

Water Industry Competition Act 2006 No 104

[2006-104]



New South Wales

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

Notes—

- **Does not include amendments by**
 - [Water Industry Competition Amendment \(Review\) Act 2014 No 57](#), Sch 1 [1]-[62] and [65]-[71] (not commenced)
 - [Water Industry Competition Amendment Act 2021 No 26](#) (not commenced)

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New South Wales

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Water Industry Competition Act 2006 No 104



New South Wales

An Act to encourage competition in relation to the supply of water and the provision of sewerage services and to facilitate the development of infrastructure for the production and reticulation of recycled water; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Water Industry Competition Act 2006*.

2 Commencement

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

3 Definitions

- (1) Words and expressions that are defined in the Dictionary at the end of this Act have the meanings set out in that Dictionary.
- (2) Notes included in this Act do not form part of this Act.

4 Act binds Crown

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

Part 2 Licensing of network operators and retail suppliers

Division 1 Preliminary

5 Prohibition of unlicensed network operation and water supply

- (1) A person must not:
 - (a) construct, maintain or operate any water industry infrastructure, or
 - (b) supply water, or provide a sewerage service, by means of any water industry infrastructure,

otherwise than under the authority of a licence.

Maximum penalty: 10,000 penalty units (in the case of a corporation) and 2,500 penalty units (in any other case).

Note—

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 97.

- (2) Subsection (1) (b) does not apply to or in respect of the supply of water, or the provision of sewerage services, by a licensed network operator to a licensed retail supplier or public water utility.
- (3) This section does not apply to a public water utility in relation to:
 - (a) the construction, maintenance or operation of water industry infrastructure situated within its area of operations, or
 - (b) the supply of water, or the provision of a sewerage service, by means of water industry infrastructure situated within its area of operations.
- (4) This section does not apply to or in respect of:
 - (a) such water industry infrastructure as comprises water management works to which Chapter 4, 5 or 6 of the *Water Management Act 2000* applies, or
 - (b) such other water industry infrastructure as is prescribed by the regulations.

6 Licences

- (1) Subject to any conditions imposed on it by or under this Act:
 - (a) a network operator's licence authorises the licensee, and any other person specified in the licence, to construct, maintain and operate the water industry infrastructure so specified for the purposes so specified, and
 - (b) a retail supplier's licence authorises the licensee, and any other person specified in the licence, to supply water or provide sewerage services (or, if so specified, both), by means of water industry infrastructure, to persons or classes of persons so specified.
- (2) Nothing in this section exempts a licensee from:
 - (a) any requirement under the *Water Management Act 2000* to hold an access licence or water supply work approval, or
 - (b) any requirement under the *Protection of the Environment Operations Act 1997* to hold an environmental protection licence.

7 Licensing principles

- (1) In considering whether or not a licence is to be granted under this Part and what conditions are to be imposed on such a licence, regard is to be had to the following principles:
 - (a) the protection of public health, the environment, public safety and consumers generally,
 - (b) the encouragement of competition in the supply of water and the provision of sewerage services,
 - (c) the ensuring of sustainability of water resources,
 - (d) the promotion of production and use of recycled water,
 - (e) the promotion of policies set out in any prescribed water policy document,
 - (f) the potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the licence,
 - (g) the promotion of the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security.
- (2) This section does not restrict the matters to which regard may be had in considering the matters referred to in subsection (1).
- (3) In this section:

prescribed water policy document means a plan or other policy document concerning the use of water resources issued by or on behalf of the Government that is prescribed by the regulations (whether as in force at a particular time or from time to time).

Division 2 Procedure for obtaining licences

8 Applications for licences

- (1) An application for a licence may only be made by or on behalf of a corporation.
- (2) Such an application:
 - (a) must be in such form as the Minister may approve, and
 - (b) must be accompanied by such fee as the Minister may determine, and
 - (c) must be lodged at the office of IPART.

9 Consideration of applications by IPART

- (1) On receiving an application for a licence, IPART:
 - (a) must furnish a copy of the application to the Minister, and
 - (b) must furnish copies of the application to, and invite submissions on the application from:
 - (i) the Minister administering the *Public Health Act 2010*, and
 - (ii) the Minister administering Chapter 2 of the *Water Management Act 2000*, and
 - (iii) such other persons as are prescribed by the regulations, and
 - (c) must invite submissions on the application from the public.
- (2) After considering the application and any such submissions, IPART must furnish a report on the application to the Minister.
- (3) Such a report must include recommendations as to whether or not a licence should be granted and as to the conditions (if any) to which a licence (if granted) should be subject.

10 Determination of applications

- (1) The Minister may determine an application for a licence by granting a licence or by refusing the application.
- (2) The Minister must consider, but is not bound to accept, any advice or recommendation in IPART's report on the application and may, if circumstances so require, seek further advice from IPART in relation to the application.
- (3) A licence may not be granted to:
 - (a) a disqualified corporation, or
 - (b) a corporation that is a related entity (within the meaning of the *Corporations Act 2001* of the Commonwealth) of a disqualified corporation, but only if the disqualified corporation would have a direct or indirect interest in, or influence on, the carrying out of the activities that the licence would authorise if granted.
- (4) A licence may not be granted unless the Minister is satisfied as to each of the following:
 - (a) that the applicant has, and will continue to have, the capacity (including technical, financial and organisational capacity) to carry out the activities that the licence (if granted) would authorise,
 - (b) that the applicant has the capacity to carry out those activities in a manner that

does not present a risk to public health,

- (c) that the applicant has made, and will continue to maintain, appropriate arrangements with respect to insurance,
- (d) in the case of an application for a licence to supply water, that, if such a licence is granted, sufficient quantities of the water supplied by the licensee will have been obtained otherwise than from a public water utility,
- (e) such matters as are prescribed by the regulations,
- (f) such other matters as the Minister considers relevant, having regard to the public interest.

(5) On making a decision under this section, the Minister must cause notice of the decision, and of the reasons for the decision, to be given to IPART.

(6) On receiving such notice, IPART must cause the information contained in the notice to be made available to the public on IPART's internet website.

11 Licence to specify authorised activities and area of operations

(1) A licence must specify the activities that it authorises the licensee to carry out and the area within which it authorises those activities to be carried out.

Note—

For example, a licence might authorise the supply of recycled water of a specified quality within a specified area.

(2) The same land may be within the area of operations of more than one licensee, whether the respective licences relate to the same or different activities.

12 Duration of licences

(1) A licence remains in force until it is cancelled.

(2) A licence does not have effect for the purposes of section 5 (1) while it is suspended.

Note—

The effect of this subsection is to prohibit the licensee from doing what the licence would otherwise authorise, but without affecting any obligations to which the licensee is subject under this Act, the regulations or the conditions of the licence.

13 Conditions of licences

(1) A licence is subject to the following conditions:

- (a) such conditions as are imposed on it by this Act or the regulations,
- (b) such other conditions (not inconsistent with those imposed on it by this Act or the regulations) as are imposed on it by the Minister.

- (2) Without limiting any other matter with respect to which the Minister may impose conditions:
- (a) the Minister may impose conditions to ensure that the licensee has, and continues to have, the capacity (including technical, financial and organisational capacity) to carry out the activities authorised by the licence, and
 - (b) the Minister may impose conditions requiring the licensee:
 - (i) to give and maintain security (in such amount and form as the Minister may determine) for the fulfilment of its obligations under the licence, and
 - (ii) to maintain appropriate arrangements with respect to insurance, and
 - (c) in the case of a retail supplier's licence that authorises the licensee to supply drinking water—the Minister may impose conditions on the licence that the Minister is satisfied promote the equitable sharing among public water utilities and licensed retail suppliers of drinking water of the costs of water industry infrastructure that significantly contributes to water security, including (but not limited to) the following:
 - (i) a condition requiring the licensee to obtain a specified proportion of the water that it supplies under the authority of its licence by means of specified water industry infrastructure,
 - (ii) a condition requiring the licensee to contribute to the costs of specified water industry infrastructure (whether or not it is used to provide the licensee with the water that it is authorised to supply under the licence) calculated in a specified manner and payable to a specified person or persons.
- (3) Without limiting any other matter with respect to which regulations may be made, regulations for the purposes of this section:
- (a) may impose conditions requiring a licensee to implement government policy with respect to social programs for the supply of water and the provision of sewerage services, and
 - (b) may make provision for the funding of such programs, whether in whole or in part, from money made available by Parliament for that purpose, including payment of the efficient costs of implementing such programs, and
 - (c) in the case of a licence to supply water, may impose conditions with respect to the quantity of water that the licensee may obtain from a public water utility, and
 - (d) may make provision for the calculation of contributions for the purpose of the imposition of conditions under subsection (2) (c).

- (3A) Nothing in Part 3 (Access to infrastructure services) limits the power of the Minister to impose conditions under this section.
- (4) In this section, ***social program for the supply of water and the provision of sewerage services*** means a program to ensure that those services are available to people in need, including those suffering financial hardship and those living in remote areas, and includes a program for the granting of payment assistance, discounts or rebates.

Division 3 Administration of licences

14 Annual licence fees

- (1) The Minister may require a licensee to pay to the Minister such amount, by way of an annual licence fee, as the Minister may from time to time determine.
- (2) The amount so determined must not exceed the cost of administering this Act, during the year to which the fee relates, in relation to the licensee.
- (3) It is a condition of each licence that the licensee must comply with any requirement under this section.

15 Variation of licence conditions

The Minister may at any time:

- (a) vary the existing conditions of a licence (other than those imposed by this Act or the regulations), or
- (b) impose new conditions on a licence (not inconsistent with those imposed by this Act or the regulations),

either of his or her own motion or on the application of the licensee.

16 Enforcement of licences

- (1) The Minister may, by order, do any one or more of the following in relation to a licensee that contravenes this Act or the regulations or the conditions of the licence:
- (a) the Minister may impose on the licensee a monetary penalty not exceeding:
- (i) \$500,000 for the first day on which the contravention occurs, and
 - (ii) a further \$20,000 for each subsequent day (not exceeding 25 days) on which the contravention continues,
- (b) the Minister may require the licensee to take such action as the Minister considers appropriate in the circumstances, including (for example) requiring the licensee to do any one or more of the following:

- (i) to send specified information to customers,
 - (ii) to publish notices containing specified information,
 - (iii) to take specified action to rectify the contravention,
 - (iv) to take specified action to prevent any future contravention,
- (c) the Minister may cancel the licence,
- (d) the Minister may suspend the licence,
- (e) the Minister may declare that the licensee is a disqualified corporation for the purposes of this Act,
- (f) the Minister may declare that specified persons, being:
- (i) persons who are directors of the licensee or are concerned in the management of the licensee, or
 - (ii) persons or classes of persons who are related persons in relation to a person referred to in subparagraph (i),
- are disqualified individuals for the purposes of this Act.
- (2) An order under subsection (1) (d), (e) or (f) may be expressed to apply indefinitely, for a specified period of time or for a period of time ending on the occurrence of a specified event or state of affairs.
- (3) The Minister may, by order, cancel or suspend a licence if the licensee becomes a disqualified corporation.
- (4) The Minister's functions under subsections (1) and (3) may also be exercised by IPART but, in the case of action of the kind referred to in subsection (1) (c), (d), (e) or (f) or (3), only with the concurrence of the Minister.
- (5) Neither IPART nor the Minister may take action under this section for any contravention for which the other has previously taken the same kind of action.
- (6) Nothing in this section prevents a licence from being cancelled or suspended at the request of the licensee.
- (7) IPART has the function of monitoring and reporting to the Minister on compliance by a licensee with the conditions of the licence.

17 Licensees to be notified of proposed action

- (1) Action under section 15 or 16 may not be taken unless:
- (a) notice of the proposed action has been given to:

- (i) the licensee, and
 - (ii) such other persons as are prescribed by the regulations, and
- (b) the licensee and each such person has been given a reasonable opportunity to make submissions with respect to the proposed action, and
- (c) the Minister or IPART, as the case requires, has given consideration to any such submissions.

(2) Subsection (1) (a) (i) does not apply to action taken at the request of the licensee.

18 Emergency directions

- (1) If of the opinion that it is necessary to do so in order to deal with a risk to public health or public safety arising from:
- (a) the construction, maintenance or operation of water industry infrastructure, or
 - (b) the supply of water, or the provision of a sewerage service,
- the Minister may direct a licensed network operator or licensed retail supplier to take specified action to reduce or eliminate that risk.
- (2) It is a condition of a network operator's or retail supplier's licence that the network operator or retail supplier must comply with any direction under this section.
- (3) If the network operator or retail supplier fails to carry out appropriate work in accordance with any such direction, the Minister may arrange for the work to be carried out.
- (4) The cost of carrying out the work may be recovered by the Minister in a court of competent jurisdiction as a debt owed to the Minister by the network operator or retail supplier.
- (5) The Minister's functions under this section may be exercised by an inspector on the Minister's behalf without the need for any authority other than that conferred by this subsection.

19 Cancellation of licences in public interest

- (1) The Minister may, by written notice served on the licensee, cancel a licence if the Minister considers the cancellation to be in the public interest.
- (2) Cancellation may be:
- (a) of the Minister's own motion, or
 - (b) on the written recommendation of some other Minister.

- (3) Cancellation may be with respect to the whole or any part of the water industry infrastructure to which the licence relates.
- (4) Cancellation takes effect on and from the day specified in the notice of cancellation.
- (5) In determining when cancellation is to take effect, the Minister is to consider the public interest and, if cancellation arises from the recommendation of some other Minister, that Minister's reasons for the recommendation.
- (6) A licensee whose licence is cancelled under this section may bring proceedings for compensation in the Supreme Court:
 - (a) if cancellation was of the Minister's own motion, against the Minister, or
 - (b) if cancellation was on the written recommendation of some other Minister, against that Minister.
- (7) The Supreme Court is to hear the proceedings and determine whether it is just that compensation be paid to the plaintiff by reason of the cancellation.
- (8) If the Supreme Court determines that it is just that such a payment be made, the Supreme Court must determine the amount of the payment and give judgment accordingly.

20 Register of licences

- (1) IPART is to maintain a register of licences.
- (2) The regulations may make provision with respect to the manner and form in which the register is to be kept and the nature of the information to be included in the register.
- (3) IPART must keep the register available for inspection by members of the public, free of charge, during normal office hours.
- (4) It is sufficient compliance with subsection (3) if a copy of the register is made available to the public on IPART's internet website.
- (5) Copies of entries in the register are to be made available to members of the public, at cost, during normal office hours.

Part 3 Access to infrastructure services

Division 1 Preliminary

21 Object of Part

The object of this Part is to establish a scheme to promote the economically efficient use and operation of, and investment in, significant water industry infrastructure, thereby promoting effective competition in upstream or downstream markets.

22 Part applies only to scheduled areas

- (1) This Part applies to and in respect of water industry infrastructure that is situated in, on or over land referred to in Schedule 1 (a **scheduled area**).
- (2) The Minister may, by order published on the NSW legislation website, amend Schedule 1 so as to add more scheduled areas or include more land in existing scheduled areas.

23 Declaration criteria

For the purposes of this Part, the following criteria are **declaration criteria** in relation to an infrastructure service provided by water industry infrastructure:

- (a) that the infrastructure is of State significance, having regard to its nature and extent and its importance to the State economy,
- (b) that it would not be economically feasible to duplicate the infrastructure,
- (c) that access (or an increase in access) to the service by third parties is necessary to promote a material increase in competition in an upstream or downstream market,
- (d) that the safe use of the infrastructure by access seekers can be ensured at an economically feasible cost and, if there is a safety requirement, that appropriate regulatory arrangements exist,
- (e) that access (or an increase in access) to the service would not be contrary to the public interest.

Division 2 Coverage declarations

24 Applications for coverage declaration

- (1) An application for a coverage declaration for an infrastructure service may only be made by or on behalf of one of the following:
 - (a) the service provider for that service,
 - (b) an access seeker in relation to that service who has tried, but failed:
 - (i) to obtain access to that service, or
 - (ii) to obtain a change to some aspect of the person's existing access to that service,
 - (c) the Minister, in the case only of a service provided by a public water utility.
- (2) In the case of a service the subject of an existing coverage declaration, an application for the renewal of the declaration may also be made by any person currently having access to the service.

- (3) A coverage application:
 - (a) must be in such form as the Minister may approve, and
 - (b) must be accompanied by such fee as the Minister may determine, and
 - (c) must be lodged at the office of IPART.

25 Consideration of coverage applications by IPART

- (1) On receiving a coverage application, IPART:
 - (a) must furnish a copy of the application to the Minister, and
 - (b) must furnish copies of the application to, and invite submissions on the application from, such other persons as are prescribed by the regulations, and
 - (c) must invite submissions on the application from the public.
- (2) After considering the application and any such submissions, IPART must furnish a report on the application to the Minister.
- (3) Such a report:
 - (a) must include a statement of IPART's opinion as to whether or not the declaration criteria are met in relation to the service to which the application relates, and
 - (b) if IPART's opinion is that all of those criteria are met, a recommendation as to the terms in which a coverage declaration should be made and the period for which it should have effect.
- (4) IPART must use its best endeavours to ensure that a report on the application is provided within 4 months after the application is made.
- (5) This section does not apply to:
 - (a) a coverage application for an infrastructure service that is the subject of a binding non-coverage declaration or an access undertaking, or
 - (b) a coverage application that IPART determines, with the consent of the Minister, to be frivolous or vexatious.

26 Determination of coverage applications by Minister

- (1) The Minister must determine a coverage application:
 - (a) if satisfied:
 - (i) that all of the declaration criteria are met in relation to the service to which the application relates, and

(ii) that the service is not the subject of a binding non-coverage declaration or an access undertaking,

by making a coverage declaration in relation to the service, or

(b) if not so satisfied, by refusing to make such a declaration.

- (2) The Minister must consider, but is not bound to accept, any advice or recommendation in IPART's report on the application and may, if circumstances so require, seek further advice from IPART in relation to the application.
- (3) A coverage declaration need not be in the terms sought by the coverage application, and may apply to a greater or lesser extent than that so sought.
- (4) The Minister must use his or her best endeavours to ensure that a decision on a coverage application is made within 6 months after the date on which the application was lodged with IPART.
- (5) On making a decision under this section, the Minister must cause notice of the decision, and of the reasons for the decision, to be given to IPART.
- (6) On receiving such notice, IPART must cause the information contained in the notice, together with its report on the coverage application, to be made available to the public on IPART's internet website.

27 Period for which coverage declarations to have effect

- (1) A coverage declaration must state the period for which it is to have effect.
- (2) Subject to its renewal under section 26, or to its revocation under section 30, a coverage declaration has effect until the end of that period.
- (3) A coverage declaration does not have effect in relation to an infrastructure service while the service is the subject of an access undertaking.

Division 3 Revocation of coverage declarations

28 Applications for revocation of coverage declaration

- (1) An application for the revocation of a coverage declaration for an infrastructure service may only be made by or on behalf of the service provider for that service.
- (2) A revocation application:
 - (a) must be in such form as the Minister may approve, and
 - (b) must be accompanied by such fee as the Minister may determine, and
 - (c) must be lodged at the office of IPART.

29 Consideration of revocation applications by IPART

- (1) On receiving a revocation application, IPART:
 - (a) must furnish a copy of the application to the Minister, and
 - (b) must furnish copies of the application to, and invite submissions on the application from, such other persons as are prescribed by the regulations, and
 - (c) must invite submissions on the application from the public.
- (2) After considering the application and any such submissions, IPART must furnish a report on the application to the Minister.
- (3) Such a report must include a statement of IPART's opinion as to whether or not the declaration criteria are met in relation to the service to which the application relates.
- (4) IPART must use its best endeavours to ensure that a report on the application is provided within 4 months after the application is made.
- (5) This section does not apply to a revocation application that IPART determines, with the consent of the Minister, to be frivolous or vexatious.

30 Determination of revocation applications by Minister

- (1) The Minister must determine a revocation application:
 - (a) if satisfied that any of the declaration criteria are not met in relation to the service to which the application relates, by revoking the coverage declaration for the service, or
 - (b) if not so satisfied, by refusing to make such a declaration.
- (2) The Minister must consider, but is not bound to accept, any advice or recommendation in IPART's report on the application and may, if circumstances so require, seek further advice from IPART in relation to the application.
- (3) A revocation declaration need not be in the terms sought by the revocation application, and may apply to a greater or lesser extent than that so sought.
- (4) The Minister must use his or her best endeavours to ensure that a decision on a revocation application is made within 6 months after the date on which the application was lodged with IPART.
- (5) On making a decision under this section, the Minister must cause notice of the decision, and of the reasons for the decision, to be given to IPART.
- (6) On receiving such notice, IPART must cause the information contained in the notice, together with its report on the revocation application, to be made available to the

public on IPART's internet website.

- (7) A revocation declaration takes effect on the day specified in the declaration in that regard.

Division 4 Binding non-coverage declarations

31 Application of Division

- (1) This Division applies to infrastructure services to be provided by:
- (a) proposed water industry infrastructure, being infrastructure (other than a minor extension to existing infrastructure) that is not currently constructed, or
 - (b) existing infrastructure that is not currently used, or
 - (c) existing infrastructure that is currently used otherwise than for the production, treatment, filtration, storage, conveyance or reticulation of water or sewage,
- but does not apply to infrastructure services provided by existing water industry infrastructure.
- (2) For the purposes of determining a binding non-coverage application, the references to **currently** in subsection (1) are references to the time when the application is made.

32 Applications for binding non-coverage declaration

- (1) An application for a binding non-coverage declaration for an infrastructure service:
- (a) may only be made by or on behalf of the service provider for that service, and
 - (b) may not be made after the water industry infrastructure by means of which the service is to be provided has been commissioned.
- (2) A binding non-coverage application:
- (a) must be in such form as the Minister may approve, and
 - (b) must be accompanied by such fee as the Minister may determine, and
 - (c) must be lodged at the office of IPART.

33 Consideration of binding non-coverage applications by IPART

- (1) On receiving a binding non-coverage application, IPART:
- (a) must furnish a copy of the application to the Minister, and
 - (b) must furnish copies of the application to, and invite submissions on the application from, such other persons as are prescribed by the regulations, and

- (c) must invite submissions on the application from the public.
- (2) After considering the application and any such submissions, IPART must furnish a report on the application to the Minister.
- (3) Such a report:
 - (a) must include a statement of IPART's opinion as to whether or not the declaration criteria are met in relation to the service to which the application relates, and
 - (b) if IPART's opinion is that any of those criteria are not met, a recommendation as to the terms in which a binding non-coverage declaration should be made and the period for which it should have effect.
- (4) IPART must use its best endeavours to ensure that a report on the application is provided within 4 months after the application is made.
- (5) This section does not apply to:
 - (a) a binding non-coverage application for an infrastructure service that is the subject of a coverage declaration or an access undertaking, or
 - (b) a binding non-coverage application that IPART determines, with the consent of the Minister, to be frivolous or vexatious.

34 Determination of binding non-coverage applications by Minister

- (1) The Minister must determine a binding non-coverage application:
 - (a) if satisfied:
 - (i) that any of the declaration criteria are not met in relation to the service to which the application relates, and
 - (ii) that the service is not the subject of a coverage declaration or an access undertaking,by making a binding non-coverage declaration in relation to the service, or
 - (b) if not so satisfied, by refusing to make such a declaration.
- (2) The Minister must consider, but is not bound to accept, any advice or recommendation in IPART's report on the application and may, if circumstances so require, seek further advice from IPART in relation to the application.
- (3) The Minister must use his or her best endeavours to ensure that a decision on a binding non-coverage application is made within 6 months after the date on which the application was lodged with IPART.
- (4) On making a decision under this section, the Minister must cause notice of the

decision, and of the reasons for the decision, to be given to IPART.

- (5) On receiving such notice, IPART must cause the information contained in the notice, together with its report on the binding non-coverage application, to be made available to the public on IPART's internet website.

35 Period for which binding non-coverage declarations to have effect

- (1) A binding non-coverage declaration must state the period (not exceeding 10 years) for which it is to have effect.
- (2) Subject to its renewal under section 34, or to its revocation under section 37, a binding non-coverage declaration has effect until the end of that period.
- (3) A binding non-coverage declaration does not have effect in relation to an infrastructure service while the service is the subject of an access undertaking.

36 Binding non-coverage declarations have effect only for complying infrastructure

A binding non-coverage declaration does not have effect unless the water industry infrastructure to which it relates, when used for the storage, conveyance or reticulation of water or sewage:

- (a) has substantially the same capacity, and
 - (b) serves substantially the same geographical locations,
- as those specified in the application for the declaration.

37 Revocation of binding non-coverage declaration

The Minister may revoke a binding non-coverage declaration:

- (a) if the service provider for the service to which the declaration relates requests the Minister to revoke the declaration, or
- (b) if the application for the declaration contained false or misleading information or failed to contain information that it was required to contain.

Division 5 Access undertakings

38 Access undertakings

- (1) A service provider may give IPART an access undertaking with respect to any one or more of its infrastructure services (whether or not it has begun providing them and whether or not they are the subject of coverage declarations).
- (2) An access undertaking is to be in the form of a document that sets out the service provider's arrangements for the provision of access to its infrastructure services.

- (3) Those arrangements must provide for any disputes concerning the provision of access to its infrastructure services to be referred to IPART for resolution in accordance with section 40.
- (4) An access undertaking does not have effect until it has been approved by IPART.
- (5) On receiving an application for approval of an access undertaking, IPART must invite public submissions on the application.
- (6) In deciding whether to approve a service provider's access undertaking, IPART must have regard to the following:
 - (a) the legitimate business interests of the service provider,
 - (b) the public interest, including the public interest in having competition in markets,
 - (c) the interests of prospective access seekers,
 - (d) any other matters that IPART considers relevant.

Note—

See also section 41 in relation to the application of pricing principles and section 92 in relation to IPART's guidelines as to the exercise of its functions under this section.

- (7) An access undertaking has effect for the period specified in the undertaking in that regard, and may only be varied during that period with the consent of IPART.
- (8) A service provider must keep its access undertakings available for inspection by members of the public, free of charge, during normal office hours.
- (9) It is sufficient compliance with subsection (8) if copies of the access undertakings are made available to the public on the service provider's internet website.
- (10) Copies of an access undertaking are to be made available to members of the public, at cost, during normal office hours.

Division 6 Access agreements and access determinations

39 Access agreements

- (1) The terms on which a service provider is to provide access to an infrastructure service the subject of a coverage declaration or an access undertaking are to be set out:
 - (a) in an agreement between the service provider and the access seeker, or
 - (b) if no such agreement can be reached, in an access determination.
- (2) A provision of an access agreement is void to the extent to which it purports:
 - (a) to prohibit a service provider from providing a service the subject of a coverage

declaration or an access undertaking to any person, whether or not the person is a party to the agreement, or

- (b) to prohibit a service provider from providing a service the subject of a coverage declaration or an access undertaking to some persons on more advantageous terms than those on which it provides the same service to other persons, or
- (c) to prohibit or restrict any person from giving information to IPART or the Minister pursuant to any requirement under this or any other Act, or from creating documents for the purpose of recording information for that purpose.

40 Access determinations

(1) If a dispute exists between a service provider and an access seeker:

- (a) as to the terms on which the access seeker is to be given access (or an increase in access) to a service the subject of a coverage declaration or an access undertaking, or
- (b) as to any matter arising under an access agreement that provides for a dispute as to that matter to be dealt with in accordance with this section, or
- (c) as to any matter arising under a determination under this section,

either party to the dispute may apply to IPART for the dispute to be determined by arbitration.

Note—

Pursuant to section 24B of the *Independent Pricing and Regulatory Tribunal Act 1992* (as applied by subsection (5)), the arbitrator for such a dispute may be IPART or some other person appointed by IPART to arbitrate the dispute.

- (2) IPART may refuse to accept such an application if it is not satisfied that the applicant has, in good faith, attempted to resolve the dispute by negotiation.
- (3) At any time after commencement of proceedings on an application under this section, the arbitrator may require the service provider to cause notice of the proceedings to be given to all other persons to which the service provider provides access to the service concerned.
- (4) Subject to this section and the regulations, the *Commercial Arbitration Act 2010* applies to an arbitration under this section, and to any determination arising from an arbitration under this section, as if a reference in that Act to an award were a reference to a determination under this section.
- (5) Sections 24B–24E of the *Independent Pricing and Regulatory Tribunal Act 1992* apply to an arbitration under this section in the same way as they apply to an arbitration under section 24A of that Act, and so apply as if:

(a) a reference in those sections to a government agency were a reference to a service provider, and

(b) section 24B (2) and (3) (b) and (c) of that Act were omitted,

except that section 15 of that Act does not apply in relation to any determination arising from an arbitration under this section.

(6) In considering the terms of a proposed determination, the arbitrator must have regard to such matters as are prescribed by the regulations.

Note—

See also section 41 in relation to the application of pricing principles.

(7) Before making a determination, the arbitrator:

(a) must cause copies of the proposed determination to be given to each of the parties to the dispute, and

(b) must give each of the parties an opportunity to make submissions to the arbitrator in relation to the proposed determination.

(8) Subject to subsection (9), the arbitrator must use his or her best endeavours to determine the dispute within 6 months after the application for the dispute to be determined was made to IPART.

(9) If the access seeker seeks access in relation to any activity for which it would require, but does not yet hold, a licence under Part 2:

(a) the arbitrator may adjourn proceedings for such time as the arbitrator considers reasonable for the purpose of enabling the access seeker to obtain such a licence, and

(b) if the access seeker fails to obtain such a licence within that time, may make a determination refusing the access sought.

(10) In making a determination under this section:

(a) the arbitrator must give effect to any access undertaking to which the service concerned is subject, and

(b) the arbitrator must not include in the determination any provision that requires a service provider to do, or not to do, anything that would put it in breach of its obligations under any existing access determination or under this or any other Act or law.

(11) On making a determination under this section, the arbitrator must cause a notice of the making of the determination (which notice must include a summary of the determination) to be given to IPART.

- (12) On receiving such a notice, IPART must cause the information contained in the notice to be made available to the public on IPART's internet website.

Division 7 Administration of access regime

41 Pricing principles

- (1) For the purposes of this Part:
- (a) IPART must have regard to the pricing principles when deciding whether or not to approve an access undertaking for an infrastructure service, and
 - (b) an arbitrator must have regard to the pricing principles when determining a dispute in relation to the pricing of access to an infrastructure service the subject of a coverage declaration.
- (2) For the purposes of this section, the **pricing principles** in relation to any infrastructure service are as follows:
- (a) the price of access should generate expected revenue for the service that is at least sufficient to meet the efficient costs of providing access to the service, and include a return on investment commensurate with the regulatory and commercial risks involved,
 - (b) the price of access should allow multi-part pricing and price discrimination when it aids efficiency,
 - (c) the price of access should not allow a vertically integrated service provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent to which the cost of providing access to other operators is higher,
 - (d) the price of access should provide incentives to reduce costs or otherwise improve productivity.
- (3) These principles must be implemented in a manner that is consistent with any relevant pricing determinations for the supply of water and the provision of sewerage services, including (where applicable) the maintenance of "postage stamp pricing" (that is, a system of pricing in which the same kinds of customers within the same area of operations are charged the same price for the same service).

42 Service providers to have approved cost allocation manuals

- (1) Within 3 months after an infrastructure service becomes the subject of a coverage declaration, the service provider:
- (a) must keep separate accounts for such of its infrastructure services as are the subject of the declaration, and

- (b) must submit a cost allocation manual to IPART in relation to that infrastructure.
- (2) A cost allocation manual must be in the form of a document that, in accordance with any rules under subsection (3), sets out the basis on which the service provider proposes to establish and maintain accounts for those of its infrastructure services as are the subject of a coverage declaration.
 - (3) The Minister may from time to time, by order published in the Gazette, establish rules for the preparation of cost allocation manuals.
 - (4) IPART may approve a service provider's cost allocation manual as submitted, or may require the service provider to amend it and resubmit it for approval.
 - (5) On and from the expiry of 3 months from the date on which IPART approves a service provider's cost allocation manual in relation to infrastructure services the subject of a coverage declaration, the service provider must ensure that costs are allocated between each of those services, and between those services and its other activities, in accordance with the manual.
 - (6) A cost allocation manual may only be varied with the consent of IPART.
 - (7) A service provider must keep its cost allocation manual available for inspection by members of the public, free of charge, during normal office hours.
 - (8) It is sufficient compliance with subsection (7) if a copy of the cost allocation manual is made available to the public on the service provider's internet website.
 - (9) Copies of the cost allocation manual are to be made available to members of the public, at cost, during normal office hours.
 - (10) A service provider must not fail to comply with the requirements of this section.

Maximum penalty: 500 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

43 Hindering access to certain services

- (1) The provider or a user of a service the subject of a coverage declaration or an access undertaking, or a body corporate related to the provider or a user of the service, must not engage in conduct for the purpose of preventing or hindering any other person from obtaining or exercising rights of access to the service.

Maximum penalty: 500 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

- (2) A person may be taken to have engaged in conduct for the purpose referred to in subsection (1) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or

from other relevant circumstances.

- (3) Subsection (2) does not limit the manner in which the purpose of a person may be established for the purposes of subsection (1).
- (4) In this section, a **user** of a service includes a person who has a right to use the service.

44 Register of infrastructure services

- (1) IPART is to maintain a register of:
 - (a) infrastructure services the subject of coverage declarations, and
 - (b) infrastructure services the subject of binding non-coverage declarations, and
 - (c) infrastructure services the subject of access undertakings.
- (2) The regulations may make provision with respect to the manner and form in which the register is to be kept and the nature of the information to be included in the register.
- (3) IPART must keep the register available for inspection by members of the public, free of charge, during normal office hours.
- (4) It is sufficient compliance with subsection (3) if a copy of the register is made available to the public on IPART's internet website.
- (5) Copies of entries in the register are to be made available to members of the public, at cost, during normal office hours.

Part 4 Sewer mining

45 Application of Part

This Part applies to sewerage infrastructure whose service provider:

- (a) has lodged with IPART a notice:
 - (i) that sets out the service provider's policy as to whether, and on what terms, it will permit sewer miners to draw from the contents of the infrastructure, and
 - (ii) that indicates that the service provider is willing to allow disputes as to its granting or refusal of such permission to be referred to IPART for arbitration, and
- (b) has not subsequently lodged with IPART any notice that indicates that the service provider is no longer willing to allow such disputes to be so referred.

46 Sewer mining determinations

- (1) If a dispute exists between a service provider and a sewer miner:

- (a) as to the terms of any agreement under which the sewer miner is to be permitted to draw from the contents of the service provider's sewerage infrastructure, or
- (b) as to any matter arising under an agreement referred to in paragraph (a) that provides for a dispute as to that matter to be dealt with in accordance with this section, or
- (c) as to any matter arising under a determination under this section,

either party to the dispute may apply to IPART for the dispute to be determined by arbitration.

- (2) The dispute may be dealt with by IPART or by such other person as IPART may nominate to arbitrate the dispute.
- (3) At any time after commencement of proceedings on an application under this section, the arbitrator may require the service provider to cause notice of the proceedings to be given to other persons permitted to draw from the contents of the service provider's sewerage infrastructure.
- (4) Subject to this section and the regulations, the [Commercial Arbitration Act 2010](#) applies to an arbitration under this section, and to any determination arising from an arbitration under this section, as if a reference in that Act to an award were a reference to a determination under this section.
- (5) In considering the terms of a proposed determination, the arbitrator:
 - (a) must give effect to the service provider's policy with respect to the granting of permission to draw from the contents of its sewerage infrastructure, and
 - (b) subject to paragraph (a), must have regard to such matters as are prescribed by the regulations.
- (6) Before making a determination, the arbitrator:
 - (a) must cause copies of the proposed determination to be given to each of the parties to the dispute, and
 - (b) must give each of the parties an opportunity to make submissions to the arbitrator in relation to the proposed determination.
- (7) The arbitrator must use his or her best endeavours to determine the dispute within 6 months after the application for the dispute to be determined is made to IPART.
- (8) On making a determination under this section, the arbitrator must cause a notice of the determination (which notice must include a summary of the determination) to be given to IPART.

- (9) On receiving such a notice, IPART must cause the information contained in the notice to be made available to the public on IPART's internet website.

Part 5 Operation of water retail market

Division 1 Resolution of disputes

46A Definition

In this Division:

entitled person means any of the following:

- (a) an owner or occupier of land affected by the exercise (or proposed exercise) of a function under Division 2 of Part 6,
- (b) any other person of a class prescribed by the regulations.

47 Internal review of certain decisions disputed by small retail customers

- (1) A small retail customer may apply to a licensed retail supplier for a review of the retail supplier's decision in relation to any matter arising under a water supply or sewerage service contract or any other matter prescribed by the regulations for the purposes of this subsection.
- (2) The regulations:
 - (a) may establish the procedures for making an application and for dealing with an application, and
 - (b) may impose conditions on retail suppliers' licences relating to the provision and implementation of procedures for dealing with an application, and
 - (c) may treat a failure to make a decision within a specified period as a decision of a particular kind.
- (3) An application is to be made and dealt with free of charge to the applicant.

48 Review of decisions under approved ombudsman scheme

- (1) A small retail customer and any entitled person may apply to the ombudsman for review of a decision in a dispute or complaint to which the scheme relates.
- (2) Except as provided by the scheme or by the regulations, a person does not have a right of review under this section in respect of a decision for which a review may be sought under section 47 unless the decision has been the subject of review under that section.
- (3) A review under this section is to be free of charge to small retail customers and to entitled persons.

- (4) This section does not limit or otherwise affect the jurisdiction of the Civil and Administrative Tribunal.
- (5) The ombudsman may decline to deal with a matter if it has been, is being or should be dealt with by another person or tribunal or there are, in the ombudsman's opinion, not sufficient grounds for further investigation.
- (6) Without limiting subsection (5), the ombudsman may deal with a matter by making arrangements for it to be referred to another person or tribunal.

49 Approved ombudsman scheme

- (1) The Minister may approve an ombudsman scheme for the purposes of this Act, being a scheme that provides for the appointment of an ombudsman to deal with:
 - (a) disputes and complaints under water supply or sewerage service contracts entered into with small retail customers, and
 - (a1) disputes and complaints concerning the exercise, or proposed exercise, of functions under Division 2 of Part 6, and
 - (b) any other disputes and complaints of such classes (whether or not under water supply or sewerage service contracts referred to in paragraph (a)) as are prescribed by the regulations.
- (2) Before approving such a scheme, the Minister must be satisfied that the scheme meets the following objectives:
 - (a) that all licensed retail suppliers and authorised licensed network operators that are required to be members of the scheme are members of the scheme, have agreed to be bound by decisions of the ombudsman under the scheme and, as members, are so bound,
 - (b) that the scheme has satisfactory arrangements in place to deal with all disputes and complaints referred to in subsection (1),
 - (c) that the ombudsman will be able to operate independently of all licensed retail suppliers and authorised licensed network operators in exercising functions under the scheme,
 - (d) that the scheme will be accessible to small retail customers and entitled persons,
 - (e) that membership of the scheme will be accessible to all potential members and will provide appropriate representation for all members in relation to the scheme's governing body,
 - (f) that, without limiting any other application of the scheme, the scheme will apply to all disputes and complaints arising under water supply or sewerage service

contracts,

- (g) that the scheme will operate expeditiously and without cost to small retail customers and to entitled persons,
 - (h) that the scheme will allow small retail customers to choose whether or not they wish to be bound by determinations under the scheme,
 - (i) that the scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its constitution and procedure and in terms of its day to day operations,
 - (j) that the scheme will provide for a monetary limit on claims covered by the scheme of an amount or amounts approved by the Minister,
 - (k) that the scheme will maintain the capacity of the ombudsman, where appropriate, to refer disputes or complaints to other forums,
 - (l) that the scheme will require the ombudsman to inform the Minister of substantial breaches of this Act or the regulations, or the conditions of a licence, of which the ombudsman becomes aware,
 - (m) such other objectives as are prescribed by the regulations.
- (3) A scheme may treat a failure to make a decision within a specified period as a decision of a particular kind.
- (4) The Minister may at any time revoke an approval under this section.
- (5) If the regulations prescribe a dispute or complaint involving a person other than a licensed retail supplier or authorised licensed network operator as a dispute or complaint to which an approved scheme may apply, the regulations may make it an offence for the person to fail to comply with a decision of the ombudsman under the scheme.
- (6) Notice of any approval given by the Minister under this section, and of the revocation of any such approval, is to be published in the Gazette.
- (7) Subject to this section, the same scheme may be approved for the purposes of both this Act and any other Act or law.

50 Licence conditions relating to approved ombudsman scheme

- (1) It is a condition of a retail supplier's licence under which a licensed retail supplier supplies water or provides sewerage services (or both) to small retail customers that:
- (a) the retail supplier must be a member of an approved ombudsman scheme, and
 - (b) the retail supplier is bound by, and must comply with, any decision of the

ombudsman under the scheme relating to a dispute or complaint involving the retail supplier and a small retail customer.

- (2) It is a condition of the network operator's licence of an authorised licensed network operator that:
 - (a) the operator must be a member of an approved ombudsman scheme, and
 - (b) the operator is bound by, and must comply with, any decision of the ombudsman under the scheme relating to a dispute or complaint involving the operator and an entitled person.

Division 2 Monopoly suppliers

51 Declaration of monopoly suppliers

- (1) The Minister may, by order published in the Gazette, declare that a specified licensed retail supplier or licensed network operator is a monopoly supplier in relation to:
 - (a) a specified water supply or sewerage service, and
 - (b) a specified area, and
 - (c) a specified class of customers.
- (2) Such a declaration may only be made in relation to a service if the Minister is satisfied:
 - (a) that it is a service:
 - (i) for which there are no other suppliers to provide competition in the part of the market concerned, and
 - (ii) for which there is no contestable market by potential suppliers in the short term in that part of the market, and
 - (b) in the case of a water supply service for recycled water, that connection of land to that service is required by or under some other Act,and must be revoked if the Minister ceases to be satisfied as to any of those matters.

52 Pricing determinations for monopoly services

- (1) The Minister may refer either or both of the following matters to IPART for investigation and report:
 - (a) the determination of the pricing for any service in respect of which a declaration is in force under section 51,
 - (b) a periodic review of pricing policies in respect of any such service.

- (2) The provisions of Part 3 of the *Independent Pricing and Regulatory Tribunal Act 1992* in relation to government monopoly services apply to and in respect of a matter referred to IPART under this section in the same way as they apply to and in respect of a matter referred to IPART under section 12 of that Act.
- (3) It is a condition of any licence held by a monopoly supplier that the supplier must comply with IPART's determination in relation to a matter so referred.

53 Obligations of monopoly suppliers

- (1) It is a condition of a licence held by a monopoly supplier for any water supply or sewerage service that the supplier must, in accordance with the declaration for that service, supply that service to any eligible premises to which the owner of the premises requests the supplier to provide that service.
- (2) In this section, **eligible premises**, in relation to a water supply or sewerage service, means premises to which water industry infrastructure by means of which the service is provided is available.

Division 3 Retailers of last resort

54 Declaration of retailers of last resort

The Minister may, by order published in the Gazette, declare that a specified person (whether a licensed retail supplier or a public water utility) is the retailer of last resort in relation to the supply of water or the provision of sewerage services within the whole or any specified part of its area of operations.

55 Preparation of contingency plans

- (1) As soon as practicable after a person becomes a retailer of last resort, the person must, in accordance with the regulations, submit for the Minister's approval a contingency plan setting out the arrangements that are in place to ensure that it can meet its obligations as a retailer of last resort.
- (2) The Minister may approve a contingency plan as submitted, or may require the retailer of last resort to amend it and resubmit it for approval.
- (3) A contingency plan may only be varied with the consent of the Minister.
- (4) In the case of a retailer of last resort that is a licensed retail supplier:
 - (a) submission of a contingency plan in accordance with subsection (1), and
 - (b) maintenance of the arrangements set out in its contingency plan,are conditions of the retail supplier's licence.

56 Minister may declare supply failure

- (1) The Minister may, by order in writing served on:
 - (a) a licensed retail supplier, and
 - (b) the relevant retailer of last resort,declare a supply failure in relation to the licensed retail supplier.
- (2) Such an order may not be given except in such circumstances as are prescribed by the regulations.

57 Effect of declaration of supply failure

- (1) Subject to the regulations and the terms of the order:
 - (a) the licensed retail supplier, on being served with such an order, must cease supplying water or providing sewerage services to those customers specified by the order, and
 - (b) a retailer of last resort, on being served with such an order, must commence supplying water or providing sewerage services to such of those customers as are within the area in respect of which it is the retailer of last resort, and
 - (c) those customers become, in relation to the supply of water or the provision of sewerage services, the customers of the relevant retailer of last resort.
- (2) In the case of a retailer of last resort that is a licensed retail supplier, compliance with such an order is a condition of the retail supplier's licence.
- (3) Each such customer and the relevant retailer of last resort are taken to have entered into a special circumstances contract in such terms as are prescribed by the regulations for the purposes of this section.
- (4) Subsection (3) does not apply in circumstances in which section 36 (4) of the *Hunter Water Act 1991*, section 553A (2) of the *Local Government Act 1993* or section 55 (3B) of the *Sydney Water Act 1994* applies.

Part 6 Work relating to water industry infrastructure

Division 1 Powers and duties relating to water industry infrastructure generally

58 Erection and placement of water industry infrastructure

- (1) This section applies to work connected with the erection, installation, extension, alteration, maintenance or removal of any water industry infrastructure.

- (2) For the purposes of this Act, a licensed network operator:
 - (a) may carry out work to which this section applies, and
 - (b) in particular, may carry out any such work in or under a public road or public reserve.
- (3) No such work (other than routine connections, repairs or maintenance work) may be carried out unless the network operator:
 - (a) has given the local council or roads authority notice of the proposal to carry out the work, and
 - (b) has given the local council or roads authority a reasonable opportunity (being at least 40 days from the date on which the notice was given) to make submissions to the network operator in relation to the proposal, and
 - (c) has given consideration to any such submissions.
- (4) Subsection (3) does not apply to the carrying out of any such work to cope with emergencies.
- (5) Work to which this section applies is exempt from the requirement for an approval under the [Local Government Act 1993](#).
- (6) Section 138 of the [Roads Act 1993](#) does not apply to or in respect of anything done, or to be done, pursuant to this section.

59 Damage to public roads and public reserves to be made good

- (1) If a public road or public reserve is damaged:
 - (a) by a leakage from, or a bursting of, a licensed network operator's water industry infrastructure, or
 - (b) by any work carried out by a licensed network operator,the local council or roads authority may require the network operator to make good the damage without delay.
- (2) If the network operator fails to carry out appropriate work in accordance with any such requirement, the local council or roads authority may carry out the work itself.
- (3) The cost of carrying out the work may be recovered by the local council or roads authority in a court of competent jurisdiction as a debt owed to it by the network operator.

60 Interference with water industry infrastructure by trees

- (1) If a licensed network operator has reasonable cause to believe that a tree is

destroying, damaging or interfering with the network operator's water industry infrastructure, the network operator may, by written notice, require the owner of the land on which the tree is situated, within a reasonable period specified in the notice, to remove the tree, including all roots of the tree that are or may be destroying, damaging or interfering with that infrastructure.

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

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

61 Obstruction of water mains and sewer mains

- (1) This section applies if a licensed network operator has reasonable cause to believe that any of its water mains or sewer mains could be damaged, destroyed or adversely affected by any nearby structure or thing that, since the water mains or sewer mains were laid, has been erected or installed on a public road or public reserve.
- (2) In those circumstances, the network operator:
- (a) may serve a written notice on the person having control of the structure or thing requiring that person to modify or remove it, or
 - (b) in an emergency, may, at its own expense, modify or remove the structure or thing itself.
- (3) A notice served on a person under subsection (2) (a):
- (a) must specify the work to be carried out, and
 - (b) must specify a reasonable time within which the work is to be carried out.
- (4) If the person fails to carry out the work in accordance with the notice, the network operator may carry out the work itself.
- (5) The cost of:

(a) carrying out the work referred to in the notice, and

(b) repairing any damage done to the water main or sewer main by the structure or thing,

may be recovered by the network operator in a court of competent jurisdiction as a debt owed to it by the person.

(6) A licensed network operator may apply for an injunction to prevent a structure or thing being placed in, on or near any of its water mains or sewer mains.

(7) A licensed network operator may take action under this section even if the person having control of the structure or thing owns or occupies the land in, on or over which the water main or sewer main is situated.

(8) In the circumstances referred to in subsection (7):

(a) the network operator is liable to the owner of the structure or thing for any loss or damage suffered by the owner as a consequence of the work referred to in subsection (4), and

(b) the costs referred to in subsection (5) are not recoverable under that subsection, unless the existence, in its present position, of the structure or thing concerned contravenes the terms of any easement, agreement or other authority that supports the presence of the water main or sewer main in, on or over the land.

62 Altering position of conduits

(1) A licensed network operator may serve a written notice on a person if:

(a) the network operator needs an alteration to be made in the position of a conduit owned by the person, and

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

(2) The notice:

(a) must specify the work to be carried out, and

(b) must specify a reasonable time within which the work is to be carried out, and

(c) must include an undertaking by the network operator to pay the reasonable cost of carrying out the work.

(3) If the work is not carried out as required by the notice, the network operator may carry out the work in a manner that does not permanently damage the conduit or adversely affect its operation.

- (4) In this section, **conduit** means anything that is in or under a public road or public reserve (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.

63 Charges for placement of water industry infrastructure

No annual or other periodic or special charge is payable by a licensed network operator to a local council or roads authority in respect of any water industry infrastructure located in a public reserve or public road or in respect of the space in a public reserve or public road that is occupied by any such infrastructure.

64 Ownership of water industry infrastructure

- (1) Except where another Act expressly provides otherwise, water industry infrastructure is owned by the person that constructs or installs it or any person that subsequently acquires title to it, whether or not the land in, on, under or over which it is situated is owned by that person.

Note—

Examples of provisions of other Acts that expressly provide for the ownership of water industry infrastructure by certain public water utilities include the following:

- (a) section 19 of the [Hunter Water Act 1991](#),
 - (b) section 37 of the [Sydney Water Act 1994](#),
 - (c) section 29 of the [Water NSW Act 2014](#).
- (2) Water industry infrastructure that a network operator's licence authorises the licensee to construct, maintain or operate is not to be taken in execution of any judgment against a person (other than the owner of the infrastructure or the licensee) under any process of a court.
- (3) The provisions of this section have effect despite anything contained in section 42 of the [Real Property Act 1900](#).

65 Meter readers

- (1) A licensed network operator or licensed retail supplier may appoint any of its employees or agents as a meter reader.
- (2) Each meter reader so appointed must be issued with an identity certificate containing the following:
- (a) the name of the meter reader,
 - (b) the name of the network operator or retail supplier,
 - (c) a passport-style photograph of the meter reader's face,
 - (d) a statement to the effect that, pursuant to this Act, the meter reader is authorised

to read meters on behalf of the network operator or retail supplier.

- (3) A meter reader so appointed may, during normal business hours, enter any premises for the purpose of reading a meter that measures:
- (a) water supplied from water mains that are controlled by the network operator or by means of which the retail supplier supplies water to those premises, or
 - (b) sewage discharged into sewer mains that are controlled by the network operator or by means of which the retail supplier provides sewerage services to those premises.
- (4) On request by any person who appears to be in occupation of the premises, a meter reader so appointed must produce his or her identity certificate for inspection.

Maximum penalty: 10 penalty units.

- (5) This section does not authorise a meter reader to enter such part of a building as is being used for residential purposes except with the consent of the occupier.

Division 2 Powers of entry of authorised licensed network operators

65A Interpretation

- (1) In this Division:

authorised agent of an authorised licensed network operator means a person appointed by the operator under section 65F.

- (2) A reference in this Division to the water industry infrastructure of an authorised licensed network operator (however expressed) is a reference to the water industry infrastructure that the operator is authorised to construct, maintain or operate under its network operator's licence regardless of whether the infrastructure is owned by the operator or any other person.

65B Entry of land

- (1) An authorised licensed network operator may, by any of its authorised agents, enter any land in accordance with this Division for any one or more of the following purposes:
- (a) to carry out an inspection or maintenance work on any of its water industry infrastructure,
 - (b) to carry out necessary repair work on any of its water industry infrastructure,
 - (c) to carry out emergency work on any of its water industry infrastructure.
- (2) Except in emergencies, a power of entry may be exercised only during daylight hours.

65C Notice of entry

- (1) Before an authorised agent of an authorised licensed network operator exercises a power of entry under this Division, the authorised licensed network operator concerned must give the occupier (or, if there is no occupier, the owner) of the land written notice of the intention to enter the land.
- (2) The notice must specify the day on which the authorised agent intends to enter the land and must be given at least 2 days before that day.
- (3) This section does not require notice to be given:
 - (a) if entry to the land is made with the consent of the occupier (or, if there is no occupier, the owner) of the land, or
 - (b) if entry is required urgently and the case is one in which the authorised licensed network operator has authorised in writing (either generally or in the particular case) entry without notice, or
 - (c) if the giving of notice would defeat the purpose for which the power is to be exercised.

65D Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to any land (other than such part of a building as is being used for residential purposes) under a power conferred by this Division, but only if authorised by the authorised licensed network operator concerned in accordance with this section.
- (2) The authority:
 - (a) must be in writing, and
 - (b) must be given in respect of the particular entry concerned, and
 - (c) must specify the circumstances that must exist before force may be used.

65E Compensation

- (1) An authorised licensed network operator, in exercising its functions under this Division, is to do as little damage as practicable and is, subject to this Division, to compensate all persons who suffer damage by the exercise of the functions.
- (2) Compensation may be made by reinstatement, repair, construction of works or payment.

65F Certificates of authority to enter land

- (1) An authorised licensed network operator may appoint a person to be an authorised

agent of the authorised licensed network operator for the purposes of exercising powers under this Division by issuing the person with a certificate of authority.

- (2) A power of entry under this Division may not be exercised by an authorised agent unless the authorised agent:
 - (a) is in possession of a certificate of authority issued by the authorised licensed network operator concerned, and
 - (b) produces the certificate when required to do so by the owner or occupier of the land.
- (3) The certificate of authority:
 - (a) must state that it is issued under this Act, and
 - (b) must give the name of the person to whom it is issued, and
 - (c) must describe the nature of the powers conferred and the source of those powers, and
 - (d) must state the date (if any) on which it expires, and
 - (e) must describe the kind of land to which the power extends, and
 - (f) must:
 - (i) be under the seal of the authorised licensed network operator concerned, or
 - (ii) bear the signature of the principal officer of the authorised licensed network operator concerned or of any other officer of that operator (or an officer belonging to a class of officers of that operator) prescribed by the regulations.
- (4) The Minister may, by written notice given to an authorised licensed network operator, do any or both of the following:
 - (a) impose conditions or restrictions on certificates of authority issued under this section by the operator, either generally or in particular cases, including restrictions on the purposes for which and the circumstances in which a power of entry may be exercised,
 - (b) issue guidelines to be observed by the operator concerning the issue of certificates of authority under this section.

65G Entry to residential premises

A power of entry conferred by this Division is not exercisable in relation to such part of a building as is used for residential purposes except:

- (a) with the consent of the occupier (or, if there is no occupier, the owner) of that part of

the building, or

(b) under the authority conferred by a warrant of entry.

65H Warrants of entry

- (1) An authorised licensed network operator may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* if it is of the opinion that it is necessary for an authorised agent of the authorised licensed network operator to enter any land (including any building used for residential purposes) for the purposes of this Division.
- (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 warrant of entry authorising an authorised agent of the authorised licensed network operator named in the warrant to enter the land for the purposes of this Division.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a warrant of entry under this section in the same way as it applies to a search warrant under that Act.

65I Other powers of entry unaffected

This Division does not apply to any power of entry that a licensed network operator has apart from this Division (including under any contract, lease or easement).

Part 7 Offences

Division 1 Offences

66 Exposure of underground pipes

A person must not, by opening any ground, expose a licensed network operator's water industry infrastructure:

- (a) without lawful excuse, or
- (b) without having given the network operator at least 2 days' written notice of intention to open the ground.

Maximum penalty: 100 penalty units (in the case of a corporation) and 20 penalty units (in any other case).

67 Interference with water industry infrastructure

A person must not interfere with a licensed network operator's water industry infrastructure unless authorised to do so by the network operator.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

68 Interference with meters

A person must not alter or otherwise interfere with a meter that is connected to a licensed network operator's water main or sewer main, or to any seal attached to such a meter, unless authorised to do so by the network operator.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

69 Unauthorised connections

A person must not connect any pipe or fitting to a licensed network operator's water main or sewer main unless authorised to do so by the network operator.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

70 Unauthorised increase in capacity of connections

A person must not increase the capacity of an existing connection to a licensed network operator's water main or sewer main unless authorised to do so by the network operator.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

71 Offence to discharge into drains and sewers

A person must not discharge any substance into a licensed network operator's stormwater drain or sewer main unless authorised to do so under an arrangement with the network operator or a licensed retail supplier.

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

Note—

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 97.

72 Unauthorised use of water

A person must not take, waste, divert, consume or use any water conveyed by a licensed network operator's water infrastructure unless authorised to do so under an arrangement with the network operator or a licensed retail supplier.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

73 Unlicensed plumbing and drainage work

- (1) A person must not do any kind of plumbing work intended for direct or indirect connection with a licensed network operator's water main, or any kind of drainage work intended for direct or indirect connection to a licensed network operator's sewer main, unless the person:
 - (a) holds an endorsed contractor licence or a supervisor certificate in force under the *Home Building Act 1989* authorising the holder to do that kind of work, or
 - (b) does the work under the immediate supervision of the holder of a licence or certificate referred to in paragraph (a), or
 - (c) holds a tradesperson certificate in force under the *Home Building Act 1989* authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).

Maximum penalty: 100 penalty units.

- (2) The regulations may make provision for or with respect to any plumbing work or drainage work, including the standards for and supervision of any such work and the grant of permission by a licensed network operator for the performance of any such work.
- (3) If any standard or other requirement with respect to such work is inconsistent with any requirement imposed by the *Plumbing and Drainage Act 2011* or the regulations under that Act with respect to the work, that Act and any regulations under that Act prevail to the extent of the inconsistency.

Note—

The *Plumbing and Drainage Act 2011* sets out the standards and other requirements for work that is plumbing and drainage work within the meaning of that Act.

Division 2 Powers of inspectors

74 Inspectors

- (1) The Minister may appoint inspectors for the purposes of this Act or of any specified provision of this Act.
- (2) Each inspector must be issued with an identity certificate containing the following:
 - (a) the name of the inspector,
 - (b) a passport-style photograph of the inspector's face,
 - (c) a statement to the effect that the inspector is authorised to enter premises for the purpose of this Act.

- (3) Subject to any conditions to which his or her appointment as an inspector is subject, an inspector may, during normal business hours, enter any premises for the purpose of ascertaining whether an offence against this Act or the regulations, or a contravention of the conditions of a licence, has been committed.
- (4) On request by any person who appears to be in occupation of the premises, an inspector must produce his or her identity certificate for inspection.

Maximum penalty: 10 penalty units.

- (5) This section does not authorise an inspector to enter such part of a building as is being used for residential purposes except with the consent of the occupier or under the authority of a warrant of entry.

75 Notice of entry

- (1) Before an inspector exercises a power of entry under this Division, the inspector must give the owner or occupier of the land written notice of the intention to enter the land.
- (2) The notice must specify the day on which the inspector intends to enter the land and must be given before that day.
- (3) This section does not require notice to be given:
 - (a) if entry to the land is made with the consent of the owner or occupier of the land, or
 - (b) if entry is required in an emergency.

76 Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to any land (other than such part of a building as is being used for residential purposes) under a power conferred by this Division, but only if authorised by the Minister in accordance with this section.
- (2) The authority:
 - (a) must be in writing, and
 - (b) must be given in respect of the particular entry concerned, and
 - (c) must specify the circumstances that must exist before force may be used.

77 Notification of use of force or urgent entry

- (1) An inspector:
 - (a) who uses force for the purpose of gaining entry to land, or

(b) who enters land in an emergency without giving written notice to the owner or occupier of the land,

must promptly advise the Minister of that fact.

(2) The Minister must give notice of the entry to such persons or authorities as appear to the Minister to be appropriate in the circumstances.

78 Care to be taken

- (1) In the exercise of a power under this Division, an inspector must do as little damage as possible.
- (2) As far as practicable, entry onto fenced land is to be made through an existing opening in the enclosing fence or, if entry through an existing opening is not practicable, through a new opening.
- (3) Any new opening is to be properly closed when the need for entry ceases.
- (4) If, in the exercise of a power under this Division, any pit, trench, hole or bore is made, the inspector:
 - (a) must fence it, and keep it securely fenced, so long as it remains open or not sloped down, and
 - (b) must, without unnecessary delay, close it, fill it or slope it down.

79 Compensation

An inspector must pay compensation to the owner of any land in respect of which a power has been exercised under this Division for any loss or damage arising from the exercise of the power, but is not so liable to the extent to which the loss or damage arises from work done for the purposes of an inspection that reveals that the owner has contravened this Act or the regulations.

80 Warrants of entry

- (1) An inspector may apply to an authorised officer for a warrant of entry if of the opinion that it is necessary for an inspector to enter and inspect any land (including any building used for residential purposes) for the purposes of this Act.
- (2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a warrant of entry authorising an inspector named in the warrant to enter and inspect the land for the purposes of this Act.
- (3) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a warrant of entry under this section in the same way as it applies to a search warrant under that Act.

- (4) In this section, **authorised officer** has the same meaning as it has in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

81 Obstruction of inspectors

A person must not:

- (a) prevent an inspector from exercising the inspector's functions under this Act, or
- (b) hinder or obstruct an inspector in the exercise of any such function, or
- (c) impersonate an inspector.

Maximum penalty: 200 penalty units (in the case of a corporation) and 50 penalty units (in any other case).

Division 3 General

82 Penalty notices

- (1) An authorised official may issue a penalty notice to a person if it appears to the official that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

Note—

The [Fines Act 1996](#) provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised official** means a person appointed in writing by the Minister as an authorised official for the purposes of this section.

83 Court may order disconnection and discontinuance of water supply

- (1) A court that finds a person guilty of an offence under section 66–72 may make either or both of the following orders:
 - (a) an order that the premises to which the offence relates be disconnected from the water mains of the licensed network operator concerned,

(b) an order that the supply of water to those premises be restricted or discontinued.

(2) An order under this section has effect regardless of the provisions of any contract or other arrangement.

84 Court may order payment for stolen water

(1) A court that finds a person guilty of an offence under section 72 of unlawfully causing water to be taken, wasted, diverted, consumed or used may make an order directing the person to pay to the licensed network operator or licensed retail supplier concerned such amount as the court considers appropriate for the water so taken, wasted, diverted, consumed or used.

(2) Such an order:

(a) may be made by a court on its own motion, or on the application of the network operator or retail supplier, at any time within 6 months after the date of the finding, and

(b) if made by the Local Court, may be enforced in the Local Court in its exercise of jurisdiction under Part 3 of the [Local Court Act 2007](#).

(3) Part 8 of the [Civil Procedure Act 2005](#) applies to and in respect of an order under this section that is made by the Local Court as if:

(a) the order were a judgment of the Local Court in civil proceedings, and

(b) the amount ordered to be paid were a judgment debt, and

(c) the person against whom the order is made were a judgment debtor, and

(d) the person in whose favour the order is made were a judgment creditor.

(4) The remedy provided by this section is an alternative to any other remedy that may be available apart from this section.

Part 8 Functions of IPART

Division 1 Licence auditing functions

85 Licence auditing functions

(1) IPART's functions under this Division are to monitor, and to report to the Minister on, the extent to which licensed network operators and licensed retail suppliers comply, or fail to comply, with the conditions imposed on the licences held by them.

(2) In particular, IPART is to review each licence at intervals of not more than 5 years, and at such other times as the Minister may direct, with the first 5-year review commencing on the fifth anniversary of the granting of the licence.

- (3) A report with respect to such a review may include recommendations as to the variation or revocation of existing licence conditions or the imposition of new licence conditions.

86 Recovery of IPART's costs

- (1) Each licensee is required to pay to the Treasurer the cost (as certified by IPART) involved in and in connection with carrying out IPART's functions under this Division in relation to the licensee.
- (2) Without limitation, a licence may include terms and conditions relating to the determination of the cost of carrying out those functions.

87 Power to direct licensees to keep records and furnish information

For the purposes of monitoring and reporting under this Division, IPART may, by notice in writing served on a licensee, require the licensee:

- (a) to keep specified records, including any documents specified in the notice, and
- (b) to furnish specified information to IPART.

88 Failure to keep records or furnish information

- (1) A person must not, without reasonable excuse, refuse or fail to comply with a notice served under section 87.
- (2) Without limitation, it is a reasonable excuse for the purposes of subsection (1) that to comply with the notice might tend to incriminate a natural person or make the person liable to any forfeiture or penalty.
- (3) A person must not give to IPART any information that the person knows to be false or misleading in a material particular (unless the person informs IPART of that fact).
- (4) A person must not take any action that detrimentally affects the employment of another person, or threaten to do so, because that other person has assisted IPART in any investigation.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

89 Annual reports

- (1) As soon as practicable after 30 June (but on or before 31 October) in each year, IPART must prepare and forward to the Minister a report on the extent to which licensees have complied, or failed to comply, with the conditions imposed on their licences during the 12 months ending on 30 June in that year.
- (2) The Minister must lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Division 2 Regulatory functions

90 Regulatory functions

- (1) IPART's regulatory functions under this Division are:
 - (a) the functions conferred on it by Part 2, and
 - (b) the functions conferred on it by Part 3, and
 - (c) the functions conferred on it by section 46, and
 - (d) the functions conferred on it by section 52, and
 - (e) such of IPART's other functions under this Act as are prescribed by the regulations for the purposes of this section.
- (2) Part 4B of the *Independent Pricing and Regulatory Tribunal Act 1992* applies in relation to IPART's regulatory functions under this Act.

Division 3 Miscellaneous

91 Investigations by IPART

- (1) IPART may conduct investigations for the purpose of enabling it to exercise its functions under this Act.
- (2) Subject to this section, and except to the extent to which the regulations otherwise provide, the provisions of Division 7 of Part 3 of the *Independent Pricing and Regulatory Tribunal Act 1992* apply to an investigation under this section in the same way as they apply to an investigation under that Act.
- (3) Section 21 (1) of the *Independent Pricing and Regulatory Tribunal Act 1992* does not apply so as to require IPART to hold any hearing for the purposes of an investigation under this section.

92 IPART guidelines

- (1) IPART may issue guidelines as to the manner in which it exercises its functions under this Act.
- (2) IPART must keep the guidelines available for inspection by members of the public, free of charge, during normal office hours.
- (3) It is sufficient compliance with subsection (2) if a copy of the guidelines is made available to the public on IPART's internet website.
- (4) Copies of the guidelines are to be made available to members of the public, at cost, during normal office hours.

93 Exclusion of Part 3, Division 3, of [Independent Pricing and Regulatory Tribunal Act 1992](#)

Division 3 of Part 3 of the [Independent Pricing and Regulatory Tribunal Act 1992](#) does not apply to or in respect of a service provider's infrastructure services.

Part 9 Miscellaneous

94 Delegation of functions

- (1) The Minister and the Director-General may delegate to any person any of their functions under this Act, other than this power of delegation.
- (2) Despite subsection (1), the Director-General may sub-delegate to any person any function that has been delegated to the Director-General by the Minister, but only if the terms of the delegation authorise its sub-delegation.

Note—

See also section 49 of the [Interpretation Act 1987](#) in relation to the delegation of functions.

95 Service of documents

- (1) A document that by this Act or the regulations is required to be served on a person may be served:
 - (a) on an individual, by delivering it to the individual personally or by sending it by post to (or leaving it in the individual's letterbox at) the person's place of residence or business, and
 - (b) on a corporation, by sending it by post to (or leaving it in the corporation's letterbox at) the corporation's registered office within the meaning of the [Corporations Act 2001](#) of the Commonwealth.
- (2) This section does not affect any other law governing the service of documents.

96 Exclusion of personal liability

Any matter or thing done or omitted to be done by the Minister, the Director-General or an inspector, or by any person acting under the direction of the Minister or the Director-General, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act, subject that person personally to any action, liability, claim or demand.

97 Liability of directors etc for offences by corporation—offences attracting executive liability

- (1) For the purposes of this section, an **executive liability offence** is an offence against any of the following provisions of this Act that is committed by a corporation:

(a) section 5 (1),

(b) section 71.

(2) A person commits an offence against this section if:

(a) a corporation commits an executive liability offence, and

(b) the person is:

(i) a director of the corporation, or

(ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and

(c) the person:

(i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and

(ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

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

(3) The prosecution bears the legal burden of proving the elements of the offence against this section.

(4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.

(5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.

(6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:

director has the same meaning it has in the [Corporations Act 2001](#) of the Commonwealth.

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

reasonable in all the circumstances:

(a) action towards:

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

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

(c) action towards ensuring that:

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

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

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

97A Liability of directors etc for offences by corporation—accessory to the commission of the offences

(1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 97.

(2) A person commits an offence against this section if:

(a) a corporation commits a corporate offence, and

(b) the person is:

- (i) a director of the corporation, or
- (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and

(c) the person:

- (i) aids, abets, counsels or procures the commission of the corporate offence, or

- (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
- (iii) conspires with others to effect the commission of the corporate offence, or
- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

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

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

97B Evidence as to state of mind of corporation

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the **state of mind** of a person includes:
 - (a) the knowledge, intention, opinion, belief or purpose of the person, and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

98 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
 - (a) summarily before the Local Court, or
 - (b) before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought before the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units (in the case of a corporation) and 50 penalty units (in any other case), despite any higher maximum

monetary penalty provided in respect of the offence.

99 Recovery of monetary penalties

Any unpaid fee, charge or other amount owed to the Minister or to IPART, and any monetary penalty imposed on a licensee by the Minister or by IPART, may be recovered in any court of competent jurisdiction as a debt due to the Crown.

100 Evidentiary certificates

A certificate that is issued by the Director-General and that states that, on a specified date or during a specified period:

- (a) a specified person was or was not a licensee under a specified licence or under a licence of a specified kind, or
- (b) a specified person's licence was or was not in specified terms, or
- (c) a specified person's licence was or was not subject to specified conditions, or
- (d) a specified person's licence was or was not suspended or cancelled,

is admissible in legal proceedings as evidence of the matters so stated.

101 Regulations

- (1) The Governor may make regulations not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the matters set out in Schedule 2.
- (3) A regulation may create an offence punishable by a penalty not exceeding 250 penalty units (in the case of a corporation) and 100 penalty units (in any other case).
- (4) A regulation may apply, adopt or incorporate the provisions of any standard, code or specification, either as in force as at a particular day or as in force for the time being.

102 (Repealed)

103 Savings, transitional and other provisions

Schedule 4 has effect.

104 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Scheduled areas

(Section 22)

The area of operations of the Sydney Water Corporation, as referred to in section 10 of the [Sydney Water Act 1994](#)

The area of operations of the Hunter Water Corporation, as referred to in section 16 of the [Hunter Water Act 1991](#)

Schedule 2 Regulation-making powers

(Section 101)

1 Water quality and public health

Matters relating to water quality and public health, including the following:

- (a) the production, treatment, storage and conveyance of water,
- (b) the treatment, storage and conveyance of sewage,
- (c) the assessment of risks to water quality and the treatment of water or sewage to avert such risks,
- (d) the implementation of water quality guidelines.

2 Construction and maintenance of water industry infrastructure

Matters relating to the construction and maintenance of water industry infrastructure, including the following:

- (a) the design, construction, maintenance and renewal of water and sewage pipes and associated equipment,
- (b) the construction, alteration, extension, maintenance, repair and operation of water industry infrastructure,
- (c) the procedures to be followed in preparing for, and dealing with, accidents and emergencies,
- (d) the development and implementation by licensed network operators of plans to ensure the safe operation and renewal of water industry infrastructure,
- (e) the development and implementation by licensed network operators of plans to

ensure the safe connection of premises to water industry infrastructure,

(f) the development and implementation by licensed network operators of plans to ensure that:

(i) the supply of water and sewage by means of their water industry infrastructure is reliable, and

(ii) the water and sewage so supplied is of an appropriate quality,

including contingency plans in the event of the network operator becoming unable to carry out the activities authorised by its licence.

3 Consumer protection

Matters relating to consumer protection, including the following:

(a) water supply or sewerage service contracts,

(b) the establishing of marketing codes of conduct in relation to the supply of water and the provision of sewerage services,

(c) the development of payment plans for those suffering financial hardship,

(d) the debt collection procedures to be observed by licensed retail suppliers in relation to amounts owed by customers in connection with the supply of water,

(e) the procedures to be followed when customers switch from one supplier of water to another, including procedures with respect to the transfer of information,

(f) the standards of service to be provided to customers by licensed network operators and licensed retail suppliers in connection with the supply of water and the provision of sewerage services,

(g) the procedures to be followed in relation to planning for failures in water supply, including procedures for identifying the existence of such failures and for arranging alternative water supplies in the event of such failures,

(h) the installation, examination and testing of water and sewage meters,

(i) the circumstances under which water supply or sewage collection may be refused or discontinued,

(j) the regulation of ancillary market participants in their conduct of ancillary market activities,

(k) the procedures to be adopted by licensed network operators and licensed retail suppliers for the resolution of customer complaints,

(l) the obligations of persons who obtain or receive information about customers or

prospective customers with respect to the collection, keeping, disclosure or other use of that information and the inclusion of such obligations in water supply or sewerage service contracts.

3A Developments

Matters relating to the following:

- (a) certificates of compliance granted by the holder of an operational approval for water industry infrastructure certifying that the requirements of the holder for connection of a particular development to the water industry infrastructure have been complied with, including the following:
 - (i) the making of an application for a certificate of compliance,
 - (ii) the giving of a notice of requirements before the grant of a certificate of compliance, which may include requirements relating to:
 - (A) the payment of costs, and
 - (B) the construction, installation or alteration of infrastructure, and
 - (C) the transfer of infrastructure to the holder, and
 - (D) other matters,
 - (iii) the enforcement of requirements set out in a notice,
 - (iv) the grant of a certificate of compliance,
 - (v) the conditions of a certificate of compliance,
- (b) providing the holder of an operational approval for water industry infrastructure an opportunity to make submissions on an application for a statutory approval for a development that may affect the operation of the infrastructure, including requiring the relevant authority to notify the holder of relevant applications and to take into account submissions made by the holder,
- (c) providing for delegation of functions or powers of the holder of an operational approval for water industry infrastructure under regulations made under paragraph (a) or (b) to a licensed operator of the infrastructure.

4 Access to infrastructure services

Matters relating to access to infrastructure services, including the following:

- (a) the meeting of time limits in connection with the administration of this Act,
- (b) the rights and obligations of persons when negotiating access to an infrastructure service the subject of a coverage declaration or an access undertaking,

- (c) arbitrators' functions in relation to the conduct of arbitrations for the purposes of this Act,
- (d) standard terms for inclusion in access agreements and access determinations,
- (e) the obligations that may be imposed on a service provider pursuant to an access undertaking or access determination,
- (f) the awarding of costs in relation to arbitrations conducted for the purposes of this Act,
- (g) the circumstances in which variations of an infrastructure service, or alterations or extensions of the water industry infrastructure by means of which an infrastructure service is provided, affect the operation of any coverage declaration or binding non-coverage declaration to which the service is subject.

5 Administration

Matters relating to administration, including the following:

- (a) the conduct of investigations by IPART for the purposes of this Act,
- (b) the keeping, provision and publishing of records, information and statistics in relation to:
 - (i) the operation of water mains and the supply of water, and
 - (ii) the operation of sewer mains and the collection of sewage, and
 - (iii) the operation of stormwater drains and the collection of stormwater, and
 - (iv) water quality, and
 - (v) the operation of water treatment processes, and
 - (vi) the environmental impact arising from the construction, maintenance and operation of water industry infrastructure and other activities carried out pursuant to a licence,
- (c) the manner in which, and the period for which, information must be made available on internet websites pursuant to the requirements of this Act.

6 Other matters

Other matters, including the following:

- (a) the carrying out of plumbing work and drainage work,
- (b) the use of water for fire-fighting purposes,
- (c) the imposition of water restrictions,

- (d) the prohibition and regulation of discharges into sewage pipes and sewer mains,
- (e) matters of a savings or transitional nature consequent on the making of a coverage declaration, a revocation declaration or a binding non-coverage declaration.

Schedule 3 (Repealed)

Schedule 4 Savings, transitional and other provisions

(Section 103)

Part 1 General

1 Regulations

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

Part 2 Provisions consequent on enactment of this Act

2 Deemed coverage declarations

- (1) Subject to any revocation declaration under Division 3 of Part 3 of this Act, each service specified in Column 1 of the Table to this clause is taken to be the subject of a coverage declaration for the period specified in relation to that service in Column 2 of that Table.
- (2) In the Table to this clause, a reference to a reticulation network is a reference to that part of Sydney Water Corporation's sewerage infrastructure into which sewage is discharged from a customer's connection point for conveyance to a treatment plant.

Table

Column 1

Column 2

Description of service

Period of coverage

Services within the Sydney Water Corporation's area of operations

Sewerage: Bondi Reticulation Network

Connection of another party's works to Sydney Water Corporation's Bondi Reticulation Network 1 January 2007 to 31 December 2056 (inclusive)

Conveyance of sewage through Sydney Water Corporation's Bondi Reticulation Network from the premises of another party's customers to the points where the Network connects with the other party's works 1 January 2007 to 31 December 2056 (inclusive)

Sewerage: Malabar Reticulation Network

Connection of another party's works to Sydney Water Corporation's Malabar Reticulation Network 1 January 2007 to 31 December 2056 (inclusive)

Conveyance of sewage through Sydney Water Corporation's Malabar Reticulation Network from the premises of another party's customers to the points where the Network connects with the other party's works 1 January 2007 to 31 December 2056 (inclusive)

Sewerage: North Head Reticulation Network

Connection of another party's works to Sydney Water Corporation's North Head Reticulation Network 1 January 2007 to 31 December 2056 (inclusive)

Conveyance of sewage through Sydney Water Corporation's North Head Reticulation Network from the premises of another party's customers to the points where the Network connects with the other party's works 1 January 2007 to 31 December 2056 (inclusive)

3 References to access licences under [Water Management Act 2000](#)

The reference in section 6 (2) of this Act to an access licence under the [Water Management Act 2000](#) includes, in relation to any land or water source not subject to that Act, a reference to a licence or permit under the [Water Act 1912](#).

Part 3 Provisions consequent on enactment of [Water Industry Competition Amendment Act 2011](#)

4 Definition

In this Part:

amending Act means the *Water Industry Competition Amendment Act 2011*.

5 Approval of new approved ombudsman scheme before commencement of amendments to Division 1 of Part 5

- (1) For the purpose of facilitating the application of an approved ombudsman scheme to entitled persons in relation to the exercise of functions under Division 2 of Part 6 (as inserted by the amending Act) and to small retail customers of sewerage services, the Minister may before the relevant day approve an existing or new ombudsman scheme under section 49 as if all of the amendments made to Division 1 of Part 5 by the amending Act had commenced on the date of assent to that Act.
- (2) An ombudsman scheme approved as provided by subclause (1) has effect on and from the relevant day.
- (3) The provisions of this clause are in addition to, and do not derogate from, the provisions of section 26 of the *Interpretation Act 1987*.
- (4) In this clause:

relevant day means the day on which the amendment to section 49 (1) made by the amending Act commences.

6 Transitional period in relation to enforcement of new statutory licensing conditions

- (1) The Minister may not take enforcement action under section 16 during the applicable transitional period in relation to any of the following licence conditions imposed by section 50 (as amended by the amending Act):
 - (a) the condition imposed by section 50 (1), but only in its application to any retail supplier who provides sewerage services under its retail supplier's licence,
 - (b) the condition imposed by section 50 (2).
- (2) The **applicable transitional period** in relation to a licence condition referred to in subclause (1) is the period of 3 months commencing on the day on which the amendment made by the amending Act that imposes the condition concerned commences.

7 Ownership of water industry infrastructure

- (1) Subject to the regulations, section 64 (1) (as substituted by the amending Act) is taken on and from the relevant day to extend to:
 - (a) any water industry infrastructure constructed or installed before the relevant day, and
 - (b) any water industry infrastructure constructed or installed before the relevant day the title to which has subsequently been acquired by another person (whether

before, on or after the relevant day).

(2) The regulations may make provision for or with respect to the application of section 64 (1) (as substituted by the amending Act) to water industry infrastructure constructed or installed before the relevant day.

(3) In this clause:

relevant day means the day on which section 64 (1) is substituted by the amending Act.

Dictionary

(Section 3)

access agreement means an agreement referred to in section 39.

access determination means an arbitrator's determination under section 40.

access seeker, in relation to an infrastructure service, means a person who wants access to the service or wants a change to some aspect of the person's existing access to the service.

access undertaking means an access undertaking established under section 38.

approved ombudsman scheme means a scheme approved under section 49.

area of operations means:

- (a) in relation to a licensee, the area within which the licensee is authorised to exercise the powers conferred by the licence, and
- (b) in relation to the Sydney Water Corporation, the area of operations established for that Corporation under section 10 of the [Sydney Water Act 1994](#), and
- (c) in relation to the Hunter Water Corporation, the area of operations established for that Corporation under section 16 of the [Hunter Water Act 1991](#), and
- (d) in relation to a water supply authority, the area of operations established for that authority under section 289 of the [Water Management Act 2000](#), and
- (e) in relation to a council, the council's local government area under the [Local Government Act 1993](#), and
- (f) in relation to a county council, the area of operations established for the county council under section 393 of the [Local Government Act 1993](#).

authorised licensed network operator means a licensed network operator that is a prescribed authority within the meaning of section 88A of the [Conveyancing Act 1919](#).

binding non-coverage application means an application referred to in section 32.

binding non-coverage declaration means a declaration under section 34.

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

county council has the same meaning as it has in the [Local Government Act 1993](#).

coverage application means a coverage application referred to in section 24.

coverage declaration means a declaration under section 26.

declaration criteria means the criteria set out in section 23.

Department means the Department of Energy, Utilities and Sustainability.

Director-General means the Director-General of the Department.

disqualified corporation means:

- (a) a corporation that, pursuant to a declaration under section 16 (1) (e), has been declared to be a disqualified corporation for the purposes of this Act, or
- (b) a corporation that has, as one of its directors or as one of the persons concerned in its management, an individual who is a disqualified individual.

disqualified individual means:

- (a) an individual who, pursuant to the [Corporations Act 2001](#) of the Commonwealth, is prohibited from managing a corporation, or
- (b) an individual who, pursuant to a declaration under section 16 (1) (f), is a disqualified individual for the purposes of this Act, or
- (c) an individual who is a director of a disqualified corporation or is concerned in the management of a disqualified corporation.

exercise a function includes perform a duty.

function includes a power, authority or duty.

infrastructure service means the storage, conveyance or reticulation of water or sewage by means of water industry infrastructure, and includes the provision of connections between any such infrastructure and the infrastructure of the person for whom water or sewage is stored, conveyed or reticulated, but:

- (a) does not include the storage of water behind a dam wall, and
- (b) does not include:
 - (i) the filtering, treating or processing of water or sewage, or
 - (ii) the use of a production process, or
 - (iii) the use of intellectual property, or
 - (iv) the supply of goods (including the supply of water or sewage),

except to the extent to which it is a subsidiary but inseparable aspect of the storage, conveyance or reticulation of water or sewage.

inspector means an inspector appointed under section 74.

IPART means the Independent Pricing and Regulatory Tribunal.

land includes (in Division 2 of Part 6 and Division 2 of Part 7) any building or part of a building, or any structure or part of a structure, located on, under or above land.

licence means a network operator's licence or a retail supplier's licence.

licensed network operator means the licensee under a network operator's licence.

licensed retail supplier means the licensee under a retail supplier's licence.

monopoly supplier means a licensee that is a monopoly supplier pursuant to an order in force under section 51.

network operator's licence means a licence referred to in section 6 (1) (a).

ombudsman means the ombudsman appointed under an approved ombudsman scheme.

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

public road has the same meaning as it has in the [Roads Act 1993](#).

public water utility means:

- (a) Water NSW, or
- (b) (Repealed)
- (c) the Sydney Water Corporation, or
- (d) the Hunter Water Corporation, or
- (e) a water supply authority within the meaning of the [Water Management Act 2000](#), or
- (f) a council or county council exercising water or sewerage functions.

recycled water means water obtained from the processing of sewage.

related person, in relation to an individual, means some other individual who is the firstmentioned individual's:

- (a) employer, employee or partner, or
- (b) spouse, de facto partner, parent, step-parent, grandparent, child, step-child, grandchild, sibling, step-sibling, nephew or niece.

Note—

"De facto partner" is defined in section 21C of the [Interpretation Act 1987](#).

retail supplier's licence means a licence referred to in section 6 (1) (b).

retailer of last resort means a person who is a retailer of last resort pursuant to an order in force under section 54.

revocation application means a revocation application referred to in section 28.

revocation declaration means a declaration under section 30.

roads authority has the same meaning as it has in the [Roads Act 1993](#).

scheduled area means an area specified in Schedule 1.

service provider, in relation to an infrastructure service, means the person who has, or is to have, control of the water industry infrastructure by means of which the service is, or is to be, provided, whether or not the person is a licensed network operator.

sewer main means such part of a network operator's sewerage infrastructure as comprises the main sewage pipe into which sewage is discharged from premises.

sewer miner means a person who draws from the contents of a service provider's sewers or who wants to do so.

sewerage infrastructure means any infrastructure that is, or is to be, used for the treatment, storage, conveyance or reticulation of sewage, including any outfall pipe or other work that stores or conveys water leaving the infrastructure, but does not include any pipe, fitting or apparatus that is situated upstream of a customer's connection point to a sewer main.

small retail customer means a person who belongs to a class of persons who are declared by the regulations to be small retail customers for the purposes of this Act.

stormwater drain means such part of a network operator's water infrastructure as comprises the main drain into which stormwater is discharged from premises.

water includes stormwater and recycled water, but does not include sewage.

water industry infrastructure means water infrastructure or sewerage infrastructure.

water infrastructure means any infrastructure that is, or is to be, used for the production, treatment, filtration, storage, conveyance or reticulation of water, but does not include:

- (a) any pipe, fitting or apparatus that is situated downstream of a customer's connection point to a water main, or
- (b) any pipe, fitting or apparatus that is situated upstream of a customer's connection point to a stormwater drain.

water main means such part of a network operator's water infrastructure as comprises the main water pipe from which water is distributed to premises.

water supply or sewerage service contract means a contract under which a licensed retail supplier agrees to supply water, or provide sewerage services, to a customer.