded against or convicted for the offence.

### **363B Penalties**

For the purposes of this Act:

- (a) a Tier 1 penalty corresponds to a maximum penalty of:
  - (i) in the case of a corporation, 20,000 penalty units and, in the case of a continuing offence, a further penalty of 2,400 penalty units for each day the offence continues, or
  - (ii) in any other case, imprisonment for 2 years or 10,000 penalty units, or both, and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, and
- (b) a Tier 2 penalty corresponds to a maximum penalty of:
  - (i) in the case of a corporation, 10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, or
  - (ii) in any other case, 2,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues, and
- (c) a Tier 3 penalty corresponds to a maximum penalty of 100 penalty units.

### **364 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily:
- (a) by the Local Court, or
  - (b) by the Land and Environment Court in its summary jurisdiction.

- (2) Proceedings for an offence against this Act or the regulations may be commenced at any time within, but not later than, 3 years after the date on which the offence is alleged to have been committed.
- (3) Proceedings for an offence against this Act or the regulations may also be commenced at any time within, but not later than, 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer.
- (4) If subsection (3) is relied on for the purpose of commencing proceedings for an offence, the process by which the proceedings are commenced must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer and need not contain particulars of the date on which the offence was committed.
- (5) The date on which evidence first came to the attention of any relevant authorised officer is the date specified in the process by which the proceedings are commenced, unless the contrary is established.
- (6) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Act or the regulations is:
  - (a) the lesser of the following:
    - (i) 200 penalty units,
    - (ii) the maximum monetary penalty specified in respect of the offence, and
  - (b) in the case of a continuing offence, 10 per cent of the further monetary penalty specified in respect of the offence for each day the offence continues.
- (7) The maximum penalty that may be imposed by the Land and Environment Court in proceedings for an offence against this Act or the regulations is the maximum penalty specified in respect of the offence.
- (8) In this section, **evidence** of an offence means evidence of any act or omission constituting the offence.

**364A Matters to be considered in imposing penalty**

- (1) In imposing a penalty on a person for an offence against this Act or the regulations, the court is to take into consideration the following (so far as they are relevant):
  - (a) the impact of the offence on other persons' rights under this Act,
  - (b) the market value of any water that has been lost, misused or unlawfully taken as a consequence of the commission of the offence,
  - (c) the extent of the harm caused or likely to be caused to the environment (including, in particular, any water source or waterfront land) by the commission of

the offence,

- (d) the practical measures that may be taken to prevent, control, abate or mitigate that harm,
- (e) the extent to which the person could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence,
- (f) the extent to which the person had control over the causes that gave rise to the offence,
- (g) whether the offence was committed during a severe water shortage (that is, in contravention of an order in force under section 49A or 324),
- (h) the person's intentions in committing the offence,
- (i) whether, in committing the offence, the person was complying with orders from an employer or supervising employee,
- (j) in the case of an offence of taking water in contravention of this Act, whether the water so taken had been released for environmental purposes and, if so, whether the person was aware of that fact,
- (k) any civil penalty that has been imposed on the person under section 60G in relation to the conduct from which the offence arises.

(2) The court may take into consideration other matters that it considers relevant.

### **365 Penalty notices for certain offences**

(1) In this section:

**penalty notice** means a notice to the effect that, if the person served with the notice does not wish to have an alleged offence dealt with by a court, the person may pay, in accordance with the notice, the penalty specified in the notice.

**penalty notice offence** means an offence against this Act or the regulations that is declared by the regulations to be a penalty notice offence.

- (2) An authorised officer may serve a penalty notice on a person who appears to the authorised officer to have committed a penalty notice offence.
- (3) The amount of the penalty to be specified in a penalty notice is the amount prescribed by the regulations for the alleged offence, being an amount not exceeding the maximum penalty which could be imposed for the offence by a court.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of the penalty prescribed by the regulations for an alleged offence is

paid under this section, no person is liable to any further proceedings for the alleged offence.

- (6) Payment of a penalty under this section is not to be regarded as an admission of liability for the purposes of, nor is in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The Ministerial Corporation may withdraw a penalty notice at any time within 28 days after the date on which it was served and, in that event:
  - (a) the amount payable under the notice ceases to be payable, and
  - (b) any amount that has been paid under the notice is repayable to the person by whom it was paid, and
  - (c) further proceedings for the offence in respect of which the notice was served may be taken against any person (including the person on whom the notice was served) as if the notice had never been served.
- (8) This section does not limit the operation of any other provision of this or any other Act or law in relation to proceedings that may be taken in respect of offences.

### **365A Continuing offences**

- (1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or stop doing something (whether or not within a specified period or before a particular time):
  - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to the extent that a requirement of a notice is revoked.

### **366 Legal proceedings do not affect, and are unaffected by, other action under this Act**

The prosecution of a person for an offence against this Act or the regulations, or the issue of a penalty notice in respect of such an offence, does not affect, and is unaffected by, any other action taken under this Act in relation to the act or omission giving rise to the offence.

### **367 Evidentiary certificates**

- (1) A certificate that is issued by the Minister and that states:
  - (a) that an instrument, a copy of which is set out in or annexed to the certificate,



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, or

- (b) that a document, a copy of which is set out in or annexed to the certificate, is a copy of part of, or an extract from, a register or water allocation account kept under this Act, or
- (c) that an image, a copy of which is set out in or annexed to the certificate:
  - (i) is a photograph or other remotely-sensed image of a specified kind, and
  - (ii) portrays specified land as at a specified date, or
- (d) that an amount payable under this Act by a specified person has, or has not, been paid,

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

- (2) A certificate that is issued by the Minister and that states that, on a date or during a period specified in the certificate:
  - (a) a specified person was, or was not, the holder of a specified access licence or approval, or
  - (b) a specified access licence or approval was, at a specified time, revoked or suspended for a specified period or was revoked or suspended subject to specified conditions, or
  - (c) a specified condition of an access licence or approval was, at a specified time, imposed or revoked, or
  - (d) specified land was, or was not, the subject of a specified approval, or
  - (e) specified land was, or was not, within a specified water management area, or
  - (f) a specified part of a water source was, or was not, within a specified water management area, or
  - (g) a specified water management work was, or was not, at a specified location within a specified parcel of land, or
  - (h) a specified water management work was, or was not, the subject of a specified water management work approval, or

- (i) the conditions of a specified access licence or approval were, or were not, as so specified, or
  - (j) the terms of a specified available water determination were, or were not, as so specified, or
  - (k) a specified person was, or was not, an authorised officer in relation to a specified provision of this Act, or
  - (l) a specified person was, or was not, an authorised analyst, or
  - (m) a specified person was, or was not, a member of staff of the Department, or
  - (n) a specified delegation under this Act was, or was not, in force, or
  - (o) a specified access licence or approval was, or was not, in force, or
  - (p) specified matters were, or were not, recorded in the Access Register or were, or were not, recorded in specified terms, or
  - (q) the water allocations credited to, or debited or otherwise withdrawn from, the water allocation account for a specified access licence were, or were not, as so specified, or
  - (r) a specified number of water allocations were, or were not, credited to, or debited or otherwise withdrawn from, the water allocation account for a specified access licence, or
  - (s) a specified quantity of water was, or was not, ordered in relation to a specified access licence, or
  - (s1) a specified quantity of water that was taken was, or was not, taken from a specified water source or part of a specified water source, or
  - (s2) Part 2 or 3 of Chapter 3 of this Act does, or does not, apply to a specified water source or part of a specified water source, or
  - (t) information required to be furnished to the Minister or an authorised officer pursuant to this Act was, or was not, received, or
  - (u) an approved river gauge had, or had not, been maintained in accordance with the requirements (if any) prescribed by the regulations, or
  - (v) the readings on an approved river gauge were, or were not, as so specified,
- is admissible in any legal proceedings and is evidence of the fact or facts so stated.

(3) In any legal proceedings, evidence is not required:

(a) as to the accuracy or reliability of an approved river gauge, or

(b) as to the manner in which an approved river gauge was operated,

unless evidence is adduced that the gauge was not accurate, was not reliable or was not properly operated.

(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.

(5) In this section, **approved river gauge** means a gauge of a type or design approved by the Minister, by order published in the Gazette, for the purpose of measuring the level or flow of water in a river or lake.

(6) In this section:

(a) a reference to a water management work includes a reference to a corresponding kind of work to which Part 2, 5 or 8 of the [Water Act 1912](#) extends, and

(b) a reference to an approval or access licence includes a reference to an entitlement (within the meaning of clause 2 of Schedule 10) that confers a corresponding authority.

### **367A Evidence of analysts**

(1) A certificate of an authorised analyst stating the result of an analysis or examination is admissible in evidence in any legal proceedings as evidence of the facts stated in the certificate and the correctness of the result of the analysis or examination.

(2) A certificate of an authorised 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 legal proceedings 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.

(3) 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.

### **367B Rebuttable presumptions**

(1) In any proceedings for an offence against this Act or the regulations being taken against a landholder:

- (a) the fact that a water management work is or has been located:
    - (i) on the landholder's land, or
    - (ii) in a river or lake within the landholder's land,gives rise to a rebuttable presumption that the work was constructed by the landholder, and
  - (b) the fact that a water management work is being or has been used:
    - (i) on the landholder's land, or
    - (ii) in a river or lake within the landholder's land,gives rise to a rebuttable presumption that the work is being or has been used by the landholder, and
  - (c) the fact that water is being or has been taken from a water source by means of a water supply work situated:
    - (i) on the landholder's land, or
    - (ii) in a river or lake within the landholder's land,gives rise to a rebuttable presumption that the water is being or has been taken by the landholder, and
  - (d) the fact that water is being or has been discharged into a water source by means of a drainage work situated on the landholder's land gives rise to a rebuttable presumption that the water is being or has been discharged by the landholder, and
  - (e) the fact that water is being or has been used on the landholder's land gives rise to a rebuttable presumption that the water is being or has been used by the landholder, and
  - (f) the fact that a controlled activity is being or has been carried out on waterfront land within the landholder's land gives rise to a rebuttable presumption that the activity is being or has been carried out by the landholder, and
  - (g) the fact that an aquifer interference activity is being or has been carried out on the landholder's land gives rise to a rebuttable presumption that the activity is being or has been carried out by the landholder.
- (2) In any proceedings for an offence against this Act or the regulations being taken against the holder of an approval for a water supply work, the fact that water is being or has been taken from a water source:

(a) by means of the work, or

(b) through metering equipment installed in connection with the work,

gives rise to a rebuttable presumption that the holder of the approval is or has been using the work to take water from that water source.

(3) In any proceedings for an offence against this Act or the regulations, the fact that a work of the kind referred to in:

(a) the definition of **drainage work** in the Dictionary, or

(b) paragraph (a), (b) or (c) of the definition of **water supply work** in the Dictionary,

is capable of being used for the purpose referred to in that provision gives rise to a rebuttable presumption that the work has been constructed or used for that purpose.

(4) This section does not limit the operation of section 60E or 91L.

## Division 2 Appeals

### 368 Appeals to Land and Environment Court

(1) An appeal lies to the Land and Environment Court against any of the following decisions made by the Minister:

(a) a decision refusing to grant an access licence,

(b) a decision granting a designated access licence, if the appellant was an objector to the granting of the licence,

(c) a decision imposing a discretionary condition on an access licence,

(d) a decision fixing the term of an access licence,

(e) a decision refusing consent to a dealing in an access licence,

(f) a decision suspending or cancelling an access licence,

(fa) a decision:

(i) in relation to the recording of any matter in the Access Register, or

(ii) in relation to the issue of any access licence certificate,

(g) a decision refusing to grant an approval, other than a decision refusing to accept an application for an approval,

(h) a decision granting a designated approval, if the appellant was an objector to the granting of the approval,

- (i) a decision imposing a discretionary condition on an approval,
- (j) a decision fixing the term of an approval,
- (k) a decision refusing to amend an approval in accordance with an application made by its holder,
- (l) a decision suspending or cancelling an approval or part of an approval,
- (la) a decision ordering an irrigation corporation to pay a civil penalty to the Minister,
- (m) a decision ordering a major utility or local water utility to pay a civil penalty to the Minister,
- (ma) a decision under section 60G,
- (n) a decision to give a direction to a person under Part 1,
- (o) a decision as to a person's entitlement to compensation for damage arising from the exercise of a power of entry under Part 2.

(2) Despite subsection (1):

- (a) no appeal lies against any decision made by the Minister on an application to which an objection has been made if:
  - (i) in the case of the applicant, the Minister has dismissed the application as a consequence of the applicant having failed to participate in mediation or neutral evaluation proceedings, or
  - (ii) in the case of the objector, the Minister has dismissed the objection as a consequence of the objector having failed to participate in mediation or neutral evaluation proceedings, and
- (b) no appeal lies against any decision made by the Minister pursuant to a report from a Commission of Inquiry under section 119 of the *Environmental Planning and Assessment Act 1979*, and
- (c) no appeal lies against a decision of the Minister to grant a licence under section 63A or 63B or to impose a discretionary condition on such a licence, and
- (d) no appeal lies against a decision of the Minister to impose a discretionary condition on a licence amended under section 68B.

(3) An appeal is to be made in accordance with rules of court, but may not be made more than 28 days after the date on which the decision was made.

(4) In addition to the appellant and the Minister:

- (a) the parties to an appeal made by an applicant for a designated access licence or

designated approval against a decision refusing to grant the licence or approval include any objector to the granting of the licence or approval who, in accordance with rules of court, gives notice to the Land and Environment Court of the objector's wish to become a party to the appeal, and

(b) the parties to an appeal made by an objector to the granting of a designated access licence or designated approval against a decision granting the licence or approval include the applicant for the licence or approval.

(5) The lodging of an appeal does not operate to stay action on the decision appealed against, except to the extent that the Land and Environment Court otherwise directs.

(5A) If the Land and Environment Court directs that a decision under appeal is stayed, the decision does not operate until the stay ceases to have effect or the Land and Environment Court confirms the decision or the appeal is withdrawn, whichever first occurs.

(6) In this section:

**designated access licence** means an access licence to which a person has a right of objection under section 62.

**designated approval** means an approval to which a person has a right of objection under section 93.

## **Chapter 8 Administration**

### **Part 1**

**369, 370 (Repealed)**

### **Part 2 Water Administration Ministerial Corporation**

#### **371 Constitution of Water Administration Ministerial Corporation**

- (1) There is constituted by this Act a corporation with the corporate name "Water Administration Ministerial Corporation".
- (2) The affairs of the Ministerial Corporation are to be managed by the Minister.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Ministerial Corporation by the Minister, or with the authority of the Minister, is taken to have been done by the Ministerial Corporation.
- (4) The Ministerial Corporation is, for the purposes of any Act, a statutory body representing the Crown.

### **372 Functions of Ministerial Corporation**

- (1) The Ministerial Corporation has the following functions:
  - (a) to construct, maintain and operate water management works,
  - (a1) to construct, maintain and operate gauging stations and other monitoring equipment,
  - (b) to conduct research, collect information and develop technology in relation to water management,
  - (c) to acquire rights to water, whether within or beyond New South Wales,
  - (d) to do anything for the purpose of enabling the objects of this Act to be attained.
- (1A) The Ministerial Corporation has such other functions as are conferred or imposed on it by or under this or any other Act or law.
- (2) The Ministerial Corporation may exercise its functions within and beyond New South Wales.
- (3) The Ministerial Corporation may exercise any of its functions, and may otherwise act, in the name of the Department.
- (4) It is the duty of the Ministerial Corporation to exercise its functions consistently with the principles of ecologically sustainable development.
- (5) It is the duty of the Ministerial Corporation to exercise its function of issuing a Snowy water licence under Part 5 of the [Snowy Hydro Corporatisation Act 1997](#) consistently with the terms of the *Snowy Water Inquiry Outcomes Implementation Deed*.
- (6) In subsection (5), **Snowy Water Inquiry Outcomes Implementation Deed** means the deed under that title that was entered into on behalf of the Commonwealth, New South Wales and Victoria on 3 June 2002, as that deed is amended from time to time in accordance with its terms.

#### **372A Metering equipment functions**

- (1) **Conferral of metering equipment functions** The Ministerial Corporation may install, test and remove metering equipment.
- (2) If the regulations so provide, the Ministerial Corporation has the following functions:
  - (a) to maintain, repair, modify and replace metering equipment (whether or not that equipment was installed by the Corporation),
  - (b) to operate metering equipment.
- (3) Regulations under subsection (2) may provide that the Ministerial Corporation is, or is



not, to exercise such functions to the exclusion of any other person and may limit the exercise of the functions to:

- (a) specified water sources or classes of water sources, or
- (b) a specified area, or
- (c) specified access licences or approvals or classes of access licences or approvals in specified areas, or
- (d) specified works or classes of works.

- (4) **Operation of section** The functions conferred by this section are in addition to any functions conferred on the Ministerial Corporation under this Act or the [Water Act 1912](#) in relation to water management works or other works.
- (5) This section and any regulations made under this section have effect despite any other provision of this Act or the [Water Act 1912](#).
- (6) A direction under section 326, or a condition of an access licence or approval, ceases to have effect during any period that the exercise of a function is conferred exclusively on the Ministerial Corporation by or under this section, if the direction or condition requires the exercise of, or relates to the exercise of, that function.
- (7) Subsection (6) does not affect the operation of, or enforcement of, a direction under section 326 or a condition of an access licence or approval in relation to any period before the direction or condition ceased to have effect.
- (8) In this section, a reference to an access licence or approval includes a reference to an entitlement (within the meaning of clause 2 of Schedule 10) that confers a corresponding authority.

### **372B Interests and rights in metering equipment**

- (1) Metering equipment installed or replaced by the Ministerial Corporation is not the property of the Ministerial Corporation, except as otherwise provided by this Act or the [Water Act 1912](#) or regulations under this Act or that Act.
- (2) No compensation is payable by or on behalf of the Crown to any person who suffers loss or damage because of the removal by the Ministerial Corporation of metering equipment installed by the Ministerial Corporation.
- (3) If a provision of the regulations provides that the Ministerial Corporation is the owner of specified metering equipment that it installs or replaces, the provision has effect despite anything contained in section 42 of the [Real Property Act 1900](#).

### **373 Commercial operations**

- (1) With the approval of the Governor, the Ministerial Corporation may enter into

commercial operations with respect to:

- (a) any services developed in connection with the exercise of its functions, and
- (b) any products or by-products (including intellectual property) resulting from the exercise of its functions, and
- (c) such other matters as may be prescribed by the regulations.

(2) With the approval of the Governor, the Ministerial Corporation may form, or join in forming, a company, partnership or trust for the purpose of exercising its functions under this Act.

### **374 Application of [Public Works Act 1912](#)**

- (1) For the purposes of the [Public Works Act 1912](#), any works carried out by the Ministerial Corporation under this Act are taken to be authorised works and the Ministerial Corporation is taken to be the Constructing Authority for those works.
- (2) Part 3 of the [Public Works Act 1912](#) does not apply to or in respect of any works constructed by the Ministerial Corporation under this Act.

### **375 Acquisition of land**

- (1) The Ministerial Corporation may acquire land for the purposes of this Act by agreement, or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) The acquisition of land by the Ministerial Corporation for the purpose of its transfer to an irrigation corporation or private irrigation board is taken to be for the purposes of this Act if the purpose of the transfer is to enable the irrigation corporation or private irrigation board to exercise its functions under this Act.
- (3) For the purposes of the [Public Works Act 1912](#), any such acquisition is taken to be for an authorised work, and the Ministerial Corporation is, in relation to that work, taken to be the Constructing Authority.

### **376 Staff of Ministerial Corporation**

The Ministerial Corporation may arrange for the use of the services of any staff or facilities of any government department or public authority.

### **377 Delegation of functions**

The Ministerial Corporation may delegate to any person the exercise of any of its functions, other than this power of delegation.

## **Part 3 Water investment trust**

### **378 Definitions**

In this Part:

**Board of Trustees** means the Board of Trustees referred to in section 379 (4).

**Fund** means the Water Investment Trust Fund established by section 384.

**Trust** means the Water Investment Trust constituted by section 379.

### **379 Constitution of Trust**

- (1) There is constituted by this Act a body corporate with the corporate name of the Water Investment Trust.
- (2) The Trust has such functions as are conferred or imposed on it by or under this or any other Act or law.
- (3) The Trust is, for the purposes of any Act, a statutory body representing the Crown.
- (4) The affairs of the Trust are to be managed by a Board of Trustees.
- (5) Subject to this section, the constitution and procedure of the Board of Trustees are to be as prescribed by the regulations.

### **380 Objects of Trust**

The objects of the Trust are to promote, organise, carry out and fund projects, in both the public and private sectors, for:

- (a) the restoration and rehabilitation of water sources and their dependant ecosystems, and
- (b) the construction of works for the more efficient delivery, use and recycling of water, and
- (c) the conduct of water industry adjustment, business restructuring and industry training, and
- (d) the conduct of research, and the development of technology, in relation to the matters referred to in paragraphs (a), (b) and (c),

in order to maximise the environmental, social and economic benefits of the State's water sources for present and future generations.

### **381 Functions of Trust**

The Trust may, for the purpose of promoting its objects:

- (a) make grants or loans (either conditionally or subject to conditions) for projects of the kind described in section 380, and
- (b) supervise the expenditure of money so granted, and
- (c) establish works programs, and associated budgets, for projects to be carried out or funded by the Trust, and
- (d) engage in such other activities relating to its objects as the Minister may approve.

### **382 Staff of Trust**

- (1) The Trust may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department or public authority.
- (2) For the purposes of this Act, a person whose services are made use of under this section is an officer of the Trust.

### **383 Delegation**

The Trust may delegate to a member of the Board of Trustees, or to an officer of the Trust, the exercise of any of its functions, other than this power of delegation.

### **384 Water Investment Trust Fund**

- (1) There is to be established in the Special Deposits Account a Water Investment Trust Fund into which are to be paid:
  - (a) such money as may be raised by way of water investment contributions pursuant to this Part, and
  - (b) such money as may be appropriated by Parliament for payment into the Fund, and
  - (c) the proceeds of investment of money in the Fund, and
  - (d) any gift or bequest of money to the Trust, and
  - (e) such other money as is required or permitted to be paid into the Fund.
- (2) Money in the Trust Fund may be used:
  - (a) for the purpose of enabling the Trust to exercise its functions, and
  - (b) to cover the costs incurred by the Trust in administering this Part.

### **385 Investments**

The Trust is to invest money in the Trust Fund:

- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*,  
or

- (b) if that Act does not confer power on the Trust to invest money, in any manner approved by the Treasurer.

### **386 Investment levies on water users**

- (1) The regulations may make provision for or with respect to the fixing, assessing and levying of water investment contributions from persons who hold access licences.
- (2) Water investment contributions are to be fixed in relation to specified works programs established by the Trust, and so as to yield receipts no greater in total than the amounts budgeted by the Trust in relation to the works program so specified.
- (3) For the purposes of section 78 (1) (c), a water investment contribution payable by the holder of a licence is taken to be a charge payable in respect of the licence.
- (4) Part 4 of Chapter 7 applies to and in respect of a water investment contribution levied under this section in the same way as it applies to and in respect of a rate or charge referred to in that Part and, for that purpose, the Trust is taken to be a charging authority.

## **Part 3A Murray-Darling Basin**

### **386A Definitions**

In this Part:

**Agreement** means the Murray-Darling Basin Agreement set out in Schedule 1 to the [Water Act 2007](#) of the Commonwealth.

**Basin Officials Committee** means the committee of that name established under the Agreement.

### **386B Appointments to Basin Officials Committee**

- (1) The Minister is authorised to appoint, under and in accordance with the terms of the Agreement:
  - (a) a person as a member of the Basin Officials Committee representing the State, and
  - (b) a person to act as the member of the Basin Officials Committee in place of the member appointed under paragraph (a).
- (2) The Minister may, at any time, terminate the appointment of any such person.
- (3) The regulations may make provision for or with respect to the appointment of, or the holding of office by, any such person.

### **386C Minister may act for Government of NSW**

The Minister is authorised to act on behalf of the State as a Contracting Government under the Agreement.

### **386D Authorisation of works, operations and measures under the Agreement**

Subject to the law of this State and the Agreement:

- (a) the construction, maintenance, operation and control in the State of any works under the Agreement, and
  - (b) the carrying out of any of the operations referred to in the Agreement, and
  - (c) the implementation of any measures referred to in the Agreement,
- are authorised.

### **386E Constructing Authority for NSW**

- (1) The Ministerial Corporation, Water NSW and any other public authority authorised by the Minister by notice published in the Gazette are each Constructing Authorities for the purposes of the Agreement and authorised to carry out the functions of a Constructing Authority under the Agreement.
- (2) The Minister may determine any dispute as to which authority should act as the Constructing Authority for a particular work, operation or measure.

### **386F Certain documents to be tabled in Parliament**

The Minister is to table or cause to be tabled in each House of Parliament:

- (a) a copy of each annual report of the Murray-Darling Basin Authority received by the Minister under the [Water Act 2007](#) of the Commonwealth, and
- (b) a copy of each amendment of the Agreement that takes effect under the terms of the Agreement,

within 15 sitting days of that House after the report is received or the amendment takes effect (as the case requires).

## **Part 4 General administration**

### **387 Expert advisory panels**

- (1) The Minister may appoint expert advisory panels for the purpose of this Act.
- (2) An expert advisory panel is to consist of such persons as, in the opinion of the Minister, have the qualifications and expertise appropriate to the matters proposed to be referred to it.

- (3) An expert advisory panel has the function of investigating, and reporting to the Minister on, such of the following matters as are referred to it for investigation and report:
- (a) any State Water Management Outcomes Plan to be established under section 6,
  - (b) the terms of reference to be set by the Minister under section 15 for the preparation of a draft management plan,
  - (c) the adequacy and appropriateness of the provisions of a draft management plan submitted to the Minister under section 37 or 40,
  - (d) the effectiveness, in relation to the furthering of the water sharing principles, of any bulk access regime established by a management plan to be made by the Minister under section 41,
  - (e) any management plan in respect of which a review is being carried out under section 43,
  - (f) any implementation program to be established under section 51.

**387A Water Innovation Council**

- (1) The Minister may establish a Water Innovation Council for the purposes of this Act.
- (2) The Water Innovation Council is to consist of such persons as, in the opinion of the Minister, have the qualifications and expertise appropriate to the function of the Council.
- (3) The function of the Water Innovation Council is to advise the Minister and Local Land Services on the identification and pursuit of measures for water conservation, including measures for:
  - (a) the recovery of water (that is, preventing the loss of water from uncapped bores, porous irrigation channels, evaporation and the like), and
  - (b) the re-use of water, and
  - (c) the efficient use of water.

The Council is also to advise the Minister on any other matter that is referred by the Minister for advice.

- (4) Provisions with respect to the members and procedure of the Water Innovation Council or any other advisory body established under this section are, subject to any requirements of the regulations, to be determined by the Minister.

### **388 Committees**

The Minister may establish advisory and other committees for the purposes of this Act.

### **389 Delegation**

- (1) The Minister may delegate to any person any functions conferred or imposed on the Minister by or under this Act, other than this power of delegation.
- (2) Despite subsection (1), the Director-General may sub-delegate to any person any such function that has been delegated to the Director-General, but only if the terms of the delegation authorise the Director-General to sub-delegate that function.

### **389A Conferral of water management functions on Local Land Services**

- (1) The Minister may authorise Local Land Services to exercise the following functions:
  - (a) assisting the Minister or a management committee in the development of, in consultations about or in the implementation of management plans,
  - (b) managing licensed environmental water (within the meaning of section 8) under access licences,
  - (c) monitoring water quality and other environmental health objectives of management plans (including in connection with a review or audit of any such plan).
- (2) Local Land Services may, with the approval of the Minister, acquire, hold and deal with access licences.
- (3) This section does not limit section 389.

### **390 Authorised officers and analysts**

- (1) The Minister may appoint authorised officers, either for the purposes of this Act generally or for the purposes of any specified provisions of this Act.
- (2) The Minister may appoint authorised analysts for the purposes of this Act.

### **391 Resolution of disputes between public authorities**

- (1) Any dispute arising between two or more public authorities as to the exercise of their functions under this Act is to be resolved:
  - (a) by agreement between the Ministers responsible for them, or
  - (b) if the dispute is between Ministers, by the Premier.
- (2) Each public authority must comply with any directions arising out of the resolution of the dispute under this section.



### **391A Interstate arrangements in relation to access licences and approvals**

- (1) The Minister may enter into arrangements with a Minister of any other State or Territory with respect to the carrying out of administrative functions in relation to access licences or approvals, and their equivalents in the other State or Territory, in cases referred to in section 71W (2) or 89 (2).
- (2) Without limiting subsection (1), such arrangements may be made with respect to the following:
  - (a) the collection of fees, charges and civil penalties,
  - (b) the keeping of water allocation accounts.

## **Chapter 9 Miscellaneous**

### **392 State's water rights**

- (1) For the purposes of this Act, the rights to the control, use and flow of:
  - (a) all water in rivers, lakes and aquifers, and
  - (b) all water conserved by any works that are under the control or management of the Minister, and
  - (c) all water occurring on or below the surface of the ground (including overland flow water flowing over or lying there for the time being) other than water referred to in subsection (1A),are the ***State's water rights***.
- (1A) Subsection (1) (c) does not include any of the following:
  - (a) water that is collected from a roof (including water collected from a roof using a rainwater tank),
  - (b) water occurring on or below the surface of the ground in such other circumstances as may be prescribed by the regulations.
- (2) The State's water rights are vested in the Crown, except to the extent to which they are divested from the Crown by or under this or any other Act.
- (3) The State's water rights prevail over any authority conferred by or under any other Act or law, except to the extent to which this or any other Act expressly so provides.
- (4) The State's water rights are not to be exercised in contravention of:
  - (a) the powers conferred by section 15 of the *Fire Brigades Act 1989* and section 26 of the *Rural Fires Act 1997* on an officer in charge at a fire or hazardous material incident, or

- (b) the rights and obligations of the Snowy Hydro Company under a Snowy water licence within the meaning of the *Snowy Hydro Corporatisation Act 1997*, or
- (c) the rights conferred by the *Local Land Services Act 2013* with respect to the watering of stock at stock watering places within the meaning of that Act.

### **393 Abolition of common law riparian rights**

Any right that the owner of riparian land would, but for this section, have at common law with respect to the flow of any river, estuary or lake through or past the land, or to the taking or using of water from any such river, estuary or lake, is hereby abolished.

### **394 Service of documents**

- (1) A document may be served on a person:
  - (a) personally, or
  - (b) by leaving it at, or by sending it by post to, the person's residential address or, in the case of a corporation, the address of the corporation's registered office, or
  - (c) if it is impracticable for the document to be served on a landholder of land in the manner referred to in paragraph (a) or (b), by affixing the document in a conspicuous position on the land, or
  - (d) in any manner provided for by the regulations.
- (2) In the case of land that is owned or occupied by more than one person or of an approval that is held by more than one person, service of a document on any one of them, or on any person duly appointed by them for the purpose of accepting service of documents, is taken to be service on all of them.
- (3) This section does not limit any other manner in which a document may be served.

### **395 Newspaper publication of orders and notices etc**

A requirement of this Act that a proclamation, order or notice be published in an appropriate newspaper is taken to be a requirement that it be published:

- (a) in a newspaper circulating throughout the area it affects, or
- (b) in as many newspapers circulating within the various parts of that area as are necessary to ensure that it reaches all parts of the area.

### **395A Continuing effect of directions and conditions**

- (1) A direction given, or a condition of a licence or approval imposed, under this Act or the regulations that specifies a time by which, or period within which, the direction or condition must be complied with continues to have effect until the direction or

condition is complied with even though the time has passed or the period has expired.

- (2) A direction that does not specify a time by which, or period within which, the direction must be complied with continues to have effect until the direction is complied with.
- (3) This section does not apply to the extent that any requirement under a direction or a condition of a licence or approval is revoked.
- (4) Nothing in this section affects the powers of the Minister with respect to the enforcement of a direction or a condition of a licence or approval.

### **396 Act binds Crown**

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

### **397 Exclusion of personal liability**

(1) An act or omission of:

- (a) the Minister or the Director-General, or
- (b) a prescribed authority, or a member of a prescribed authority, or
- (c) a member of staff of the Department or of a prescribed authority, or
- (d) a person acting under the direction of a person referred to in paragraph (a), (b) or (c),

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

(2) In this section, **prescribed authority** means:

- (a) the Ministerial Corporation, or
- (b) (Repealed)
- (c) the Water Investment Trust, or the Board of Trustees of the Water Investment Trust, or
- (d) a management committee, or
- (e) a water supply authority, or
- (f) a private irrigation board, or
- (g) a private drainage board, or
- (h) a private water trust, or

- (i) an irrigation corporation.

### **398 Exclusion of Crown liability**

- (1) Neither the Crown nor any other person is subject to any action, liability, claim or demand arising:
  - (a) from the unavailability of water, or
  - (b) from any failure in the quantity or quality of water,as a consequence of anything done or omitted to be done in good faith by the Minister, by a prescribed authority or by any person acting on behalf of the Minister or a prescribed authority, in the exercise any functions under this Act or the [Water NSW Act 2014](#).
- (2) Neither the Crown nor any other person is subject to any action, liability, claim or demand arising as a consequence of:
  - (a) the use in good faith of any water management work, or
  - (b) the release in good faith of water from any water management work,by the Minister, by a prescribed authority or by any person acting on behalf of the Minister or a prescribed authority, in the exercise of any functions under this Act or the [Water NSW Act 2014](#).
- (3) In this section, **prescribed authority** means:
  - (a) the Ministerial Corporation, or
  - (b) a water supply authority, or
  - (c) Water NSW.

### **399 Annual report of Department**

The annual report prepared for the Department under the [Annual Reports \(Departments\) Act 1985](#) is to include a report on the Minister's work and activities under this Act for the period to which that report relates, and may also include the annual report prepared for the Ministerial Corporation under the [Annual Reports \(Statutory Bodies\) Act 1984](#).

### **400 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 and, in particular, for or with respect to:
  - (a) the forms to be used in connection with the administration of this Act, and

- (b) the fees and charges to be imposed in connection with the administration of this Act, and the circumstances under which fees and charges may be waived, reduced and remitted, and
  - (c) the requirement for security deposits, the circumstances in which security deposits are to be forfeited and the application of money arising from the forfeiture of security deposits, and
  - (d) the regulation and control of bore drilling and the licensing of bore drillers, and
  - (e) the information to be provided to the Minister by the holder of any approval under this Act, including the circumstances in which any such information must be verified by statutory declaration.
- (2) A regulation may make provision for or with respect to the exemption of any person, matter or thing from the operation of this Act or any specified provision of this Act, either unconditionally or subject to conditions.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.
- (4) A regulation may apply, adopt or incorporate any publication as in force from time to time.

#### **401 Repeals**

The Acts listed in Schedule 7 are repealed.

#### **402 Amendment of other Acts**

Each Act listed in Schedule 8 is amended as set out in that Schedule.

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

Schedules 9, 10 and 11 have effect.

#### **404 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 1A Access Register

(Section 71C)

### Part 1 Registration of access licences, security interests and caveats over access licences and other matters

#### 1 Registration of Ministerial actions

- (1) The Minister registers an access licence granted by the Minister under section 63, 63A or 63B by recording in the Access Register in such form as the Minister considers appropriate the following:
  - (a) the name of each holder or co-holder of the access licence,
  - (b) details of entitlements conferred on the holder or co-holders by the licence,
  - (c) if the licence is co-held, details of the arrangements under which the licence is held by the co-holders (the ***co-holder's tenancy arrangement***),
  - (d) any water supply work, or group of water supply works, nominated as a work or group of works by means of which water allocations under the licence may be taken,
  - (e) any adaptive environmental water condition to which the licence, or a part of the licence, is subject.
- (2) The Minister registers any Ministerial action (other than the grant of an access licence under section 63, 63A or 63B) by recording in the Access Register the details of the action in such form as the Minister considers appropriate.
- (3) The Minister must not register an access licence or any Ministerial action until:
  - (a) the end of the time permitted by section 368 (3) for making an appeal with respect to the decision to grant the licence, or
  - (b) if an appeal is made against the decision within that time, at or after the time the appeal is finally disposed of.
- (4) The Minister may include in the Access Register such other information about the holder of an access licence and the conditions of, and other matters relating to, the licence as the Minister considers appropriate.

#### 2 Registration of dealings in access licences and holdings in access licences

- (1) A party to a dealing in an access licence or holding in an access licence may make an application to the Minister in the approved form for the dealing to be registered in the Access Register.

- (2) The application must be accompanied:
  - (a) by an instrument evidencing the dealing, and
  - (b) by such other documents (if any) as the Minister may require, and
  - (c) by such fee (if any) as approved by the Minister.

**Note—**

This clause has a similar effect in relation to registration of dealings in access licences and holdings in access licences to the effect section 41 of the *Real Property Act 1900* has in relation to registration of dealings in estates or interests in land.

- (3) The Minister must (unless anything recorded in the Access Register prevents the registration of the dealing):
  - (a) register the dealing by recording in the Access Register the particulars of the names of the parties to the dealing, a description of the dealing and the time and date of the recording.
  - (b) (Repealed)

**3 Registration of security interests over access licences and holdings in access licences**

- (1) A security holder may apply to the Minister in the approved form for the security interest to be recorded in the Access Register as a registered security interest.
- (2) The application must be accompanied:
  - (a) by an instrument or instruments evidencing the security interest, and
  - (b) by such other documents (if any) as the Minister may require, and
  - (c) by such fee (if any) as is approved by the Minister.

**Note—**

This clause has a similar effect in relation to registration of security interests in access licences and holdings in access licences to the effect section 41 of the *Real Property Act 1900* has in relation to registration of dealings in estates or interests in land.

- (3) The Minister must (unless any thing recorded in the Access Register prevents the registration of the security interest):
  - (a) register the security interest by recording in the Access Register the particulars of the name of the holder of the interest and a description of the interest, and
  - (b) endorse on the instrument evidencing the security interest the fact of the entry having been made, together with the date and time of the making of the entry.
- (4) The Minister is to register the security interest without inquiring into, or being

concerned with, the legal effect of the instrument evidencing it.

- (5) The Minister may, on application in the approved form by the holder of a registered security interest, remove the security interest from the Access Register or amend details recorded in relation to it.
- (6) The Minister may include in the Access Register such other information about a registered security interest as the Minister considers appropriate.

#### **4 Priority of registered security interests in access licences and holdings in access licences**

- (1) Except as provided by clause 19 of Schedule 10, an earlier registered security interest has priority, for all purposes, over a later registered security interest.
- (2) Subclause (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapters 2K and 5 of that Act.

**Note—**

Subclause (2) ensures that the priorities established by subclause (1) are not over-ridden by the provisions of the *Corporations Act 2001* with respect to the distribution of assets of a corporation that is being wound up under that Act.

- (3) For the purposes of this Act, a person is not taken to hold an interest in an access licence or a holding in an access licence held by a corporation merely because the person is a shareholder in the corporation.

## **Part 2 Caveats**

### **5 Withdrawal of caveat**

- (1) A caveat may be withdrawn at any time by:
  - (a) the caveator, or
  - (b) a person with legal authority under a law of this State or any other place to act on behalf of the caveator, or
  - (c) by any other person, or person belonging to a class of persons, prescribed by the regulations.
- (2) The withdrawal is to be in the approved form.

### **6 Duration of caveat**

- (1) A caveat is taken to have had effect from the time at which it is lodged with the Minister.
- (2) A caveat ceases to have effect if:



- (a) the Land and Environment Court makes an order for its removal on an appeal under section 368, or
  - (b) the caveat is withdrawn, or
  - (c) the caveator is given notice under clause 7 and 21 days have passed since the notice was given.
- (3) Subclause (2) (c) does not apply if, before the end of the 21 days the caveator:
- (a) obtains an order from the Land and Environment Court extending the caveat for such further period as is specified in the order or until the further order of the Court, and
  - (b) lodges a copy of the order certified by a proper officer of the Court with the Minister.

#### **7 Notice to caveator**

- (1) If a general dealing, dealing on default, security interest or change in co-holder's tenancy arrangements in relation to an access licence or holding in an access licence that is the subject of a caveat is lodged with the Minister, or the holder of an access licence or holding in an access licence so requests, the Minister must notify the caveator that it has been lodged.
- (2) The Minister is not required to give notice if:
  - (a) the caveator is a party to the dealing, or
  - (b) the caveator has specified the class of matters the caveator wants to receive notice of and the matter falls outside that class, or
  - (c) if the caveator has changed address since lodging the caveat and has not notified the Minister of the change.

#### **8 Powers of Land and Environment Court in relation to caveats**

The Land and Environment Court may:

- (a) order the withdrawal of a caveat from an access licence or holding in an access licence, or
- (b) order the Minister to register a general dealing, dealing on default, security interest or change in co-holder's tenancy arrangements in relation to an access licence or holding despite the caveat, or
- (c) extend the period provided for by clause 6, or
- (d) make such further or other orders as it thinks fit.

## **9 Compensation payable in certain cases**

- (1) Any person who, without reasonable cause:
  - (a) lodges a caveat with the Minister under this Schedule, or
  - (b) procures the lapsing of a registered caveat, or
  - (c) being the caveator, refuses or fails to withdraw a caveat after being requested to do so,is liable to pay to any person who sustains pecuniary loss that is attributable to that act, refusal or failure compensation with respect to that loss.
- (2) The compensation is recoverable in proceedings in a court of competent jurisdiction by the person who claims to have sustained the loss.
- (3) A caveator is not entitled to bring proceedings under subclause (1) (b) if the caveator, having had an opportunity to do so, has failed to take all reasonable steps to prevent the caveat from lapsing.

## **Part 3 Miscellaneous**

### **10 Powers of Minister with respect to production and retention of certain instruments**

- (1) The Minister may require any person who may have possession or control of an instrument relating to an access licence or holding in an access licence that is the subject of any matter that may be recorded in the Access Register to produce the instrument.
- (2) The Minister may retain an instrument relating to an access licence that is the subject of any matter that may be recorded in the Access Register (whether or not produced under subclause (1)) until it is no longer required for action in connection with an application for registration of the matter in the Access Register.

### **11 Lodgment and registration of documents**

The Minister may refuse to accept, or record in the Access Register, a dealing, an application for consent to a dealing or a security interest, caveat, devolution or change in co-holder's tenancy arrangements in relation to an access licence or holding in an access licence if:

- (a) it is not in the approved form or does not comply with any requirement made by or under this or any other Act with respect to the making or execution of such a matter, or
- (b) the Minister requests the production of the access licence certificate for the access licence for the purpose of recording the matter in the Access Register and it is not produced, or

- (c) the application concerned is not accompanied by the approved fee (if any) for the matter concerned.

## 12 Wrongful retention of certain instruments

- (1) The Minister may, by notice in writing served on a person at the person's last known address, require the person to deliver up an access licence certificate or an instrument evidencing any matter that may be recorded in the Access Register for the purpose of the certificate or instrument being cancelled or corrected if the Minister is satisfied that:
  - (a) the certificate has been issued to the person in error or contains any misdescription of an access licence or holding in an access licence, or
  - (b) a recording has been made in error in the Access Register, or
  - (c) the certificate or recording in the Access Register has been fraudulently or wrongfully obtained by the person, or
  - (d) the certificate or instrument is fraudulently or wrongfully retained by the person.
- (2) If the person:
  - (a) cannot be found for the giving of such notice of requirement, or
  - (b) having been given such notice does not comply with the requirement,the Minister may, if the Minister thinks fit, commence proceedings against the person in the Land and Environment Court for an order that the person (the **defendant**) deliver up the access licence certificate or instrument for the purpose of it being cancelled or corrected.
- (3) The Court may order that service on the defendant of the originating process and of all other documents in the proceedings be dispensed with.
- (4) Subject to the [Land and Environment Court Act 1979](#), the Court must not order that service on the defendant be dispensed with unless the Court is satisfied that:
  - (a) the defendant cannot be found in New South Wales, or
  - (b) it is uncertain whether the defendant is living.
- (5) The Court may order the personal attendance before it of the defendant.
- (6) On the personal appearance of the defendant before the Court, the Court may examine the defendant on oath.
- (7) The Court may order the defendant to deliver up to the Minister, within such time as the Court may fix, the access licence certificate or instrument evidencing the matter.

## Schedule 1B Provisions relating to exit from co-held access licence

(Section 74 (7))

### 1 Definitions

In this Schedule:

**extinguished holdings** means the holdings in an access licence extinguished by the Minister under section 74.

**new access licence** means an access licence granted by the Minister under section 74 (1).

**original access licence** has the meaning given by section 74 (1).

### 2 Share component of new access licence

The share component of the new access licence:

- (a) in a case where all the co-holders consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in accordance with the directions in the application, or
- (b) in a case where co-holders who hold a majority of the holdings under the original access licence consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in the same proportions as the extinguished holdings bear to the whole of the holdings in the original access licence, or
- (c) in a case where co-holders holding a majority of the water entitlements under the original access licence did not consent to the application under section 74 (1)—the share component for the original access licence is to be distributed between the original access licence and the new access licence in accordance with the order of the Supreme Court under section 74.

### 3 Extraction component of new access licence

- (1) If the extraction component of the original access licence did not specify a volume limit or some other kind of restriction on the amount of water to be extracted, the new access licence is to have the same extraction component as applied to the original access licence.
- (2) If the extraction component of the original access licence specified a volume limit or some other kind of restriction on the amount of water to be extracted, the extraction component of the new access licence:
  - (a) in a case where all the co-holders consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access

licence in accordance with the directions in the application, or

- (b) in a case where co-holders who hold a majority of the holdings under the original access licence consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in the same proportions as the extinguished holdings bear to the whole of the holdings in the original access licence, or
- (c) in a case where co-holders holding a majority of the water entitlements under the original access licence did not consent to the application under section 74 (1)—the extraction component for the original access licence is to be distributed between the original access licence and the new access licence in accordance with the order of the Supreme Court under section 74.

#### **4 Water allocation account for new access licence**

The water allocations for a water allocation account for an original access licence and new access licence are to be adjusted as follows:

- (a) in a case where all the co-holders consented to the application under section 74 (1)—the water standing to the credit of the water allocation account for the original access licence is to be distributed between the water allocation accounts for the original access licence and the new access licence in accordance with the directions in the application,
- (b) in a case where co-holders who hold a majority of the holdings under the original access licence consented to the application under section 74 (1)—the water standing to the credit of the water allocation account for the original access licence is to be distributed between the water allocation accounts for the original access licence and the new access licence in the same proportions as the extinguished holdings bear to the whole of the holdings in the original access licence,
- (c) in a case where co-holders holding a majority of the water entitlements under the original access licence did not consent to the application under section 74 (1)—the water standing to the credit of the water allocation account for the original access licence is to be distributed between the water allocation accounts for the original access licence and the new access licence in accordance with an order of the Supreme Court under section 74 (4).

#### **5 Conditions of new licence**

A new access licence, at the time at which it is granted, is subject to the same mandatory conditions to which the original access licence was subject at that time.

#### **6 Nominated water supply work for new access licence**

A water supply work nominated in relation to an original access licence is taken to be

nominated in relation to the new access licence unless a different water supply work is nominated in accordance with this Act or an order of the Supreme Court made under section 74 provides otherwise.

## **7 Security interests relating to new access licences**

- (1) A dealing under section 74 is not to be recorded in the Access Register unless the consent of any holder of a security interest in the extinguished holdings of the original access licence has been obtained.
- (2) Any security interests that subsisted in the extinguished holdings, as in force immediately before they were extinguished, become equivalent interests in the new access licence.

## **Schedule 1 Irrigation corporations**

(Section 117)

***Coleambally Irrigation Limited***, in respect of the former Coleambally Irrigation Area.

***Jemalong Irrigation Limited***, in respect of:

- (a) the former Jemalong Domestic and Stock Water Supply and Irrigation District, and
- (b) the former Wyldes Plains Domestic and Stock Water Supply and Irrigation District.

***Western Murray Irrigation Limited***, in respect of:

- (a) the former Buronga Irrigation Area, and
- (b) the former Coomealla Irrigation Area, and
- (c) the former Curlwaa Irrigation Area.

***Murray Irrigation Limited***, in respect of:

- (a) the former Tullakool Irrigation Area, and
- (b) the former Berriquin Provisional Domestic and Stock Water Supply and Irrigation District, and
- (c) the former Denimein Provisional Domestic and Stock Water Supply and Irrigation District, and
- (d) the former Deniboota Provisional Domestic and Stock Water Supply and Irrigation District, and
- (e) the former Wakool Domestic and Stock Water Supply and Irrigation District.

***Murrumbidgee Irrigation Limited***, in respect of:

- (a) the former Yanco No 1 Irrigation Area, and
- (b) the former Mirrool No 1 Irrigation Area, and
- (c) the former Benerembah Domestic and Stock Water Supply and Irrigation District, and

- (d) the former Tabbita Domestic and Stock Water Supply and Irrigation District, and
- (e) the former Wah Wah Domestic and Stock Water Supply and Irrigation District.

## **Schedule 2 Major utilities**

(Section 281)

AGL Macquarie Pty Limited  
Delta Electricity  
EnergyAustralia NSW Pty Ltd  
Eraring Energy  
Hunter Water Corporation  
Sydney Water Corporation  
Water NSW

## **Schedule 3 Water supply authorities**

(Section 285)

### **Part 1 Bodies established by this Act**

Cobar Water Board

### **Part 2 Statutory bodies established by other Acts**

Gosford City Council  
Sydney Olympic Park Authority  
Wyong Council

### **Part 3 State owned corporations**

Essential Energy  
Water NSW (but only in relation to the Fish River water supply scheme within the meaning of the [Water NSW Act 2014](#))

## **Schedule 4 Land exempt from water supply authority service charges**

(Section 312)

- (1)** Land that is vested in the Crown, or in a public body, or in trustees, and is used for a public cemetery.
- (2)** Land that is vested in the Crown, or in a public body, or in trustees, and is used for a common.
- (3)** Land that is vested in the Crown, or in a public body, or in trustees, and is used for a public reserve or park.
- (4)** Land that belongs to any public hospital, public benevolent institution or public charity, and is used or occupied by the hospital, institution or charity for its purposes.
- (5)** Land that is used or occupied solely for the purposes of, or connected with, a baby health centre,

day nursery, kindergarten or amenities for the aged not conducted for private gain.

- (6)** Land that is vested in a local health district constituted under the *Health Services Act 1997* and is used or occupied by the local health district for its purposes.
- (7)** Land that is vested in the Crown, or in a public body, or in trustees, and is used solely for the purposes of a free public library.
- (8)** Land owned by the Crown that (except in the case of land leased to a caretaker at a nominal rental) is not leased by the Crown to any person for private purposes.
- (9)** Land that belongs to a religious body and that is occupied and used in connection with:
- (a) any church or other building used or occupied for public worship, or
  - (b) any building used or occupied solely as the residence of a minister of religion in connection with any such church or building, or
  - (c) any building used or occupied for the purposes of religious teaching or training, or
  - (d) any building used or occupied solely as the residence of the official head or the assistant official head, or both, of any religious body in the State or in any diocese in the State.
- (10)** Land that is a public place within the meaning of the *Local Government Act 1993*.
- (11)** Land that:
- (a) is unoccupied, and
  - (b) is not supplied with water from any water-pipe of a water supply authority and is not connected to any sewer of a water supply authority, and
  - (c) has been determined, by the council of the local government area in which the land is situated, to be unsuitable for the erection of a building because of flooding or landslip.
- (12)** Land that is unoccupied and that is below highwater mark of any tidal water.
- (13)** Land that belongs to and that is occupied and used in connection with any registered non-government school under the *Education Act 1990*, including:
- (a) any playground that belongs to and is used in connection with any such school, and
  - (b) any building that is occupied as a residence by any caretaker, employee or teacher of any such school and that belongs to and is used in connection with the school.
- (14)** Land that comprises any sports ground, garden or children's playground provided by a council under the *Local Government Act 1993*.
- (15)** Land that is vested in the University of Newcastle, or in a college of the University, and is used or occupied by the University or college solely for its purposes.
- (16)** Land that is vested in:
- (a) the New South Wales Aboriginal Land Council, or



(b) a Regional Aboriginal Land Council, or

(c) a Local Aboriginal Land Council,

constituted under the *Aboriginal Land Rights Act 1983*, being land that is declared under Division 5 of Part 2 of that Act to be exempt from the payment of rates under this Schedule.

**(17)** Land that:

(a) is vested in the mines rescue company, within the meaning of the *Coal Industry Act 2001*, and

(b) is used for the purposes of a mine rescue station controlled by that company.

## **Schedule 5 Constitution and procedure of water supply authorities**

(Section 288)

### **Part 1 Provisions relating to the members of a water supply authority**

#### **1 Employment of full-time member**

The employment of a full-time member of a water supply authority is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.

#### **2 Elected member**

(1) In this clause:

***elected member***, in the case of a water supply authority of which one or more of the members is appointed after being elected by employees of the water supply authority, means a member so elected.

(2) Regulations may be made for or with respect to the election of a person to hold office as an elected member.

(3) The Electoral Commissioner for New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner, is to be the returning officer for an election, and has and may exercise the functions conferred or imposed on the returning officer by the regulations made under this clause in relation to the election.

(4) Employees of a water supply authority are entitled to vote at an election in accordance with the regulations made under this clause.

(5) A person's nomination as a candidate for election as elected member is invalid if:

(a) the nomination is not made by at least 2 persons who are employees of the water supply authority, or

(b) the person is not, at the time of nomination, an employee of the water supply authority, or

- (c) the person is not, at the time of nomination, a member of an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996* or an association of employees registered as an organisation under the *Workplace Relations Act 1996* of the Commonwealth, being such an organisation or association that is prescribed by the regulations for the purposes of this paragraph as being an organisation or association representing employees of the water supply authority, or
  - (d) the instrument of nomination is not accompanied by a statutory declaration to the effect that the person is, at the time of nomination, such a member, and the returning officer is entitled to rely on the information contained in the statutory declaration.
- (6) A person may be, at the same time, both the elected member and an employee of the water supply authority.
- (7) Nothing in any law, rule, direction or other requirement that:
- (a) is applicable to the elected member in his or her capacity as an employee of the water supply authority, and
  - (b) would not be so applicable if the elected member were not such an employee, operates so as to prevent or restrict the exercise by the elected member of any of the functions of an elected member.
- (8) If no person is nominated at an election, or if for any other reason an election fails, the Governor may appoint a person eligible for election to be a part-time member, and the person, on being appointed, is taken to be a person elected in the manner prescribed by the regulations made under this clause.
- (9) If a vacancy occurs in the office of elected member otherwise than by reason of the expiration of the period for which an elected member was appointed:
- (a) the Governor may appoint a person eligible for election to hold, subject to this Schedule, the office of elected member for a term commencing on the date of appointment or a later date specified in the relevant instrument of appointment and ending on the commencement of the term of office of the next elected member, and
  - (b) any such person, on being so appointed, is taken to be a person elected in the manner prescribed by the regulations made under this clause.

### **3 Chairperson of a water supply authority**

- (1) One of the members, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, is to be appointed as chairperson of a water supply authority.

- (2) The Governor may remove a member from the office of chairperson.
- (3) A person who is a member and chairperson is taken to have vacated office as chairperson if the person:
  - (a) is removed from that office by the Governor under subclause (2), or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.
- (4) The Minister may appoint a member to act in the office of chairperson during a vacancy in the office or during the illness or absence of the chairperson and the person, while so acting, has and may exercise all the functions of the chairperson and is taken to be the chairperson.
- (5) This clause does not apply to the Broken Hill Water Board or the Cobar Water Board constituted as provided by Parts 2 and 3 of this Schedule.

#### **4 Acting members**

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during a vacancy in the office or during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.
- (2) The Minister may remove any person from any office to which the person was appointed under this clause.
- (3) A person while acting in the office of a part-time 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.

#### **5 Terms of office**

Subject to this Part, a member is to hold office:

- (a) in the case of a part-time member other than an elected member—for such period not exceeding 5 years, or
- (b) in the case of an elected member—for such period not exceeding 5 years but not less than 3 years,

as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

#### **6 Remuneration**

A part-time 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.

## **7 Casual vacancies**

- (1) A member (other than a full-time member) is taken to have vacated office if the member:
  - (a) dies, resigns or is removed from office, or
  - (b) absents himself or herself from 4 consecutive meetings of the water supply authority of which reasonable notice has been given to the member personally or in the ordinary course of post, unless:
    - (i) the water supply authority has granted the member leave to be absent from those meetings, or
    - (ii) within 4 weeks after the last of those meetings, the member is excused by the water supply authority for having been absent from those meetings, or
  - (c) 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
  - (d) becomes a mentally incapacitated person, or
  - (e) is convicted in New South Wales of an offence that is punishable by 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, or
  - (f) being an elected member, ceases to be an employee of the water supply authority for which he or she is an elected member.
- (2) The Governor may remove a part-time member from office.
- (3) If the office of any member becomes vacant, a person is, subject to this Part, to be appointed to fill the vacancy.

## **8 Disclosure of pecuniary interests**

- (1) A member who has a direct or indirect pecuniary interest:
  - (a) in a matter that is being considered, or is about to be considered, at a meeting of the water supply authority, or
  - (b) in a thing being done or about to be done by the water supply authority,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 water supply authority.

- (2) A disclosure by a member at a meeting of the water supply authority 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 a specified person,is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person that may arise after the date of the disclosure.
- (3) The water supply authority must cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book must be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the water supply authority from time to time.
- (4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subclause (1) or (2), the member must not, unless the Minister otherwise determines:
  - (a) be present during any deliberation of the water supply authority, or take part in any decision of the water supply authority, with respect to that matter, or
  - (b) exercise any functions under this Act with respect to that thing,as the case requires.
- (5) A contravention of this clause does not invalidate any decision of the water supply authority or the exercise of any function under this Act.
- (6) A reference in this clause to a meeting of the water supply authority includes a reference to a meeting of a committee of the water supply authority.

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

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member (other than a full-time member) and the office of such a member is not, for the purposes of any Act, an office or place of profit under the Crown.
- (2) If by or under any other 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,

that provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Part as a part-time member.

## **Part 2 Broken Hill Water Board**

### **10-12 (Repealed)**

### **13 Definitions**

- (1) In this Part:

**Corporation** means Australian Inland Energy Water Infrastructure.

**council** means the Council of the City of Broken Hill.

**financial year** means the financial year for the Corporation.

**mining company** means a company for the time being prescribed as a mining company for the purposes of this Part.

- (2) Until the regulations otherwise provide, the following companies are mining companies for those purposes:

Pasminco Australia Limited

Minerals Mining and Metallurgy Limited

- (3) If a company ceases to be a mining company for the purposes of this Part, it remains responsible for any undischarged liability to which it was subject under this Part while it was a mining company.

### **14 Exemption from service charges**

- (1) Land at Broken Hill that is held by a mining company under a lease from the Crown, and is used for mining or incidental purposes, is not subject to a water service charge.
- (2) Land referred to in subclause (1) is not subject to a sewerage service charge because of the construction of any sewerage works.

### **15 Supply of water to mining companies**

- (1) The Corporation must supply each mining company, at places as near as possible to the mines or works of the company, with the water required by the company to carry on its business.

(2) Subclause (1) has effect only in so far as is permitted by:

(a) the capacity of the works of the Corporation, and

(b) the requirements of the landholders of land and of other persons using water for domestic purposes.

#### **16 Mining companies to take water**

(1) A mining company is to draw from the Corporation all the water that it requires for the purposes of its business and that the Corporation is able to supply.

(2) Subclause (1) does not prevent a mining company from drawing water from:

(a) supplies conserved in its own tanks and dams, or

(b) sources other than Stephens Creek, by means lawfully used by it on and after 21 December 1915 and before 1 January 1939.

#### **17 Water charges**

(1) The charge for water supplied by the Corporation to a mining company is to be:

(a) 11 cents per kilolitre unless it is water referred to in paragraph (b), or

(b) 5.5 cents per kilolitre if it is used only for a dwelling or plantation or any other purpose determined by the Corporation to be a social purpose.

(2) A determination by the Corporation of the proportion of water supplied by it to a mining company that is water referred to in subclause (1) (b) is binding on the company.

(3) The charge imposed by subclause (1) is taken to be a charge imposed by the Corporation for water supplied to the land referred to in clause 14.

(4) No liability for a service charge arises in relation to land that:

(a) adjoins the rising main between Menindee and the pumping station at Stephens Creek, and

(b) is part of a holding under the [Western Lands Act 1901](#) or a part of land held under freehold title,

unless the whole of the holding or freehold land of which it forms part is within the area of operations of the Corporation.

#### **18 Additional payments to Water Fund**

(1) If, after excluding income received from the mining companies for water supplied to them during a financial year, there is a deficiency for that year in the Water Fund of

the Corporation:

- (a) the Treasurer, out of money to be provided by Parliament, may pay to the Corporation towards the deficiency thirteen fifty-ninths of its amount, and
  - (b) each mining company must, on demand, pay to the Corporation the prescribed contribution for the company.
- (2) The prescribed contribution for a mining company towards the deficiency for a financial year is the amount ascertained by:
- (a) calculating the amount that bears to forty-six fifty-ninths of the deficiency the same proportion as is borne by the amount payable by the company under clause 17 in that year to the total amount so payable by all the mining companies, and
  - (b) deducting from the amount so calculated the amount paid by the company under clause 17 in that year.
- (3) The amount payable by a mining company under this clause is taken to be a charge imposed by the Corporation for water supplied by the Corporation.

#### **19 Estimated deficit and advance payments**

- (1) If estimates prepared by the Corporation before the commencement of a financial year disclose the possibility of a deficit for that year in the Water Fund of the Corporation:
- (a) the Corporation is to provide the Treasurer and each mining company with particulars of the estimates and the possible deficit, and
  - (b) the Treasurer and each mining company must, in that year, make payments to the Corporation as required by subclause (2).
- (2) Towards discharging the respective liabilities of the Treasurer and each mining company for a financial year:
- (a) the Treasurer must pay to the Corporation out of money to be provided by Parliament the amount estimated by the Treasurer to be sufficient to discharge the liability of the Treasurer, and
  - (b) each mining company must pay to the Corporation the amount estimated by the Corporation to be sufficient to discharge the liability of the mining company,
- by equal instalments on 1 January, 1 April, 1 July and 1 October in that year.
- (3) On the auditing of the Corporation's accounts for a financial year, the Corporation must pay to, or receive from, the Treasurer and each mining company an amount in adjustment of any difference between the estimated and actual liabilities under clause 18 for that financial year.



## **20 Sewerage charges**

- (1) Each mining company must, in respect of each financial year of the Corporation, pay to the Corporation an amount that bears to \$6,400 the same proportion as the amount payable by the company to the council for ordinary rates bears to the total amount payable by all the mining companies to the council for ordinary rates for that year.
- (2) The amount payable by a mining company under subclause (1) is taken to be a charge imposed by the Corporation for sewerage services for that year in respect of the land referred to in clause 14.
- (3) If, in a financial year of the Corporation, there is a deficiency in its Sewerage Fund, the Treasurer, out of money to be provided by Parliament, may pay to the Corporation for application towards the deficiency:
  - (a) the amount of the deficiency, or
  - (b) \$6,000,whichever is the lesser amount.
- (4) Money at credit in the Australian Inland Energy Water Infrastructure Administration Account in the Special Deposits Account at the Treasury is, at the request of the Corporation, to be paid to the Corporation for the renewal or replacement of capital assets.

## **21 Default by mining company**

If the Corporation:

- (a) has obtained judgment against a mining company for an amount payable under this Part, and
- (b) the judgment remains unsatisfied even though the Corporation has taken all reasonable steps to enforce it,

the Corporation may recover the unpaid amount from each company not in default rateably in proportion to each amount paid by it under this Part.

## **Part 3 Cobar Water Board**

### **22 Members of the Cobar Water Board**

- (1) The Cobar Water Board is to consist of 7 part-time members appointed by the Governor.
- (2) Of the members:
  - (a) one is to be selected by the Minister and is, in and by the instrument by which the

person is appointed, to be appointed as President of the Board, and

(b) one is to be nominated by:

(i) Goldcorp Asia Pacific Pty Ltd, or

(ii) if another mining company is prescribed by the regulations for the purposes of this subparagraph, that company, and

(c) one is to be nominated by:

(i) CBH Resources Limited, or

(ii) if another mining company is prescribed by the regulations for the purposes of this subparagraph, that company, and

(d) one is to be nominated by:

(i) Cobar Management Pty Ltd, or

(ii) if another mining company is prescribed by the regulations for the purposes of this subparagraph, that company, and

(e) 3 are to be nominated by the Cobar Shire Council.

(3) If a nomination under subclause (2) (b), (c), (d) or (e) is not made within a time notified by the Minister, a person nominated by the Minister is to be appointed.

(4) A person who, immediately before the substitution of this clause by Schedule 1 to the *Statute Law (Miscellaneous Provisions) Act 2006*, held office as a member of the Cobar Water Board ceases to hold office on that substitution.

(5) A person who ceases to hold office because of subclause (4) is not entitled to any remuneration or compensation because of so ceasing to hold office.

## **23 (Repealed)**

## **24 Meetings of the Board**

(1) The President, if present, is to preside at a meeting of the Cobar Water Board.

(2) In the absence of the President from a meeting of the Board, a member elected from those present is to preside at the meeting.

## **Schedule 6 Management committees**

(Section 13)

## **Part 1 Constitution**

### **1 Application of Schedule**

This Schedule applies to all management committees.

### **2 Acting chairperson**

- (1) The Minister may, from time to time, appoint a person to act in the office of chairperson during the illness or absence of a chairperson, and the person, while so acting, has all the functions of the chairperson and is taken to be the chairperson.
- (2) The Minister may, at any time, remove a person from an office to which the person has been appointed under this clause.
- (3) For the purposes of this clause, a vacancy in the office of chairperson is taken to be an absence from office of the chairperson.

### **3 Term of office**

Subject to this Schedule:

- (a) (Repealed)
- (b) a member of a management committee holds office during the term for which the committee is established.

### **4 Remuneration**

A member of a management committee 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.

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

- (1) The office of a member of a management committee becomes vacant if the member:
  - (a) dies, resigns or is removed from office, or
  - (b) absents himself or herself from 4 consecutive meetings of the committee of which reasonable notice has been given to the member personally or in the ordinary course of post, unless:
    - (i) the committee has granted the member leave to be absent from those meetings, or
    - (ii) within 4 weeks after the last of those meetings, the member is excused by the committee for having been absent from those meetings, or
  - (c) 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

(d) becomes a mentally incapacitated person, or

(e) is convicted in New South Wales of an offence that is punishable by 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 a member of a management committee from office at any time.

## **6 Filling of vacancy in office of member**

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

## **7 Disclosure of pecuniary interests**

(1) A member of a management committee who has a direct or indirect pecuniary interest:

(a) in a matter that is being considered, or is about to be considered, at a meeting of the committee, or

(b) in a thing being done or about to be done by the committee,

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 committee.

(2) A disclosure at such a meeting 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 a specified person,

is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person that may arise after the date of the disclosure.

(3) The management committee must cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book must be open at all reasonable hours to the inspection, free of charge, of any person.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subclause (1) or (2), the member must not, unless the Minister

otherwise determines:

(a) be present during any deliberation, or take part in any decision, of the management committee with respect to that matter, or

(b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) Subclause (4) does not apply to a member whose interest consists merely of the fact that the member is the holder of an access licence or approval.

(6) A contravention of this clause does not invalidate any decision of the management committee or the exercise of any function under this Act.

(7) A reference in this clause to a meeting of a management committee includes a reference to a meeting of any of its committees.

## **8 Effect of certain other Acts**

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member of a management committee and the office of such a member is not, for the purposes of any Act, an office or place of profit under the Crown.

(2) If by or under any other 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,

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

## **Part 2 Procedure**

### **9 General procedure**

Except as otherwise provided by this Act or the regulations:

(a) meetings of a management committee are to be held at such times and places as are fixed by the chairperson, and

(b) the procedure for the convening of meetings and for the conduct of business at those meetings is to be as determined by the chairperson.

## **10 Quorum**

A majority of the members of a management committee constitute a quorum.

## **11 Presiding members**

The chairperson (or, in the absence of the chairperson, a member appointed by the members then present) is to preside at a meeting of a management committee.

## **12 Decisions**

- (1) At any meeting of a management committee, all members present are to strive for consensus in reaching decisions.
- (2) However, a decision by a management committee has effect if it is supported by a majority of the votes cast at a meeting at which a quorum is present.
- (3) Despite subclause (2), any of the following decisions of a management committee, that is:
  - (a) any decision to submit a draft management plan to the Minister under section 37 or 40, and
  - (b) any decision that is required to be unanimous by the terms of the order by which the committee is established,does not have effect unless it is unanimous, that is, unless it is supported by all of the votes cast at a meeting at which a quorum is present.

## **13 Record of proceedings**

- (1) The presiding member at a meeting of a management committee must cause a record of the proceedings at the meeting to be made.
- (2) Records made for the purposes of this clause may be destroyed after the expiry of the period prescribed by the regulations.

## **14 Authentication of documents**

Any document requiring authentication by a management committee is sufficiently authenticated if it is signed by:

- (a) the member who presided at the meeting that dealt with the proceedings with respect to which the document was prepared, or
- (b) in the absence of that member, any other member who was present at that meeting.

## **15 First meeting**

The first meeting of a management committee is to be called by the Minister in such

manner as the Minister considers appropriate.

## Schedule 7 Repeals

(Section 401)

*Balranald Irrigation Act 1902 No 78*  
*Crown Lands Amendment Act 1932 No 69*  
*Drainage Act 1939 No 29*  
*Fish River Water Supply Administration Act 1945 No 16*  
*Glennies Creek Dam Act 1979 No 126*  
*Hunter Valley Flood Mitigation Act 1956 No 10*  
*Irrigation Act 1912 No 73*  
*Irrigation (Amendment) Act 1916 No 22*  
*Irrigation (Amendment) Act 1941 No 54*  
*Irrigation (Amendment) Act 1973 No 3*  
*Irrigation (Amendment) Act 1979 No 160*  
*Irrigation and Water (Amendment) Act 1943 No 2*  
*Irrigation Corporations Act 1994 No 41*  
*Irrigation, Water and Rivers and Foreshores Improvement (Amendment) Act 1955 No 12*  
*Miscellaneous Acts (Water Administration) Amendment Act 1986 No 205*  
*Private Irrigation Districts Act 1973 No 47*  
*Rivers and Foreshores Improvement Act 1948 No 20*  
*Water Act 1912 No 44*  
*Water (Amendment) Act 1936 No 31*  
*Water (Amendment) Act 1940 No 57*  
*Water (Amendment) Act 1976 No 33*  
*Water (Amendment) Act 1979 No 159*  
*Water (Soil Conservation) Amendment Act 1986 No 143*  
*Water Administration Act 1986 No 195*  
*Water Administration (Transfer of Functions) Act 1986 No 204*  
*Water Supply Authorities Act 1987 No 140*

## Schedule 8 Amendment of other Acts

(Section 402)

### 8.1-8.26

(Repealed)

### 8.27 Sydney Water Act 1994 No 88

#### [1]-[4] (Repealed)

#### [5] Section 12 Grant of operating licences

Omit section 12 (3)-(6).

**[6] (Repealed)**

**[7] Section 90 Activities outside area of operations**

Omit the section.

**[8] Section 91 Contracting out**

Omit section 91 (2)–(6).

**8.28, 8.29**

(Repealed)

**8.30 Water Management Act 2000**

**[1] (Repealed)**

**[2] Chapter 5, Part 2 Hunter Valley flood mitigation works**

Omit the Part.

**[3]–[5] (Repealed)**

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

(Section 403)

**Part 1 Preliminary**

**1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Water Management Amendment Act 2002*

*Water Management Amendment Act 2004*

*State Water Corporation Act 2004* (but only in relation to the amendments made to this Act)

*Water Management Amendment Act 2005*

*Water Management Amendment Act 2008*

*Water Management Amendment Act 2009*

*Water Management Amendment Act 2010*



*Statute Law (Miscellaneous Provisions) Act (No 2) 2011*, to the extent that it amends this Act or the regulations made under this Act

any other Act that amends this Act

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a 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 that 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 that publication.
- (4) If the regulations so provide, such a provision has effect despite any other provision of this Schedule, Schedule 10 or Schedule 11.

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

### **Division 1 General**

#### **2 Definitions**

In this Part:

**amended legislation** means any Act amended by Schedule 8, as so amended.

**appointed day**, in its application to any act, matter, thing or circumstance arising under this Part, means:

- (a) in relation to a provision of the old legislation that has been repealed or amended by this Act, the day on which the repeal or amendment commences, or
- (b) in relation to a new provision inserted into the amended legislation by this Act, the day on which the new provision commences.

**old legislation** means:

- (a) any Act repealed by Schedule 7, as in force immediately before its repeal, and
- (b) any Act amended by Schedule 8, as in force immediately before its amendment.

### **3 (Repealed)**

### **4 Delegations**

Any delegation that was in force immediately before the appointed day under a provision of the old legislation for which there is a corresponding provision in the amended legislation is taken to be a delegation in force under the corresponding provision of the amended legislation.

### **5 Construction of references to Water Administration Ministerial Corporation**

Subject to this Schedule and the regulations, in any Act or instrument, a reference to the Water Administration Ministerial Corporation (however described), in relation to a function that under the old legislation was exercisable by the Ministerial Corporation but under this Act is exercisable by the Minister, extends to the Minister.

### **6 Construction of other references**

Subject to this Schedule and the regulations, in any Act or instrument:

- (a) a reference to a provision of the old legislation for which there is a corresponding provision in the amended legislation extends to the corresponding provision of the amended legislation, and
- (b) a reference to any act, matter or thing referred to in a provision of the old legislation for which there is a corresponding provision in the amended legislation extends to the corresponding act, matter or thing referred to in the corresponding provision of the amended legislation.

### **7 General saving**

Subject to this Schedule and the regulations:

- (a) anything begun before the appointed day under a provision of the old legislation for which there is a corresponding provision in the amended legislation may be continued and completed under the old legislation as if this Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the old legislation for which there is a corresponding provision in the amended legislation (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of the amended legislation.

## **Division 2 Water Act 1912**

### **8 Definition**

In this Division, **the 1912 Act** means the [Water Act 1912](#), as in force immediately before the appointed day.

## **9-10 (Repealed)**

### **11 Rates and charges**

Any rates and charges fixed under Part 3 or 7 of the 1912 Act are taken to have been fixed under Part 3 of Chapter 5 of this Act.

### **12 Floodplains**

Subject to the regulations, any land that, immediately before the appointed day, was designated as a floodplain under Part 8 of the 1912 Act is taken to be a floodplain for the purposes of this Act.

### **13 Floodplain management plans**

- (1) A floodplain management plan adopted under section 166A of the 1912 Act is taken to be a Minister's plan made under this Act in relation to floodplain management.
- (2) Section 43 (Duration of management plans) is taken to apply to a floodplain management plan that becomes a Minister's plan by operation of subclause (1) as if it had commenced on the day on which it became a Minister's plan.

### **13A Regulations**

Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the following regulations:

- (a) the *Water (Part 2—General) Regulation 1997*,
- (b) the *Water (Part 5—Bore Licences) Regulation 1995*,
- (c) the *Water (Part 5—Drillers' Licences) Regulation 1995*,
- (d) the *Water (Part 8—General) Regulation 1995*.

## **Division 3**

### **14, 15 (Repealed)**

## **Division 4 Water Administration Act 1986**

### **16 Definition**

In this Division, **the 1986 Act** means the *Water Administration Act 1986*, as in force immediately before the appointed day.

### **17 Continuation of Ministerial Corporation**

The Water Administration Ministerial Corporation constituted by Part 2 of Chapter 8 of this Act is a continuation of, and the same legal entity as, the Water Administration Ministerial

Corporation constituted by the 1986 Act.

### **18 Continued operation of section 19**

Section 19 of the 1986 Act continues to apply to acts, matters and things that arose before the appointed day.

## **Division 5 Water Supply Authorities Act 1987**

### **19 Definition**

In this Division, **the 1987 Act** means the *Water Supply Authorities Act 1987*, as in force immediately before the appointed day.

### **20 Continuation of water supply authorities**

- (1) Each water supply authority constituted by Part 2 of Chapter 6 of this Act is a continuation of, and the same legal entity as, the water supply authority of the same name constituted by the 1987 Act.
- (2) Subject to the regulations, the area of operations of a water supply authority constituted by Part 2 of Chapter 6 of this Act is the same as the area of operations for the corresponding water supply authority constituted by the 1987 Act.
- (3) Subject to this Act, the members of a water supply authority constituted by the 1987 Act continue to hold office as members of the corresponding water supply authority constituted by Part 2 of Chapter 6 of this Act for the residue of their respective terms of office under the 1987 Act.

### **21 Special areas**

A special area for a water supply authority constituted by the 1987 Act is taken to be a special area for the corresponding water supply authority constituted by Part 2 of Chapter 6 of this Act.

### **22 Certificates of compliance**

A certificate of compliance granted by a water supply authority under the 1987 Act is taken to be a certificate of compliance issued by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.

### **23 Service charges**

- (1) An order declaring a development area, charging year, drainage area, floodplain, river management area or special industry under section 28 of the 1987 Act is taken to be the corresponding order under Part 2 of Chapter 6 of this Act.
- (2) Service charges levied by a water supply authority under the 1987 Act are taken to be service charges levied by the corresponding water supply authority under Part 2 of

Chapter 6 of this Act.

- (3) Determinations made by a water supply authority under section 34 of the 1987 Act are taken to be determinations made by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.
- (4) Assessments made by a water supply authority under section 35 or 36 of the 1987 Act are taken to be assessments made by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.
- (5) A certificate issued by a water supply authority under section 41 of the 1987 Act is taken to be a certificate issued by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.

#### **24 Penalty notices**

A penalty notice issued by an authorised employee of a water supply authority under section 51 of the 1987 Act is taken to have been issued by an authorised employee or agent of the corresponding water supply authority under Part 2 of Chapter 6 of this Act, and may be enforced accordingly.

#### **25 Regulations**

Any regulations in force under the 1987 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

### **Division 6 Fish River Water Supply Administration Act 1945**

#### **26 Definition**

In this Division, **the 1945 Act** means the *Fish River Water Supply Administration Act 1945*, as in force immediately before the appointed day.

#### **27 Contributions by councils**

Any amount payable by a council under Part 4 of the 1945 Act is taken to be payable under Part 1 of Chapter 5 of this Act.

#### **28 Regulations**

Any regulations in force under the 1945 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

### **Division 7 Hunter Valley Flood Mitigation Act 1956**

#### **29 Definition**

In this Division, **the 1956 Act** means the *Hunter Valley Flood Mitigation Act 1956*, as in force immediately before the appointed day.

### **30 Permissions**

Any permission in force under section 12 of the 1956 Act immediately before the appointed day, and any approval in force under section 16 of the 1956 Act immediately before the appointed day, are taken to be consents in force under Part 2 of Chapter 5 of this Act.

### **31 Control and management of works**

Any work that, immediately before the appointed day, was under the control and management of the Ministerial Corporation under the 1956 Act is taken to be under the control and management of the Ministerial Corporation under Part 2 of Chapter 5 of this Act.

### **32 Finance**

Any amount for which the Hunter Catchment Management Trust or a local council was liable under the 1956 Act immediately before the appointed day is taken to be an amount for which the Trust or council is liable under Part 2 of Chapter 5 of this Act.

### **33 Regulations**

Any regulations in force under the 1956 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

## **Division 8 Irrigation Corporations Act 1994**

### **34 Definition**

In this Division, **the 1994 Act** means the *Irrigation Corporations Act 1994*, as in force immediately before the appointed day.

### **35 Operating licences**

Any operating licence granted to an irrigation corporation under the 1994 Act is taken to be an operating licence under Part 1 of Chapter 4 of this Act.

### **36 Continuation of indemnity**

Section 75 of the 1994 Act continues to apply to matters arising under that Act before the appointed day as if this Act had not been enacted.

### **37 Regulations**

Any regulations in force under the 1994 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

## **Division 9 Private Irrigation Districts Act 1973**

### **38 Definition**

In this Division, **the 1973 Act** means the *Private Irrigation Districts Act 1973*, as in force immediately before the appointed day.

### **39 Private districts**

- (1) A provisional private domestic and stock water supply district constituted under the 1973 Act is taken to be a private domestic and stock water supply district constituted under Part 2 of Chapter 4 of this Act.
- (2) A private domestic and stock water supply district constituted under the 1973 Act is taken to be a private domestic and stock water supply district constituted under Part 2 of Chapter 4 of this Act.
- (3) A provisional private domestic and stock water supply and irrigation district constituted under the 1973 Act is taken to be a private domestic and stock water supply and irrigation district constituted under Part 2 of Chapter 4 of this Act.
- (4) A private domestic and stock water supply and irrigation district constituted under the 1973 Act is taken to be a private domestic and stock water supply and irrigation district constituted under Part 2 of Chapter 4 of this Act.

### **40 Boards of management**

- (1) The Board of management of a provisional private district or private district under the 1973 Act is taken to be a private irrigation board under Part 2 of Chapter 4 of this Act.
- (2) Subject to this Act, the members of a Board of management of a provisional private district or private district constituted under the 1973 Act continue to hold office as members of the corresponding private irrigation board under this Act for the residue of their respective terms of office under the 1973 Act.

### **41 Control and management of works**

Any work that, immediately before the appointed day, was under the control and management of the Board of management of a provisional private district or private district under the 1973 Act is taken to be under the control and management of the corresponding private irrigation board under Part 2 of Chapter 4 of this Act.

### **42 Rates and charges**

- (1) Any rates and charges fixed by the Board of management of a provisional private district or private district under the 1973 Act before the appointed day are taken to have been fixed by the corresponding private irrigation board under Part 2 of Chapter 4 of this Act.

- (2) A certificate issued by the Board of management of a provisional private district or private district under the 1973 Act before the appointed day is taken to be a certificate issued by the corresponding private irrigation board under Part 2 of Chapter 4 of this Act.

#### **43 Water allocations**

Any determination made by the Board of management of a provisional private district or private district under the 1973 Act before the appointed day is taken to be a determination made by the corresponding private irrigation board under Part 2 of Chapter 4 of this Act.

#### **44 By-laws**

Any by-laws made the Board of management of a provisional private district or private district under the 1973 Act before the appointed day are taken to be by-laws made by the corresponding private irrigation board under Part 2 of Chapter 4 of this Act, and may be amended and repealed accordingly.

#### **45 Regulations**

Any regulations in force under the 1973 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

### **Division 10 [Drainage Act 1939](#)**

#### **46 Definition**

In this Division, **the 1939 Act** means the [Drainage Act 1939](#), as in force immediately before the appointed day.

#### **47 Rates**

Any rate levied under Division 2 of Part 5 of the 1939 Act before the appointed day is taken to be a rate levied under Division 3 of Part 3 of Chapter 4 of this Act.

#### **48 Regulations**

Any regulations in force under the 1939 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

### **Division 11**

#### **49, 50 (Repealed)**

### **Division 12 Transfer of assets, rights and liabilities**

#### **51 Definitions**

In this Part:



**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.

**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).

**transfer order** means an order made by the Minister under clause 52.

**transferee** means the person to whom any staff, assets, rights or liabilities are transferred by a transfer order.

**transferor** means the person from whom any staff, assets, rights or liabilities are transferred by a transfer order.

## **52 Transfer orders**

- (1) The Minister may, by order in writing, transfer to any public authority (including any water supply authority) any assets, rights or liabilities (but not any staff) of the Minister or the Ministerial Corporation with respect to the Fish River water supply scheme referred to in Part 1 of Chapter 5.
- (2) The Minister may, by order in writing, transfer to any public authority any staff, assets, rights or liabilities of the Minister or the Ministerial Corporation with respect to the Hunter Valley flood mitigation works referred to in Part 2 of Chapter 5.
- (3) The Minister may, by order in writing, transfer to any private irrigation board any assets, rights or liabilities (but not any staff) of the Minister or the Ministerial Corporation with respect to the Lowbidgee flood control and irrigation works referred to in Part 3 of Chapter 5.
- (4) The Minister may, by order in writing, transfer to any public authority, irrigation corporation or private irrigation board any assets, rights or liabilities (but not any staff) of the Benerembah Irrigation District Environment Protection Trust referred to in Part 1 of Schedule 3.
- (5) The Minister may, by order in writing, transfer to any public authority any assets, rights or liabilities (but not any staff) of the Upper Parramatta River Catchment Trust referred to in Part 1 of Schedule 3.

## **53 Transfer of staff**

Any person who, by virtue of a transfer order, becomes a member of staff of a transferee 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 become a member of staff of the transferee but remained a member of staff of the transferor.

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

- (1) When any assets, rights or liabilities are transferred by a transfer order, the following provisions have effect:
  - (a) the assets of the transferor are, by operation of this clause, vested in the transferee,
  - (b) the rights and liabilities of the transferor become, by operation of this clause, the rights and liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights and liabilities of the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities of the transferor before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which it has any effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to the assets, rights or liabilities) taken to include a reference to the transferee.
- (2) The operation of this clause is not to be regarded:
  - (a) as a breach of 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 causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
  - (d) as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) A transfer is subject to the terms and conditions of the transfer order by which it is effected.
- (5) No compensation is payable to any person in connection with a transfer under this Division except to the extent (if any) to which the transfer order giving rise to the transfer so provides.

(6) Subclause (5) does not affect the rights of any member of staff referred to in clause 53.

#### **55 Date of vesting**

A transfer takes effect on the date specified in the transfer order by which it is effected.

#### **56 Consideration for vesting**

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

#### **57 Payment of duty**

Duty under the *Duties Act 1997* is not chargeable for or in respect of anything certified by the Minister as having been done in consequence of the operation of this clause (for example, the transfer or conveyance of an interest in land).

#### **58 Confirmation of vesting**

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities under this Division.
- (2) A notice under this clause is conclusive evidence of the transfer to which it relates.

### **Part 3 Provisions consequent on enactment of [Water Management Amendment Act 2002](#)**

#### **59 Definitions**

In this Part:

**the 2002 amending Act** means the [Water Management Amendment Act 2002](#).

#### **60 Guidelines under section 306 (3) (c)**

Any guidelines in force under section 306 (3) (c) immediately before its amendment by the 2002 amending Act are taken to be guidelines issued by the Minister for the purposes of that paragraph as amended by that Act.

### **Part 4 Provisions consequent on enactment of [Water Management Amendment Act 2004](#)**

#### **61 Definition**

In this Part, **the 2004 amending Act** means the [Water Management Amendment Act 2004](#).

#### **62 References in management plans to environmental health water and supplementary**

### **environmental water**

In any management plan made before the commencement of this clause:

- (a) a reference to environmental health water or supplementary environmental water is taken to be a reference to planned environmental water, and
- (b) any environmental water rules established by the plan in relation to environmental health water or supplementary environmental water are taken to have been established in relation to planned environmental water.

### **63 Duration of management plans**

- (1) Subject to section 43, any management plan for a water source whose nominal commencement date occurs before the date on which the water source is declared, by proclamation under section 55A, to be a water source to which Part 2 of Chapter 3 applies commences on, and has effect for 10 years from 1 July next after, the date so declared.
- (2) In any management plan whose actual commencement date is later than its nominal commencement date:
  - (a) any date or period of time that is required to be calculated by reference to the nominal commencement date is instead to be calculated by reference to the actual commencement date, and
  - (b) any date specified in the plan is taken instead to be the date occurring after the date so specified by the number of days by which the actual commencement date succeeds the nominal commencement date.
- (3) In this clause:

**actual commencement date**, in relation to a management plan referred to in subclause (1), means the date on which that plan commences pursuant to that subclause.

**nominal commencement date**, in relation to a management plan, means the date specified in the plan as the date on which the plan is to commence.

### **64 Validity of management plans and exercise of plan-making functions**

- (1) Section 47, as substituted by the 2004 amending Act, applies to a management plan made before the substitution in the same way as it applies to a management plan made after the substitution.
- (2) Subclause (1) does not apply to any management plan made before the substitution of section 47 if proceedings under section 47, as in force before the substitution, were commenced in the Land and Environment Court within 3 months after the date of its publication in the Gazette.

## **65 Minister's plans**

Section 50, as amended by the 2004 amending Act, applies to:

- (a) any management plan that was in course of preparation before the commencement of this clause, and
  - (b) any management plan that was made before the commencement of this clause,
- in the same way as it applies to any management plan that is prepared or made after that commencement.

## **66 Applications for access licences**

Despite section 61, a person may apply for an access licence in accordance with this Act if:

- (a) the application is for a specific purpose access licence and the relevant management plan contains provisions to the effect that access licences of the type concerned should be exempt from any embargo under this Act (even though the provisions of this Act relating to the declaration of embargoes may have been repealed), or
- (b) the application is for a supplementary water access licence and is made by the owner or occupier of land on which is situated a work referred to in:
  - (i) the Schedule to the order under the [Water Act 1912](#) published in Gazette No 119 of 19 July 2002 at page 5,493, or
  - (ii) the Schedule to the order under the [Water Act 1912](#) published in Gazette No 210 of 8 November 2002 at page 9,491.

## **67 References to former sections 71A and 71B-71J, 71K and 71L**

- (1) In any instrument that was in force under this Act immediately before the commencement of Schedule 3 [6] to the 2004 amending Act, a reference to section 71A extends to section 71M, as inserted by Schedule 3 [6].
- (2) In any instrument that was in force under this Act immediately before the commencement of Schedule 3 [25] to the 2004 amending Act, a reference to section 71B-71J, 71K or 71L extends to section 71O-71W, 71Y or 71Z, respectively, as renumbered by Schedule 3 [25].
- (3) The renumbering of section 71K as section 71Y does not affect the operation or validity of any access licence dealing principles or access licence dealing rules that were in force immediately before the section was renumbered.

## **68 Directions under section 323**

Any direction in force under section 323 immediately before the amendment of that

section by the 2004 amending Act continues to have effect as if that section had not been amended by that Act.

#### **69 Directions under section 325**

Any direction in force under section 325 immediately before the substitution of that section by the 2004 amending Act continues to have effect as if that section had not been substituted by that Act.

### **Part 5 Provisions consequent on enactment of [Water Management Amendment Act 2005](#)**

#### **70 Definition**

In this Part, **amending Act** means the [Water Management Amendment Act 2005](#).

#### **71 Management plans**

- (1) Any management plan (and any amendment of a management plan) that was published in the Gazette before the commencement of this clause is taken to have been validly made and to be valid on and from the date that it was so published.
- (2) Anything done or omitted to be done before the commencement of this clause pursuant to a management plan or amendment of a management plan referred to in subclause (1) (or done or omitted purportedly in pursuance of such a plan or amendment) is taken on and from the time at which it was done or omitted to be done to have been validly done or validly omitted to be done.
- (3) In this clause, a reference to a management plan, or an amendment of a management plan, includes a reference to a purported management plan or a purported amendment of a management plan.

### **Part 6 Provisions consequent on enactment of [Water Management Amendment Act 2008](#)**

#### **72 Definition**

In this Part, **the 2008 amending Act** means the [Water Management Amendment Act 2008](#).

#### **73 Orders under section 60 (2) of the unamended Act**

- (1) Any order that, immediately before the commencement of this clause, was in force under section 60 (2) is taken to have been made under section 49A, as inserted by the 2008 amending Act.
- (2) Section 49A (4), as inserted by the 2008 amending Act, does not apply to an order referred to in subclause (1).

### **73A Application of metering offences**

- (1) A reference in sections 91H and 91I to a condition of an access licence or approval includes a reference to a condition of an entitlement as referred to in clause 2 of Schedule 10.
- (2) This clause does not apply in respect of any proceedings for an offence under those sections commenced before the date of assent to the [Water Management Amendment Act 2010](#).
- (3) Subclause (1) is taken to have commenced on the commencement of section 91H.

### **74 Bore drillers' licences under the 1912 Act**

- (1) A bore driller's licence under the [Water Act 1912](#) is taken to be a bore driller's licence under this Act, and may be varied or revoked accordingly.
- (2) Unless sooner revoked, a bore driller's licence referred to in subclause (1) expires at the end of 3 years from the date on which it was issued under the [Water Act 1912](#).
- (3) Until they are repealed, the [Water Act 1912](#) and the [Water \(Part 5—Drillers' Licences\) Regulation 1995](#) continue to apply to a bore driller's licence referred to in subclause (1).

## **Part 7 Provisions consequent on enactment of [Water Management Amendment Act 2010](#)**

### **75 Definitions**

In this Part:

**new corporation** means a private water corporation constituted under this Part.

**the 2010 amending Act** means the [Water Management Amendment Act 2010](#).

### **85 References to adaptive environmental water conditions**

A reference in any instrument to an adaptive environmental water condition is taken to be a reference to a condition referred to in section 8 (1) (b) (i), as inserted by the 2010 amending Act.

### **86 Application of new defences**

Sections 91A (4) and (5), 91B (5) and 91I (3), as inserted by the 2010 amending Act, do not apply to proceedings for offences commenced before the commencement of those subsections.

## **Part 8 Provision consequent on enactment of [Statute Law](#)**

## **(Miscellaneous Provisions) Act (No 2) 2011**

### **87 Application of amendments to Schedule 10**

- (1) The amendments made to Schedule 10 by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2011* apply in relation to the conversion of entitlements where the appointed day (within the meaning of Schedule 10) concerned is specified in a proclamation made under section 55A or 88A on or after the commencement of the amendments.
- (2) Any regulations modifying the application of Schedule 10 in relation to a specified part of the State or water source before the commencement of the amendments to that Schedule continue to have effect as if the Schedule had not been amended.

### **Part 9 Provision consequent on Local Land Services Act 2013**

#### **88 Members of management committees**

A person who held office as a member of a management committee under section 13 (1) (d) as in force immediately before it was substituted by the *Local Land Services Act 2013* is taken to have been appointed under section 13 (1) (d) as substituted by that Act.

### **Part 10 Provisions consequent on enactment of Water Management Amendment Act 2014**

#### **89 Definition**

In this Part:

**amending Act** means the *Water Management Amendment Act 2014*.

#### **90 Amendments concerning supplementary water access licences**

- (1) An order that was in force under section 70 immediately before the day on which that section was substituted by Schedule 1.2 to the amending Act continues to have effect for the purposes of the substituted section as if the provisions of the order were contained in a relevant management plan.
- (2) An order to which subclause (1) applies ceases to have effect on the day on which a relevant management plan makes provision for the matter concerned or the day on which the order is revoked, whichever is earlier.
- (3) Sections 87 and 87AA, as amended by Schedule 1.2 to the amending Act, extend to regulated river supplementary water access licences that were in force immediately before their amendment.



**91 Amendments concerning harvestable rights**

- (1) Sections 53 and 54, as substituted by Schedule 1.3 to the amending Act, extend to existing dams.
- (2) An **existing dam** is a dam that was in existence immediately before sections 53 and 54 were substituted by Schedule 1.3 to the amending Act.
- (3) However, nothing in this clause permits the capturing and storage of water in, or the taking and use of water from, an existing dam in accordance with substituted sections 53 and 54 if the dam was not lawfully constructed and continues to be unlawful.

**92 Amendments concerning the controlled allocation of access licences**

Section 65, as amended by Schedule 1.4 to the amending Act, extends to orders under that section that were in force immediately before the commencement of that Schedule.

**93 Amendments concerning water allocation accounts and the taking of water**

- (1) An order that was in force under section 85A immediately before the day on which that section was amended by Schedule 1.8 to the amending Act continues to have effect for the purposes of the amended section as if the provisions of the order were contained in a relevant management plan.
- (2) An order to which subclause (1) applies ceases to have effect on the day on which a relevant management plan makes provision for the matter concerned or the day on which the order is revoked, whichever is earlier.

**94 Amendments concerning nominated water supply works and water tagging zones**

Section 71W, as in force immediately before the day on which it was substituted by Schedule 1.9 to the amending Act, continues to apply to applications that were made (but not determined) before that day.

**95 Amendments concerning the streamlining of licensing and trading processes**

- (1) Each of the following provisions, as amended, inserted or substituted by Schedule 1.10 to the amending Act, extends to applications made (but not determined) before the amendment, insertion or substitution of the provision concerned:
  - (a) sections 61 and 92,
  - (b) sections 63 (1A) and 95 (1A),
  - (c) sections 66A, 67 and 100A,
  - (d) section 95 (5).
- (2) Section 107, as amended by Schedule 1.10 to the amending Act, extends to approvals

that were in force immediately before the commencement of the amendment concerned.

- (3) Clause 1 (3) of Schedule 1A, as substituted by Schedule 1.10 to the amending Act, extends to access licences granted (but not recorded in the Access Register) before the substitution of that subclause.

#### **96 Amendments concerning management plans**

Sections 43A, 45A and 87AC, as amended, substituted or inserted by Schedule 1.11 to the amending Act, extend to management plans that were in force immediately before the amendment, substitution or insertion of the provision concerned.

#### **97 Amendments concerning combined approvals**

Sections 95 and 99A, as amended or inserted by Schedule 1.12 to the amending Act, extend to:

- (a) applications for approvals that were made (but not determined) before the amendment or insertion of the provision concerned, and
- (b) approvals that were in force immediately before the amendment or insertion of the provision concerned.

#### **98 Amendments concerning floodplain harvesting access licences**

- (1) Part 2 of Chapter 3 is taken not to have commenced to apply to any category of floodplain harvesting access licences in connection with a place or water source regardless of whether or not that category was expressly excluded from a previous application proclamation for the place or source.
- (2) A ***previous application proclamation*** for a place or water source is a proclamation under section 55A made with respect to the place or water source that was published before the day on which section 57A was inserted by the amending Act.

**Note—**

A proclamation under section 55A operates to apply Part 2 of Chapter 3 to parts of the State or water sources specified by the proclamation.

- (3) This clause applies despite section 55A (or a proclamation made under that section) or Schedule 10.
- (4) However, nothing in this clause limits the application of section 57A (as inserted by Schedule 1.13 to the amending Act), or any regulations made for the purposes of that section, to the conversion of actual or proposed floodplain water usage by landholders into floodplain harvesting access licences in connection with a water source to which subclause (1) applies.

## 99 Amendment of water sharing plans

- (1) The amendments made to a water sharing plan by Schedule 2 to the amending Act are not to be construed as altering the meaning of any provision of the plan (a **native title provision**) dealing with the management of a water source with respect to which there may be native rights.
- (2) Accordingly, a native title provision is to continue to be construed to have the same meaning as it had before the amendment of the plan until it is amended by some other means.

## Schedule 9A Transferred provisions

### 1 River Murray (Diversion) Act 1933

- (1) Upon completion of the works authorised by the *River Murray (Diversion) Act 1933* (as in force immediately before its repeal) they shall be handed over to the Ministerial Corporation which shall thereupon be charged with the maintenance thereof.
- (2) Subclause (1) re-enacts (with minor modifications) section 2 (4) of the *River Murray (Diversion) Act 1933* and is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

## Schedule 10 Conversion of former entitlements to access licences and approvals

(Section 403)

## Part 1 Preliminary

### 1 Application of Schedule

This Schedule applies:

- (a) to each category or subcategory of access licence that relates to a part of the State or water source to which Part 2 of Chapter 3 applies by operation of a proclamation under section 55A, and
- (b) to each type or kind of approval that relates to a part of the State or water source to which Part 3 of Chapter 3 applies by operation of a proclamation under section 88A.

### 2 Definitions

In this Schedule and Schedule 11:

**appointed day** means:

- (a) in relation to a category or subcategory of access licence to which Part 2 of Chapter 3 applies or an entitlement from which such an access licence arises, the day appointed

under section 55A in relation to that category or subcategory of access licence, or

- (b) in relation to a type or kind of approval to which Part 3 of Chapter 3 applies or an entitlement from which such an approval arises, the day appointed under section 88A in relation to that type or kind of approval.

**Note—**

Clause 9 provides that, in certain circumstances, the operation of those Parts is deferred in relation to particular entitlements.

**entitlement** means:

- (a) a licence, permit, authority, irrigation corporation licence or group licence referred to in Part 2 of the 1912 Act, or
- (b) a right to take and use water referred to in section 38B of the 1912 Act, or
- (c) a licence referred to in Part 5 of the 1912 Act, or
- (d) an approval referred to in Part 8 of the 1912 Act, or
- (e) a water management licence under Part 9 of the 1912 Act, or
- (f) a permit under Part 3A of the 1948 Act, or
- (g) an irrigation corporation licence under the 1994 Act, or
- (h) any power under section 12 of the [Water Administration Act 1986](#) or section 8 of the 1912 Act that, immediately before the appointed day, was exercisable by any person pursuant to an agreement between that person and the Ministerial Corporation, or
- (i) any right to take water from an unlicensed water bore (being a water bore constructed as referred to in section 112 (1) (b) of the 1912 Act) that was in force immediately before the appointed day, or
- (j) any arrangement that, immediately before the commencement of this Schedule, was in force between the Inverell Shire Council and the Ministerial Corporation, or
- (k) any other right, interest, privilege, permission or authority that is declared by the regulations to be an entitlement for the purposes of this clause.

**former entitlement**, in relation to an access licence or approval, means the entitlement from which the access licence or approval arises because of the operation of this Schedule.

**replacement access licence**, in relation to an entitlement, means an access licence (including any supplementary water access licence) that, by operation of this Schedule, arises from the entitlement or from a direction under section 20AA of the 1912 Act in relation to the entitlement.

**replacement approval**, in relation to an entitlement, means an approval that, by operation of this Schedule, arises from the entitlement.

**specified water source** means a water source specified in a management plan.

**the 1912 Act** means the [Water Act 1912](#).

**the 1948 Act** means the [Rivers and Foreshores Improvement Act 1948](#).

**the 1994 Act** means Division 3 of Part 4 of the [Irrigation Corporations Act 1994](#), as continued in force by the regulations.

## Part 2 Conversion of former entitlements

### Division 1 Entitlements generally

#### 3 Access licences and approvals arising from former entitlements

- (1) Subject to this Schedule, an entitlement that, immediately before the appointed day, was in force under the 1912 Act, the 1948 Act or the 1994 Act is taken to have been replaced:
  - (a) to the extent to which it entitles any person or body to take a specified quantity of water, by an access licence held by that person or body (subject to such of the conditions of the entitlement as are applicable to an access licence):
    - (i) for the quantity of water so specified, or
    - (ii) if the relevant management plan, and regulations made for the purposes of this paragraph, indicate that a different quantity of water calculated in accordance with a specified methodology may be taken under an access licence issued in relation to the water management area or water source to which the management plan applies—for a different quantity of water calculated in accordance with that methodology, and
  - (b) to the extent to which it entitles any person or body to use a specified water management work, by a water management work approval held by that person or body in respect of that work (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and
  - (c) to the extent to which it entitles any person or body to use water on any land, by a water use approval held by that person or body in respect of that land (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and
  - (d) to the extent to which it entitles any person or body to carry out a specified activity, by an activity approval held by that person or body in respect of that activity (subject to such of the conditions of the entitlement as are applicable to

an approval of that kind).

- (2) Subclause (1) does not apply to an entitlement that, immediately before the appointed day, was held by a local water utility for the purposes of town water supply.
- (3) An access licence that replaces an entitlement may provide for a specified reduction over a specified period of the quantity of water that the holder of the licence is entitled to take or of the share component of the licence if the relevant management plan and any regulations made for the purposes of this subclause allow the licence to provide for those matters.

#### **4 Categories and subcategories of access licence**

- (1) Without limiting clause 3, an entitlement of the kind referred to in Column 1 of Schedule 11 that, immediately before the appointed day, was held for a purpose specified in Column 2 of that Schedule, or subject to conditions limiting the entitlement to such a purpose, is taken to be:
  - (a) an access licence of the category referred to in Column 3 of that Schedule, in the case of an entitlement with respect to a regulated river, or
  - (b) an access licence of the category referred to in Column 4 of that Schedule, in the case of an entitlement with respect to an unregulated river, estuary, lake or aquifer.
- (2) A description appearing between square brackets in Column 3 or 4 of Schedule 11 indicates that the access licence concerned is of the subcategory indicated by that description.
- (3) The regulations may amend Schedule 11 so as to insert, amend or omit matter in Column 1, 2, 3 or 4 of that Schedule to make provision for categories and subcategories of access licence prescribed by the regulations (as referred to in section 57 (1) and (2)).
- (4) Despite subclause (3), if an entitlement has been replaced in accordance with this Act before the commencement of an amendment to Schedule 11 made pursuant to that subclause, Schedule 11 as in force at the time the entitlement was replaced continues to apply in relation to that entitlement.

#### **5 More than one licence or approval may replace a single entitlement**

- (1) An entitlement that, immediately before the appointed day, was held for or limited to 2 or more purposes specified in Column 2 of Schedule 11 is, to the extent to which it entitles any person or body to take a specified quantity of water, taken to have been replaced by a separate access licence held by that person or body:
  - (a) for each of those purposes for which a separate category or subcategory of licence is specified in Schedule 11, and

- (b) for the quantity of water applicable under the entitlement for the relevant purpose.
- (2) An entitlement that, immediately before the appointed day, was held in relation to 2 or more water sources to which Part 2 of Chapter 3 applies is, to the extent to which it entitles any person or body to take a specified quantity of water, taken to have been replaced by separate access licences held by that person or body:
- (a) for each of the specified water sources, and
  - (b) for the quantity of water applicable under the entitlement to the relevant specified water source.
- (3) An entitlement with respect to a water management work that, immediately before the appointed day, allocated water not only to the land on which the work is situated but also to other land (being land held otherwise than by the landholder of the land on which the work is situated) is taken to have been replaced:
- (a) to the extent to which it allocates water to the land on which the work is situated:
    - (i) by an access licence held by the landholder of that land for the quantity of water so allocated (subject to such of the conditions of the entitlement as are applicable to an access licence), and
    - (ii) by a water management work approval held in respect of that work by the landholder of that land (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and
    - (iii) by a water use approval held by the landholder of that land for the use of water on that land (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and
  - (b) to the extent to which it allocates water to other land (being land held otherwise than by the landholder of the land on which the work is situated):
    - (i) by an access licence held by the landholder of that other land for the quantity of water so allocated (subject to such of the conditions of the entitlement as are applicable to an access licence), and
    - (ii) by a water use approval held by the landholder of that other land for the use of water on that land (subject to such of the conditions of the entitlement as are applicable to an approval of that kind).
- (4) Subclause (3) does not apply to an entitlement held by an irrigation corporation or a private irrigation board.

## **6 Access licences and approvals not to arise from certain entitlements**

- (1) An entitlement that, immediately before the appointed day, entitled any person or body:
  - (a) to take water, or
  - (b) to construct or use a water management work, or
  - (c) to use water, or
  - (d) to carry out an activity,

for a specified purpose for which an access licence or approval is not required to be obtained under this Act or the regulations is, to the extent to which it relates to any such purpose, not replaced by an access licence or approval.

### **Note—**

For example, an owner or occupier of a landholding may take water and construct and use works for domestic and stock purposes, or within a harvestable rights area, without being required to hold an access licence.

- (2) A document purporting to be an access licence or approval that is inadvertently issued in replacement of an entitlement referred to in subclause (1) is of no effect.
- (3) However, subclauses (1) and (2) do not apply in relation to an entitlement to take or use water for domestic and stock purposes if the entitlement arises from Part 2 of the 1912 Act.
- (4) Any access licence issued before the commencement of subclause (3) as a replacement for an entitlement of the kind referred to in that subclause that would have been validly issued if that subclause had been in force at the time it was issued is taken to have been (and always to have been) validly issued.

## **7 Manner in which access licences to be expressed**

- (1) The Minister, by order in writing, may at any time convert the manner in which the share component of an access licence (other than a local water utility access licence) is expressed from a specified quantity of water to any other manner in which the share component of an access licence may be expressed under section 56.
- (2) The Minister, by order in writing, may at any time apply uniform extraction components to replacement access licences, but having regard to any relevant management plan.
- (3) An order under this clause:
  - (a) may apply to access licences generally, or to access licences of a specified category or subcategory, and



(b) may apply with respect to one or more parts of the State or water sources.

(4) No compensation is payable as a consequence of the making of an order under this clause.

## **8 Supplementary water access licences**

On the appointed day, and if the regulations so provide, supplementary water access licences, additional to those arising under this Part, are taken to have arisen in accordance with the regulations.

## **9 Entitlements with no specified quantity of water to continue under former Acts**

(1) Despite any other provision of this Schedule:

(a) neither an access licence nor an approval arise in relation to an entitlement if, immediately before the appointed day, the entitlement was for an unspecified quantity of water or for a quantity of water yet to be specified, and

(b) in any such case, the 1912 Act, the 1948 Act or the 1994 Act, as the case requires, is taken to continue to apply to the entitlement until such time as a quantity of water is specified under that Act in relation to the entitlement, or until the entitlement ceases to be in force under that Act, whichever occurs first.

(2) Parts 2 and 3 of Chapter 3, and this Schedule (apart from this clause) apply to the entitlement from the day the quantity is specified in relation to the entitlement:

(a) as if that day were the appointed day, and

(b) as if the entitlement entitled the person or body to take the specified quantity of water.

## **9A Conditions relating to food safety and essential dairy care**

(1) If an entitlement authorised water to be extracted for the purposes of food safety or essential dairy care at times of low flows when extraction of the water would not otherwise be allowed, an access licence that replaces that entitlement is taken to contain the same authorisation.

(2) An access licence referred to in subclause (1) is also subject to a mandatory condition that the authorisation ceases to have effect if the activity for which the extraction of water is permitted ceases to be conducted at the same location or is not carried out in the same manner as it was carried out immediately before the entitlement concerned was replaced by the access licence.

## **10 Owners to hold new access licences if occupier or predecessor did not obtain entitlement**

(1) This clause applies to an entitlement if, on the appointed day, the owner of the land to

which the entitlement relates (the **landowner**) is not the same person as the person who is in occupation of the land (the **current occupier**).

- (2) The entitlement is taken to have been replaced by an access licence held by the landowner, and not by the current occupier, to the extent to which the entitlement was originally granted otherwise than to the current occupier or a predecessor in title of the current occupier.
- (3) The access licence referred to in subclause (2) is taken to be the subject of a term transfer (within the meaning of section 71N) to the current occupier.
- (4) Despite section 71N, the term transfer referred to in subclause (3) continues in force until the current occupier ceases to be entitled to occupy the land.

#### **11 Mortgagors of old system land to hold new access licences**

- (1) This clause applies to an entitlement with respect to land (other than land under the provisions of the *Real Property Act 1900*) that, on the appointed day, is subject to a mortgage that is registered in the General Register of Deeds (the **original mortgage**).
- (2) The entitlement is taken to have been replaced by an access licence held by the person holding the right to redeem the original mortgage.

#### **12 Partial application of Act to existing entitlement**

- (1) This clause applies if:
  - (a) immediately before the appointed day, an entitlement applied to more than one water source, work or activity, and
  - (b) on or after that day, the entitlement continues to apply to a water source, work or activity but is partially replaced by an access licence or approval in respect of some other water source, work or activity.
- (2) Subject to this Schedule, the entitlement and replacement access licence or approval are each taken to be subject to a condition that limits the total quantity of water that may be taken and used under both of them to not more than the total quantity of water authorised to be taken and used under the entitlement immediately before the replacement access licence or approval first came into effect.
- (3) Subclause (2) does not apply to a local water utility access licence.

#### **13 Local water utilities**

- (1) On, or as soon as practicable after, the appointed day, the Minister must issue to a local water utility that, immediately before the appointed day, held one or more entitlements for town water supply purposes:

- (a) for each specified water source to which Part 2 of Chapter 3 applies:
    - (i) one access licence, or
    - (ii) if the entitlements relate to more than one water supply scheme, one access licence for each such scheme, and
  - (b) one or more water supply work approvals to cover all water supply schemes situated on land to which Part 3 of Chapter 3 applies, and
  - (c) one water use approval to cover each water supply scheme situated on land to which Part 3 of Chapter 3 applies, being land supplied with water by the local water utility.
- (2) The share component of an access licence referred to in subclause (1) (a) is to be expressed as a specified volume per year.
- (3) Subject to subclauses (4) and (5), the specified volume in relation to the access licence may be any of the following:
- (a) the quantity of water specified in the former entitlements immediately before the appointed day,
  - (b) a quantity of water calculated by reference to the nature and extent of the area to which all the former entitlements related:
    - (i) having regard to population levels, geographical location and current water usages, and
    - (ii) assuming that reasonable demand management strategies are implemented in that area,
  - (c) a quantity of water calculated on the basis of the current yield of the water management works controlled or managed under all the former entitlements by the local water utility by which the licence is taken to be held.
- (4) The yield referred to in subclause (3) (c) is to be determined with regard to historical stream flow data, and with regard to drought management strategies and demand management practices established by the local water utility concerned.
- (5) In the case of an access licence whose specified volume is greater than the quantity of water currently taken and used under the former entitlements, the Minister may at any time impose a condition on the access licence to the effect that water in excess of that quantity, or in excess of such greater quantity as the Minister may determine, is not to be taken, used or assigned except with the consent of the Minister.
- (6) Such a condition is not to be imposed unless the Minister is satisfied that the imposition of such a condition is necessary in the public interest.

- (7) The Minister has absolute discretion as to whether or not to grant consent to the assignment of excess water, as referred to in subclause (5), and, in particular, is not subject to any limitation under section 71Y as to the manner in which an application for such consent is dealt with.
- (8) If a former entitlement relates partly to a water source to which Part 2 of Chapter 3 applies and partly to some other water source, the share components for the replacement access licences arising under this clause are not to include any quantity of water covered by an entitlement remaining under the 1912 Act.
- (9) If more than one access licence is issued to a local water utility under this clause, the Minister may impose on each access licence a condition limiting the total quantity of water that may be taken and used under those licences.
- (10) In this clause, **water supply scheme** means an aggregation of water supply works used by a local water utility for the purposes of exercising its water supply functions.

#### **14 Water use approvals for town water supply**

- (1) To the extent to which, immediately before the appointed day, an entitlement allowed water taken by a person or body to be used for town water supply and one or more other purposes, the entitlement is taken to have been replaced by the following water use approvals:
  - (a) an approval entitling the appropriate local water utility (or such other person or body as is responsible for town water supply in that area) to use water for town water supply,
  - (b) an approval entitling the firstmentioned person or body to use water for the other purposes (but only on the land to which the entitlement relates).
- (2) An approval referred to in subclause (1) is subject to such of the conditions of the entitlement as are applicable to an approval of that kind.

#### **15 Private water trusts**

- (1) This clause applies to a private water trust's right, pursuant to Part 3 of the 1912 Act, to take and use water conserved or obtained by a work administered and managed by the private trust (being a right saved by clause 16 of the *Water Management (Private Water Trusts—General) Savings and Transitional Regulation 1995*, as in force immediately before 1 September 2002, whether or not the right is in force immediately before the appointed day) referred to in this clause as a **Part 3 right**.
- (2) On the appointed day, a private water trust's Part 3 right in relation to a water source is taken to have been replaced:
  - (a) to the extent to which it entitled any private water trust to take a specified quantity of water, by an access licence held by the private water trust for the

quantity of water provided for in the relevant volumetric water allocation scheme under section 20W of the 1912 Act, as in force immediately before 1 September 2002, and

- (b) to the extent to which it entitled the private water trust to use a specified water supply work, by a water supply work approval held by the private water trust in respect of that work, and
- (c) by a water use approval entitling the private water trust to use water on the land to which the right related.

- (3) An access licence or approval referred to in subclause (2) is subject to such of the conditions of the Part 3 right as are applicable to an access licence or approval of that kind.

## **16 Entitlements relating to water bores**

- (1) The location to be specified in an approval for a water bore that replaces a licence under Part 5 of the 1912 Act may differ from the location specified in the licence if the water bore to which the licence relates is situated elsewhere than at the location so specified.
- (2) If the holder of a licence under Part 5 of the 1912 Act has been taking water from a different water source to that authorised by the licence because of erroneous location data, an access licence that is taken to replace that licence may be issued with a share component or extraction component (or both) that refers to the different water source rather than to the water source referred to in the replaced licence.
- (3) A licence under Part 5 of the 1912 Act which, immediately before the appointed day, related to a water bore that intersects two water sources that vertically abut each other is taken to have been replaced by:
  - (a) an access licence that specifies in its share component the water source that is the main source of extraction of water, and
  - (b) a water supply work approval.

## **17 Multiple bore licences**

- (1) This clause applies to any group of licences under Part 5 of the 1912 Act that, immediately before the appointed day, were linked by a condition specifying a maximum quantity of water that may be taken under all of the licences, referred to in this clause as **linked Part 5 licences**.
- (2) On the appointed day, any linked Part 5 licences are taken to have been replaced:
  - (a) to the extent to which they entitled any person or body to take a specified quantity of water, by a single aquifer access licence held by all the persons or

bodies who held the licences for the quantity of water specified by the linking condition, and

(b) to the extent to which they entitled any person or body to use a specified water supply work, by one water supply work approval held by all the persons or bodies who held the licences in respect of works to which the linking condition related, and

(c) by one water use approval entitling all the persons or bodies who held the licences to use water on the land to which the linking condition related.

(3) An access licence or approval referred to in subclause (2) is subject to such of the conditions of the linked Part 5 licences as are applicable to an access licence or approval of that kind.

(4) In any group of linked Part 5 licences, the Part 5 licence last granted is taken to be the entitlement from which the replacement access licence and approvals arise for the purposes of clause 21.

#### **18 Water use approvals for joint schemes**

(1) An entitlement that, immediately before the appointed day, was in force under Division 4 of Part 2 of the 1912 Act is taken to have expired on that day and been replaced, to the extent to which it entitles a person or body to use water on the land to which it relates, by separate water use approvals for each person or body who is entitled to take water under the replacement access licence.

(2) An approval referred to in subclause (1) is subject to such of the conditions of the entitlement as are applicable to an approval of that kind.

### **Division 2 Continuation of security interests**

#### **19 Registration of security interests in replacement access licences**

(1) Subject to this clause, a person who, immediately before the appointed day, had an interest in an entitlement (being an interest in the nature of a security interest) is taken to have an equivalent security interest in the replacement access licence.

(2) If the interest in the entitlement arose from a mortgage over land, the equivalent security interest in the access licence is taken to be a mortgage over the replacement access licence.

(3) If a document in the approved form with respect to a security interest in a replacement access licence is lodged for registration in the Access Register within the prescribed period, or is subsequently lodged for registration pursuant to an order of a court in proceedings that have been commenced within that period and of which notice has been given to the Minister within that period, then on registration:

- (a) it ranks, with respect to any other security interest, in the same priority as it previously ranked under section 184G of the *Conveyancing Act 1919* or section 36 of the *Real Property Act 1900*, or under Part 2K.3 of the *Corporations Act 2001* of the Commonwealth, as the case may be, and
  - (b) it ranks before any other security interest in the licence that arises after the appointed day, regardless of when that other security interest is registered.
- (4) A security interest in a replacement access licence in respect of which a document in the approved form is not lodged for registration in the Access Register within the time allowed by subclause (3) is taken to have been extinguished.
- (5) As soon as practicable after the appointed day, the Director-General is to cause a notice containing the following matters to be published in an appropriate newspaper, and in any other manner the Director-General thinks fit:
  - (a) that security interests in replacement access licences may be registered in the Access Register,
  - (b) that security interests registered in the Access Register will retain their current priority relative to other security interests,
  - (c) that the Director-General will act for any person claiming a security interest, at no cost to the person, in relation to the registration of the interest in the Access Register,
  - (d) that, before the Director-General will take action under this clause with respect to a person's security interest, the person claiming the interest must lodge with the Director-General a written notice stating that the person has, at least 90 days before lodging the notice, advised the holder of the licence, in the form approved by the Director-General, as to the existence of the security interest claimed.
- (6) As soon as practicable after receiving written notice of a claimed security interest, the Director-General must forward the claim to the Minister for registration in the Access Register.
- (7) If an objection is received in relation to the claimed security interest, the Director-General may nevertheless forward the claim to the Minister but, in that event:
  - (a) the Director-General must indicate to the Minister that the claim is disputed, and
  - (b) the Minister must ensure that, when the interest is registered, a note to the effect that the claim is disputed is included in the Access Register in relation to the interest.
- (8) Subclause (7) (b) does not prevent the Minister from including in the Access Register such other notes as he or she considers appropriate in relation to a claimed security

interest.

- (9) Duty is not chargeable under Chapter 7 of the *Duties Act 1997* on any security interest arising under this clause.
- (10) Despite subclause (9), duty may become chargeable on a security interest under section 210 (2) of the *Duties Act 1997* in relation to any advance or further advance referred to in that subsection that occurs after the security interest is registered in the Access Register.
- (10A) Subclause (10B) applies only to an access licence arising from an entitlement with respect to land in respect of which an interest was, immediately before the appointed day, registered under the *Real Property Act 1900* or under the *Corporations Act 2001* of the Commonwealth.
- (10B) No dealing that requires the consent of the holder of a security interest may be registered in relation to an access licence until the expiry of the prescribed period unless, before the expiry of that period, the holder of the interest:
- (a) has lodged with the Director-General a notice of the kind referred to in subclause (5) (d), or
  - (b) has notified the Director-General that the holder does not propose to seek registration of the interest in the Access Register.
- (11) In this clause, **prescribed period**, in relation to an interest in a replacement access licence, means the period of 36 months beginning on the appointed day for that licence.

## Division 3 General

### 20 Notification of licences

- (1) The Minister must cause written notice of the terms of each access licence or approval arising by operation of this Schedule to be given to the holder of each such access licence or approval.
- (2) A replacement access licence or approval:
- (a) is to include any mandatory conditions that are required to be imposed on the licence or approval, and
  - (b) may include such other conditions (**discretionary conditions**) as the Minister thinks fit, including (but not limited to) conditions relating to the protection of the environment.
- (2A) Notice of any mandatory or discretionary conditions of a replacement access licence or approval may be given in the written notice given under subclause (1) or by one or



more subsequent written notices.

(2B) Discretionary conditions imposed on a replacement access licence or approval before the commencement of this subclause are taken to have been validly imposed (and always to have been validly imposed) to the extent that the conditions would have been validly imposed had subclauses (2) and (2A) (as substituted or inserted by the *Water Management Amendment Act 2014*) been in force at the time that they were imposed.

(3) A replacement access licence or approval is to be in such form as the Minister may determine.

## **21 Duration of new access licence or approval**

(1) A replacement access licence continues in force until it is cancelled.

(2) Unless it is sooner cancelled, a replacement approval has effect for:

(a) except as provided by paragraph (b):

(i) 2 years from the appointed day, or

(ii) for the balance of the period for which its former entitlement would (but for this Schedule) have remained in force,

whichever is the longer, or

(b) if its former entitlement would (but for this Schedule) have remained in force for an indefinite period, 10 years.

(3) Any suspension of an entitlement under the 1912 Act, the 1948 Act or the 1994 Act that was in force immediately before the appointed day continues in force under this Act, and may accordingly be revoked at any time.

(4) This clause does not limit the operation of section 105.

## **22 Water management work approvals arising from certain permits**

A water supply work approval or water use approval replacing a permit granted under section 18H of the 1912 Act or Part 3A of the 1948 Act has effect for the balance of the period for which the permit would (but for the this Schedule) have remained in force.

## **23 Entitlements held by 2 or more co-holders**

Two or more co-holders of a replacement access licence are taken to hold the access licence:

(a) if the Minister has a record of the shares in which the former entitlement was held immediately before the appointed day, in the same shares as the former entitlement was so held, or

- (b) if the Minister has no such record, but within 2 months after sending a written request to the co-holders seeking information as to their shareholding the Director-General receives:
- (i) a notice, signed by or on behalf of each of them, by which they agree as to the shares in which they hold the access licence, or
  - (ii) a notice, signed by any one of them, to the effect that legal proceedings have been commenced for the purpose of obtaining a declaration as to the shares in which they hold the access licence,
- in the agreed shares referred to in the notice under subparagraph (i), or in the shares determined pursuant to the legal proceedings referred to in the notice under subparagraph (ii), as the case may be, or
- (c) in any other case, as tenants in common with the entitlements conferred by the licence under section 56 apportioned equally between them.

#### **24 Right of access continued temporarily**

In the case of a licence under section 13A or an authority under section 20CA of the 1912 Act, the holder of the replacement water management work approval may continue to exercise the rights conferred by section 13A (7) or 20CA (8) of that Act, as the case requires, but only until the approval ceases to have effect, or until the date of the first extension of the approval, as the case requires.

**Note—**

After that time, the continued exercise of those rights will need to be supported by an easement or other arrangement, whether negotiated by agreement between the respective landholders or imposed by means of an order under section 88K of the [Conveyancing Act 1919](#).

#### **25 Water allocations**

- (1) On the appointed day, the balance of the water allocation account for an access licence is taken to be the balance of the water account for the former entitlement.
- (2) If more than one access licence arises from a former entitlement, the balance of the water account for the former entitlement is to be apportioned between the water allocation accounts for the access licences in accordance with the accounting practices that applied to water accounts immediately before the appointed day.
- (3) As soon as practicable after the appointed day, the Director-General must reduce the water allocation for a replacement access licence by an amount not exceeding the amount by which the water allocation for the entitlement from which the licence arises would have been reduced under section 17A, 20H, 20S, 20XA, 20XC, 117A, 117G or 189 of the 1912 Act, or under section 53, 54 or 60 of the 1994 Act, had that entitlement continued in force under the 1912 Act or the 1994 Act, as the case may be.

- (4) If the appointed day is not 1 July in any year, the Minister may, at any time before the next 1 July, make such adjustments to the water allocations standing to the credit of a replacement access licence as could have been made, in accordance with the accounting practices that applied to water accounts immediately before the appointed day, to the water allocations standing to the credit of the water account for the former entitlement.
- (5) In this clause, **water account**, in relation to an entitlement, means the water account that, in accordance with the administrative practices followed by the Director-General before the appointed day, was kept in relation to the entitlement.

## **26 Nominated works**

- (1) Each work specified in a replacement water supply work approval is taken to have been nominated under section 71W in relation to each replacement access licence arising from the same entitlement, including any supplementary water access licence arising from or in relation to that entitlement.
- (2) Such a nomination may be withdrawn under section 71W in the same way as any other nomination under that section.

## **27 Replacement licences under former Acts**

A document that is issued for the purposes of the 1912 Act, the 1948 Act or the 1994 Act to replace an entitlement that has been partially superseded by an access licence or approval is not a new entitlement but merely a restatement of the remaining entitlement.

# **Part 3 Modified application of this and other Acts**

## **Division 1 Modified application of this Act**

### **28-31 (Repealed)**

### **32 Construction of certain references**

A reference in section 118, 141, 199, 216 (3), 222 or 284 to an access licence or approval includes, in the case of any act, matter or thing to which the 1912 Act, the 1948 Act or the 1994 Act applies, a reference to the applicable entitlement under the 1912 Act, the 1948 Act or the 1994 Act.

## **Division 2 Modification of amendments to other Acts made by this Act**

### **33 Effect of amendments and repeals of other statutory provisions**

- (1) This clause applies to the following statutory provisions referred to in Schedule 8:
  - (a) item 25 of Table 1 in Schedule 1 to the *Criminal Procedure Act 1986*,
  - (b) sections 91 and 120A of the *Environmental Planning and Assessment Act 1979*,

- (c) sections 16 and 16A (5) of the *Farm Water Supplies Act 1946*,
  - (d) sections 17, 18, 19, 20 and 21 of the *Land and Environment Court Act 1979*,
  - (e) section 124 of the *Local Government Act 1993*,
  - (f) sections 5 and 47J of the *National Parks and Wildlife Act 1974*,
  - (g) section 12 of the *Native Vegetation Conservation Act 1997*,
  - (h) sections 19 and 52 of the *Plantations and Reafforestation Act 1999*,
  - (i) section 32 of the *Snowy Hydro Corporatisation Act 1997*,
  - (j) section 14 of the *Soil Conservation Act 1938*.
- (2) The statutory provisions referred to in subclause (1) operate in relation to:
- (a) an entitlement under the 1912 Act, or
  - (b) a permit under Part 3A of the 1948 Act, or
  - (c) a licence under Division 3 of Part 4 of the 1994 Act,
- as if those provisions had not been amended or repealed by Schedule 8.
- (3) This clause does not limit or otherwise affect the operation of a statutory provision referred to in subclause (1), as amended by Schedule 8, in relation to:
- (a) an access licence to which Part 2 of Chapter 3 applies, or
  - (b) an approval to which Part 3 of Chapter 3 applies.

## **Division 3 Modification of other Acts**

### **34 Application of 1912 Act**

- (1) Part 2 of the 1912 Act does not apply to or in respect of any water source, work, use of water or activity to the extent to which Part 2 or 3 of Chapter 3 applies to or in respect of that water source, work, use or activity.
- (2) Part 5 of the 1912 Act does not apply to or in respect of any water source, work, use of water or activity to the extent to which Part 2 or 3 of Chapter 3 applies to or in respect of that water source, work, use or activity.
- (3) Part 8 of the 1912 Act does not apply to or in respect of any flood work, use of water or activity to the extent to which Part 3 of Chapter 3 applies to or in respect of that work, use or activity.
- (4) Part 9 of the 1912 Act does not apply to or in respect of any water source, work, use

of water or activity to the extent to which Part 2 or 3 of Chapter 3 applies to or in respect of that water source, work, use or activity.

**Note—**

Proclamations under sections 55A and 88A apply the provisions of Parts 2 and 3 of Chapter 3 to particular matters formerly dealt with under the 1912 Act. Matters to which those provisions do not apply continue to be dealt with under the 1912 Act.

**35 Application of 1948 Act**

Part 3A of the 1948 Act does not apply to or in respect of any activity to the extent to which Part 3 of Chapter 3 applies to or in respect of that activity.

**Note—**

Proclamations under section 88A apply the provisions of Part 3 of Chapter 3 to particular matters formerly dealt with under the 1948 Act. Matters to which those provisions do not apply will continue to be dealt with under the 1948 Act.

**36 Application of 1994 Act**

The 1994 Act does not apply to or in respect of any water source, work, use of water or activity to the extent to which Part 2 or 3 of Chapter 3 applies to or in respect of that water source, work, use or activity.

**Note—**

Proclamations under sections 55A and 88A apply the provisions of Parts 2 and 3 of Chapter 3 to particular matters formerly dealt with under the 1994 Act. Matters to which those provisions do not apply will continue to be dealt with under the 1994 Act.

**Part 4 General**

**37 Enforcement of debts**

- (1) On and from the appointed day, sections 78 and 109, and Part 4 of Chapter 7, have effect with respect to any debt under the 1912 Act, the 1948 Act or the 1994 Act in the same way as they have effect with respect to any debt under this Act.
- (2) Enforcement action that has been commenced in relation to an entitlement under the 1912 Act, the 1948 Act or the 1994 Act before the day on which that entitlement is replaced under this Act may be completed under the 1912 Act, the 1948 Act or the 1994 Act, as the case requires.

**38 Pending applications**

- (1) Any application for or in relation to an entitlement that was made under the provisions of the 1912 Act, the 1948 Act or the 1994 Act before the appointed day is to be dealt with under those provisions as if this Act had not been enacted.
- (2) Any decision in relation to any such application with respect to an entitlement, including any decision in relation to an application for the renewal of an entitlement, is

to be implemented in relation to the relevant access licence or approval that has arisen from the entitlement with respect to which the application was made.

- (3) In relation to each entitlement arising from an application dealt with under this clause, the provisions of this Schedule apply to the entitlement, as from the date on which it arises, in the same way as they apply to an entitlement that was in force immediately before the appointed day.

### 39 Replacement of recently-expired entitlements

- (1) For the purposes of section 61, the holder of an entitlement that expired not more than 2 years before the appointed day is entitled to apply for an access licence to replace that entitlement.
- (2) An embargo under section 112 does not apply to an application for an approval to replace an entitlement that expired not more than 2 years before the appointed day.
- (3) An application referred to in subclause (1) or (2) is to be dealt with as if it had been made when the entitlement expired, and (subject to due payment of any fees payable under section 14 (1A) of the 1912 Act) the entitlement is taken to continue in force until the application is determined.
- (4) This clause does not apply to an application made more than 2 years after the appointed day.

### 40 Access licences arising from management plans

- (1) On the appointed day, there are taken to have been granted to the Minister such access licences in relation to adaptive environmental water as any management plan, as in force on that day, requires to be granted to the Minister.
- (2) Any such access licence is subject to such conditions as the management plan concerned requires to be imposed on the licence.

## Schedule 11 Categories of access licence

(Section 403)

Column 1	Column 2	Column 3	Column 4
Entitlement	Purpose	Regulated river	Unregulated river, estuary, lake or aquifer
<b>Water Act 1912</b>			
Section 12 or section 13 licence	Town water supply (held otherwise than by local water utility)	Regulated river (high security) [Town water supply]	Domestic and stock [Town water supply]
	Recreation (high security)	Regulated river (high security)	Unregulated river

Recreation (low security)	Regulated river (general security)	Unregulated river
Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
Stock and domestic	Domestic and stock	Domestic and stock
Railway	Regulated river (high security)	Unregulated river
Industrial	Regulated river (high security)	Unregulated river
Industrial (low security)	Regulated river (general security)	Unregulated river
Industrial (sand and gravel)	Regulated river (high security)	Unregulated river
Power generation	Regulated river (high security)	Unregulated river
Mining	Regulated river (high security)	Unregulated river
Mining (low security)	Regulated river (general security)	Unregulated river
Irrigation	Regulated river (general security)	Unregulated river
A component irrigation	Regulated river (general security—A class)	Nil
B component irrigation	Regulated river (general security—B class)	Nil
Farming	Regulated river (high security)	Unregulated river
Feedlot	Regulated river (high security)	Unregulated river
Horticulture (including citrus, grapes, pecans)	Regulated river (high security)	Unregulated river
Pisciculture	Regulated river (high security)	Unregulated river
Aquaculture	Regulated river (high security)	Unregulated river
Experimental/research	Regulated river (high security) [Research]	Unregulated river [Research]

	Teaching	Regulated river (general security)	Unregulated river
	Commercial	Regulated river (general security)	Unregulated river
Section 13A licence	Irrigation	Regulated river (general security)	Unregulated river
	Stock and domestic	Domestic and stock	Domestic and stock
	Horticulture (including citrus, grapes, pecans)	Regulated river (high security)	Unregulated river
Section 20B authority (not high flow)	Town water supply (other than local water utility)	Regulated river (high security) [Town water supply]	Domestic and stock [Town water supply]
	Recreation (high security)	Regulated river (high security)	Unregulated river
	Recreation (low security)	Regulated river (general security)	Unregulated river
	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
	Stock and domestic	Domestic and stock	Domestic and stock
	Industrial	Regulated river (high security)	Unregulated river
	Industrial (low security)	Regulated river (general security)	Unregulated river
	Mining	Regulated river (high security)	Unregulated river
	Irrigation	Regulated river (general security)	Unregulated river
	A component irrigation	Regulated river (general security—A class)	Nil
	B component irrigation	Regulated river (general security—B class)	Nil
	Farming	Regulated river (high security)	Unregulated river
	Horticulture (including citrus, grapes, pecans)	Regulated river (high security)	Unregulated river
	Pisciculture	Regulated river (high security)	Unregulated river



	Aquaculture	Regulated river (high security)	Unregulated river
	Experimental/research	Regulated river (high security) [Research]	Unregulated river [Research]
	Teaching	Regulated river (general security)	Unregulated river
	Commercial	Regulated river (general security)	Unregulated river
Section 20CA authority	Stock	Domestic and stock [Stock]	Nil
Section 20L licence	Town water supply (other than local water utility)	Regulated river (high security) [Town water supply]	Domestic and stock [Town water supply]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Stock and domestic	Domestic and stock	Domestic and stock
	Industrial	Regulated river (high security)	Unregulated river
	Industrial (low security)	Regulated river (general security)	Unregulated river
	Mining	Regulated river (high security)	Unregulated river
	Irrigation	Regulated river (general security)	Unregulated river
	Horticulture	Regulated river (high security)	Unregulated river
	Citrus	Regulated river (high security)	Unregulated river
Section 38B authority	Stock	Domestic and stock [Stock]	Nil
	Domestic	Domestic and stock [Domestic]	Nil
	Stock and domestic	Domestic and stock	Nil
	Irrigation	Regulated river (general security)	Nil
	Horticulture (including citrus and grapes)	Regulated river (high security)	Nil

	Town water supply	Regulated river (high security) [Town water supply]	Nil
	Industrial	Regulated river (high security)	Nil
Section 112 (1) (a) licence	Domestic	Not applicable	Domestic and stock [Domestic]
	Stock	Not applicable	Domestic and stock [Stock]
	Stock and domestic	Not applicable	Domestic and stock
	Town water supply (held otherwise than by local water utility)	Not applicable	Aquifer [Town water supply]
	Experimental/research	Not applicable	Aquifer [Research]
	Any other purpose	Not applicable	Aquifer
Section 112 (1) (b) right	Any purpose other than stock or domestic	Nil	Aquifer
Section 188 licence	Urban water	Major utility [Urban water]	Major utility [Urban water]
	Power generation	Major utility [Power generation]	Major utility [Power generation]
Water supply works pursuant to a written agreement or approval under section 8	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
	Stock and domestic	Domestic and stock	Domestic and stock
	Any other purpose	Regulated river (general security)	Unregulated river

### ***Irrigation Corporations Act 1994***

Irrigation corporation licence	Recreation (high security)	Regulated river (high security)	Nil
	Recreation (low security)	Regulated river (general security)	Nil
	Stock and domestic	Domestic and stock	Nil
	Town water supply (other than local water utility)	Regulated river (high security) [Town water supply]	Nil

Conveyance	Murrumbidgee Irrigation (conveyance), Coleambally Irrigation (conveyance), Regulated river (conveyance)	Nil
Industrial	Regulated river (high security)	Nil
Irrigation	Regulated river (general security)	Nil
Horticulture	Regulated river (high security)	Nil

### **Water Administration Act 1986**

Water supply works pursuant to a written agreement or approval under section 12

Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
Stock and domestic	Domestic and stock	Domestic and stock
Any other purpose	Regulated river (general security)	Unregulated river

## **Schedule 12 Amendment of management plans**

(Section 42 (3))

### **Part 1 Amendment relating to adaptive environmental water**

#### **1 Management plans to be amended**

The management plans to which this Part applies are all management plans made before the commencement of this Part.

#### **2 Amendment of management plans relating to adaptive environmental water**

Each management plan to which this Part applies is amended by omitting subclause (2) of the clause titled "Adaptive environmental water" and by inserting instead the following subclauses:

- (2) The Minister may grant an access licence in a water source to which this Plan applies if the licence is subject to an adaptive environmental water condition and arises through water savings in the system made in that water source as referred to in section 8C (1) of the Act.

(2A) The Minister may change the category or subcategory of an access licence in a water source to which this Plan applies if the licence is subject to an adaptive environmental water condition that arises through water savings as referred to in section 8D of the Act.

## **Part 2 Amendment relating to planned environmental water**

### **3 Management plans to be amended**

The management plans to which this Part applies are all management plans made before the commencement of this Part.

### **4 Amendment of management plans relating to planned environmental water**

Each management plan to which this Part applies (other than the [Water Sharing Plan for the Toorumbree Creek Water Source 2003](#)) is amended by inserting after the last clause (with appropriate numbering) in the Part titled "Amendment of this Plan" the following clause:

#### **Amendment relating to planned environmental water**

- (1) The Minister may amend this Plan to provide for the recovery of planned environmental water as follows:
  - (a) the recovery is only to apply where the Minister has cancelled an access licence held by the Minister in accordance with section 8A of the Act,
  - (b) the amount of additional water to be provided as planned environmental water is to be equivalent to the annual average extraction of water under the cancelled licence over the long-term,
  - (c) the average annual long-term availability of water for the remaining access licences that relate to the water source concerned is to be reduced by the average annual long-term extraction of water under the cancelled licence.
- (2) The Minister may amend this Plan to specify the purposes for which planned environmental water committed under section 8A of the Act is to be used.

### **5 Amendment of [Water Sharing Plan for the Toorumbree Creek Water Source 2003](#)**

The [Water Sharing Plan for the Toorumbree Creek Water Source 2003](#) is amended by inserting as the final Part (with appropriate Part and clause numbering) the following Part:

## **Part Amendment of this Plan**

### **Amendment relating to planned environmental water**

- (1) The Minister may amend this Plan to provide for the recovery of planned environmental water as follows:
  - (a) the recovery is only to apply where the Minister has cancelled an access licence held by the Minister in accordance with section 8A of the Act,
  - (b) the amount of additional water to be provided as planned environmental water is to be equivalent to the annual average extraction of water under the cancelled licence over the long-term,
  - (c) the average annual long-term availability of water for the remaining access licences that relate to the water source concerned is to be reduced by the average annual long-term extraction of water under the cancelled licence.
- (2) The Minister may amend this Plan to specify the purposes for which planned environmental water committed under section 8A of the Act is to be used.

## **Part 3 Amendment of management plans relating to floodplain harvesting**

### **6 Management plans to be amended**

The management plans to which this Part applies are the following:

- (a) *Water Sharing Plan for the Adelong Creek Water Source 2003,*
- (b) *Water Sharing Plan for the Apsley River Water Source 2003,*
- (c) *Water Sharing Plan for the Castlereagh River above Binnaway Water Source 2003,*
- (d) *Water Sharing Plan for the Commissioners Waters Water Source 2003,*
- (e) *Water Sharing Plan for the Coopers Creek Water Source 2003,*
- (f) *Water Sharing Plan for the Dorrigo Plateau Surface Water Source and Dorrigo Basalt Groundwater Source 2003,*
- (g) *Water Sharing Plan for the Gwydir Regulated River Water Source 2002,*
- (h) *Water Sharing Plan for the Hunter Regulated River Water Source 2003,*
- (i) *Water Sharing Plan for the Jilliby Jilliby Creek Water Source 2003,*
- (j) *Water Sharing Plan for the Kangaroo River Water Source 2003,*
- (k) *Water Sharing Plan for the Karuah River Water Source 2003,*

- (l) *Water Sharing Plan for the Lachlan Regulated River Water Source 2003,*
- (m) *Water Sharing Plan for the Macquarie and Cudgegong Regulated Rivers Water Source 2003,*
- (n) *Water Sharing Plan for the Mandagery Creek Water Source 2003,*
- (o) *Water Sharing Plan for the Murrumbidgee Regulated River Water Source 2003,*
- (p) *Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2003,*
- (q) *Water Sharing Plan for the Ourimbah Creek Water Source 2003,*
- (r) *Water Sharing Plan for the Phillips Creek, Mooki River, Quirindi Creek and Warrah Creek Water Sources 2003,*
- (s) *Water Sharing Plan for the Rocky Creek, Cobbadah, Upper Horton and Lower Horton Water Source 2003,*
- (t) *Water Sharing Plan for the Tarcutta Creek Water Source 2003,*
- (u) *Water Sharing Plan for the Tenterfield Creek Water Source 2003,*
- (v) *Water Sharing Plan for the Toorumbree Creek Water Source 2003,*
- (w) *Water Sharing Plan for the Upper Billabong Water Source 2003,*
- (x) *Water Sharing Plan for the Upper Brunswick River Water Source 2003,*
- (y) *Water Sharing Plan for the Upper Namoi and Lower Namoi Regulated River Water Sources 2003,*
- (z) *Water Sharing Plan for the Wandella Creek Water Source 2003,*
- (aa) *Water Sharing Plan for the Wybong Creek Water Source 2003.*

## **7 Amendment of management plans relating to floodplain harvesting**

Each management plan to which this Part applies (other than the Plan referred to in clause 6 (v)) is amended by inserting as the final clause (with appropriate numbering) in the Part titled "Amendment of this Plan" the following clause:

### **Amendment of Plan relating to floodplain harvesting**

The Minister may amend this Plan so as to provide for the floodplain harvesting of water by amending the waters or water sources to which this Plan applies and by consequential amendments so long as the amendments:

- (a) if the Plan has already taken into consideration floodplain harvesting extractions, do not affect the outcomes of the long-term extraction limit specified in the Plan, or
- (b) if the Plan has not already taken into consideration floodplain harvesting extractions, do not allow more water being taken pursuant to access licences for floodplain harvesting than permitted under Schedule F to the Agreement within the meaning of the *Murray-Darling Basin Act 1992*.

## 8 Amendment of *Water Sharing Plan for the Toorumbree Creek Water Source 2003*

The *Water Sharing Plan for the Toorumbree Creek Water Source 2003* is amended by inserting as the final clause (with appropriate numbering) the following clause:

### **Amendment of Plan relating to floodplain harvesting**

The Minister may amend this Plan so as to provide for the floodplain harvesting of water by amending the waters or water sources to which this Plan applies and by consequential amendments so long as the amendments:

- (a) if the Plan has already taken into consideration floodplain harvesting extractions, do not affect the outcomes of the long-term extraction limit specified in the plan, or
- (b) if the Plan has not already taken into consideration floodplain harvesting extractions, do not allow more water being taken pursuant to access licences for floodplain harvesting than permitted under Schedule F to the Agreement within the meaning of the *Murray-Darling Basin Act 1992*.

## Dictionary

(Section 4)

**access licence** means an access licence referred to in section 56.

**access licence certificate** means a certificate issued under section 87B.

**access licence dealing principles** means principles established under section 71Z.

**access licence dealing rules** means the rules established by the water sharing provisions of a management plan, as referred to in section 20 (1) (d).

**Access Register** means the Water Access Licence Register required to be kept under section 71.

**activity approval** means a controlled activity approval or an aquifer interference approval.

**adaptive environmental water condition** means a condition imposed on an access licence of a type referred to in section 8 (1) (b) (i).

**appropriate newspaper**—see section 395.

**approval** means a water use approval, a water management work approval or an activity approval.

**approved form** means form approved by the Minister.

**aquifer** means a geological structure or formation, or an artificial landfill, that is permeated with water or is capable of being permeated with water.

**aquifer interference activity** means an activity involving any of the following:

- (a) the penetration of an aquifer,
- (b) the interference with water in an aquifer,
- (c) the obstruction of the flow of water in an aquifer,
- (d) the taking of water from an aquifer in the course of carrying out mining, or any other activity prescribed by the regulations,
- (e) the disposal of water taken from an aquifer as referred to in paragraph (d).

**aquifer interference approval** means an approval referred to in section 91 (3).

**assignment dealing** means the following:

- (a) an assignment of water allocations to or from the water allocation account for an access licence as referred to in section 71T,
- (b) the crediting or debiting of water allocations to or from the water allocation account for an access licence to give effect to an interstate assignment of water allocations as referred to in section 71V.

**authorised analyst** means a person appointed by the Minister under section 390 to exercise the functions conferred on an authorised analyst by this Act.

**authorised officer**, in relation to a provision of this Act, means a person authorised by the Minister under section 390 to exercise the functions conferred on an authorised officer by that provision, whether generally or in a particular case.

**available water**, in relation to a water management area or water source, means the water that is available in that area or water source in accordance with an available water determination that is in force in respect of that area or water source.

**available water determination** means a determination referred to in section 59.

**basic landholder rights** means domestic and stock rights, harvestable rights or native title rights.

**Basin water resources** has the same meaning as it has in the [Water Act 2007](#) of the Commonwealth.

**bulk access regime** means a bulk access regime established by a management plan, as referred to in section 20 (1) (e), or by a Minister's plan, and includes a bulk access regime as varied by the Minister under section 45.



**caveat** on an access licence or holding in an access licence means a caveat in respect of the licence or holding recorded in the Access Register.

**coastal waters of the State** has the same meaning as it has in Part 10 of the [Interpretation Act 1987](#).

**co-holder's tenancy arrangement** means the joint tenancy, tenancy in common or other arrangement under which the entitlements conferred by an access licence are held by co-holders of the licence.

**construct** a work includes install, maintain, repair, alter or extend the work.

**controlled activity** means:

- (a) the erection of a building or the carrying out of a work (within the meaning of the [Environmental Planning and Assessment Act 1979](#)), or
- (b) the removal of material (whether or not extractive material) or vegetation from land, whether by way of excavation or otherwise, or
- (c) the deposition of material (whether or not extractive material) on land, whether by way of landfill operations or otherwise, or
- (d) the carrying out of any other activity that affects the quantity or flow of water in a water source.

**controlled activity approval** means an approval referred to in section 91 (2).

**Crown land** has the same meaning as it has in the [Crown Lands Act 1989](#).

**dealing** in an access licence or holding in an access licence means a general dealing, a dealing on default or an assignment dealing in the licence or holding.

**dealing on default** in an access licence or holding in an access licence means the transfer of the licence or holding as referred to in section 71X.

**Department** means the Department of Water and Energy.

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

**development consent** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).

**Director-General** means the Director-General of the Department.

**domestic and stock rights** means the rights conferred on a landholder by section 52.

**drainage work** means a work (such as a pump, pipe or channel) that is constructed or used for the purpose of draining water from land, including a reticulated system of such works, and includes all associated pipes, sluices, sluiceways, valves, metering equipment and other equipment, but does not include:

- (a) any sewage work (within the meaning of Part 2 of Chapter 6), or

(b) any work declared by the regulations not to be a drainage work.

**drainage work approval** means an approval referred to in section 90 (3).

**environment** includes all aspects of the surroundings of human beings, whether affecting them as individuals or in their social groupings.

**environmental water rules** means environmental water rules referred to in section 8 (2).

**estuary** means:

- (a) any part of a river whose level is periodically or intermittently affected by coastal tides, or
- (b) any lake or other partially enclosed body of water that is periodically or intermittently open to the sea, or
- (c) anything declared by the regulations to be an estuary,

but does not include anything declared by the regulations not to be an estuary.

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

**extractive material** means earth, sand, gravel, rock, mud, clay or any other such substance.

**flood work** means a work (such as a barrage, causeway, cutting or embankment):

- (a) that is situated:
  - (i) in or in the vicinity of a river, estuary or lake, or
  - (ii) within a floodplain, and
- (b) that is of such a size or configuration that, regardless of the purpose for which it is constructed or used, it is likely to have an effect on:
  - (i) the flow of water to or from a river, estuary or lake, or
  - (ii) the distribution or flow of floodwater in times of flood,

and includes all associated pipes, valves, metering equipment and other equipment, but does not include any work declared by the regulations not to be a flood work.

**flood work approval** means an approval referred to in section 90 (4).

**floodplain** means land declared by the regulations to be a floodplain.

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

**general dealing** in an access licence or holding in an access licence means the following:

- (a) the transfer of the licence or holding from one person to another, as referred to in section 71M,
- (b) the term transfer of the water entitlements conferred by the licence or holding from one person to another, as referred to in section 71N,

- (c) the grant of a new access licence of a different category or subcategory, as referred to in section 71O,
- (d) the grant of an access licence arising from a subdivision or consolidation, as referred to in section 71P,
- (da) the grant of an access licence on an application under section 74,
- (e) the assignment of rights in the licence, as referred to in section 71Q,
- (f) the grant of a new access licence after amendment of the share component of the licence, as referred to in section 71R,
- (g) the amendment of the extraction component of an access licence, as referred to in section 71S,
- (h) the grant or cancellation of an access licence to give effect to the interstate transfer of an access licence, as referred to in section 71U,
- (i) the amendment of the licence to nominate a specified water supply work, or group of water supply works, as a means by which water allocations under the licence may be taken, as referred to in section 71W,
- (j) such other dealings as are prescribed by the regulations.

**General Register of Deeds** means the General Register of Deeds maintained under Part 23 of the [Conveyancing Act 1919](#).

**harvestable rights** mean the rights conferred on a landholder by a harvestable rights order.

**harvestable rights area** means an area of land that is constituted as a harvestable rights area by a harvestable rights order.

**harvestable rights order** means an order in force under section 54.

**holding in an access licence** means the share of the entitlements conferred by the access licence held by a particular co-holder of the licence.

**implementation program** means a program referred to in section 51.

**irrigation corporation** means an irrigation corporation referred to in Part 1 of Chapter 4.

**lake** includes:

- (a) a wetland, a lagoon, a saltmarsh and any collection of still water, whether perennial or intermittent and whether natural or artificial, and
- (b) any water declared by the regulations to be a lake,

whether or not it also forms part of a river or estuary, but does not include any water declared by the regulations not to be a lake.

**land** includes any water source, and also includes the land on or in which any water source is situated.

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

- (a) the owner of the land or (if the owner is not in occupation of the land) the lawful occupier of the land, or
- (b) the local council, in the case of land that comprises:
  - (i) a public road vested in, or under the control or management of, the local council, or
  - (ii) the site of a work that is, or is proposed to be, constructed for the local council.

**landholding** means a holding that is owned by a person, or occupied by a person (either alone or together with some other person with whom he or she has an association of a kind prescribed by the regulations), being a holding that comprises:

- (a) a parcel of land that is separately valued under the [Valuation of Land Act 1916](#), or
- (b) two or more such parcels that together form a single area of land (ignoring any division that arises merely because the land is transected by a road or river).

**local council** means the council of a local government area.

**Local Land Services** means the body corporate with that name established under the [Local Land Services Act 2013](#).

**local water utility** means:

- (a) a water supply authority, or
- (b) a council or county council exercising water supply functions under Division 2 of Part 3 of Chapter 6 of the [Local Government Act 1993](#), or
- (c) a licensed network operator within the meaning of the [Water Industry Competition Act 2006](#).

**major utility** means a person or body referred to in Schedule 2.

**management committee** means a committee referred to in section 12.

**management plan** means a plan referred to in section 15 and, in relation to any land that is not within a water management area, or is within a water management area for which there is no relevant management plan, includes a Minister's plan.

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

**Ministerial action**, in relation to an access licence or holding in an access licence means the following:

- (a) the grant of an access licence under section 63, 63A or 63B,
- (b) the issue of a replacement access licence (within the meaning of Schedule 10) arising from the operation of that Schedule,
- (c) the amendment or revocation of the conditions of an access licence under sections 66–68,

- (ca) the grant of an access licence under section 8C or the imposition, revocation or amendment of an adaptive environmental water condition under section 8B, 8C or 8D,
- (d) the amendment of the share or extraction component of an access licence under section 68A or 68B,
- (e) the surrender of an access licence under section 77,
- (f) the cancellation of an access licence under section 77A,
- (g) the suspension or cancellation of an access licence under section 78,
- (h) the compulsory acquisition of an access licence under section 79,
- (i) any other action in relation to an access licence or holding in an access licence prescribed by the regulations.

**Ministerial Corporation** means the Water Administration Ministerial Corporation constituted by section 371.

**Minister's plan** means a plan referred to in section 50.

**native title holder**, in relation to any waters, means a person who holds native title rights in relation to those waters pursuant to a determination under the [Native Title Act 1993](#) of the Commonwealth.

**native title rights** means non-exclusive rights to take and use water for personal, domestic and non-commercial communal purposes (including the purposes of drinking, food preparation, washing, manufacturing traditional artefacts, watering domestic gardens, hunting, fishing and gathering and recreation, cultural and ceremonial purposes).

**Natural Resources Commission** means the Natural Resources Commission established under the [Natural Resources Commission Act 2003](#).

**nominated water supply work**, in relation to a water source, means a water supply work, or group of water supply works, nominated or specified in an access licence as a work, or group of works, by means of which water credited to the water allocation account for an access licence may be taken from that water source.

**overland flow water**—see section 4A.

**owner** of land means the only person who, or each 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
- (c) is entitled to receive, or receives, or if the land were let to a tenant would be entitled to 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 other than land for which there is an owner under paragraph (b) or (c), means the Crown.

**principles of ecologically sustainable development** means the principles of ecologically sustainable development described in section 6 (2) of the [Protection of the Environment Administration Act 1991](#).

**private drainage board** means a private drainage board referred to in Part 3 of Chapter 4.

**private irrigation board** means a private irrigation board referred to in Part 2 of Chapter 4.

**private water trust** means a private water trust referred to in Part 4 of Chapter 4.

**public authority** means:

- (a) a Minister of the Crown, or
- (b) a Government Department or Administrative Office, or
- (c) a statutory body representing the Crown, or
- (d) a statutory State owned corporation (or any of its subsidiaries) within the meaning of the [State Owned Corporations Act 1989](#), or
- (e) a council or county council within the meaning of the [Local Government Act 1993](#),

but does not include any person or body declared by the regulations not to be a public authority.

**record**, in relation to the Access Register, includes amend, cancel or omit.

**registered** means registered in the Access Register.

**regulated river** means a river that is declared by the Minister, by order published in the Gazette, to be a regulated river.

**Editorial note—**

For orders pursuant to this definition see Gazettes No 264 of 27.12.2002, p 11119, No 45 of 14.2.2003, p 1664, No 49 of 21.2.2003, pp 2504, 2506, 2508; No 52 of 26.2.2003, pp 3135, 3140; No 110 of 1.7.2004, pp 5482, 5484, 5486, 5488, 5490, 5494, 5500, 5502; No 179 of 12.11.2004, p 8461; No 82B of 26.6.2007, p 3913; No 79 of 29.5.2009, p 2491; No 135 of 17.12.2010, p 5902; No 19 of 15.2.2012, p 417 and No 92 of 14.9.2012, p 3955.

**regulated river supplementary water access licence** means a supplementary water access licence (including a subcategory of such a licence) that entitles its holder to shares of water from a water source that is a regulated river.

**river** includes:

- (a) any watercourse, whether perennial or intermittent and whether comprising a natural channel or a natural channel artificially improved, and
- (b) any tributary, branch or other watercourse into or from which a watercourse referred to in paragraph (a) flows, and
- (c) anything declared by the regulations to be a river,

whether or not it also forms part of a lake or estuary, but does not include anything declared by the regulations not to be a river.

**security holder**, in relation to an access licence or holding in an access licence, means the holder of a registered security interest over the licence or holding.

**security interest** over an access licence or holding in an access licence means a mortgage or charge over, or other arrangement of a kind prescribed by the regulations in respect of, the licence or holding, that secures the payment of a debt or performance of some other obligation under a contract or other legally enforceable arrangement.

**specific purpose access licence** means:

- (a) a major utility access licence, or
- (b) a local water utility access licence, or
- (c) a domestic and stock access licence, or
- (d) an access licence of a subcategory of access licence, or
- (e) an access licence of a type that is declared by the regulations to be a specific purpose access licence.

**State government policy** means policy of the Government of New South Wales.

**State's water rights** means the rights referred to in section 392 (1).

**statutory body** means a corporation that is incorporated by or under an Act, other than:

- (a) a company within the meaning of the [Corporations Act 2001](#) of the Commonwealth, and
- (b) a society within the meaning of the [Co-operative Housing and Starr-Bowkett Societies Act 1998](#) or a co-operative within the meaning of the [Co-operatives National Law \(NSW\)](#), or
- (c) an incorporated association within the meaning of the [Associations Incorporation Act 2009](#).

**Tier 1, 2 or 3 offence** means an offence that is punishable by a Tier 1, 2 or 3 penalty, as the case may be.

**Tier 1, 2 or 3 penalty**—see section 363B.

**unregulated river** means a river that is not a regulated river.

**use** a water management work means:

- (a) in relation to a water supply work:
  - (i) to operate the work for any purpose referred to in paragraph (a), (b) or (c) of the definition of **water supply work**, or
  - (ii) to allow the work to operate for that purpose, or
- (b) in relation to a drainage work:
  - (i) to operate the work for the purpose of draining water from land, or

(ii) to allow the work to operate for that purpose, or

(c) in relation to a flood work:

(i) to operate the work for the purpose of influencing the flow of floodwater in the vicinity of the land on which the work is situated, or

(ii) to allow the work to operate for that purpose.

**water allocation** means the water to which the holder of an access licence is entitled from time to time under the licence, as recorded in the water allocation account for the licence.

**water allocation account** for an access licence means the account for the licence referred to in section 85 (1).

**water bore** means a bore that is used:

(a) for the purpose of finding an aquifer, or

(b) for the purpose of testing the production capacity or water quality of an aquifer, or

(c) for the purpose of taking water from, or discharging anything into, an aquifer, or

(d) for any other purpose prescribed by the regulations,

being a bore that has been artificially created, widened, lengthened or modified by means of drilling, boring, augering, digging or jetting.

**water management area** means an area of land that is constituted as a water management area by an order in force under section 11.

**water management principles** means water management principles referred to in section 5.

**water management work** means a water supply work, a drainage work or a flood work, and includes any part of such a work.

**water management work approval** means a water supply work approval, a drainage work approval or a flood work approval.

**water return flow rules** means rules established under section 75 for the regaining of water allocations under an access licence.

**water source** means the whole or any part of:

(a) one or more rivers, lakes or estuaries, or

(b) one or more places where water occurs on or below the surface of the ground (including overland flow water flowing over or lying there for the time being),

and includes the coastal waters of the State.

**water supply authority** means a water supply authority referred to in Schedule 3.

**water supply work** means:



- (a) without limiting paragraphs (b)–(g), a work (such as a water pump or water bore) that is constructed or used for the purpose of taking water from a water source, or
- (b) a work (such as a tank or dam) that is constructed or used for the purpose of capturing or storing water, or
- (c) a work (such as a water pipe or irrigation channel) that is constructed or used for the purpose of conveying water to the point at which it is to be used, or
- (d) any work (such as a bank or levee) that has, or could have, the effect of diverting water flowing to or from a water source, or
- (e) any work (such as a weir) that has, or could have, the effect of impounding water in a water source,

including a reticulated system of such works, and includes all associated pipes, sluices, valves, metering equipment and other equipment, but does not include:

- (f) any work (other than a water supply work under the control or management of the Sydney Water Corporation, the Hunter Water Corporation or a local water utility) that receives water from a water supply work under the control or management of the Sydney Water Corporation, the Hunter Water Corporation or a local water utility, or
- (g) any work declared by the regulations not to be a water supply work.

**water supply work approval** means an approval referred to in section 90 (2).

**water use approval** means an approval referred to in section 89.

**waterfront land** means:

- (a) the bed of any river, together with any land lying between the bed of the river and a line drawn parallel to, and the prescribed distance inland of, the highest bank of the river, or
- (a1) the bed of any lake, together with any land lying between the bed of the lake and a line drawn parallel to, and the prescribed distance inland of, the shore of the lake, or
- (a2) the bed of any estuary, together with any land lying between the bed of the estuary and a line drawn parallel to, and the prescribed distance inland of, the mean high water mark of the estuary, or
- (b) if the regulations so provide, the bed of the coastal waters of the State, and any land lying between the shoreline of the coastal waters and a line drawn parallel to, and the prescribed distance inland of, the mean high water mark of the coastal waters,

where the prescribed distance is 40 metres or (if the regulations prescribe a lesser distance, either generally or in relation to a particular location or class of locations) that lesser distance. Land that falls into 2 or more of the categories referred to in paragraphs (a), (a1) and (a2) may be waterfront land by virtue of any of the paragraphs relevant to that land.