

# NSW Reconstruction Authority Act 2022 No 80

[2022-80]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Note**

Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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

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New South Wales

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# NSW Reconstruction Authority Act 2022 No 80



New South Wales

An Act to establish the NSW Reconstruction Authority; to provide for the Authority's functions and powers; to provide for other matters to assist NSW communities to recover from disasters and improve resilience for potential disasters; to make related amendments to the *Environmental Planning and Assessment Act 1979*, the *Government Sector Employment Act 2013* and the *State Emergency and Rescue Management Act 1989*; and for related purposes.

## Part 1 Preliminary

### Division 1 Introduction

#### 1 Name of Act

This Act is the *NSW Reconstruction Authority Act 2022*.

#### 2 Commencement

This Act commences as follows—

(a) the following provisions commence on the date of assent to this Act—

- (i) Part 1,
- (ii) Part 2, Divisions 1 and 3–6,
- (iii) section 10, other than section 10(1)(a)–(m) and (q)–(s),
- (iv) Part 3,
- (v) sections 87, 89 and 94,
- (vi) Schedule 1,
- (vii) Schedule 3, section 1,
- (viii) Schedule 4,
- (ix) Schedules 5.1[3] and [4] and 5.2,

(b) otherwise—on a day or days to be appointed by proclamation.



### 3 Primary object

The primary object of this Act is to promote community resilience to the impact of disasters in New South Wales through—

- (a) disaster prevention, preparedness and adaptation, and
- (b) recovery and reconstruction following disasters.

### 4 How primary object is to be achieved

The primary object is to be achieved by—

- (a) establishing the NSW Reconstruction Authority to facilitate community resilience to the impact of disasters in New South Wales through prevention, preparedness and adaptation, and
- (b) providing for the functions and powers of the NSW Reconstruction Authority, including functions and powers to—
  - (i) facilitate the protection, recovery and reconstruction of affected communities, and
  - (ii) mitigate against the impact of potential disasters on communities, and
  - (iii) improve the resilience and adaptability of affected communities in relation to potential disasters, including, for example, by the betterment of affected communities, and
- (c) providing for the exercise of functions by the chief executive officer of the NSW Reconstruction Authority, subject to the Minister's control and direction, including ensuring the Authority exercises its functions effectively and efficiently.

## Division 2 Interpretation

### 5 Definitions

The Dictionary in Schedule 4 defines certain terms used in this Act.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

### 6 Meaning of “disaster”

In this Act, **disaster** includes the following—

- (a) natural disasters, including, for example, bushfires, coastal hazards, cyclones, earthquakes, floods, heatwaves, landslides, severe thunderstorms, tornadoes and tsunamis,
- (b) hazards caused by natural disasters including air pollution, water and soil

contamination and water insecurity,

- (c) other emergencies in relation to which the Minister has requested assistance from the Authority,
- (d) other emergencies in relation to which—
  - (i) a public authority, including a Minister other than the Minister administering this Act, has requested assistance from the Authority, and
  - (ii) the Authority has agreed to provide assistance,
- (e) events, incidents or matters, or classes of events, incidents or matters, prescribed by the regulations.

## **Part 2 NSW Reconstruction Authority**

### **Division 1 Establishment and status of Authority**

#### **7 Establishment**

The NSW Reconstruction Authority is established.

#### **8 Status of Authority**

The Authority is—

- (a) a corporation, and
- (b) a NSW Government agency.

**Note—**

See the [Interpretation Act 1987](#), section 13A, which provides that a NSW Government agency has the status, privileges and immunities of the Crown.

#### **9 Ministerial control**

The Authority is subject to the control and direction of the Minister in the exercise of the Authority's functions.

### **Division 2 Functions of Authority**

#### **10 Functions**

- (1) The Authority's functions are as follows—
  - (a) disaster prevention and preparedness, including—
    - (i) identifying, assessing and managing the risks from disasters, and
    - (ii) leading disaster resilience, adaptation and mitigation activities, and

- (iii) building community capacity and resilience to disasters, and
  - (iv) developing and implementing methodologies for disaster resilience, adaptation and mitigation activities,
- (b) reconstruction and recovery following disasters and other emergencies, including—
  - (i) assisting the Minister administering the *State Emergency and Rescue Management Act 1989* and the State Emergency Recovery Controller to exercise the Minister's and Controller's functions in relation to recovery under that Act, and
  - (ii) facilitating, coordinating and directing the recovery, planning and rebuilding of affected communities, including repairing and rebuilding land and infrastructure and other development, and
  - (iii) balancing constraints to enable a focused, timely and expedited recovery of affected communities,
- (c) information provision and exchange and community engagement, including—
  - (i) supporting collaboration and coordination between government agencies, local councils, service providers and communities to improve disaster prevention, preparedness, recovery, reconstruction and adaptation, and
  - (ii) increasing the flow of information and enabling community participation to support the development of strategies for disaster prevention, preparedness, recovery, reconstruction and adaptation,
- (d) to coordinate the development and implementation of whole-of-government policies for—
  - (i) managing the risk of disasters in the State, and
  - (ii) ensuring communities can recover, reconstruct and adapt effectively and efficiently following disasters, and
  - (iii) improving the preparedness and resilience of communities for potential disasters,
- (e) to prepare and implement a State disaster mitigation plan for disasters in the State,
- (f) to provide advice and support to local councils to help maximise the effectiveness of councils' disaster preparedness and reconstruction programs,
- (g) to provide advice and assistance to local councils and relevant strategic planning authorities under the *Environmental Planning and Assessment Act 1979* to ensure

strategic plans prepared under that Act, Division 3.1 and the State disaster mitigation plan align,

- (h) to lead the management and coordination of housing and infrastructure renewal and recovery within affected communities,
  - (i) to work closely with affected communities to ensure the needs of each community are recognised in the recovery and reconstruction of the community, and to improve the disaster preparedness and resilience of communities,
  - (j) to lead public education on disaster risks and certain disaster preparations,
  - (k) to carry out research, and provide advice, proposals, recommendations and reports to the Minister, about—
    - (i) disaster prevention and preparedness, and
    - (ii) recovery and reconstruction following disasters,
  - (l) to enter into joint ventures, project delivery agreements and other arrangements with landowners, developers, State and Commonwealth government agencies and local councils in relation to disaster prevention, recovery and reconstruction,
  - (m) to implement funding schemes to provide financial support in relation to disaster prevention, recovery and reconstruction,
  - (n) to carry out rezoning and land use planning, including exercising the functions of local councils for the purpose of land use planning in relation to disasters,
  - (o) to carry out flood modelling and the determination of flood planning levels, particularly in relation to high risk catchments,
  - (p) to assist with the development of flood plans,
  - (q) to monitor the cumulative impact of disasters on the State, including by collecting and storing data about the impact, or likely impact, of disasters across the State,
  - (r) to exercise other functions conferred or imposed on the Authority by or under this Act or another Act,
  - (s) to do anything supplementary, incidental or consequential on the exercise of the Authority's functions under paragraphs (a)–(r).
- (2) To avoid doubt—
- (a) the functions of the Authority are not intended to limit functions given to agencies by the State Emergency Management Plan under the [State Emergency and Rescue Management Act 1989](#), and

(b) to the extent of any inconsistency between a direction given by the Authority or chief executive officer in exercising functions under this Act and a direction given by the State Emergency Recovery Controller in exercising functions under the *State Emergency and Rescue Management Act 1989*, the direction given by the State Emergency Recovery Controller under the *State Emergency and Rescue Management Act 1989* prevails.

(3) In this section—

**State Emergency Recovery Controller** means the State Emergency Recovery Controller appointed under the *State Emergency and Rescue Management Act 1989*.

## 11 Authority's powers

(1) The Authority has all the powers of an individual and may, for example—

- (a) enter into contracts, and
- (b) acquire, hold, deal with and dispose of property, and
- (c) appoint agents and attorneys, and
- (d) engage consultants, and
- (e) do anything else necessary or convenient to be done in the exercise of the Authority's functions.

(2) Without limiting subsection (1), the Authority has the powers given to it under this Act or another Act.

## 12 Authority may carry out development on certain land in particular circumstances

(1) Subject to subsection (2), the Authority may carry out development on land (**specified land**) if—

- (a) the Authority is satisfied—
  - (i) the specified land is in a part of the State that has been, or is likely to be, directly or indirectly affected by a disaster, and
  - (ii) the development is necessary to give effect to the primary object of this Act, and
  - (iii) given the nature of the disaster or likely disaster, and its direct or indirect effect on the specified land, carrying out the development immediately is appropriate in the circumstances, and
  - (iv) the development will not involve clearing native vegetation or will involve clearing native vegetation only to the minimum extent necessary, or

(b) the Authority is satisfied—

- (i) the specified land is not in a part of the State that has been, or is likely to be, directly affected by a disaster but the development is a direct response to the disaster or likely disaster, and

**Example—**

development for the purposes of residential accommodation to house residents who have been displaced by a disaster

- (ii) the development is necessary to give effect to the primary object of this Act, and
- (iii) that, given the nature of the disaster or likely disaster and its impact, carrying out the development immediately is appropriate in the circumstances, and
- (iv) the development will not involve clearing native vegetation or will involve clearing native vegetation only to the minimum extent necessary.

(2) The Authority may carry out development under subsection (1)(a)(i) on specified land that is likely to be affected by a disaster, or development under subsection (1)(b)(i) that is a direct response to a likely disaster, only if the Premier has made a declaration under subsection (3) authorising the proposed development.

(3) The Premier may, by written order given to the Authority (a **proposed development declaration**), declare that proposed development is authorised to be carried out under this section if—

- (a) the Authority has asked that the proposed development declaration be made, and
- (b) the specified land is likely to be directly or indirectly affected by a disaster or the development is a direct response to a likely disaster, and
- (c) the development is necessary to give effect to the primary object of this Act, and
- (d) carrying out the development immediately is appropriate in the circumstances given—
  - (i) for development mentioned in subsection (1)(a)—the nature of the likely disaster and its direct or indirect effect on the specified land, or
  - (ii) for development mentioned in subsection (1)(b)—the nature of the likely disaster and its impact.

(4) The proposed development declaration must specify the period during which development may be carried out under the declaration.

(5) The Authority must, by Gazette notice—

- (a) give notice of development being carried out under subsection (1), within 14 days

after the development starts, and

- (b) give notice of the making of a proposed development declaration under subsection (3), within 14 days after the declaration is made.
- (6) A Gazette notice under subsection (5)(a) must specify the date, not later than the end of the period during which development may be carried out under the proposed development declaration, that is—
- (a) the day on which the Gazette notice expires, and
  - (b) the last day on which development on the specified land may be carried out under this section.
- (7) Failure to publish a notice as required by subsection (5)(a) or (b) does not affect—
- (a) the power of the Authority to carry out, or to continue to carry out, the development on the specified land, or
  - (b) the validity of the proposed development declaration.
- (8) This section applies despite—
- (a) another provision of this Act, or
  - (b) a provision of the *Environmental Planning and Assessment Act 1979* or an instrument made under that Act.

### **13 Authority may direct relevant entities**

- (1) The Authority may, by written notice given to a relevant entity, direct the relevant entity to take any of the following actions (a **relevant action**)—
- (a) to provide assistance to the Authority in the exercise of the Authority's functions under this Act or another Act,
  - (b) for a local council—to take certain action in the exercise of the council's functions under the *Environmental Planning and Assessment Act 1979*,
  - (c) for another planning authority—to take certain action in the exercise of the planning authority's functions as prescribed by the regulations,
  - (d) for another relevant entity—to take certain action in the exercise of the relevant entity's functions as prescribed by the regulations.
- (2) The Authority may give a direction to a relevant entity under subsection (1) only if the Authority is satisfied—
- (a) the relevant action relates to a disaster or likely disaster, and

- (b) the relevant action is necessary to give effect to the primary object of this Act, and
  - (c) given the nature of the disaster or likely disaster, and its direct or indirect effect on a part of the State, directing the relevant entity to take the relevant action immediately is appropriate in the circumstances.
- (3) A relevant entity given a direction under subsection (1) must comply with the direction unless the entity has a reasonable excuse.

Maximum penalty—200 penalty units.

#### **14 Cooperation with other agencies**

- (1) In exercising its functions, the Authority may work in cooperation with other government agencies, and other persons and bodies, the Authority thinks appropriate, whether or not the agencies, persons or bodies are in or of the State.
- (2) Without limiting subsection (1), the Authority may, if asked by a public authority, including a Minister, assist the public authority to respond to issues that impact on the safety or wellbeing of an affected community or members of an affected community.
- (3) The Authority may consult with, and disseminate information to, other government agencies, and other persons and bodies, the Authority thinks appropriate, whether or not the agencies, persons or bodies are in or of the State.
- (4) Each relevant entity is under a duty to cooperate with the Authority in the exercise of the Authority's functions.

#### **15 Delegation**

- (1) The Authority may delegate the exercise of a function of the Authority under this Act or another Act, other than this power of delegation, to an authorised person.
- (2) A person to whom the exercise of a function is delegated under subsection (1) may subdelegate the exercise of the function to an authorised person if authorised by the Authority to subdelegate the exercise of the function.
- (3) In this section—

**authorised person** means—

- (a) a member of staff of the Authority, or
- (b) a person, or a class of persons, prescribed by the regulations for this section.



## **Division 3 Staff of Authority**

### **16 Staff**

- (1) The staff of the Authority consist of—
  - (a) a chief executive officer, who is the person who is employed in the Public Service as the chief executive officer of the Authority, and
  - (b) the other members of the staff of the Authority.
- (2) The chief executive officer is, for the purposes of the *Government Sector Employment Act 2013*, to be employed in a Band 4—Secretary level role.

## **Division 4 Chief executive officer**

### **17 Role**

- (1) The chief executive officer is responsible for the day-to-day operations of the Authority.
- (2) An act, matter or thing done in the name of, or on behalf of, the Authority by the chief executive officer is taken to have been done by the Authority.
- (3) The chief executive officer is entitled to attend and participate in discussions at meetings of the Advisory Board but is not entitled to vote at the meetings.

### **18 Functions**

- (1) The main functions of the chief executive officer are as follows—
  - (a) to ensure the Authority exercises its functions effectively and efficiently,
  - (b) to carry out or commission investigations, prepare plans or take steps the Minister directs, or the chief executive officer considers necessary or desirable, to ensure proper planning, preparation, coordination and control of development for the protection, rebuilding and recovery of affected communities,
  - (c) to make recommendations to the Minister about a matter that—
    - (i) relates to the performance or exercise of the chief executive officer's or Authority's functions or powers, and
    - (ii) may help the Minister with the proper administration of this Act.
- (2) The chief executive officer's functions also include other functions given to the chief executive officer under this Act or another Act.

## 19 Delegation

- (1) The chief executive officer may delegate the exercise of a function of the chief executive officer under this Act or another Act, other than the following powers, to an authorised person—
  - (a) the power to give a direction under section 13,
  - (b) this power of delegation.
- (2) In this section—

**authorised person** means—

  - (a) a member of staff of the Authority, or
  - (b) a person, or a class of persons, prescribed by the regulations for this section.

## Division 5 Other members of staff

### 20 Staff

Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Authority to exercise its functions.

**Note—**

The [Government Sector Employment Act 2013](#), section 59 provides that the persons so employed, or whose services the Authority makes use of, may be referred to as officers or employees, or members of staff, of the Authority. The [Constitution Act 1902](#), section 47A precludes the Authority from employing staff.

## Division 6 Other assistance

### 21 Alternative staffing, facilities and other resources

The chief executive officer may arrange for the use of the services of any members of staff, by secondment or otherwise, or facilities or other resources, of—

- (a) a Public Service agency, or
- (b) a public authority or local authority.

## Division 7 Financial matters

### 22 NSW Reconstruction Authority Fund

- (1) There is to be established in the Special Deposits Account a NSW Reconstruction Authority Fund (the **Fund**).
- (2) The following amounts may be paid into the Fund—
  - (a) money advanced to the Authority by the Treasurer or the Commonwealth, or

- appropriated by Parliament for the purposes of the Authority,
- (b) money directed or authorised to be paid into the Fund by or under this Act or another Act,
  - (c) the proceeds of the investment of money in the Fund,
  - (d) money received by the Authority from another source, including money received from a funding scheme implemented by the Authority or donations and philanthropic contributions,
  - (e) an amount, or an amount of a class, prescribed by the regulations.
- (3) The following amounts may be paid from the Fund—
- (a) amounts required to meet expenditure incurred by the Authority,
  - (b) amounts required to be paid by the Authority in accordance with a funding scheme implemented by the Authority,
  - (c) other payments required by this Act or another Act to be paid from the Fund,
  - (d) an amount, or an amount of a class, prescribed by the regulations.
- (4) To avoid doubt, the Authority may spend money mentioned in subsection (2)(d) for any purpose that will assist the Authority to achieve the primary object of this Act.
- (5) The Fund is to be administered by the Authority.
- (6) The Authority may invest money in the Fund—
- (a) if the Authority is a GSF agency for the [Government Sector Finance Act 2018](#), Part 6—in any way the Authority is permitted to invest money under that Part, or
  - (b) if the Authority is not a GSF agency for the [Government Sector Finance Act 2018](#), Part 6—in any way approved by the Minister with the concurrence of the Treasurer.
- (7) The Authority must, if asked by the Treasurer, repay money advanced to the Authority by the Treasurer.

### **23 Payments out of Consolidated Fund for exigencies**

- (1) This section applies if the annual Appropriation Act for an annual reporting period for the NSW Government has already been enacted.
- (2) The Treasurer may, with the concurrence of the Minister, determine that additional money is to be paid out of the Consolidated Fund during the annual reporting period for the NSW Government, in anticipation of appropriation by Parliament, if the money is required to meet exigencies of the Authority during the annual reporting period.

(3) The Treasurer must ensure details of the payments of money under subsection (2) are included in the Budget Papers for the next annual reporting period for the Authority.

(4) In this section—

**annual Appropriation Act** has the same meaning as in the *Government Sector Finance Act 2018*.

**annual reporting period** has the same meaning as in the *Government Sector Finance Act 2018*.

**Budget Papers** has the same meaning as in the *Government Sector Finance Act 2018*.

**Consolidated Fund** has the same meaning as in the *Government Sector Finance Act 2018*.

## Part 3 NSW Reconstruction Authority Advisory Board

### Division 1 Establishment and functions

#### 24 The Advisory Board

The Authority has an advisory board known as the NSW Reconstruction Authority Advisory Board (the **Advisory Board**).

#### 25 Functions of Advisory Board

The functions of the Advisory Board are as follows—

- (a) to provide advice to the chief executive officer about the Authority's strategic priorities,
- (b) to make recommendations to the chief executive officer about—
  - (i) priorities for community infrastructure, other property and community services needed for the protection, rebuilding and recovery of affected communities, and
  - (ii) the need for the declaration of declared projects, reconstruction areas and disaster prevention areas,
- (c) to provide advice to the Minister and chief executive officer in relation to the Authority's functions, including—
  - (i) whether the Authority is exercising the Authority's functions in an appropriate, effective and efficient way, and
  - (ii) any other matter requested by the Minister or chief executive officer.

## **Division 2 Members**

### **26 Membership of Advisory Board**

- (1) The Advisory Board consists of the following members appointed by the Governor—
  - (a) a Chairperson nominated by the Minister,
  - (b) 4 other members nominated by the Minister,
  - (c) 2 members nominated by the Commonwealth.
- (2) Each member of the Advisory Board must be a person who, in the opinion of the person nominating the person for appointment, has skills, knowledge and experience relevant to the Authority's functions, including skills, knowledge and experience relevant to assessing whether the Authority is exercising its functions in an appropriate, effective and efficient way.
- (3) If the office of a member mentioned in subsection (1)(a) or (b) becomes vacant, the Minister must nominate a new member for appointment by the Governor within 3 months after the vacancy occurs.
- (4) If the office of a member mentioned in subsection (1)(c) becomes vacant and the Commonwealth does not nominate a new member within 3 months after the vacancy occurs, the Minister may nominate a person for appointment to the office.
- (5) Schedule 1 has effect in relation to the Advisory Board.

### **27 Conditions of appointment**

- (1) A member of the Advisory Board is to be paid the remuneration and allowances decided by the Governor.
- (2) A member of the Advisory Board holds office on the terms and conditions, not provided by this Act, that are decided by the Governor.

## **Division 3 Chairperson**

### **28 Role of Chairperson**

The Chairperson of the Advisory Board is responsible for leading and directing the activities of the Board to ensure the Board exercises its functions appropriately.

## **Division 4 Other matters**

### **29 Reports**

- (1) The Chairperson of the Advisory Board must, as soon as practicable after the end of each quarter, give the Minister a report about the exercise of the Authority's functions

during the quarter.

- (2) The Chairperson of the Advisory Board must ensure that a copy of each report under subsection (1) is published on an appropriate website within 14 days after the report is given to the Minister.
- (3) In this section—

**appropriate website** means—

- (a) the Authority's website, or
- (b) another appropriate government website.

**quarter** means the following periods in each year—

- (a) 1 January to 31 March,
- (b) 1 April to 30 June,
- (c) 1 July to 30 September,
- (d) 1 October to 31 December.

## **Part 4 State disaster mitigation plan and disaster adaptation plans**

### **Division 1 State disaster mitigation plan**

#### **30 Requirement to have State disaster mitigation plan**

The Authority must have a disaster mitigation plan (a **State disaster mitigation plan**), approved by the Minister, for the State.

#### **31 Purpose of State disaster mitigation plan**

- (1) The purpose of the State disaster mitigation plan is to provide guidance about the mitigation of disasters across the State, including setting priorities for action to be taken under—
  - (a) the plan, and
  - (b) disaster adaptation plans, and
  - (c) strategic plans under the [Environmental Planning and Assessment Act 1979](#).
- (2) The State disaster mitigation plan must include or identify the following matters—
  - (a) potential strategies and actions for mitigating the impact of disasters on the State,
  - (b) an assessment, and consideration, of the impacts of climate change on disasters,

- (c) priority areas or regions for projects to mitigate the impact of disasters,
  - (d) the basis on which the Authority will monitor and report on the implementation of the strategies and actions mentioned in paragraph (a),
  - (e) other matters prescribed by the regulations.
- (3) In preparing the State disaster mitigation plan, the Authority must have regard to any matters—
- (a) prescribed by the regulations, and
  - (b) the Minister directs the Authority to have regard to, and
  - (c) the Authority considers relevant.

### **32 Preparation of State disaster mitigation plan**

- (1) The Authority must—
- (a) prepare a draft State disaster mitigation plan, and
  - (b) submit the draft plan to the Minister for approval.
- (2) After reviewing the draft State disaster mitigation plan, the Minister must—
- (a) approve the draft plan, or
  - (b) approve the draft plan with changes the Minister considers necessary or appropriate.

### **33 Review and update of State disaster mitigation plan**

- (1) The Authority must review and update the State disaster mitigation plan—
- (a) at least once every 5 years, or
  - (b) as otherwise directed by the Minister.
- (2) In reviewing and updating the State disaster mitigation plan, the Authority must have regard to any disaster adaptation plans.
- (3) The regulations may provide for further matters in relation to reviewing and updating the State disaster mitigation plan.

### **34 Report about implementation of State disaster mitigation plan**

- (1) The Authority must prepare a report about the implementation of the State disaster mitigation plan.
- (2) The Authority must give a report prepared under subsection (1) to the Minister within

5 years after the commencement of this Division.

## **Division 2 Disaster adaptation plans**

### **35 Requirement to prepare disaster adaptation plans**

- (1) The Authority may, by written notice given to a relevant entity, require the relevant entity to prepare a disaster adaptation plan.
- (2) The Authority may also, on its own initiative or as directed by the Minister, prepare a disaster adaptation plan.

### **36 Content of disaster adaptation plans**

- (1) A disaster adaptation plan must provide for the following—
  - (a) for a plan prepared by a relevant entity—the specific projects, strategies or actions the relevant entity will undertake to prevent or minimise the impact of disasters,
  - (b) for a plan prepared by the Authority—the specific projects, strategies or actions the Authority will undertake to prevent or minimise the impact of disasters.
- (2) A disaster adaptation plan must—
  - (a) be developed having regard to the guidance about the mitigation of disasters included in the State disaster mitigation plan, including priorities for action to be taken under disaster adaptation plans, and
  - (b) include or identify the following—
    - (i) relevant priority areas or regions for projects to mitigate the impact of disasters identified in the State disaster mitigation plan,
    - (ii) relevant strategies and actions for mitigating the impact of disasters identified in the State disaster mitigation plan,
    - (iii) actions required to support the relevant strategies and actions for mitigating the impact of disasters,
    - (iv) an assessment, and consideration, of the impacts of climate change on disasters,
    - (v) other matters the Authority directs the relevant entity to include or identify in the plan,
    - (vi) actions required to address the matters referred to in subparagraph (v),
    - (vii) the basis on which the relevant entity will monitor and report on the implementation of the disaster adaptation plan, and



- (c) be prepared in accordance with procedures or requirements prescribed by the regulations.

### **37 Guidelines**

- (1) The Authority may issue guidelines about preparing, making and implementing disaster adaptation plans.
- (2) Without limiting subsection (1), the guidelines may include—
  - (a) requirements for the form and content of disaster adaptation plans, and
  - (b) procedures for finalising, making and reviewing disaster adaptation plans, and
  - (c) information about how disaster adaptation plans should be applied, including the relationship between disaster adaptation plans and other policies and plans, including, for example—
    - (i) the State disaster mitigation plan, and
    - (ii) the State Emergency Management Plan under the *State Emergency and Rescue Management Act 1989*, and
    - (iii) strategic plans under the *Environmental Planning and Assessment Act 1979*.

## **Division 3 Implementation of State disaster mitigation plan and disaster adaptation plans**

### **38 Implementation**

- (1) A relevant entity must have regard to the State disaster mitigation plan and any relevant disaster adaptation plan in exercising any of the relevant entity's functions that are prescribed by the regulations for the purposes of this section.
- (2) The Authority must have regard to the State disaster mitigation plan and any relevant disaster adaptation plan in exercising any of the Authority's functions that are prescribed by the regulations for the purposes of this section.
- (3) A local council must have regard to the State disaster mitigation plan and any relevant disaster adaptation plan in exercising the local council's functions under—
  - (a) the *Environmental Planning and Assessment Act 1979*, and
  - (b) the *Local Government Act 1993*.
- (4) A planning authority, other than a local council, must have regard to the State disaster mitigation plan and any relevant disaster adaptation plan in exercising the planning authority's functions under the *Environmental Planning and Assessment Act 1979*.

- (5) The regulations may also prescribe circumstances in which a relevant entity, the Authority or a local council or other planning authority is not required to have regard to the State disaster mitigation plan or a relevant disaster adaptation plan.

## **Part 5 Declaration of declared projects, reconstruction areas and disaster prevention areas**

### **39 Declaration of declared projects**

- (1) The Minister may, by order published in the Gazette, declare a project for proposed development to be a declared project.
- (2) However, the Minister may make a declaration under subsection (1) only if—
- (a) the Minister is satisfied the project will be carried out in a part of the State that has been directly or indirectly affected by a disaster, and
  - (b) the Authority has recommended making the declaration, and
  - (c) the Minister is satisfied the declaration is necessary to help—
    - (i) facilitate the protection, rebuilding and recovery of an affected community, or
    - (ii) mitigate against potential disasters for an affected community, or
    - (iii) improve the resilience of an affected community for potential disasters through, for example, the betterment of the community.
- (3) The order must describe the land to which the declared project relates.
- (4) An order under subsection (1) may also specify that an Act or a statutory instrument does not apply in relation to the declared project, including the circumstances in which the Act or statutory instrument does not apply.

### **40 Declaration of reconstruction areas**

- (1) The Minister may, by order published in the Gazette, declare a part of the State to be a reconstruction area.
- (2) However, the Minister may make a declaration under subsection (1) only if—
- (a) the Minister is satisfied the part of the State has been directly or indirectly affected by a disaster, and
  - (b) the Authority has recommended the making of the declaration, and
  - (c) the Minister is satisfied the declaration is necessary to help—
    - (i) facilitate the protection, rebuilding and recovery of an affected community, or

- (ii) mitigate against potential disasters for an affected community, or
  - (iii) improve the resilience of an affected community for potential disasters through, for example, the betterment of the community.
- (3) An order under subsection (1) may also specify that an Act or a statutory instrument does not apply in relation to the reconstruction area, including the circumstances in which the Act or statutory instrument does not apply.

#### **41 Declaration of disaster prevention areas**

- (1) The Minister may, by order published in the Gazette and with the concurrence of the Premier, declare a part of the State to be a disaster prevention area.
- (2) The Minister may make a declaration under subsection (1) only if—
- (a) the Minister is satisfied the part of the State is likely to be directly or indirectly affected by a disaster, and
  - (b) the Authority has recommended making the declaration, and
  - (c) the Minister is satisfied the declaration is necessary to help prevent, or mitigate against, potential disasters for a community.
- (3) A declaration remains in force for the period specified in the order, unless sooner revoked.
- (4) An order under subsection (1) may also specify that an Act or a statutory instrument does not apply in relation to the disaster prevention area, including the circumstances in which the Act or statutory instrument does not apply.

## **Part 6 Declared projects, reconstruction areas and disaster prevention areas**

### **Division 1 Preliminary**

#### **42 Definitions**

In this Part—

***decision-maker*** means—

- (a) for a prescribed decision—the entity that may make the decision under the relevant law for the decision, and
- (b) for a prescribed process—the entity responsible for undertaking the process under the relevant law for the process.

***notice to decide***—see section 50(1).

**prescribed decision** means a decision, in relation to a declared project or development in a reconstruction area or disaster prevention area, required to be made under a law of the State, including, for example, a decision about constructing, undertaking, carrying out, establishing, maintaining or operating a declared project or development in a reconstruction area or disaster prevention area.

**prescribed process** means a process, in relation to a declared project or development in a reconstruction area or disaster prevention area, required to be undertaken under a law of the State, including, for example, a process under the *Environmental Planning and Assessment Act 1979*.

**progression notice**—see section 51(1).

**relevant land** means land within a reconstruction area or disaster prevention area.

**relevant law**, for a prescribed decision or prescribed process, means the law, other than this Act, under which the decision may be made or the process undertaken.

**step-in notice**—see section 52(1).

#### **43 Application of Part**

This Part applies if the Minister declares—

- (a) a project for proposed development to be a declared project, or
- (b) a part of the State to be a reconstruction area, or
- (c) a part of the State to be a disaster prevention area.

#### **44 Application of other laws**

- (1) This Part applies despite another Act or law.
- (2) Without limiting subsection (1), if a provision in this Part provides for a period during which a thing or matter must be done, the provision applies despite a provision of another Act or law that provides for a period during which the thing or matter must be done.

### **Division 2 Functions of Authority in relation to declared projects, reconstruction areas and disaster prevention areas**

#### **45 Particular powers of Authority in relation to declarations**

The Authority has the following powers in relation to a declared project or a reconstruction area or disaster prevention area—

- (a) the power to acquire land for the declared project, or relevant land—
  - (i) by agreement, or

(ii) by compulsory acquisition under the *Land Acquisition (Just Terms Compensation) Act 1991*,

- (b) the power to give a notice to decide to a decision-maker,
- (c) the power to give a progression notice to a decision-maker,
- (d) the power to give a step-in notice to a decision-maker.

#### **46 Functions of Authority in relation to land**

The Authority may, for the purposes of this Act—

- (a) manage land vested in the Authority or relevant land, and
- (b) arrange for surveys to be made, and plans of survey to be prepared, in relation to land vested in the Authority or relevant land, and
- (c) demolish, or arrange to be demolished, any building within or adjoining or in the vicinity of land vested in the Authority or relevant land, and
- (d) provide, or arrange, on terms and conditions agreed on, for the location or relocation of, utility services within or adjoining or in the vicinity of land vested in the Authority or relevant land, and
- (e) subdivide and re-subdivide land, and consolidate subdivided or re-subdivided land, vested in the Authority, and
- (f) set out and construct roads, or temporarily or permanently close roads, on land vested in the Authority or relevant land, and
- (g) erect, alter, repair and renovate buildings on, and make other improvements to, land vested in the Authority or other land with the consent of the person in whom the land is vested, or on relevant land, and
- (h) carry out work on or in relation to land vested in the Authority, or any other land with the consent of the person in whom the land is vested, or relevant land for the purpose of rendering the land fit for any purpose for which the land may be used under an environmental planning instrument applying to the land.

#### **47 Disposal of land**

- (1) The Authority may, with the approval of the Minister and subject to the terms and conditions decided by the Minister—
  - (a) sell, lease, exchange or otherwise deal with or dispose of land vested in the Authority, and
  - (b) grant easements or rights-of-way over the land or part of the land.

- (2) Despite subsection (1), the approval of the Minister is not required for a lease of land by the Authority for a term less than 3 years.

#### **48 Dedication of land**

- (1) The Authority may, by Gazette notice, declare that the Authority proposes to surrender to the Crown land vested in the Authority and described or referred to in the declaration to be dedicated—
- (a) for a public purpose specified in the declaration, or
  - (b) if specified in the declaration—as a public road.
- (2) The Authority may make a declaration under subsection (1) only with the concurrence of the Minister administering the *Crown Land Management Act 2016*.
- (3) When land described or referred to in a declaration published under subsection (1) is surrendered, the land—
- (a) becomes Crown land reserved from sale, lease or licence under the *Crown Land Management Act 2016*, and
  - (b) on revocation of the reservation, may be dedicated—
    - (i) under the *Crown Land Management Act 2016* for the public purpose specified in the notice, or
    - (ii) under the *Roads Act 1993*, section 12 as a public road.
- (4) The Authority may, in a declaration published under subsection (1), limit the description of, or reference to, land to a specified depth below the surface of the land and, if the description or reference is limited, subsection (1) does not apply to or in relation to land below the depth specified.

#### **49 Application of Public Works and Procurement Act 1912**

- (1) For the *Public Works and Procurement Act 1912*—
- (a) the acquisition of land under section 45(a) is taken to be for an authorised work, and
  - (b) the Authority is, in relation to the authorised work, taken to be the Constructing Authority.
- (2) The *Public Works and Procurement Act 1912*, sections 34–37 do not apply to works constructed under this Act.

## Division 3 Notice to decide

### 50 Notice to decide

- (1) The Authority may, by written notice (a **notice to decide**) given to the decision-maker for a prescribed decision, require the decision-maker to make the decision within the period stated in the notice (the **stated period**).
- (2) The notice to decide must—
  - (a) identify the decision, and
  - (b) state the decision-maker must—
    - (i) make the decision within the stated period, and
    - (ii) inform the Authority of the decision within 5 business days after the decision is made.
- (3) On receiving the notice to decide, the decision-maker must—
  - (a) subject to subsection (5), make the prescribed decision within the stated period, and
  - (b) inform the Authority of the decision within 5 business days after the decision is made.
- (4) The Authority may, by written notice given to the decision-maker and without the decision-maker's agreement, extend the period for making the prescribed decision.
- (5) If the Authority extends the period for making the prescribed decision, the decision-maker must make the decision within the extended period.

## Division 4 Progression notice

### 51 Progression notice

- (1) The Authority may, by written notice (a **progression notice**) given to the decision-maker for a prescribed process, require the decision-maker to undertake, within the period stated in the notice (the **stated period**), administrative processes required to complete the process.
- (2) The progression notice must—
  - (a) identify the process, and
  - (b) state the decision-maker must—
    - (i) undertake the process within the stated period, and

- (ii) inform the Authority of the completion of the process within 5 business days after the process is completed.
- (3) On receiving the progression notice, the decision-maker must—
  - (a) subject to subsection (5), undertake the prescribed process within the stated period, and
  - (b) inform the Authority of the completion of the process within 5 business days after the process is completed.
- (4) The Authority may, by written notice given to the decision-maker and without the decision-maker's agreement, extend the period for undertaking the prescribed process.
- (5) If the Authority extends the period for undertaking the prescribed process, the decision-maker must undertake the process within the extended period.

## **Division 5 Step-in notice**

### **52 Step-in notice**

- (1) The Authority may, with the approval of the Minister, give the decision-maker and applicant for a prescribed decision or a prescribed process a written notice (a **step-in notice**) advising the decision-maker and applicant the Authority will make an assessment and a decision about the prescribed decision or prescribed process under this Division.
- (2) Before deciding to approve the giving of a step-in notice, the Minister must be satisfied the giving of the notice is necessary—
  - (a) for the protection, rebuilding or recovery of a community, or
  - (b) to mitigate against potential disasters for a community, or
  - (c) to improve the resilience of a community for potential disasters, including, for example, through the betterment of the community.
- (3) The step-in notice must—
  - (a) identify the prescribed decision or prescribed process, and
  - (b) state the Authority is the decision-maker for the prescribed decision or prescribed process from the time the notice is given until the Authority makes a decision, under section 56, about the prescribed decision or prescribed process.

### **53 When step-in notice may be given**

- (1) The Authority may give a step-in notice for a prescribed decision or prescribed



process only after a notice to decide or progression notice has been given for the decision or process.

- (2) If a notice to decide or progression notice has been given for a prescribed decision or prescribed process, the step-in notice may be given at any time after the Authority is satisfied the decision-maker has not complied with the notice to decide or progression notice but before the decision-maker has made the decision or undertaken the process.

#### **54 Providing assistance or recommendations**

- (1) The decision-maker for the prescribed decision or prescribed process must give the Authority all reasonable assistance or materials the Authority requires to act under this Division, including—
- (a) all material about the prescribed decision or prescribed process the decision-maker had before the step-in notice was given, and
  - (b) any material received about the prescribed decision or prescribed process by the decision-maker after the step-in notice was given.
- (2) Without limiting subsection (1), the Authority may, by written notice given to the decision-maker, require the decision-maker to give the Authority, within the reasonable period started in the notice, a written report containing—
- (a) an assessment of matters, stated in the notice, relevant to the prescribed decision or prescribed process, or
  - (b) recommendations about the assessment mentioned in paragraph (a), including, for example, recommendations about proposed conditions relevant to the prescribed decision or prescribed process.

#### **55 Effects of step-in notice**

If the Authority gives a step-in notice for a prescribed decision or prescribed process, the Authority—

- (a) is the decision-maker under the relevant law for the prescribed decision or prescribed process from the time the step-in notice is given until the Authority makes a decision under section 56 about the prescribed decision or prescribed process, and
- (b) has, for making the decision, all the powers of the decision-maker under the relevant law for the prescribed decision or prescribed process, and
- (c) must, in making the decision, consider the following—
  - (i) the criteria, if any, for making the prescribed decision or undertaking the prescribed process under the relevant law,

- (ii) the primary object of this Act.

## **56 Authority's decision**

- (1) After making an assessment about the prescribed decision or prescribed process, the Authority may—
  - (a) make the decision or undertake the process, or
  - (b) send the decision or process, with or without conditions, back to the decision-maker under the relevant law for the decision or process, or
  - (c) decide aspects of the decision and send undecided aspects of the decision, with or without conditions, back to the decision-maker under the relevant law for the decision.
- (2) In acting under subsection (1), the Authority may, for the prescribed decision, impose conditions the Authority considers necessary or desirable having regard to—
  - (a) the nature of the declared project, or development in the reconstruction area or disaster prevention area, to which the decision relates, and
  - (b) the matters mentioned in section 55(c).

## **57 Effects of decision**

- (1) The Authority's decision under section 56 about the prescribed decision or prescribed process, including a decision to impose a condition—
  - (a) is taken to be a decision of the decision-maker (the **original decision-maker**) under the relevant law for the prescribed decision or prescribed process but a person may not appeal against the Authority's decision under this Act or the relevant law, and
  - (b) takes effect when the applicant for the prescribed decision or prescribed process and the original decision-maker are given notice under section 58(1) of the Authority's decision.
- (2) If the original decision-maker makes another prescribed decision for the declared project, or development in the reconstruction area or disaster prevention area, to which the step-in notice relates, the other prescribed decision must not be inconsistent with the Authority's decision.

## **58 Notice of decision**

- (1) The Authority must give notice of the Authority's decision under section 56 about the prescribed decision or prescribed process to the applicant and decision-maker for the prescribed decision or prescribed process.

(2) A notice under this section must include—

- (a) the reasons for the Authority's decision, and
- (b) the conditions, if any, imposed under section 56(2) in relation to the decision.

## **Division 6 Miscellaneous**

### **59 No requirement to consult on particular matters**

The Authority is not required to consult with anyone before giving a progression notice or notice to decide.

## **Part 7 Additional step-in functions and powers of Authority**

### **Division 1 Step-in functions and powers for delivery of declared projects**

#### **60 Application of Division**

This Division applies in relation to a declared project.

#### **61 Definitions**

In this Division—

**assets**—

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

**carry out**, a project, means carry out development, within the meaning of the [Environmental Planning and Assessment Act 1979](#), for the purposes of the project.

**government agency** does not include a council, within the meaning of the [Local Government Act 1993](#), or other local authority.

**liabilities** means any liabilities, debts or obligations, whether present or future, whether vested or contingent and whether personal or assignable.

**project authorisation order**—see section 63(1).

**project divesting order**—see section 67(1).

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

## **62 Step-in functions of Authority**

The Authority has the following functions in relation to a declared project—

- (a) to carry out the project if authorised by a project authorisation order,
- (b) if the project is being carried out by, or involves, another government agency—to be responsible, in accordance with a project authorisation order, for the project.

## **63 Project authorisation orders**

- (1) The Minister may make an order for the purposes of this Division (a ***project authorisation order***).
- (2) A project authorisation order must be published in the Gazette.
- (3) A project authorisation order may be made on the terms and conditions—
  - (a) decided by the Minister, and
  - (b) specified or referred to in the order.

## **64 Authorisation to carry out projects**

A project authorisation order may authorise the Authority to carry out a project specified in the order.

## **65 Authorisation to take over projects**

- (1) A project authorisation order may, for a project being carried out by or that involves another government agency, declare the Authority to be responsible for the government agency's functions in relation to the project.
- (2) The following provisions have effect on the making of a project authorisation order under this section—
  - (a) the Authority has and may exercise all the functions of the government agency in relation to the project,
  - (b) the government agency may not exercise functions in relation to the project except with the consent of the Authority,
  - (c) the Authority may, with the approval of the Minister and after consulting with the government agency, give directions to the government agency in relation to the project,
  - (d) the government agency must comply with directions given to the agency under paragraph (c) by the Authority.
- (3) To avoid doubt, subsection (2) does not limit the terms and conditions of a project

authorisation order the Minister may make under this Division.

- (4) A project authorisation order may relate to the exercise of the functions of more than 1 government agency.
- (5) Before making a project authorisation order that declares the Authority to be responsible for a project that involves development on land within a national park, the Minister must consult with the Minister administering the *National Parks and Wildlife Act 1974*.
- (6) Before making a project authorisation order that declares the Authority to be responsible for a project being carried out by or that involves a State owned corporation, the Minister must consult with the following—
  - (a) the portfolio Minister of the State owned corporation,
  - (b) the voting shareholders of the State owned corporation,
  - (c) the Chairperson of the board of directors of the State owned corporation.
- (7) Failure to comply with subsection (5) or (6) does not affect the validity of a project authorisation order.
- (8) In this section—

**national park** has the same meaning as in the *National Parks and Wildlife Act 1974*.

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

- (1) If a project authorisation order declares the Authority to be responsible for another government agency's functions in relation to carrying out a project, the order may provide—
  - (a) for the transfer to the Authority of assets, rights or liabilities of the government agency, or classes of the agency's assets, rights and liabilities, relevant to the project and specified in the order, or
  - (b) that a contract, agreement, conveyance, deed, lease, licence or other instrument or undertaking entered into by the government agency, or class of instruments, is taken to have been entered into by the Authority.
- (2) Schedule 2 applies to a project authorisation order that provides for the transfer of assets, rights or liabilities under subsection (1)(a).

## **67 Transfer of projects managed by Authority to government agency**

- (1) The Minister may, by order published in the Gazette (a **project divesting order**), direct that the assets, rights or liabilities of the Authority in relation to a project specified in the order, including assets, rights or liabilities transferred to the Authority

by a project authorisation order, be transferred to another government agency specified in the order.

- (2) The assets, rights or liabilities to be transferred by a project divesting order may consist of a specified class of assets, rights or liabilities.
- (3) A project divesting order may transfer assets, rights or liabilities in relation to a project to more than 1 government agency.
- (4) A project divesting order may be made on the terms and conditions decided by the Minister and specified or referred to in the order.
- (5) Schedule 2 applies to a project divesting order.
- (6) Before making a project divesting order that transfers assets, rights or liabilities to a State owned corporation, the Minister must consult with the following—
  - (a) the portfolio Minister of the State owned corporation,
  - (b) the voting shareholders of the State owned corporation,
  - (c) the Chairperson of the board of directors of the State owned corporation.
- (7) Failure to comply with subsection (6) does not affect the validity of a project divesting order.

## Division 2 Development approval powers

### 68 Ministerial authorisations

- (1) The Minister may, by order (a **Ministerial authorisation**), authorise the undertaking of development without the need for—
  - (a) an approval or assessment under the [Environmental Planning and Assessment Act 1979](#), or

**Example—**

an approval or environmental assessment under the [Environmental Planning and Assessment Act 1979](#), Part 5

  - (b) consent from any person.
- (2) A Ministerial authorisation may be given only—
  - (a) in accordance with subsection (3), or
  - (b) in the exceptional circumstances in subsection (4).
- (3) For subsection (2)(a), a Ministerial authorisation under subsection (1) may be given only if—

- (a) the chief executive officer has asked that the authorisation be given in circumstances, or on the basis of a ground, mentioned in paragraph (b)(i) or (ii), and
  - (b) the authorisation is given—
    - (i) during a state of emergency declared under the *State Emergency and Rescue Management Act 1989*, or
    - (ii) in relation to a declared project, reconstruction area or disaster prevention area, and
  - (c) the chief executive officer has advised, and the Minister is satisfied—
    - (i) the authorisation is necessary to protect the safety and welfare of members of the public—
      - (A) following a disaster that resulted in the declaration of the state of emergency, or
      - (B) because of the disaster or likely disaster that resulted in the declaration of the declared project, reconstruction area or disaster prevention area, and
    - (ii) the development is in a part of the State that has been, or is likely to be, directly or indirectly affected by the disaster.
- (4) For subsection (2)(b), a Ministerial authorisation may be given only if the Minister is satisfied—
- (a) exceptional circumstances exist, and
  - (b) immediate action is required to protect the safety and welfare of members of the public, and
  - (c) no other mechanism available under this Act would be appropriate in the circumstances.
- (5) The Authority must publish a copy of a Ministerial authorisation in the Gazette within 14 days after the authorisation is given.
- (6) Failure to publish a Ministerial authorisation under subsection (5) does not affect the authorisation of the development on the specified land or the development that has been, or will be, undertaken under the authorisation.
- (7) In this section—
- exceptional circumstances** means circumstances prescribed by the regulations for the purposes of this section.

## 69 Effect of Ministerial authorisation

- (1) A Ministerial authorisation has effect despite—
  - (a) an environmental planning instrument or development consent, or
  - (b) another Act or statutory instrument specified in the Ministerial authorisation, in the circumstances specified in the authorisation.
- (2) The giving of a Ministerial authorisation for the carrying out of development is taken to be—
  - (a) for development requiring development consent under the *Environmental Planning and Assessment Act 1979*—a grant of development consent for the development, and any conditions of the authorisation are taken to be conditions of the development consent, or
  - (b) for development that is an activity requiring an environmental assessment under the *Environmental Planning and Assessment Act 1979*, Part 5, Division 5.1—
    - (i) an approval for the carrying out of the activity, and any conditions of the authorisation are taken to be conditions of the approval, or
    - (ii) if the activity is being carried out by a public authority—an environmental assessment, or
  - (c) for State significant infrastructure that would otherwise require approval under the *Environmental Planning and Assessment Act 1979*, Part 5, Division 5.2—approval by the Minister under that Act, and any conditions of the authorisation are taken to be conditions of the Minister under that Act.
- (3) A Ministerial authorisation may relate to a class of development and, if so, the authorisation is taken to be a separate development consent for each development carried out under the authorisation.
- (4) A Ministerial authorisation may provide that, to the extent necessary to enable development to be carried out in accordance with the authorisation, a regulatory instrument specified in the authorisation does not apply to the development or applies subject to modifications specified in the authorisation.
- (5) In this section—

**regulatory instrument** has the same meaning as in the *Environmental Planning and Assessment Act 1979*, section 3.16.

## 70 Term of Ministerial authorisation

A Ministerial authorisation remains in force for the period specified in the authorisation, unless earlier revoked, and does not cease to have effect merely because—



- (a) for an authorisation given under section 68(2)(a)—the state of emergency or declaration of the project or area mentioned in section 68(3) ends, or
- (b) for an authorisation given under section 68(2)(b)—the exceptional circumstances mentioned in section 68(4) end.

## **Part 8 Inspection and related powers**

### **71 Definitions**

In this Part—

**authorised officer** means a person appointed as an authorised officer under section 72 by the chief executive officer.

**records** includes plans, specifications, maps, reports, books and other documents, whether in writing, electronic form or otherwise.

### **72 Appointment of authorised officers**

- (1) The chief executive officer may appoint persons, including a class of persons, as authorised officers for the purposes of this Part.
- (2) A person's appointment as an authorised officer may be made—
  - (a) generally, or
  - (b) subject to conditions or restrictions, or
  - (c) only for limited purposes.
- (3) A person's appointment as an authorised officer must be made by—
  - (a) for an individual appointment—written instrument, or
  - (b) for the appointment of a class of persons—Gazette notice.
- (4) An authorised officer must be provided by the Authority with an identification card as an authorised officer.
- (5) If persons of a class are appointed as authorised officers, the persons need not be provided with an identification card if the Authority is satisfied the persons possess adequate identification as persons of that class.

### **73 Purposes for which functions under Part may be exercised**

- (1) An authorised officer may exercise functions under this Part for any of the following purposes—
  - (a) enabling the Minister, Authority or chief executive officer to exercise functions

under this Act,

- (b) determining whether there has been compliance with or a contravention of this Act, including an instrument, consent, approval or other document or requirement issued, given or made under this Act,
- (c) obtaining information or records for purposes connected with the administration of this Act,
- (d) generally for administering this Act.

(2) Nothing in this Part affects a function under another provision of this Act or under another Act.

#### **74 Functions of authorised officers after entering land**

- (1) An authorised officer may enter land for a purpose mentioned in section 73(1) and do the following—
- (a) inspect or value the land,
  - (b) examine and inspect any works, plant or other article,
  - (c) take and remove samples,
  - (d) make the examinations, inquiries and tests the officer thinks necessary,
  - (e) take the photographs, films, audio, video and other recordings the officer thinks necessary,
  - (f) take measurements, make surveys and take levels, including digging trenches, breaking up the soil and setting up any posts, stakes or marks,
  - (g) take other action prescribed by the regulations.
- (2) An authorised officer must ensure that, in exercising a function under subsection (1), the authorised officer does as little damage as possible.
- (3) This section does not authorise an authorised officer to enter a building or other structure on the land.
- (4) In this section—

**structure** means anything built or constructed, whether or not attached to land.

#### **75 Care to be taken**

- (1) An authorised officer must do as little damage as possible in entering land in the exercise of a function under this Part.

- (2) Without limiting subsection (1), as far as practicable, entry onto fenced land must be made through an existing opening in the enclosing fence.
- (3) If entry onto fenced land through an existing opening is not practicable, a new opening may be made in the enclosing fence, but the fence must be fully restored when the need for entry ends.

#### **76 Authorised officers may require information**

- (1) An authorised officer may, by written notice given to a relevant entity or another person, require the relevant entity or other person to give information the Authority reasonably requires for the effective and efficient exercise of the Authority's functions.
- (2) The notice must specify the following—
  - (a) the information required to be given,
  - (b) the form in which the information must be given,
  - (c) the reasonable time, having regard to the nature of the information, within which the information must be given,
  - (d) that failure to give the information without reasonable excuse is an offence.
- (3) A relevant entity or another person to whom a notice is given under subsection (1) must comply with the notice unless the entity or other person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (4) In this section—

**information** does not include personal information.

**personal information** means information or an opinion, including information or an opinion forming part of a database, whether true or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

## **Part 9 Offences and legal proceedings**

### **77 Disclosure of information**

A person must not disclose information obtained in the administration of this Act, or otherwise obtained in connection with the exercise of the person's functions under this Act, unless the disclosure is made—

- (a) with the agreement of the person from whom the information was obtained, or
- (b) for the administration of this Act, or

- (c) for the purpose of legal proceedings in relation to this Act or a report about the legal proceedings, or
- (d) in accordance with a requirement under the *Ombudsman Act 1974*, or
- (e) with another lawful excuse.

Maximum penalty—

- (a) for an individual—20 penalty units, or
- (b) otherwise—100 penalty units.

### **78 Misuse of information—dealing with land**

(1) This section applies if—

- (a) because of an association with the Authority, a person has knowledge of specific information relating to proposals made, or to be made, by the Authority in relation to the acquisition, development or disposal of land, and
- (b) the information is not generally known but, if generally known, might reasonably be expected to affect materially the market price of the land.

(2) The person contravenes this section if the person—

- (a) deals, directly or indirectly, in the land or any other land for the purpose of gaining an advantage for the person by the use of the information, or
- (b) divulges the information for the purpose of enabling another person to gain an advantage by using the information to deal, directly or indirectly, in the land or any other land.

Maximum penalty—

- (a) for an individual—40 penalty units, or
- (b) otherwise—200 penalty units.

(3) If a contravention of this section occurs and an advantage referred to in subsection (2) is gained from a dealing in land to which the contravention relates, a person who gained the advantage is, whether or not any person has been prosecuted for or convicted of an offence in relation to the contravention, liable to another person for the amount of any loss incurred by the other person because of the gaining of the advantage.

(4) If a loss referred to in subsection (3) is incurred because of an advantage gained from a dealing in land, the amount of the loss is the difference between—

- (a) the price at which the dealing was effected, and

- (b) the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been the market price of the land at the time of the dealing if the specific information used to gain the advantage had been generally known at the time.
- (5) An action to recover a loss referred to in subsection (3) may not be brought more than 5 years after the dealing in land in relation to which the loss was incurred.
- (6) For the purposes of this section and section 79, a person has an **association with the Authority** if the person—
  - (a) is a member of the Advisory Board, or
  - (b) is a member of staff of the Authority, or
  - (c) is a person of whose services the Authority makes use, or
  - (d) is otherwise appointed, employed or engaged under this Act, or
  - (e) is an officer or employee of a local council, or
  - (f) acts or has acted as banker, Australian legal practitioner, auditor or professional adviser or in any other capacity for the Authority, the Minister or a local council, or
  - (g) for a person mentioned in paragraph (f) that is a corporation—is a director, manager or secretary of the corporation.

#### **79 Misuse of information—influencing proposals in relation to land**

- (1) This section applies if—
  - (a) because of an association with the Authority, a person is in a position to influence proposals made, or to be made, by the Authority in relation to the acquisition, development or disposal of land, and
  - (b) the person influences a proposal by securing the inclusion or alteration of a matter in, or the exclusion or omission of a matter from, the proposal.
- (2) The person contravenes this subsection if the person influences a proposal by securing the inclusion or alteration of any matter in, or the exclusion or omission of any matter from, the proposal for the purpose of—
  - (a) gaining an advantage for the person, or
  - (b) enabling another person to gain an advantage.

Maximum penalty—

- (a) for an individual—40 penalty units, or

(b) otherwise—200 penalty units.

- (3) If a contravention of this section occurs and an advantage referred to in subsection (2) is gained that would not have been gained if the proposal had not been influenced, a person who gained the advantage is, whether or not any person has been prosecuted for or convicted of an offence in relation to a contravention of subsection (2), liable to another person for the amount of any loss incurred by the other person because of the gaining of the advantage.
- (4) If a loss referred to in subsection (3) is incurred because of an advantage gained from a dealing in land, the amount of the loss is the difference between—
- (a) the price at which the dealing was effected, and
  - (b) the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been the market price of the land at the time of the dealing if the proposal had not been influenced.
- (5) An action to recover a loss referred to in subsection (3) may not be brought more than 5 years after the dealing in land in relation to which the loss was incurred.

#### **80 False or misleading information**

A person must not, for the purposes of this Act, state anything the person knows is false or misleading in a material particular.

Maximum penalty—

- (a) for an individual—40 penalty units, or
- (b) otherwise—200 penalty units.

#### **81 False or misleading documents**

A person must not, for the purposes of this Act, give the Authority a document the person knows is false or misleading in a material particular.

Maximum penalty—

- (a) for an individual—40 penalty units, or
- (b) otherwise—200 penalty units.

#### **82 Obstructing authorised persons**

(1) A person must not, without reasonable excuse, obstruct or threaten a person exercising functions under this Act.

Maximum penalty—

- (a) for an individual—20 penalty units, or

(b) otherwise—100 penalty units.

(2) In this section—

**obstruct** includes—

(a) hinder, and

(b) resist, and

(c) attempt to obstruct, hinder or resist.

### **83 Proceedings for offences**

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

(2) Proceedings for an offence under this Act or the regulations must be commenced within 2 years after the commission of the offence.

## **Part 10 Miscellaneous**

### **Division 1 Fees**

#### **84 Fees**

(1) This section applies if the Minister, the Authority or the chief executive officer does any of the following (a **relevant service or action**) under this Act or the regulations—

(a) supplies a service, product, commodity or publication,

(b) gives an approval or other permission,

(c) gives information,

(d) receives an application for an approval or other permission,

(e) issues a certificate, direction or other requirements,

(f) another thing in the exercise of functions under this Act, at the request of a person or body or for the benefit of a person or body.

(2) The Minister or Authority may charge a fee for the relevant service or action—

(a) as prescribed by the regulations, or

(b) as determined in accordance with the regulations, including as determined by a person specified in the regulations.

(3) The regulations may provide for requirements about the payment of a deposit or

prepayment in relation to a fee.

### **85 Liability for fees**

A fee under section 84 is payable by the person or body—

- (a) to whom or at whose request the service, approval or information is supplied or given, or
- (b) from whom the application is received, or
- (c) at whose request the thing is done.

### **86 Recovery of amounts due to Minister or Authority**

A fee or other money due to the Minister or Authority may be recovered by the Minister or Authority as a debt in a court of competent jurisdiction.

## **Division 2 Other matters**

### **87 Protecting officials from personal liability**

- (1) An official is not personally subject to a liability for an act done, or omission made—
  - (a) in good faith, and
  - (b) for the purpose of exercising a function under this Act.
- (2) If subsection (1) prevents a liability attaching to an official, the liability instead attaches to the Crown.
- (3) In this section—

**liability** means civil liability and includes an action, claim or demand.

**official** means any of the following, when exercising a function under this Act—

- (a) a member of the Advisory Board,
- (b) the chief executive officer,
- (c) another member of staff of the Authority,
- (d) a person acting under the direction of a person referred to in paragraphs (a)–(c).

### **88 Requirement to provide information and documents to Minister**

- (1) The Minister may, by written notice given to the Authority, require the Authority to give the Minister stated information or stated documents, or copies of documents, in the Authority's possession.
- (2) The Authority must comply with the requirement.



## **89 Delegation of Minister's functions**

- (1) The Minister may delegate the exercise of a function of the Minister under this Act, other than this power of delegation, to an authorised person.
- (2) A person to whom the exercise of a function is delegated under subsection (1) may subdelegate the exercise of the function to another authorised person if authorised by the Authority to subdelegate the exercise of the function.
- (3) In this section—

**authorised person** means—

- (a) a member of staff of the Authority, or
- (b) a person employed in the Department in which this Act is administered, or
- (c) a public authority or a member of staff of a public authority, or
- (d) a local council or a member of staff of a local council, or
- (e) a person, or a class of persons, authorised for this section by the regulations.

## **90 Relevant entities to comply with Minister's directions**

- (1) The Minister may direct a relevant entity to comply with a request, direction or decision made by the Authority.
- (2) A relevant entity must comply with a direction given to the entity under this section.

## **91 Directions given to State owned corporations**

- (1) This section applies if, under this Act, the Minister or the Authority gives a direction to a State owned corporation.
- (2) The *State Owned Corporations Act 1989*, section 20P(4)–(6) applies to the direction as if—
  - (a) the direction were given under that Act, section 20P(1), and
  - (b) a reference in section 20P(5) to the portfolio Minister were a reference to the Minister under this Act or the Authority, whomever gave the direction to the State owned corporation.

## **92 Review of administrative decisions made under this Act not available**

To avoid doubt, a decision made by the Minister or Authority under this Act is not an administratively reviewable decision for the *Administrative Decisions Review Act 1997*.

### **93 Review of Act and Authority's exercise of functions**

- (1) A Joint Select Committee of the Parliament is to be established in relation to the NSW Reconstruction Authority.
- (2) The Joint Select Committee is to consist of the following members—
  - (a) a Chairperson who is to be a member of, and appointed by, the Legislative Assembly,
  - (b) 5 other members who are members of, and appointed by, the Legislative Assembly,
  - (c) 4 members who are members of, and appointed by, the Legislative Council.
- (3) The Joint Select Committee is to review—
  - (a) this Act to determine whether—
    - (i) the policy objectives of the Act remain valid, and
    - (ii) the terms of the Act remain appropriate for securing the objectives, and
  - (b) the operations of the Authority regarding any disaster in relation to which the Authority exercises functions.
- (4) A review under subsection (3) is to be undertaken as soon as practicable—
  - (a) for a review under subsection (3)(a)—after the period of 12 months from the date of assent to this Act, and
  - (b) for a review under subsection (3)(b)—after the disaster to which the review relates.
- (5) A report on the outcome of a review under subsection (3) is to be tabled in each House of Parliament within—
  - (a) for a review under subsection (3)(a)—2 years after the date of assent to this Act, and
  - (b) for a review under subsection (3)(b)—12 months after the disaster to which the review relates.

### **94 Regulations**

- (1) The Governor may make regulations about a matter that—
  - (a) under this Act is required or permitted to be prescribed, or
  - (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting subsection (1), the regulations may create offences punishable by a maximum penalty of 200 penalty units.

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

Section 26(5)

### **Part 1 General**

#### **1 Definitions**

In this Schedule—

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

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

### **Part 2 Constitution**

#### **2 Terms of office of members**

Subject to this Schedule and the regulations, an appointed member—

- (a) holds office for the period, not more than 3 years, specified in the member's instrument of appointment, and
- (b) is eligible, if otherwise qualified, for re-appointment.

#### **3 Part-time appointments**

A member holds office on a part-time basis.

#### **4 Deputies**

- (1) Subject to subsection (2), a member may, from time to time—
  - (a) appoint a person to be the deputy of the member, and
  - (b) revoke the appointment.
- (2) The Minister may, at any time and for any reason—
  - (a) direct a member not to appoint a person or any person as a deputy of the member, or
  - (b) revoke an appointment of a deputy made by a member.
- (3) A direction or revocation by the Minister under subsection (2)(a) or (b) must—
  - (a) be by written notice given to the member and, for a revocation, the deputy, and
  - (b) include the reasons for the Minister's decision.

- (4) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (5) When acting in the place of a member, a deputy—
  - (a) has all the functions of the member, and
  - (b) is taken to be a member.
- (6) For the purposes of this section, a vacancy in the office of a member is taken to be an absence of the member.
- (7) This section does not operate to confer on the deputy of a member who is the Chairperson the member's functions as Chairperson.

## **5 Vacancy in office of member**

- (1) The office of an appointed member becomes vacant if the member—
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by written instrument addressed to the Minister, or
  - (d) is removed from office by the Governor under this section, or
  - (e) is absent from 3 consecutive meetings of the Advisory Board of which reasonable notice has been given to the member personally or by post, unless the member is—
    - (i) on leave granted by the Minister, or
    - (ii) excused by the Minister for having been absent from the meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for the creditors' benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted—
    - (i) in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or
    - (ii) in a jurisdiction other than New South Wales of an offence that, if committed in New South Wales, would be an offence punishable by imprisonment for 12 months or more, or

(i) becomes an employee or contractor of the Authority.

(2) The Governor may remove an appointed member from office at any time for any reason or none.

## **6 Filling of vacancy in office of member**

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

## **7 Chairperson**

(1) A person appointed as Chairperson vacates office as Chairperson if the person—

(a) is removed from the office by the Governor under this section, or

(b) resigns the office by written instrument addressed to the Minister, or

(c) ceases to be a member of the Advisory Board.

(2) The Governor may at any time remove the Chairperson from office as Chairperson for any reason or none.

## **8 Disclosure of pecuniary interests**

(1) A member must disclose the nature of a pecuniary interest at a meeting of the Advisory Board as soon as possible after the relevant facts have come to the member's knowledge.

(2) A member has a pecuniary interest if—

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

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

(3) A disclosure is a sufficient disclosure of the nature of an interest in a matter relating to a corporation or other body, or to a person, which may arise after the date of the disclosure and which is required to be disclosed under subsection (1), if the disclosure is that the member—

(a) is a member of, or employed by, a specified corporation or other body, or

(b) is a partner of, or employed by, a specified person, or

(c) has another interest relating to a specified corporation or other body, or to a specified person.

(4) Particulars of a disclosure made under this section must be recorded by the Advisory

Board in a book that is—

- (a) kept for the purpose of recording disclosures, and
  - (b) open to inspection at all reasonable hours by a person on payment of the fee determined by the Advisory Board.
- (5) After a member has disclosed the nature of an interest in a matter, the member must not, unless the Advisory Board otherwise determines—
- (a) be present during a deliberation of the Advisory Board about the matter, or
  - (b) take part in a decision of the Advisory Board about the matter.
- (6) For the purposes of the making of a determination under subsection (5), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—
- (a) be present during a deliberation of the Advisory Board for the purpose of making the determination, or
  - (b) take part in the making of the determination.
- (7) A contravention of this section does not invalidate a decision of the Advisory Board.

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

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a member.
- (2) If, by or under any Act, provision is made for either of the following the provision does not operate to disqualify the person from holding the office and also the office of a member, or from accepting and retaining any remuneration payable to the person under this Act as a member—
  - (a) requiring a person who is the holder of a specified office to devote the whole of the person's time to the duties of that office,
  - (b) prohibiting the person from engaging in employment outside the duties of that office.

## **10 Personal liability**

A thing done or omitted to be done by the Advisory Board, a member of the Advisory Board or a person acting under the direction of the Advisory Board does not, if the thing was done or omitted to be done in good faith for the purpose of executing this Act or any other Act, subject a member of the Board or a person acting under the direction of the Board, personally to an action, liability, claim or demand.

## **Part 3 Procedure**

### **11 General procedure**

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

### **12 Quorum**

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

### **13 Presiding member**

- (1) The Chairperson or, in the absence of the Chairperson, a person elected by the members of the Advisory Board present at a meeting of the Board must preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, a second or casting vote.

### **14 Voting**

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

### **15 Transaction of business outside meetings or by telephone etc**

- (1) The Advisory Board may, if the Board thinks fit, transact any of the Board's business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board made at a meeting of the Board.
- (2) The Advisory Board may, if the Board thinks fit, transact any of the Board's business at a meeting at which members, or some members, participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of either of the following the Chairperson and each other member have the same voting rights as the Chairperson and members have at an ordinary meeting of the Advisory Board—
  - (a) the approval of a resolution under subsection (1), or
  - (b) a meeting held in accordance with subsection (2).
- (4) A resolution approved under subsection (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Board.

- (5) Papers may be circulated among the members for the purposes of subsection (1) by electronic means.

## 16 Minutes and other records

The Advisory Board must keep—

- (a) minutes of meetings of the Board, and
- (b) a record of a decisions and resolutions of the Board.

## 17 First meeting

The Minister—

- (a) must call the first meeting of the Advisory Board within 3 months after the date on which the last of the members referred to in section 26(1)(a) and (b) is appointed, and
- (b) may call the first meeting of the Board in the way the Minister thinks fit.

# Schedule 2 Transfer of assets, rights and liabilities

(Sections 66 and 67)

## 1 Application and interpretation

- (1) This Schedule applies to the following orders (a **project order**)—
  - (a) a project authorisation order that makes provision for the transfer of assets, rights and liabilities as referred to in section 66,
  - (b) a project divesting order.
- (2) For the purposes of this Schedule, the government agency from which any assets, rights or liabilities are transferred by a project order is called the **transferor** and the government agency to which the assets, rights or liabilities are being transferred is called the **transferee**.

- (3) In this Schedule—

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

## 2 Vesting of undertaking in transferee

If assets, rights or liabilities are transferred by a project order, the following provisions have effect subject to the order—

- (a) the assets of the transferor vest in the transferee because of this Schedule and without the need for a conveyance, transfer, assignment or assurance,



- (b) the rights and liabilities of the transferor become, because of this Schedule, the rights and liabilities of the transferee,
- (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) the transferee has all the entitlements and obligations of the transferor in relation to the assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,
- (e) an act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in relation to the transferor is, to the extent the act, matter or thing has any force or effect, taken to have been done or omitted by, to or in relation to the transferee,
- (f) a reference in an Act, in an instrument made under an Act or in a document of any kind to the transferor or a predecessor of the transferor is, to the extent it relates to the assets, rights or liabilities but subject to the project order, to be read as, or as including, a reference to the transferee.

### **3 Operation of Schedule**

- (1) The operation of this Schedule is not to be regarded as—
  - (a) a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) a breach of a contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) giving rise to any remedy by a party to an instrument, or causing or permitting the termination of an instrument, because of a change in the beneficial or legal ownership of an asset, right or liability.
- (2) The operation of this Schedule is not to be regarded as an event of default under a contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) The operation of this Schedule includes the making of a project order.

### **4 Date of vesting**

A project order takes effect on the date specified in the order.

## **5 Consideration for vesting**

A project order may specify the consideration, if any, on which the order is made and the value or values, if any, at which the assets, rights or liabilities are transferred.

## **6 Duties**

Duty under the *Duties Act 1997* is not chargeable in relation to—

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

## **7 Transfer of interest in land**

- (1) A project order may transfer an interest in relation to land vested in the transferor without transferring the whole of the interests of the transferor in that land.
- (2) If the interest transferred is not a separate interest, the project order operates to create the interest transferred in the terms specified in the order.
- (3) This section does not limit another provision of this Schedule.

## **8 Determinations of Minister for purposes of project orders**

For a project order, a determination by the Minister as to which entity any assets, rights or liabilities relate is conclusive.

## **9 Confirmation of vesting**

- (1) The Minister may, by written notice, confirm a transfer of particular assets, rights and liabilities by operation of this Schedule.
- (2) A notice under subsection (1) is conclusive evidence of the transfer.

# **Schedule 3 Savings, transitional and other provisions**

## **Part 1 General**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
  - (a) a provision of this Act, or
  - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.

- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—
  - (a) for a provision of this Act—the date of assent to this Act, or
  - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
  - (a) affect the rights of a person existing before the publication in a way prejudicial to the person, or
  - (b) impose liabilities on a person for anything done or omitted to be done before the publication.
- (6) In this section—

**person** does not include the State or an authority of the State.

## Part 2 Provisions consequent on enactment of this Act

### 2 State disaster mitigation plan

Despite section 30, the Authority is not required to have a State disaster mitigation plan, approved by the Minister, for the State until the day that is 12 months after the commencement of this section.

## Schedule 4 Dictionary

**Advisory Board**—see section 24.

**affected community** means a community affected by a disaster.

**assets**, for Part 7, Division 1—see section 61.

**authorised officer**, for Part 8—see section 71.

**Authority** means the NSW Reconstruction Authority established under section 7.

**betterment**, of a community, includes improving the community's infrastructure so that the infrastructure is less likely to be damaged or otherwise affected by the impact of a disaster.

**carry out**, for Part 7, Division 1—see section 61.

**carrying out of development** has the same meaning as in the [Environmental Planning and Assessment Act 1979](#), section 1.5.

**chief executive officer** means the chief executive officer of the Authority under section 16(1)(a).

**decision-maker**, for Part 6—see section 42.

**declared project** means a project for proposed development that, under section 39, has been declared to be a declared project.

**development** has the same meaning as in the [Environmental Planning and Assessment Act 1979](#).

**disaster prevention area** means a part of the State declared to be a disaster prevention area under section 41.

**emergency** has the same meaning as in the [State Emergency and Rescue Management Act 1989](#).

**Gazette notice** means a notice published in the Gazette.

**government agency**, for Part 7, Division 1—see section 61.

**liabilities**, for Part 7, Division 1—see section 61.

**Ministerial authorisation** means an authorisation given under section 68(1).

**mitigating**, against a potential disaster, means reducing or eliminating—

- (a) the risk of the disaster happening, or
- (b) the potential impact of the disaster.

**notice to decide**, for Part 6—see section 42.

**NSW Reconstruction Authority Advisory Board** means the NSW Reconstruction Authority Advisory Board established under section 24.

**planning authority** means a planning authority mentioned in the [Environmental Planning and Assessment Act 1979](#), section 2.21(1).

**prescribed decision**, for Part 6—see section 42.

**prescribed process**, for Part 6—see section 42.

**progression notice**, for Part 6—see section 42.

**reconstruction area** means a part of the State declared to be a reconstruction area under section 40.

**records**, for Part 8—see section 71.

**relevant entity** means—

- (a) a government agency, or
- (b) a local council, or
- (c) a State owned corporation, or
- (d) a person prescribed by the regulations.

**relevant land**, for Part 6—see section 42.

**relevant law**, for Part 6—see section 42.

**resilience**, of a community, means the ability of the community and its systems—

- (a) to recover from the impact of a disaster, including, for example, the ability to restore essential infrastructure and community functions, and
- (b) to accommodate or adapt to the impact of a disaster.

**rights**, for Part 7, Division 1—see section 61.

**step-in notice**, for Part 6—see section 42.

## **Schedule 5 Amendment of Acts**

### **5.1 Environmental Planning and Assessment Act 1979 No 203**

#### **[1] Section 3.3 Regional strategic plans—preparation and content**

Insert after section 3.3(3)(c)—

- (c1) the State disaster mitigation plan, to the extent relevant, and any relevant disaster adaptation plan under the *NSW Reconstruction Authority Act 2022*,

#### **[2] Section 3.4 District strategic plans—preparation and content**

Insert after section 3.4(4)(c)—

- (c1) the State disaster mitigation plan, to the extent relevant, and any relevant disaster adaptation plan under the *NSW Reconstruction Authority Act 2022*,

#### **[3], [4] (Repealed)**

### **5.2**

(Repealed)

### **5.3 State Emergency and Rescue Management Act 1989 No 165**

#### **[1] Section 20A State Emergency Recovery Controller and Deputy**

Omit section 20A(2) and (3). Insert instead—

- (2) The office of the State Emergency Recovery Controller is to be held by—
  - (a) the chief executive officer of the NSW Reconstruction Authority, unless a person is designated under paragraph (b), or

- (b) either of the following designated by the chief executive officer of the NSW Reconstruction Authority—
- (i) a senior executive employed in the NSW Reconstruction Authority,
  - (ii) a NSW Police Force senior executive.
- (3) The office of the Deputy State Emergency Recovery Controller is to be held by an employee of the NSW Reconstruction Authority designated by the chief executive officer of the NSW Reconstruction Authority.

**[2] Section 20A(5)**

Insert after section 20A(4)—

- (5) In this section and section 20B—

**chief executive officer**, of the NSW Reconstruction Authority, has the same meaning as in the [NSW Reconstruction Authority Act 2022](#).

**NSW Reconstruction Authority** has the same meaning as in the [NSW Reconstruction Authority Act 2022](#).

**[3] Section 20B Responsibility and functions of State Emergency Recovery Controller**

Insert after section 20B(4)—

- (4A) To the extent of any inconsistency between a direction given by the State Emergency Recovery Controller in the exercise of functions under this Act, and the NSW Reconstruction Authority or chief executive officer in the exercise of functions under the [NSW Reconstruction Authority Act 2022](#), the direction given by the State Emergency Recovery Controller under this Act prevails.