

# Water NSW Act 2014 No 74

[2014-74]



New South Wales

## Status Information

### Currency of version

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

### Provisions in force

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

### Notes—

- **See also**

[Water Legislation Amendment Bill 2024](#)

- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes (em-dashes). Text of the legislation is not affected.

This version has been updated.

### Authorisation

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

File last modified 24 September 2024

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New South Wales

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# Water NSW Act 2014 No 74



New South Wales

An Act to provide for State Water Corporation to become Water NSW and to abolish the Sydney Catchment Authority and transfer its functions to Water NSW; and to repeal and amend certain legislation consequentially.

## Part 1 Preliminary

### 1 Name of Act

This Act is the [Water NSW Act 2014](#).

### 2 Commencement

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

### 3 Definitions

(1) In this Act—

**area of operations** of Water NSW—see section 15.

**assets**—see clause 2 (1) of Schedule 1.

**authorised officer** means a person who has been appointed as an authorised officer under this Act.

**board** means the board of directors of Water NSW.

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

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

**catchment infrastructure works** means—

(a) water storages, water mains, or connected or associated works, or

(b) monitoring devices in, under, over or near any works referred to in paragraph (a),  
or

(c) any works ancillary or antecedent to any works referred to in paragraph (a) or (b),  
or

(d) hydro-electric plants or associated infrastructure or works,

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

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

**chief executive officer** means the chief executive officer of Water NSW.

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

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

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

**Department** means the Department of Industry, Skills and Regional Development.

**Fish River water supply scheme** means the water management work comprising the concrete dam on Fish River at Oberon and Duckmaloi Weir, together with—

(a) its associated gravitation main, concrete reservoirs, reticulation systems and treatment works, and

(b) the pumping station at Oberon, and

(c) all incidental and connected works, and

(d) all additions, amplifications, improvements and extensions to that scheme.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

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

**land** includes the following—

(a) the sea or an arm of the sea,

(b) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or non-tidal,

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

(d) a building erected on the land.

**lease** includes a licence or permit.

**liabilities**—see clause 2 (1) of Schedule 1.

**listed functions** of Water NSW—see section 7 (1).

**Ministerial Corporation** means the Water Administration Ministerial Corporation constituted by the [Water Management Act 2000](#).

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

**operating licence** means an operating licence granted under this Act or any renewal of it.

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

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

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

(b) is a person to whom the Crown has contracted to sell the land under the [Crown Land Management Act 2016](#) or any other Act relating to alienation of land of the Crown, or

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

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

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

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

(b) a co-operative within the meaning of the [Co-operatives National Law \(NSW\)](#), or

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

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

**Regulatory Authority**—see section 61.

**rights**—see clause 2 (1) of Schedule 1.

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

**specified** includes referred to.

**State Water Corporation** means State Water Corporation as constituted by the [State Water Corporation Act 2004](#) immediately before the repeal of that Act by this Act.

**Sydney catchment area** means the declared catchment area known as the Sydney catchment area referred to in clause 17 of Schedule 2, as declared from time to time under this Act.

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

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

**works**, in relation to Water NSW, includes—

- (a) any catchment infrastructure works, metering equipment, water storages and other water management works vested in or under the control of Water NSW, and
- (b) any other assets of Water NSW of a kind prescribed by the regulations.

- (2) In this Act, each of the following terms and expressions has the same meaning as in the [Water Management Act 2000](#)—

**estuary**

**lake**

**metering equipment**

**river**

**water management work**

**water source**

**water supply authority**

- (3) Subject to subsections (1) and (2), words and expressions used in this Act have the

same meanings as they have in the *State Owned Corporations Act 1989*.

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

## **Part 2 Constitution and functions of Water NSW**

### **Division 1 Constitution of Water NSW**

#### **4 Constitution of Water NSW**

- (1) State Water Corporation continues in existence as a corporation constituted by this Act, but with the new corporate name of Water NSW.
- (2) Accordingly, Water NSW is taken for all purposes (including the rules of private international law) to be a continuation of, and the same legal entity as, State Water Corporation.

**Note—**

Schedule 3 to this Act, as originally enacted, amended the *State Owned Corporations Act 1989* to provide for Water NSW to continue to be a statutory State owned corporation.

The *State Owned Corporations Act 1989* contains a number of provisions that will apply to Water NSW as a statutory State owned corporation. In particular—

- (a) Part 3 contains provisions relating to the status of Water NSW, the application of the *Corporations Act 2001* of the Commonwealth, the issue of shares to the Treasurer and another Minister, the board of directors, the chief executive officer, the employment of staff, the giving of directions by the portfolio Minister (including directions for the performance of non-commercial activities or the carrying out of public sector policies), the constitution of Water NSW, dividends and tax-equivalent payments, government guarantees, the sale or disposal of assets and the legal capacity and general powers of Water NSW, and
- (b) Part 4 deals with the accountability of Water NSW (including statements of corporate intent, annual reports and accounts), and
- (c) Part 5 deals with miscellaneous matters (including the duties and liabilities of directors and the application of public sector legislation).

#### **5 Foundation charter of Water NSW**

- (1) For the purposes of the *State Owned Corporations Act 1989*, the foundation charter of Water NSW is this Part (but not the remainder of this Act).

**Note—**

Section 3 of the *State Owned Corporations Act 1989* defines the foundation charter of a statutory State owned corporation (**SOC**) as the whole of any Act by which a SOC is established for the purposes of the *State Owned Corporations Act 1989* and, in particular, for the purpose of the provisions relating to the legal capacity of statutory SOCs and assumptions that they have complied with that Act and their foundation charter.

- (2) Nothing in this section limits the operation of section 4.

## Division 2 Objectives and functions of Water NSW

### 6 Objectives of Water NSW

- (1) The principal objectives of Water NSW are—
  - (a) to capture, store and release water in an efficient, effective, safe and financially responsible manner, and
  - (b) to supply water in compliance with appropriate standards of quality, and
  - (c) to ensure that declared catchment areas and water management works in such areas are managed and protected so as to promote water quality, the protection of public health and public safety, and the protection of the environment, and
  - (d) to provide for the planning, design, modelling and construction of water storages and other water management works, and
  - (e) to maintain and operate the works of Water NSW efficiently and economically and in accordance with sound commercial principles.
- (2) The other objectives of Water NSW are as follows—
  - (a) to be a successful business and, to that end—
    - (i) to operate at least as efficiently as any comparable business, and
    - (ii) to maximise the net worth of the State's investment in Water NSW,
  - (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
  - (c) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates,
  - (d) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*.
- (3) The other objectives of Water NSW are of equal importance, but are not as important as the principal objectives of Water NSW.
- (4) Section 20E of the *State Owned Corporations Act 1989* does not apply to Water NSW.
- (5) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

### 7 Functions of Water NSW

- (1) For the purposes of this Act, the **listed functions** of Water NSW are as follows—

- (a) to capture and store water and to release water—
    - (i) to persons entitled to take the water, including release to regional towns, and
    - (ii) for any other lawful purpose, including the release of environmental water,
  - (b) to supply water to the Sydney Water Corporation,
  - (c) to supply water to water supply authorities and to local councils or county councils prescribed by the regulations,
  - (d) to supply water to licensed operators and licensed retailers within the meaning of the *Water Industry Competition Act 2006*,
  - (e) to supply water to other persons and bodies, but under terms and conditions that prevent the person or body concerned from supplying the water for consumption by others within the State unless the person or body is authorised to do so by or under an Act,
  - (f) to construct, maintain and operate water management works (including providing or constructing systems or services for supplying water),
  - (g) to protect and enhance the quality and quantity of water in declared catchment areas,
  - (h) to manage and protect declared catchment areas and water management works vested in or under the control of Water NSW that are used within or for the purposes of such areas,
  - (i) to undertake flood mitigation and management,
  - (j) to undertake research on catchments generally, and in particular on the health of declared catchment areas,
  - (k) to undertake an educative role within the community.
- (2) Water NSW may—
- (a) provide facilities or services that are necessary, ancillary or incidental to its listed functions, and
  - (b) conduct any business or activity (whether or not related to its listed functions) that it considers will further its objectives.
- (3) However, the listed functions of Water NSW and its functions under subsection (2)—
- (a) may only be exercised under the authority of, and in accordance with, one or more operating licences, and
  - (b) are subject to any applicable requirements under the *Water Management Act*

2000 or the *Water Act 1912*.

- (4) Water NSW also has such other functions as may be conferred or imposed on it—
  - (a) by or under another provision of this Act, or
  - (b) by or under any other Act or law, or
  - (c) by an operating licence.
- (5) Nothing in this Act requires the authorisation of an operating licence for the exercise of a function that is conferred or imposed on Water NSW by or under another provision of this Act or by or under any other Act or law.

### **Division 3 Management of Water NSW**

#### **8 Board of directors of Water NSW**

- (1) The board of directors of Water NSW is to consist of not fewer than 3, and not more than 8, directors appointed by the voting shareholders.
- (2) The voting shareholders are to consult with the portfolio Minister on the persons recommended for appointment as directors.
- (3) The person for the time being holding office as chief executive officer of Water NSW is to be a director of the board.
- (4) Schedule 8 to the *State Owned Corporations Act 1989* and section 20J (subsections (2) and (5) excepted) of that Act apply with respect to the board.
- (5) The persons appointed as directors are, between them, to have the necessary expertise, skills and knowledge that will enable Water NSW to meet its objectives.

#### **9 Chief executive officer**

- (1) The chief executive officer of Water NSW is to be appointed by the board after consultation with the voting shareholders and the portfolio Minister.
- (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders and the portfolio Minister.
- (3) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine after consultation with the voting shareholders.
- (4) The board may, after consultation with the voting shareholders and the portfolio Minister, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.



- (5) The *Government Sector Employment Act 2013* (Part 6 included) does not apply to the chief executive officer.
- (6) Clauses 1 and 4 of Schedule 9 to the *State Owned Corporations Act 1989* have effect with respect to the chief executive officer.
- (7) The provisions of section 20K (2) and (4) of the *State Owned Corporations Act 1989* do not apply to the chief executive officer.
- (8) The provisions of this section are in addition to, and (except to the extent to which this section provides) do not derogate from, the provisions of the *State Owned Corporations Act 1989*.

## **10 Acting chief executive officer**

- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer.
- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.
- (3) A person, while acting in the office of chief executive officer—
  - (a) has all the functions of the chief executive officer and is taken to be the chief executive officer, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) For the purposes of this section, a vacancy in the office of chief executive officer is regarded as an absence from office of the chief executive officer.
- (5) The board is not to appoint a person to act in the office of chief executive officer during any vacancy in that office without the concurrence of the voting shareholders and the portfolio Minister.
- (6) The provisions of this section are in addition to, and (except to the extent to which this section provides) do not derogate from, the provisions of the *State Owned Corporations Act 1989*.

## **Division 4 Operating licences**

### **11 Grant of operating licences**

- (1) The Governor may, on the recommendation of the portfolio Minister, grant one or more operating licences to Water NSW to authorise it, in accordance with this Act, to carry out the listed functions specified in the licence, and such other functions as may be conferred or imposed on it by the licence, in the areas and circumstances (if any)

specified in the licence.

**Note—**

Section 7 (5) provides that nothing in this Act requires the authorisation of an operating licence for the exercise of a function that is conferred or imposed on Water NSW by or under a provision of this Act (other than section 7) or by or under any other Act or law.

- (2) If Water NSW is granted more than one operating licence, each operating licence must specify the functions to which it relates and the areas or circumstances (or both) in which those functions may be exercised under the authority of that licence.
- (3) Except to the extent to which this Act expressly provides, nothing in an operating licence limits the requirements imposed by or under any other Act or law with respect to the functions referred to in subsection (1).
- (4) In this section, **listed functions** of Water NSW include functions under section 7 (2).

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

- (1) Subject to subsection (2), an operating licence is subject to the terms and conditions determined by the Governor on the recommendation of the portfolio Minister.
- (2) The operating licence must include terms or conditions under which Water NSW is required—
  - (a) in connection with an operating licence that authorises Water NSW to capture, store, release or supply water—
    - (i) to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services to capture, store, release or supply water, and
    - (ii) to ensure that the systems and services meet the performance standards specified in the operating licence in relation to water delivery, water quality, service interruptions or any other matters set out in the operating licence, and
  - (b) in connection with an operating licence that authorises Water NSW to exercise functions with respect to a declared catchment area—to compile indicators of the direct impact of Water NSW's activities (including, but not limited to, the impact of energy used and waste generated) on the environment so as to provide information about its performance and enable reports to be prepared.

**Note—**

In the case where Water NSW has been granted more than one operating licence, section 11 (2) also requires each operating licence to specify the functions of Water NSW to which the licence relates and the areas or circumstances (or both) in which those functions may be exercised under the authority of that licence.

- (3) The terms and conditions of an operating licence are to make provision for the

preparation of operational audits by IPART.

- (4) The terms and conditions of an operating licence may confer on Water NSW any specified functions of—
  - (a) the Minister administering the *Water Management Act 2000* under that Act or the *Water Act 1912*, or
  - (b) the Ministerial Corporation under any Act or law.
- (5) A function is not to be conferred under subsection (4) unless the Minister administering the *Water Management Act 2000* or the Premier provides his or her concurrence to the conferral of the function.
- (6) A function of the Minister referred to in subsection (4) (a) or of the Ministerial Corporation conferred on Water NSW under subsection (4) may also be exercised by the Minister or the Ministerial Corporation (as the case requires) despite that conferral. However, a function may be conferred exclusively on Water NSW if the Minister administering the *Water Management Act 2000* or the Premier provides his or her concurrence to the exclusive conferral of the function.
- (7) The conferral of functions under subsection (4) has effect according to its tenor.

### **13 Amendment of operating licence**

- (1) The Governor, on the recommendation of the portfolio Minister, may—
  - (a) amend an operating licence (including by adding, altering or omitting functions authorised by the licence or areas or circumstances in which such functions may be exercised under the authority of the licence), or
  - (b) substitute an operating licence, or
  - (c) impose, amend or revoke conditions of the operating licence.
- (2) The portfolio Minister is to consult with Water NSW before making a recommendation to the Governor under subsection (1).

### **14 Term of operating licence**

- (1) The term of an operating licence is to be for a maximum of 5 years, as determined by the Governor.
- (2) The Governor may renew an operating licence, subject to subsection (1).
- (3) An operating licence may be renewed even if its term has expired.

### **15 Area of operations of Water NSW**

- (1) The area of operations of Water NSW is the whole of the State.

- (2) However, nothing in this Act authorises or requires Water NSW to exercise any of the following functions except as provided by this section—
  - (a) a function that is conferred or imposed on the Sydney Water Corporation by or under the *Sydney Water Act 1994* with respect to its area of operations,
  - (b) a function that is conferred or imposed on the Hunter Water Corporation by or under the *Hunter Water Act 1991* with respect to its area of operations under that Act,
  - (c) a function that is conferred or imposed on a water supply authority by or under the *Water Management Act 2000* with respect to the area of operations prescribed for it by regulations made under section 289 (1) of that Act.
- (3) Subsection (2) (c) does not limit the functions of Water NSW in its capacity as a water supply authority in relation to the Fish River water supply scheme.
- (4) Despite subsections (1) and (2), an operating licence may authorise Water NSW—
  - (a) to carry out any of its functions outside of the State, or
  - (b) to exercise a function referred to in subsection (2), but only with the agreement of the Corporation or water supply authority concerned (the **relevant body**).
- (5) If Water NSW is authorised by an operating licence to exercise any functions of the kind referred to in subsection (4) (b), Water NSW is to obtain the agreement of each relevant body in relation to the exercise of those functions.
- (6) Nothing in this section affects the area of operations of the Sydney Water Corporation or Hunter Water Corporation or any water supply authority.

## **16 Contravention of operating licence**

- (1) If, in the opinion of the portfolio Minister, Water NSW contravenes an operating licence, the portfolio Minister may cause a notice to be served on Water NSW requiring it to rectify the contravention within a specified period.
- (2) If, in the opinion of the portfolio Minister, Water NSW contravenes an operating licence, and whether or not a notice has been served under subsection (1) or the period specified in the notice has ended, the Governor may direct that Water NSW is to pay a monetary penalty of an amount to be determined by the Governor.
- (3) The fact that the Governor has directed that action be taken under this section does not prevent the Governor directing that the same or other action under this section be taken if the contravention continues or a fresh contravention occurs.
- (4) An operating licence may make provision for advice to be provided to the portfolio Minister in connection with the exercise of the portfolio Minister's functions under this

section.

- (5) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the State.

**17 Contravention of operating licence: action by IPART**

- (1) IPART may impose a monetary penalty on Water NSW if Water NSW contravenes an operating licence.
- (2) IPART may, instead of imposing a monetary penalty, require Water NSW to take such action as IPART considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.
- (3) IPART may not require action to be taken under subsection (2) by Water NSW if the cost of that action would exceed the monetary penalty that IPART could impose under this section on Water NSW.
- (4) If IPART requires information to be sent to a customer under subsection (2), Water NSW may satisfy that requirement by sending the information to the customer with the next account or bill to be sent to the customer by Water NSW or, if Water NSW is sending other information to that customer before the next account or bill, with that other information.
- (5) Action may be taken under this section only if Water NSW has knowingly contravened an operating licence.
- (6) The monetary penalty that IPART may impose under this section must not exceed \$10,000 for the first day on which the contravention concerned occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues.
- (7) IPART must not take action under this section unless—
- (a) IPART has—
- (i) considered whether the contravention has been or is likely to be the subject of any other penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under this section, and
- (ii) considered the action that Water NSW has taken or is likely to take in respect of the contravention and the cost to Water NSW in taking that action, and is satisfied that it is nevertheless appropriate to take action under this section, and
- (b) each of the following procedures have been followed—

- (i) notice of the proposed action has been given to Water NSW,
  - (ii) Water NSW has been given a reasonable opportunity to make submissions with respect to the proposed action,
  - (iii) IPART has given due consideration to any such submissions.
- (8) IPART is required to consider the seriousness of the contravention concerned in determining whether to impose a monetary penalty under this section.
- (9) IPART must not take action under this section in respect of a contravention if any action has already been taken under section 16 in respect of the contravention.
- (10) Nothing in this section affects any powers under section 16 in respect of a contravention, whether or not IPART has already taken action under this section in respect of the contravention.
- (11) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the State.

#### **18 Administrative review of certain decisions of IPART concerning operating licence**

- (1) Water NSW, if aggrieved by a decision of IPART to take action under section 17 in relation to Water NSW, may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision.
- (2) Section 53 (Internal reviews) of the [Administrative Decisions Review Act 1997](#) does not apply to such a decision of IPART.

#### **19 Cancellation of operating licence**

- (1) An operating licence of Water NSW may be cancelled only in the circumstances specified by this section.
- (2) The Governor may cancel an operating licence of Water NSW if Water NSW ceases, otherwise than as authorised by the operating licence, to carry out the functions of Water NSW to which the licence relates in accordance with the operating licence for any reason.
- (3) The Governor may cancel any or all of the operating licences of Water NSW if—
- (a) Water NSW—
    - (i) is, in the opinion of the portfolio Minister, in material default in complying with any operating licence, viewed in terms of the operation of the operating licence as a whole, and
    - (ii) has not, within the time specified by the portfolio Minister in a notice to Water

NSW, either rectified the default or shown cause, to the satisfaction of the portfolio Minister, why the operating licence should not be cancelled, or

- (b) Water NSW has been convicted on more than 3 occasions within a period of 12 months of offences that are punishable by a fine of at least \$10,000 or, if Water NSW were a natural person, imprisonment for 12 months or more.
- (4) A notice under section 16 (1) can also be regarded as a notice for the purposes of subsection (3) (a) (ii).
- (5) If an operating licence is cancelled under this section, the Governor may, by order published in the Gazette, transfer to the Ministerial Corporation, the State or a public or local authority (as specified in the order), from a date specified in the order, such of the assets and rights of Water NSW that are specified in the order and that, in the opinion of the portfolio Minister, are necessary to enable the Ministerial Corporation, the State or the public or local authority to exercise such of the functions exercisable (or formerly exercisable) by Water NSW as appear to be necessary in the public interest.
- (6) An order under this section may provide for—
- (a) the Ministerial Corporation, the State or a public or local authority to assume those liabilities of Water NSW that the Governor considers appropriate and specifies in the order, or
- (b) the Ministerial Corporation, the State or a public or local authority to pay the whole or any part of the liabilities of Water NSW.
- (7) Schedule 1 applies to any transfer of assets, rights or liabilities under this section.

## **Division 5 Memoranda of understanding**

### **20 Definition**

In this Division—

***regulatory agencies*** means—

- (a) the Environment Protection Authority and the Secretary of the Ministry of Health, and
- (b) the Chief Executive of the Office of Environment and Heritage, the Secretary of the Department, local councils, county councils, and any persons, bodies or agencies for the time being nominated by order of the portfolio Minister communicated to Water NSW.

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

- (1) Water NSW is required to enter into memoranda of understanding respectively with the regulatory agencies referred to in paragraph (a) of the definition of ***regulatory***

**agencies** in section 20. The following subsections of this section apply in relation to such a memorandum of understanding, and do not apply to memoranda of understanding with other regulatory agencies.

- (2) A memorandum of understanding is to be of the nature referred to in an operating licence.
- (3) A memorandum of understanding is to be reviewed, and amended or replaced, at such times and in such circumstances as are agreed on between Water NSW and the regulatory agency concerned or as are determined by the portfolio Minister.
- (4) If Water NSW and a regulatory agency are not able to enter into, or agree on a term of, a memorandum of understanding, the memorandum is to be entered into in accordance with the procedures determined by the Premier or is taken to be entered into in such terms as are determined by the Premier.

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

- (1) The portfolio Minister may, from time to time, direct Water NSW to enter into memoranda of understanding with such regulatory agencies referred to in paragraph (b) of the definition of **regulatory agencies** in section 20 as the Minister determines. This section does not apply to a memorandum of understanding referred to in section 21.
- (2) The portfolio Minister may specify the matters to be dealt with in a memorandum of understanding and the period (not more than 6 months from the date of the direction) within which the memorandum is to be entered into.
- (3) A memorandum of understanding is to be reviewed, and amended or replaced, at such times and in such circumstances as are agreed on between Water NSW and the regulatory agency concerned or as are determined by the portfolio Minister.
- (4) If Water NSW and a regulatory agency are not able to enter into, or agree on a term of, a memorandum of understanding, the memorandum is to be entered into in accordance with the procedures determined by the Premier or is taken to be entered into in such terms as are determined by the Premier.

## **23 Public exhibition of memoranda of understanding**

- (1) Water NSW must give notice of the preparation of each memorandum of understanding to which it is a party.
- (2) The notice is to be given in a manner that the regulatory agency concerned is satisfied is likely to bring the notice to the attention of members of the public in the area of operations of Water NSW and must—
  - (a) specify the address of the place at which copies of the memorandum of understanding may be inspected, and



- (b) specify the address to which representations concerning the memorandum of understanding may be forwarded.
- (3) Any person may, within 30 days or such longer period as may be specified in the notice, make representations to Water NSW and to the regulatory agency concerned about the memorandum of understanding.
- (4) Water NSW and each regulatory agency must, on the expiration of the period referred to in subsection (3), and before entering into the memorandum of understanding, consider any representations made under this section.
- (5) Notice of the execution of a memorandum of understanding is to be published in the Gazette and in a manner that the regulatory agency concerned is satisfied is likely to bring the notice to the attention of members of the public in the area of operations of Water NSW within 14 days after the execution.
- (6) The requirements of this section apply to an amendment to a memorandum of understanding in the same way as they apply to a memorandum of understanding.

## **Division 6 Arrangements for drawing water**

### **24 Arrangements for drawing water from certain water storages and pipelines**

- (1) This section applies only to—
  - (a) water storages and pipelines of Water NSW that were water storages and pipelines of the Sydney Catchment Authority to which section 21A of the [Sydney Water Catchment Management Act 1998](#) applied immediately before its repeal, and
  - (b) water storages and pipelines of Water NSW (or water storages and pipelines of Water NSW of a kind) prescribed by the regulations.
- (2) Subject to its operating licences, Water NSW has control over all water in water storages or pipelines to which this section applies.
- (3) Water in these water storages or pipelines is available for supply by Water NSW.
- (4) Water NSW may enter into an arrangement with any person to permit that person to draw or take water from these water storages or pipelines.

## **Division 7 Arrangements with Sydney Water Corporation**

### **25 Arrangements with Sydney Water Corporation**

- (1) Water NSW is required to enter into arrangements with the Sydney Water Corporation regarding the supply of water by Water NSW to the Sydney Water Corporation.

- (2) The matters with which the arrangements are to deal are to include the following—
  - (a) the standard of quality of the water supplied,
  - (b) the continuity of water supply,
  - (c) the maintenance of adequate reserves of water by Water NSW,
  - (d) subject to this Division, the cost to be paid by the Sydney Water Corporation for the supply of water to it.
- (3) The arrangements may be amended or replaced from time to time.
- (4) The Treasurer is to be consulted about the terms of the arrangements, including amendments and replacements, before their finalisation.
- (5) The terms of the arrangements, including amendments and replacements, have no effect unless or until approved by the portfolio Minister.
- (6) The arrangements are to be reviewed as required by—
  - (a) the terms of the arrangements, or
  - (b) the terms of an operating licence, or
  - (c) the portfolio Minister.
- (7) The arrangements are to be amended or replaced at times specified by—
  - (a) the terms of the arrangements, or
  - (b) the terms of an operating licence, or
  - (c) the portfolio Minister.
- (8) The provisions of section 23 (Public exhibition of memoranda of understanding) apply, with the necessary modifications, to arrangements under this section in the same way as they apply to memoranda of understanding.
- (9) Nothing in this Division limits the matters that may be included in an operating licence or limits the terms of an operating licence.

## **26 Negotiations**

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

procedures determined by the Premier or are taken to be entered into, amended or replaced in such terms as are determined by the Premier.

## **27 Role of IPART with respect to arrangements**

- (1) An arrangement under this Division is not to be entered into, amended or replaced except after consultation with IPART and after IPART has provided a report on the proposed arrangement or amendment to the portfolio Minister, Water NSW and the Sydney Water Corporation.
- (2) In providing such a report, IPART is to take into consideration any public submissions made under the provisions applied by section 25 (8).
- (3) IPART may investigate the adequacy and operation of the arrangements under this Division at any time, and may provide a report on any aspect of the arrangements, or their adequacy or operation, to the portfolio Minister.
- (4) The portfolio Minister is to table the report (or cause it to be tabled) in both Houses of Parliament within one month after the Minister receives the report.
- (5) Without limiting the generality of any provisions of the *Independent Pricing and Regulatory Tribunal Act 1992*, the supply of water by Water NSW to the Sydney Water Corporation is capable of being declared to be a government monopoly service within the meaning of that Act.
- (6) The provisions of this Division and of the arrangements have effect subject to the *Independent Pricing and Regulatory Tribunal Act 1992*.

## **Division 8 Transfer of assets, rights and liabilities**

### **28 Transfer of specified assets, rights and liabilities**

- (1) The portfolio Minister may, with the concurrence of the voting shareholders, by order in writing, transfer to Water NSW such of the assets, rights and liabilities of the Ministerial Corporation, the State or a public or local authority as are specified or referred to in the order.
- (2) The portfolio Minister may, with the concurrence of the voting shareholders, by order in writing, transfer to the Ministerial Corporation or to any other person or body on behalf of the State such of the assets, rights and liabilities of Water NSW, as are specified or referred to in the order.
- (3) The portfolio Minister is not to make an order under subsection (1) or (2) unless the relevant person or body from whom, or to whom, the assets, rights or liabilities are to be transferred has consented to the transfer.
- (4) The fee simple in land that comprises the bed of any river, lake or estuary is not to be transferred to Water NSW under this section unless the Minister administering the

*Crown Land Management Act 2016* has been consulted in relation to the transfer.

- (5) Subsection (4) does not prevent the transfer to Water NSW of the ownership of any works installed in or on the bed of any river, lake or estuary.
- (6) An order under this section may be made on such terms and conditions as are specified in the order.
- (7) Schedule 1 applies to any transfer of assets, rights or liabilities by an order under this section.
- (8) Section 20C of the *State Owned Corporations Act 1989* does not apply to the transfer of assets, rights or liabilities to Water NSW.

## Division 9 Staff transfers

### 28A Transfer of departmental staff to Water NSW

**Note—**

This section operates concurrently with Part 6-3A of the *Fair Work Act 2009* of the Commonwealth which provides that certain terms and conditions of employment of a State public sector employee are transferred when the employee is transferred to the employment of a national system employer such as Water NSW.

- (1) The Minister may, by order in writing, transfer to Water NSW any person employed in the Department who is designated by the Secretary of the Department to be a person required for the purposes of enabling Water NSW to exercise its functions (a **transferred employee**).
- (2) A transfer under this section does not require the consent of the transferred employee.
- (3) On the day specified in the order (the **transfer day**)—
  - (a) the employment of the transferred employee in the Public Service is terminated, and
  - (b) the transferred employee becomes an employee of Water NSW.
- (4) On and from the transfer day for a transferred employee—
  - (a) the transferred employee is entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which the transferred employee was a contributor, member or employee (as an employee in the Public Service) immediately before the transfer day and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law, and
  - (b) Water NSW is taken to be an employer for the purposes of any superannuation

scheme in respect of which the transferred employee continues as a contributor, member or employee pursuant to an entitlement under this section, and

- (c) the continuity of the transferred employee's contract of employment is taken not to have been broken by the transfer of employment, and service of the employee in the Public Service (including service deemed to be service with Water NSW) that is continuous service up to the time of transfer is taken for all purposes to be service with Water NSW, and
  - (d) the transferred employee retains any rights to sick leave, annual leave or extended or long service leave accrued or accruing immediately before the transfer day (except accrued leave for which the employee has, on ceasing to be employed in the Public Service, been paid the monetary value in pursuance of any other entitlement of the employee).
- (5) A transferred employee is not entitled in respect of the same period of service to claim a benefit under this section and another law or instrument.
- (6) The Secretary of the Department may, in connection with the transfer of a transferred employee's employment under this section, give a certificate in writing as to the extent of the accrued rights to annual leave, sick leave or extended or long service leave that are retained by the employee under this section, and such a certificate is evidence of the matters certified.
- (7) In the event that Part 6-3A of the *Fair Work Act 2009* of the Commonwealth does not apply to a transferred employee, Water NSW is nevertheless required to provide the transferred employee with the same entitlements to which the employee would have been entitled under that Part had it applied to the employee.
- (8) The following provisions apply in relation to the transfer of a transferred employee's employment under this section—
- (a) the transfer has effect despite the *Government Sector Employment Act 2013*, the *Industrial Relations Act 1996* or any other law, contract or instrument under a law,
  - (b) the termination of the employee's employment in the Public Service by operation of this section does not preserve, or give rise to, any entitlements or rights other than those provided for by the *Fair Work Act 2009* of the Commonwealth and this section,
  - (c) the transferred employee is not entitled to any payment or other benefit by reason only of having ceased to be an employee in the Public Service as a result of the transfer,
  - (d) the Crown is not required to make any payment to the transferred employee in relation to the transferred employee's accrued rights in respect of annual leave, sick leave or extended or long service leave,

- (e) the transfer does not affect the transferred employee's appointment (if any) under section 390 of the [Water Management Act 2000](#) as an authorised officer for the purposes of that Act.

## **Part 3 Powers of Water NSW**

### **29 Ownership of works**

- (1) Water NSW is the owner of all works installed by, vested in or transferred to Water NSW in or on any land (including the bed of any river, lake or estuary) whether or not the land is owned by Water NSW.
- (2) Water NSW may, subject to this and any other Act or law and for purposes consistent with its objectives—
  - (a) build and install works, and
  - (b) operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that are necessary or appropriate to any of its works, and
  - (c) sell, demolish or otherwise deal with any of its works.
- (3) Part 3 and section 91 (b) and (c) of the [Public Works and Procurement Act 1912](#) do not apply in respect of works owned by Water NSW.
- (4) The provisions of this section have effect despite anything contained in section 42 of the [Real Property Act 1900](#).

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

- (1) Water NSW may acquire land (including an interest in land) for the purposes of this Act.
- (2) Other purposes for which land may be acquired under this section include the purposes of a future sale, lease or disposal, that is, to enable Water NSW to exercise its functions in relation to land under this Act.
- (3) Land that Water NSW is authorised to acquire under this section may be acquired by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (4) For the purposes of the [Public Works and Procurement Act 1912](#)—
  - (a) an acquisition in accordance with this section is taken to be for an authorised work, and
  - (b) Water NSW is, in relation to that work, taken to be the Constructing Authority, and

(c) Part 3 and section 91 (b) and (c) of that Act do not apply in respect of that work.

- (5) Water NSW may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* for the purposes of this or any other Act, without the approval of the portfolio Minister.
- (6) Any such acquisition is not void merely because it is expressed to be for the purposes of Water NSW or for the purposes of this Act.

### **31 Metering equipment functions**

- (1) **Conferral of functions** Water NSW may, if an operating licence so provides, operate, replace, repair, maintain, remove, connect, disconnect or modify metering equipment that Water NSW does not own.
- (2) Water NSW may from time to time test any metering equipment that it owns or any other metering equipment in respect of which it exercises functions under this section.
- (3) The regulations may provide that Water NSW is, or is not, to exercise any of its functions with respect to the operation, replacement, repair, maintenance, removal, connection, disconnection or modification of metering equipment under section 29 or this section to the exclusion of any other person and may limit the exercise of any of those functions to—
  - (a) specified water sources or classes of water sources, or
  - (b) a specified area, or
  - (c) specified access licences or approvals or classes of access licences or approvals for specified areas, or
  - (d) specified works or classes of works.
- (4) **Operation of sections** The functions conferred by section 29 and this section in respect of metering equipment are in addition to any functions conferred on Water NSW under the *Water Management Act 2000* or the *Water Act 1912* in relation to water management works or other works.
- (5) The conferral of functions by section 29 and this section in respect of metering equipment, and any regulations under this section, have effect despite any other provision of the *Water Management Act 2000* or the *Water Act 1912*.
- (6) A direction under section 326 of the *Water Management Act 2000*, or a condition of an access licence or approval under that Act, ceases to have effect during any period that the exercise of a function is conferred exclusively on Water NSW by or under section 29 or this section, if the direction or condition requires the exercise of, or relates to the exercise of, that function.

- (7) Subsections (5) and (6) do not apply to a direction given to Water NSW or an access licence or approval held by Water NSW.
- (8) Subsection (6) does not affect the operation of, or enforcement of, a direction under section 326 of the *Water Management Act 2000* or a condition of an access licence or approval in relation to any period before the direction or condition ceased to have effect.
- (9) In this section, **access licence** and **approval** have the same meanings as in the *Water Management Act 2000* and include an entitlement (within the meaning of clause 2 of Schedule 10 to that Act) that confers a corresponding authority.

### **32 Entry on land to read meters or carry out works**

- (1) **When entry permitted** Water NSW may, by its employees and agents, enter and occupy land for any one or more of the following purposes—
  - (a) to read any of its metering equipment (including metering equipment in respect of which Water NSW has functions because of section 31),
  - (b) to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that Water NSW considers are necessary or appropriate to any of its works,
  - (c) to construct new works and, for these purposes, to carry out any work on, below or above the surface of the land,
  - (d) to ascertain the character and condition of the land to enable Water NSW to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect or improve, or do any other thing to, Water NSW's systems and services for the purposes of carrying out the terms and conditions of its operating licences,
  - (e) if pollution of water is occurring in a declared catchment area or in water that is captured, stored, released or supplied by Water NSW—to find the source of the pollution and, for this purpose, to dig up and remove material from the land,
  - (f) in exercise of any of Water NSW's functions—
    - (i) to divert water from, or alter the course of, a stream, and
    - (ii) to impound or take water on, in or under the surface of the land.
- (2) The power conferred by subsection (1) (a) is sufficient authority for an employee or agent to enter and occupy land (except an enclosed part occupied as a separate dwelling) during daylight unless the employee or agent is refused access by the lawful occupier of the land.
- (3) Water NSW may remove or use anything dug up or obtained in the exercise of its



powers under this section.

- (4) Reasonable force may be used to enter land (but not a dwelling-house) under this section.
- (5) **Giving of notice** Water NSW must not exercise the powers conferred by subsection (1) (b), (c), (d), (e) or (f) unless—
  - (a) reasonable notice in writing of its intention to do so has first been given to the landholder of the land, building or dwelling-house, or
  - (b) it authorises the entry after forming the opinion that the giving of the notice would cause undue delay.
- (6) If the powers of entry under subsection (1) (b), (c), (d), (e) or (f) are exercised without notice being given or by force, Water NSW must, without delay, notify such persons as it considers appropriate of the action taken.
- (7) **Other powers of entry** Nothing in this section limits any powers of entry that Water NSW may have apart from this section (including, without limitation, any powers it may have under sections 296 and 297 of the [Water Management Act 2000](#) in its capacity as the water supply authority for the Fish River water supply scheme or in any other capacity).

### 33 Power to break up roads

- (1) Water NSW may, on giving reasonable notice to persons likely to be affected and for the purpose of exercising its functions under this or any other Act, open and break up—
  - (a) the soil and pavement of a public road or public reserve, and
  - (b) any sewer, drain or tunnel in or under a public road or public reserve.
- (2) The statutory body having the control and management of a public road or public reserve may, as prescribed by the regulations, require Water NSW to comply with conditions in exercising its powers under subsection (1), including conditions for restoration of the surface and removal of rubbish.
- (3) If a public road or public reserve is damaged by a leakage from, or a bursting of, Water NSW's water main, the statutory body having the control and management of the public road or public reserve may require Water NSW to make good the damage without delay.
- (4) If Water NSW fails—
  - (a) to comply with a condition in force under subsection (2), or
  - (b) to comply with a requirement under subsection (3),

the statutory body affected by the failure may remedy it and recover the cost of doing so in a court of competent jurisdiction as a debt owed to the statutory body by Water NSW.

### 34 Altering position of conduits

- (1) Water NSW may serve on a person a notice in writing that complies with subsection (2) if—
  - (a) Water NSW, in order to exercise its functions, needs an alteration to be made in the position of a conduit owned by the person, and
  - (b) the alteration would not permanently damage the conduit or adversely affect its operation.
- (2) A notice must—
  - (a) specify the alteration needed, and
  - (b) require the alteration to be made within a reasonable time stated in the notice, and
  - (c) include an undertaking by Water NSW to pay the reasonable cost of the alteration.
- (3) If the alteration is not made as required by the notice, Water NSW may make the alteration in such a manner as not to damage the conduit permanently or adversely affect its operation on completion of the alteration.
- (4) Water NSW may, for the purposes of subsection (3), exercise any powers of the person on whom the notice was served, in addition to or instead of any powers of Water NSW.
- (5) Except as provided by subsection (4), this section does not confer on Water NSW or the owner of the conduit any additional powers of entry or powers to carry out works than would be available apart from this section.
- (6) In this section—

**conduit** means anything that is in or under a public road (or any other land on which no building or other structure is located) and is used for the conveyance of a substance, energy or signals.

### 35 Water NSW may use water management works to generate hydro-electricity

Water NSW may—

- (a) authorise devices for generating electricity from water released in the exercise of Water NSW's functions under this Act to be placed on or in any of its water management works, and

- (b) install and use devices placed on or in any of its water management works to generate and supply electricity.

### **36 Obstruction of water management works**

- (1) If a person places a structure or other thing in or near any of the water management works of Water NSW in such a manner as to interfere with the work, Water NSW may—
  - (a) demolish and remove the structure or other thing, and
  - (b) repair the work, and
  - (c) recover the cost of doing so in a court of competent jurisdiction as a debt owing to Water NSW by the person who placed the structure or other thing there.
- (2) Water NSW may apply for and obtain an injunction to prevent a structure or other thing being placed as referred to in subsection (1).
- (3) A person—
  - (a) must not wilfully or negligently destroy, damage or interfere with any water management works of Water NSW, or
  - (b) must not open up ground to expose any water management work of Water NSW without reasonable excuse, or the consent of Water NSW, and without giving Water NSW at least 2 days' written notice of intention to open the ground unless that requirement is waived by Water NSW.

Maximum penalty—

- (a) in the case of a corporation—400 penalty units, or
- (b) in the case of an individual—200 penalty units.

### **37 Compensation by Water NSW for damage**

- (1) Water NSW, in exercising its functions under this Part, is to do as little damage as practicable and is, subject to this Part, to compensate all persons who suffer damage by the exercise of its functions.
- (2) Compensation may be made by reinstatement, repair, construction of works or payment.
- (3) A claim for compensation—
  - (a) is ineffective unless made in writing not later than 6 months after the damage was suffered, and
  - (b) in the absence of agreement on the compensation, must be dealt with as if it were a claim for compensation for the acquisition of land for public purposes under the

*Public Works and Procurement Act 1912.*

**38 Compensation to Water NSW for damage**

- (1) Without limiting section 36, a person who, without the consent of Water NSW, carries out any activity that causes destruction of, damage to or interference with any work owned by Water NSW in circumstances in which the person should have known that the destruction, damage or interference would result from the carrying out of the activity, is liable to compensate Water NSW for all loss or damage suffered by Water NSW as a result.
- (2) Water NSW is not entitled to compensation both under this section and another provision of this Act for the same destruction, damage or interference.
- (3) A reference in this section to a person extends to any person—
  - (a) who caused the carrying out of the activity, or
  - (b) by whose order or direction the activity was carried out, or
  - (c) who aided, assisted, counselled or procured the carrying out of the activity.
- (4) Water NSW may proceed against a person for recovery of its loss or compensation for its damage under this section whether or not Water NSW has proceeded against the person principally responsible for the loss or damage or any other person involved in the carrying out of the activity that caused the loss or damage.

**39 Water NSW may impose fees and charges**

- (1) Water NSW may impose fees and charges on any person to whom Water NSW provides a service in the exercise of its functions, including any person to whom Water NSW makes water available.
- (2) Water NSW may impose different fees and charges according to specified factors or circumstances.
- (3) Any fee or charge imposed under this section is taken to be a debt due to Water NSW and is recoverable in a court of competent jurisdiction.
- (4) A fee or charge levied under this Act on the holder of an access licence (within the meaning of the [Water Management Act 2000](#)) and any costs awarded to Water NSW by a court in proceedings to recover the fee or charge are a charge on the access licence and may be registered in accordance with the [Water Management Act 2000](#).
- (5) However, Water NSW may not impose a fee or charge under this section for the provision of any service whose cost is determined or regulated under any arrangement, operating licence, memorandum of understanding or other instrument under this Act.

**Note—**

For example, arrangements between Water NSW and the Sydney Water Corporation made under section 25 regarding the supply of water to the Sydney Water Corporation are required to make provision for the cost of the supply of such water (subject to the role of IPART under Division 7 of Part 2).

## **Part 4 Declared catchment areas and special and controlled areas**

### **Division 1 Declared catchment areas**

#### **40 Declaration of declared catchment areas**

- (1) The Governor may, by order published in the Gazette, declare an area of land specified in the order to be, or to be part of, a declared catchment area of Water NSW.
- (2) The Governor may, by the same order or by a subsequent order published in the Gazette, declare a specified part of a declared catchment area of Water NSW to be the inner catchment area or outer catchment area of the declared catchment area.
- (3) The Sydney catchment area must not be reduced in size, and an order revoking the declaration of the Sydney catchment area as a declared catchment area must not be made, unless authorised by an Act of Parliament.

#### **41 Catchment health indicators**

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

#### **42 Catchment audits**

- (1) The Minister—
  - (a) must appoint a public authority or other person to be the **appointed auditor** to carry out functions under this section in relation to the Sydney catchment area,

and

(b) may appoint a public authority or other person to be the **appointed auditor** to carry out functions under this section in relation any other declared catchment area.

(2) The appointed auditor must—

(a) conduct an audit (a **catchment audit**) of the catchment health of the declared catchment area, and

(b) present a report on that audit to the Minister.

(3) The catchment audit must assess the state of the declared catchment area having regard to the catchment health indicators approved under section 41 for the area, as in force at the time of the assessment.

(4) A catchment audit for the Sydney catchment area must be conducted, and a report presented to the Minister on that audit (the **initial report**), no more than 3 years after the day on which section 4 commences. Subsequent audits must be conducted, and reports must be presented to the Minister on those audits, at intervals of no more than 3 years calculated from the day the initial report is presented.

(5) A catchment audit for a declared catchment area other than the Sydney catchment area must be conducted, and a report presented to the Minister, within the period specified by the Minister.

(6) The Minister is to table the report (or cause it to be tabled) in both Houses of Parliament within one month after the Minister receives the report.

(7) The Minister is to forward a copy of the report of a catchment audit to Water NSW as soon as practicable after the report is received.

### **43 Incorporation of catchment audit findings**

(1) Water NSW must evaluate the findings of a catchment audit, as stated in the report of the catchment audit, to the extent to which they relate to the activities of Water NSW and risks to water quality in the declared catchment area to which the catchment audit relates.

(2) Water NSW must incorporate the findings of a catchment audit, to the extent to which they relate to the activities of Water NSW and water quality, into—

(a) Water NSW's risk framework, and

(b) Water NSW's programs and activities relating to catchment management.

(3) This section must be complied with within 6 months after the catchment audit report is received by the Minister.

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

- (1) If a catchment audit has been conducted under this Division for a declared catchment area, Water NSW must report to the Minister on Water NSW's progress to achieve improvements in catchment health, to prevent degradation of existing catchment health and to maintain existing catchment health, having regard to the findings of the audit.
- (2) Such a report must be provided within 2 years after the catchment audit report is received by the Minister.

#### **45 Operation of this Division**

Nothing in this Division prevents—

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

### **Division 2 Special areas**

#### **46 Definitions**

In this Division—

**joint sponsors** means—

- (a) the Minister, and
- (b) if the Minister is not the Minister for the Environment—the Minister for the Environment.

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

#### **47 Special areas**

- (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land specified in the order to be a special area.
- (2) The Minister is not to recommend the making of such an order unless the Minister certifies that the Minister is satisfied that the making of the order is necessary for either or both of the following purposes—
  - (a) protecting the quality of stored waters, whether intended for use for drinking or other purposes,

- (b) maintaining the ecological integrity of an area of land to be declared to be a special area in a manner that is consistent with Water NSW's objectives.
- (3) The Minister must cause a copy of an order made under this section, including an order amending an order, to be tabled in each House of Parliament within 14 sitting days of that House after the order has been published in the Gazette.
- (4) A special area must not be reduced in size, and an order declaring an area of land to be a special area must not be repealed, unless authorised by an Act of Parliament.
- (5) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare that the order declaring an area of land at Woodford to be a special area (being an order published in Gazette No 45 of 15 March 1991 at page 2186) is repealed on the date specified in the later order.

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

- (1) Water NSW must not alienate, mortgage, charge or demise land in a special area that is owned by or vested in Water NSW unless—
  - (a) to or in favour of the Minister administering the [National Parks and Wildlife Act 1974](#) (at no cost to that Minister), or
  - (b) authorised by an Act of Parliament.
- (2) Nothing in subsection (1) operates—
  - (a) to extinguish or otherwise affect any existing lease or other interest in the land in a special area, or
  - (b) to prevent the renewal of any such lease or other interest, or
  - (c) to prevent the grant of a lease or other interest in the land in accordance with any plan of management prepared in relation to the land under this Act.

#### **49 Crown land in special areas**

- (1) Action may not be taken under the [Crown Land Management Act 2016](#) in relation to land in a special area unless the Regulatory Authority has given approval in writing and any conditions to which the approval is subject are complied with.
- (2) The Regulatory Authority may, in a special area, exercise the functions of a statutory land manager within the meaning of the [Crown Land Management Act 2016](#) that has been appointed as a Crown land manager of dedicated or reserved Crown land under that Act without being appointed as such.

#### **50 Exercise of functions by public agencies in special areas**

- (1) A public agency may not, in relation to land within a special area, exercise functions



other than functions under this Act unless notice is first given to the Regulatory Authority.

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

## **51 Regulations concerning special areas**

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

## **52 Plans of management**

- (1) The joint sponsors are jointly required to cause a plan of management to be prepared for each special area as soon as practicable after it has been declared to be a special area.
- (2) When a plan of management has been prepared, the joint sponsors must give notice of the plan in a manner that the joint sponsors are satisfied is likely to bring the notice to the attention of members of the public and must, in that notice—
  - (a) specify the address of the place at which copies of the plan of management may be inspected, and

- (b) specify the address to which representations concerning the plan of management may be forwarded.
- (3) Any person may, within 30 days or such longer period as may be specified in the notice, make representations to the joint sponsors concerning the plan of management.
- (4) The joint sponsors must, on the expiration of the period referred to in subsection (3), and before adopting the plan of management, consider any representations made under this section.
- (5) The joint sponsors may adopt the plan of management without alteration or with such alterations as the joint sponsors think fit having regard to the representations made under this section.
- (6) The joint sponsors may—
  - (a) amend or alter a plan of management from time to time, or
  - (b) cancel a plan of management, or
  - (c) cancel a plan of management and substitute a new plan.
- (7) Before doing any of the things referred to in subsection (6), the joint sponsors may consult with any person or body (including persons or bodies other than the joint sponsors) that the joint sponsors think fit.
- (8) Subsections (2)–(4) apply to an amendment or alteration of a plan of management in the same way as they apply to a plan of management.

### **53 Operations under plan of management**

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

## **Division 3 Controlled areas**

### **54 Controlled areas**

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

- (2) An order under this section applies to land only while it is owned by or vested in Water NSW.

## **55 Regulations concerning controlled areas**

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

## **Part 5 Regulatory functions**

### **Division 1 Functions of IPART**

#### **56 Regulatory functions of IPART**

- (1) The regulatory functions of IPART under this Act are as follows—
  - (a) the function of making recommendations under subsection (2),
  - (b) the functions of monitoring and reporting or informing under subsection (3),
  - (c) the auditing functions of IPART under subsection (4),
  - (d) the function of determining the operating licence fee (if any),
  - (e) the function of imposing monetary penalties or requiring other action to be taken under section 17,
  - (f) such other functions of IPART under this Act as are specified by the regulations for the purposes of this section.
- (2) IPART has the function of making recommendations to the portfolio Minister for or with respect to—
  - (a) the granting, amendment or cancellation of an operating licence, and
  - (b) the imposition, amendment or cancellation of conditions in relation to an operating licence, and
  - (c) action to be taken, and sanctions to be applied, in respect of a contravention of an operating licence, and
  - (d) remedial action that may be warranted as a result of a contravention of an operating licence.
- (3) IPART has the functions of—

- (a) monitoring and reporting to the portfolio Minister on compliance by Water NSW with its operating licences, and
  - (b) informing the portfolio Minister about any failure of Water NSW to meet operational standards or any other requirements imposed on Water NSW under its operating licences.
- (4) IPART has such functions as may be conferred or imposed on it by an operating licence in connection with operational audits of Water NSW.

### **57 Operational and other audits**

- (1) IPART is to prepare operational audits of Water NSW at the times directed by the portfolio Minister.
- (2) The portfolio Minister may direct IPART to prepare an operational audit of specified matters only.
- (3) IPART is to ensure that each operational audit of Water NSW is prepared in accordance with its operating licences.

### **58 Report on operational audit**

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

### **59 Tabling of report in Parliament**

The portfolio Minister is to table the report (or cause it to be tabled) in both Houses of Parliament within one month after the Minister receives the report.

### **60 Cost of audit**

- (1) Water NSW is required to pay to the Treasurer the cost (as certified by IPART) involved in and in connection with carrying out the operational audit of Water NSW.
- (2) Without limitation, an operating licence may include terms and conditions relating to the determination of the cost of carrying out the operational audit.

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

### **61 Regulatory Authority**

- (1) **Meaning of “Regulatory Authority”** For the purposes of this Act, the **Regulatory Authority**, in relation to a function conferred or imposed on the Regulatory Authority by or under this or any other Act (a **regulatory function**), is—
  - (a) the Minister, or
  - (b) if the Minister appoints a person under this section to exercise that function—that

person.

- (2) **Appointment of qualified persons to exercise regulatory functions** The Minister may, by order published in the Gazette, appoint a qualified person to exercise all or specified regulatory functions.

**Note—**

Section 43 (2) of the [Interpretation Act 1987](#) provides that if an Act confers a power on any person or body to make an order (whether or not the order must be in writing), the power includes power to amend or repeal any order made in the exercise of that power.

- (3) Subject to the regulations, each of the following is a **qualified person**—
- (a) a public authority,
  - (b) the head of a Public Service agency.
- (4) However, Water NSW cannot be appointed to exercise a regulatory function that would authorise or permit Water NSW—
- (a) to have a concurrence role (as referred to in section 62) with respect to the granting of development consent under Part 4 of the [Environmental Planning and Assessment Act 1979](#) for the carrying out of development by it, or
  - (b) to grant development consent under Part 4 of the [Environmental Planning and Assessment Act 1979](#) for the carrying out of development by it.
- (5) Different qualified persons may be appointed to exercise different regulatory functions, whether by the same order or different orders.
- (6) The Regulatory Authority in relation to a regulatory function may delegate the function to—
- (a) if the Regulatory Authority is the Minister—a member of staff of the Department, or
  - (b) if the Regulatory Authority is a public authority—a member of staff of the authority, or
  - (c) if the Regulatory Authority is the head of a Public Service agency—a member of staff of that agency.
- (7) Without limiting the generality of any provisions of the [Independent Pricing and Regulatory Tribunal Act 1992](#), a service provided by Water NSW in exercise of a regulatory function it is appointed to exercise under this section is capable of being declared to be a government monopoly service within the meaning of that Act.
- (8) **Annual reports by persons appointed to exercise regulatory functions** A qualified person who is appointed under this section to exercise any regulatory functions must report

annually to the Minister with respect to the exercise of the functions by the person and members of staff of the public authority or Public Service agency concerned.

- (9) A report under subsection (8) is to be provided to the Minister within 4 months after each 30 June.
- (10) The report is to specify the following matters in relation to the year ended on that 30 June—
- (a) if any members of staff of the public authority or Public Service agency concerned were authorised officers during the year—
    - (i) the number of times such members of staff entered land, or obtained search warrants, under Division 2 of Part 6, and
    - (ii) the number of times such members of staff exercised functions under Division 3 of Part 6, the kind of functions exercised and the outcomes of the exercise of functions, and
    - (iii) the number of times such members of staff issued penalty notices under section 102 and the outcomes of issuing the penalty notices, and
    - (iv) the number of times such members of staff exercised functions with respect to the commencement of prosecutions for offences against this Act or the regulations and the outcomes of the prosecutions,
  - (b) if the qualified person was appointed to exercise regulatory functions under Division 3 or 4 of Part 6—the number of times the person or members of staff have exercised the functions, the kinds of functions exercised and the outcomes of the exercise of the functions,
  - (c) any other information requested by the Minister with respect to the exercise of regulatory functions by the qualified person or members of staff.
- (11) The report may be combined with any other annual report of the public authority or Public Service agency concerned that is required to be tabled in both Houses of Parliament.
- (12) The Minister is to table the report (or cause it to be tabled) in both Houses of Parliament within one month after the Minister receives the report, unless the report has been combined with another annual report of the public authority or Public Service agency concerned.
- (13) **Definition** In this section—

**head** of a Public Service agency has the same meaning as in the [Government Sector Employment Act 2013](#).

## **62 Concurrence and other roles under environmental planning instruments concerning declared catchment areas**

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

## **63 Compliance role under other legislation**

- (1) The Regulatory Authority has such functions as are necessary or convenient to carry out any inspectorial, enforcement or other role conferred or imposed on it by the regulations under this Act by reference to powers conferred on other persons or bodies under any Act or instrument under any Act so far as they relate to—
  - (a) activities carried out or proposed to be carried out within a declared catchment area, or
  - (b) activities carried out or proposed to be carried out outside a declared catchment area but being of such a nature as affect or may affect a declared catchment area.
- (2) The regulations under this Act may, on the recommendation of the Minister and with the approval of the Minister administering the Act concerned, make provision for or with respect to conferring or imposing on the Regulatory Authority any such function, and to specifying the effect or consequences of the exercise of any such function.
- (3) This section does not affect the generality of any other provision of this or any other Act so far as it confers or imposes functions on the Regulatory Authority, but otherwise has effect despite anything in any other Act.
- (4) This section does not apply in relation to—
  - (a) the grant of licences, or
  - (b) activities carried on by Water NSW.

(5) In this section—

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

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

#### **64 Approval of infrastructure activities within Sydney catchment area**

(1) In this section—

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

(a) that is proposed to be carried out within the Sydney catchment area—

(i) on land owned or leased by, or leased to, Water NSW, or

(ii) on other land but under a contract to which Water NSW is a party, and

(b) that, but for this section, would be subject in any respect to the *Environmental Planning and Assessment Act 1979*, the *Local Government Act 1993* or any instrument in force under either of those Acts.

(2) The Regulatory Authority may approve the carrying out of an infrastructure activity if the Regulatory Authority certifies in the instrument of approval that the carrying out of the activity is—

(a) required to protect the quality of water supplied by Water NSW, and

(b) required in the interests of public health or public safety, and

(c) required to be carried out urgently.

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

(a) the approval of the Regulatory Authority to the carrying out of that activity, or

(b) the carrying out of that activity, or

(c) the use at any time of the works with which that activity is concerned, or

(d) the land on which that activity is carried out or proposed to be carried out or on which those works are used or proposed to be used, so far as is relevant to that activity or those works.

### **Part 5A Special provisions relating to Warragamba Dam**



## 64A Definitions

In this Part—

**approved EMP** means an environmental management plan approved for the time being under section 64C.

**draft EMP** means an environmental management plan prepared by Water NSW for approval under this Part.

**national park land** means any land reserved or dedicated under the NPW Act.

**NPW Act** means the [National Parks and Wildlife Act 1974](#).

**NPW Minister** means the Minister administering the NPW Act.

**Planning Act** means the [Environmental Planning and Assessment Act 1979](#).

**Warragamba Dam project** means development that is approved to be carried out under the Planning Act—

- (a) to raise the wall of Warragamba Dam, and
- (b) to operate the dam,

for the purposes of facilitating flood mitigation downstream of the dam.

## 64B Temporary inundation of national park land

- (1) A lease, licence, easement or right of way under the NPW Act is not required for or in respect of the temporary inundation of national park land resulting from the Warragamba Dam project.

### Note—

Accordingly, the prohibition under section 153B of the NPW Act on the NPW Minister granting a lease, licence, easement or right of way for the purposes of enabling the temporary inundation of the land concerned does not apply.

- (2) The temporary inundation of national park land resulting from the Warragamba Dam project is not subject to any plan of management under the NPW Act.
- (3) This section applies in relation to the temporary inundation of national park land resulting from the Warragamba Dam project only if an approved EMP is in force.
- (4) This section has effect despite any provision of the NPW Act.

## 64C Environmental management plan for temporary inundation of national park land

- (1) Water NSW is to prepare, in consultation with the Chief Executive of the Office of Environment and Heritage, an environmental management plan relating to the temporary inundation of national park land resulting from the Warragamba Dam

project.

- (2) The NPW Minister is, after the Warragamba Dam project has been approved under the Planning Act, to determine the matters that are to be addressed by a draft EMP. Those matters must not be inconsistent with the approval of the Warragamba Dam project under the Planning Act.
- (3) Water NSW is to submit a draft EMP to the NPW Minister.
- (4) The NPW Minister may, with the concurrence of the Minister administering this Act—
  - (a) approve a draft EMP submitted by Water NSW with or without amendments, or
  - (b) refer the draft EMP back to Water NSW for further consideration.
- (5) Water NSW is to ensure that any requirements imposed by an approved EMP are complied with.

#### **64D Amendment and revocation of environmental management plan**

- (1) The NPW Minister may, with the concurrence of the Minister administering this Act—
  - (a) approve an amendment to an approved EMP, or
  - (b) revoke an approved EMP and approve a new draft EMP.
- (2) Section 64C applies in relation to the amendment of an approved EMP in the same way as that section applies in relation to a draft EMP.
- (3) An approved EMP remains in force until it is revoked in accordance with this section.

#### **64E Ministerial directions**

- (1) The NPW Minister may, with the concurrence of the Minister administering this Act, by notice in writing given to Water NSW, direct Water NSW to do any of the following—
  - (a) to take specified action in relation to the temporary inundation of national park land resulting from the Warragamba Dam project, including action relating to the monitoring of risks associated with the temporary inundation and relating to the rehabilitation or remediation of land,
  - (b) to prepare a draft amendment of an approved EMP, or a new draft EMP, for approval under this Part,
  - (c) to conduct a review of an approved EMP and report on the outcome of the review.
- (2) Water NSW is required to comply with a direction under this section.

#### **64F Water NSW required to notify Chief Executive of OEH of certain matters**

Water NSW is, if it is of the opinion that a flood event that may affect national park land in

the vicinity of Warragamba Dam is likely to occur, required to notify the Chief Executive of the Office of Environment and Heritage, or a person nominated by the Chief Executive, of any inflows likely to inundate the land above the full water supply level of the dam.

#### **64G Delegation by NPW Minister**

The NPW Minister may delegate any of the NPW Minister's functions under this Part (other than this power of delegation) to a person or body specified in section 21 (1) of the NPW Act.

## **Part 6 Compliance and enforcement**

### **Division 1 Authorised officers**

#### **65 Authorised officers**

- (1) The Minister may appoint any person (including a class of persons) as authorised officers for the purposes of this Act.
- (2) On appointing an authorised officer under subsection (1), the Minister must issue to the officer a certificate of authority unless the officer is a police officer or an authorised officer under the *National Parks and Wildlife Act 1974*.
- (3) A certificate of authority must—
  - (a) state that it is issued under the *Water NSW Act 2014*, and
  - (b) give the name of the person to whom it is issued, and
  - (c) state the date, if any, on which it expires, and
  - (d) describe the nature of the functions conferred and the source of the functions.
- (4) In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person affected by the exercise of any such function, produce to the person—
  - (a) in the case of a police officer—the officer's police identification, or
  - (b) in the case of an authorised officer under the *National Parks and Wildlife Act 1974*—the officer's identification card as an authorised officer under that Act, or
  - (c) in any other case—the authorised officer's identification card issued in accordance with this section.
- (5) An authorised officer may exercise the functions under this Act that are described in the officer's certificate of authority.

## **66 Authorised officers may request assistance**

A person may accompany an authorised officer and take all reasonable steps to assist an authorised officer in the exercise of the authorised officer's functions under this Act if the authorised officer is of the opinion that the person is capable of providing assistance to the authorised officer in the exercise of those functions.

## **67 Obstruction of authorised officer**

A person must not—

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

Maximum penalty—

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

## **Division 2 Powers of entry of authorised officers**

### **68 Entry on to land**

- (1) An authorised officer may enter and occupy land for the purpose of ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened.

#### **Note—**

See also the investigation powers conferred on authorised officers by Division 3.

- (2) The power conferred by subsection (1) may not be exercised unless the authorised officer proposing to exercise the power—
  - (a) is in possession of the identification the officer is required to produce on request under section 65, and
  - (b) exercises the power at a reasonable time during daylight, unless this would defeat the purpose for which the power is to be exercised or the power is exercised in an emergency, and
  - (c) produces the person's identification if required to do so by the occupier of the land, and
  - (d) uses no more force than is reasonably necessary to effect the entry.
- (3) An authorised officer is not entitled to enter a part of premises used for residential purposes, except—

- (a) with the consent of the occupier of the part, or
- (b) under the authority of a search warrant.

## 69 Search warrants

- (1) An authorised officer may apply to an issuing officer for a search warrant if the officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on land.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant, when accompanied by a police officer, and any other person named in the warrant—
  - (a) to enter the land concerned, and
  - (b) to search the land for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section—

**issuing officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## Division 3 Investigation powers

### 70 Power of authorised officers to require answers

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of determining whether there has been compliance with or a contravention of this Act or the regulations or any notice issued under this Act to answer questions in relation to those matters.
- (2) The Regulatory Authority may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.
- (4) A person must not—
  - (a) fail or refuse to comply with a requirement under subsection (1) or (2), or
  - (b) in purported compliance with such a requirement, give an answer that is false or misleading in a material particular.

Maximum penalty—

(a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or

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

- (5) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (6) The place and time at which a person may be required to attend under subsection (5) is to be—
- (a) a place and time nominated by the person, or
- (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the authorised officer that is reasonable in the circumstances.

#### **71 Requirement to provide information and records**

- (1) The Regulatory Authority may, by notice in writing given to a person, require the person to provide to the Authority such information or records (or both) as the Authority requires by the notice in connection with determining whether there has been compliance with or a contravention of this Act or the regulations or any notice issued under this Act.
- (2) A person must not—
- (a) fail or refuse to comply with a requirement under subsection (1), or
- (b) in purported compliance with such a requirement, give information, or provide a record, that is false or misleading in a material particular.

Maximum penalty—

(a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or

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

#### **72 Provisions relating to records**

- (1) A notice under this Division may require a person to provide only existing records that are in the person's possession or that are within the person's power to obtain lawfully.

- (2) The Regulatory Authority may take copies of any record provided to the Authority under this Division.
- (3) If any record required to be provided under this Division is in electronic, mechanical or other form, the notice is taken to require the record to be provided in written form, unless the notice otherwise provides.

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

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

Maximum penalty—100 penalty units.

### **74 Requirement for owner of motor vehicle and others to give information**

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

- (b) in purported compliance with such a requirement, give any information that is false or misleading in a material particular.

Maximum penalty—100 penalty units.

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

## **75 Provisions relating to requirements to provide records, information or answer questions**

- (1) A person is not guilty of an offence of failing to comply with a requirement under this Division to provide records or information or to answer a question unless the person was warned on the relevant occasion that a failure to comply is an offence.
- (2) A person is not excused from a requirement under this Division to provide records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) However, any information provided or answer given by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against this Division) if—
  - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on the relevant occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.
- (4) Any record provided by a person in compliance with a requirement under this Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) Further information obtained as a result of a record or information provided or of an



answer given in compliance with a requirement under this Division is not inadmissible on the ground—

- (a) that the record or information had to be provided or the answer had to be given, or
- (b) that the record or information provided or answer given might incriminate the person.

- (6) This section extends to a requirement under this Division to state a person's name and address.

## **Division 4 Catchment correction notices and catchment protection notices**

### **Subdivision 1 Definitions**

#### **76 Definitions**

In this Division—

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

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

**compliance cost notice** means a notice under section 86.

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

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

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

### **Subdivision 2 Catchment correction notices**

#### **77 Corrective action by occupiers or persons carrying on certain activities**

- (1) The Regulatory Authority may, by notice in writing (a **catchment correction notice**), do either or both of the following—

- (a) direct an occupier of land on or from which the Regulatory Authority reasonably suspects that a targeted activity has been carried out or is being carried out,

(b) direct a person who is reasonably suspected by the Regulatory Authority of carrying out or having carried out a targeted activity,

to take the corrective action specified in the notice within such period as is specified in the notice.

- (2) The catchment correction notice may require the person to whom the notice is given to provide reports to the Regulatory Authority regarding progress on the carrying out of the corrective action.
- (3) If the person given a catchment correction notice complies with the notice but was not the person who carried out the targeted activity, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who carried out the targeted activity.
- (4) A catchment correction notice, or a variation of a catchment correction notice, operates from the day the notice or notice of the variation is given or from such later day as the notice specifies.
- (5) A person who, without reasonable excuse, does not comply with a catchment correction notice given to the person is guilty of an offence.

Maximum penalty—

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

**Note—**

An offence against subsection (5) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 95.

## **78 Corrective action by public authorities**

- (1) If the Regulatory Authority reasonably suspects that a targeted activity has been carried out or is being carried out, the Regulatory Authority may, by notice in writing, direct a public authority to take such corrective action as is specified in the notice. The public authority is authorised and required to take that action.
- (2) If a public authority reasonably suspects that a targeted activity has been carried out or is being carried out, the public authority may take such corrective action as it considers necessary. The public authority is authorised to take that action, whether or not it is directed to take corrective action under subsection (1).
- (3) Notices may be given, and action may be taken, under this section whether or not a catchment correction notice has been given under section 77, and (if such a notice

has been given) whether or not the period specified in the notice under that section has expired.

- (4) A public authority may take corrective action under this section by itself or by its employees, agents or contractors.
- (5) In this section—

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

### **79 Catchment correction notice may be given orally**

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

### **80 Fee for catchment correction notice**

- (1) The purpose of this section is to enable the Regulatory Authority to recover the administrative costs of preparing and giving catchment correction notices.
- (2) A person who is given a catchment correction notice under section 77 must, within 30 days after the notice is given, pay the fee prescribed under section 94 of the [Protection of the Environment Operations Act 1997](#) to the Regulatory Authority.
- (3) The Regulatory Authority may—
  - (a) extend the time for payment of the fee, on the application of the person given the catchment correction notice, or
  - (b) waive payment of the whole or any part of the fee, on the Regulatory Authority's own initiative or on the application of the person.
- (4) A person who does not pay the fee within the time required under this section is guilty of an offence.

Maximum penalty—200 penalty units.

## **Subdivision 3 Catchment protection notices**

### **81 Preventive action**

- (1) This section applies when the Regulatory Authority reasonably suspects that a targeted activity has been, will be or is being carried out on any land in a special area

or a controlled area.

(2) The Regulatory Authority may, by notice in writing (a **catchment protection notice**), do either or both of the following—

- (a) direct the occupier of the land,
- (b) direct the person carrying on the activity,

to take such action, as is specified in the notice within such period (if any) as is specified in the notice, to ensure that either the targeted activity is not commenced, is no longer carried on, or if the targeted activity is permitted to be carried on in future, it is carried on in a manner that does not cause damage to, or detrimentally affect, the quality of any water, or the catchment health of any land, in the special area or controlled area.

(3) The action to be taken may (without limitation) include any of the following—

- (a) ceasing to carry on or not commencing to carry on an activity,
- (b) carrying on an activity in a particular manner,
- (c) carrying on an activity only during particular times,
- (d) preparing and carrying out a plan of action to control, prevent or minimise any damage to, or detrimental effect on, the quality of any water, or the catchment health of any land, in the special area or controlled area.

(4) If the occupier who is given a notice is not the person carrying on the targeted activity, the notice is taken to require the occupier to take all available steps to cause the action to be taken by the person carrying on the targeted activity.

(5) A catchment protection notice may require the person to whom the notice is given to provide reports to the Regulatory Authority regarding progress on carrying out the action required to be taken by the notice.

(6) A person who does not comply with a catchment protection notice given to the person is guilty of an offence.

Maximum penalty—

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

**Note—**

An offence against subsection (6) committed by a corporation is an executive liability offence attracting

executive liability for a director or other person involved in the management of the corporation—see section 95.

## **82 Action in event of failure to comply**

If a person does not comply with a catchment protection notice given to the person, the Regulatory Authority may take action to cause the notice to be complied with by the Regulatory Authority or by his or her employees, agents or contractors.

## **83 Commencement of operation of catchment protection notice or variation of catchment protection notice**

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

## **84 Fee for catchment protection notice**

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

Maximum penalty—200 penalty units.

## 85 Appeals against catchment protection notices

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

## Subdivision 4 Compliance costs

### 86 Compliance cost notices

- (1) The Regulatory Authority may, by notice in writing, require a person to whom a catchment correction notice has been given to pay all or any reasonable costs and expenses incurred by the Regulatory Authority in connection with—
  - (a) monitoring action required to be taken by the notice, and
  - (b) ensuring that the notice is complied with, and
  - (c) any other associated matters.
- (2) A public authority that takes corrective action under section 78 may, by notice in writing, require—
  - (a) the occupier of the land on or from which the authority reasonably suspects that the targeted activity was carried out, or
  - (b) the person who is reasonably suspected by the authority of having carried out the targeted activity,or both, to pay all or any reasonable costs and expenses incurred by it in connection with the corrective action.
- (3) If the Regulatory Authority takes action under section 82 because a catchment protection notice is not complied with, the Regulatory Authority may, by notice in writing, require the person to whom the catchment protection notice was given to pay all or any reasonable costs and expenses incurred by the Regulatory Authority in taking the action.

## **87 Recovery of amounts**

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

## **88 Registration of compliance cost notices in relation to land**

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

## **89 Charge on land subject to compliance cost notice**

- (1) This section applies where a compliance cost notice is registered under section 88, on the application of the Regulatory Authority or a public authority, in relation to particular land owned by a person.
- (2) There is created by force of this section, on the registration of the notice, a charge on the land in relation to which the notice is registered to secure the payment to the Regulatory Authority or the public authority of the amount specified in the notice.
- (3) Such a charge ceases to have effect in relation to the land—
  - (a) on payment to the Regulatory Authority or the public authority of the amount concerned, or
  - (b) on the sale or other disposition of the land with the consent in writing of the Regulatory Authority or the public authority, or
  - (c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,whichever first occurs.

- (4) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the notice was registered.
- (5) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (3).
- (6) If—
  - (a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and
  - (b) the charge is so registered,a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (3), taken to have notice of the charge.
- (7) The regulations may make provision for or with respect to the removal of a charge under this section.
- (8) The Regulatory Authority or a public authority may, by notice in writing, require the person to whom the compliance cost notice was given to pay all or any of the reasonable costs and expenses incurred by the Regulatory Authority or the public authority in respect of the lodgment or registration of the compliance cost notice and the registration of any resulting charge (including the costs of discharging the charge). The Regulatory Authority or the public authority may recover any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

## **Subdivision 5 General**

### **90 Multiple notices**

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

### **91 No fee for revocation or variation**

A fee is not payable for the variation of a notice under this Division.

### **92 Obstruction of persons**

A person who wilfully delays or obstructs—

- (a) a person who is carrying out any action in compliance with a catchment correction notice or a catchment protection notice, or another person authorised by the person to carry it out, or
- (b) a public authority that is taking corrective action under section 78, or any person authorised by the public authority to take corrective action under section 78,



is guilty of an offence.

Maximum penalty—

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

## **Division 5 Offences**

### **93 Illegal diversion of water**

A person must not—

- (a) wrongfully take, use or divert any water that is available for supply by Water NSW or that is in any pipe or work used for supply by Water NSW, or
- (b) wrongfully alter the index of a meter or prevent a meter from duly registering the quantity of water supplied by Water NSW.

Maximum penalty—

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

### **94 Offence to discharge into works**

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

Maximum penalty—

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

#### **Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 95.

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

## Division 6 Executive and accessorial liability

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

- (1) For the purposes of this section, an **executive liability offence** is—
- (a) an offence against any of the following provisions of this Act that is committed by a corporation—
    - (i) section 77 (5),
    - (ii) section 81 (6),
    - (iii) section 94 (1), or
  - (b) an offence against the regulations—
    - (i) that is prescribed by the regulations as an offence to which this section applies, and
    - (ii) that is committed by a corporation.
- (2) A person commits an offence against this section if—
- (a) a corporation commits an executive liability offence, and
  - (b) the person is—
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person—
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

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

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.

- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section—

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

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

- (a) action towards—
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that—
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes,relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

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

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it

is an executive liability offence referred to in section 95.

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

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

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

## **97 Persons causing offences**

- (1) A person—
- (a) who causes the commission of an offence against this Act or the regulations, or
  - (b) by whose order or direction an offence against this Act or the regulations is

committed, or

(c) who aids, abets, counsels or procures the commission of an offence against this Act or the regulations,

is guilty of an offence against this Act or the regulations and liable to a penalty in the same way as the principal offender.

- (2) A person may be proceeded against for an offence against subsection (1) whether or not the principal offender has been prosecuted or convicted.
- (3) A person does not commit an offence because of this section for any act or omission that is an offence against section 96.

## **Division 7 Proceedings for offences**

### **98 Continuing offences**

- (1) A person who is guilty of an offence because the person fails to comply with a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time)—
  - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

### **99 Onus of proof of certain matters**

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

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

- (1) Proceedings for an offence against this Act or the regulations may be commenced within but not later than 2 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for an offence against this Act or the regulations may also be commenced within but not later than 2 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer.

- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence—
- (a) the court attendance notice must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer and need not contain particulars of the date on which the offence was committed, and
  - (b) the date on which evidence first came to the attention of any relevant authorised officer is the date specified in the court attendance notice, unless the contrary is established.
- (4) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (5) In this section—

**court attendance notice** means—

- (a) in relation to proceedings for an offence commenced in the Local Court—a court attendance notice within the meaning of the *Criminal Procedure Act 1986* issued in respect of the person alleged to have committed the offence, and
- (b) in relation to proceedings for an offence commenced in the Land and Environment Court in its summary jurisdiction—an application for an order under section 246 of the *Criminal Procedure Act 1986* in respect of the person alleged to have committed the offence.

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

### **101 Nature of proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with—
- (a) summarily before the Local Court, or
  - (b) summarily before the Land and Environment Court.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

### **102 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations, or an offence

against another Act or regulations under another Act (being an offence committed within the Sydney catchment area), that is prescribed by the regulations as a penalty notice offence.

- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

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

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

**103 Payment of penalty does not affect other proceedings**

- (1) Prosecution or conviction of a person for an act or omission that is an offence against this Act or the regulations does not affect any right of Water NSW to take civil proceedings or any other action to recover from the person—
- (a) an amount in respect of loss or damage caused by the act or omission, or
  - (b) the expenses incurred by Water NSW in remedying the loss or damage, or
  - (c) the value of water lost to Water NSW because of the act or omission.
- (2) Payment of a penalty for an offence against this Act or the regulations does not affect any right of Water NSW to institute any other action or proceeding.

**Division 8 Evidentiary provisions**

**104 Evidence as to state of mind of corporation**

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

### **105 Proof of certain appointments not required**

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

- (a) the appointment of the chief executive officer or any member of the staff of Water NSW, or
- (b) the appointment of any authorised officer, or
- (c) the appointment of a person as the Regulatory Authority for the purposes of a provision of this Act.

### **106 Documentary evidence generally**

Any instrument (including a notice, order or direction in writing) purporting—

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

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

### **107 Certificate evidence of certain matters**

(1) A document signed by the Regulatory Authority, or a person declared in writing by the Regulatory Authority for the purposes of this section, and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is, in the absence of evidence to the contrary, evidence of the matters so certified.

(2) The matters referred to in subsection (1) are the following—

- (a) that an instrument (including a notice, order or direction in writing), a copy of which is set out in or annexed to the document, being an instrument purporting—
  - (i) to be issued, made or given for the purposes of this Act, and
  - (ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,

was issued, made or given on a specified day,

- (b) that a person was or was not, at a specified time or during a specified period, an authorised officer,
- (c) that a person was or was not, at a specified time or during a specified period, a



member of staff of Water NSW.

### **108 Evidence of analysts**

- (1) The Regulatory Authority may, by instrument in writing, appoint appropriately qualified persons to be analysts for the purposes of this Act.
- (2) A certificate of such an analyst stating the result of an analysis or examination is admissible in evidence in any proceedings under this Act as evidence of the facts stated in the certificate and the correctness of the result of the analysis or examination.
- (3) A certificate of such an analyst that, on receipt of a container containing a sample submitted to the analyst by an authorised officer or any other person, the container was sealed and the seal securing the container was unbroken is admissible in evidence in any proceedings under this Act or the regulations as evidence—
  - (a) of the facts stated in the certificate, and
  - (b) that the sample was the same sample as the one obtained by the authorised officer or other person, and
  - (c) that the sample had not been tampered with before it was received by the analyst.
- (4) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, to be taken to be such a certificate.

## **Part 7 Miscellaneous**

### **109 Revocation or variation of notices**

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

### **110 Delegation by Minister**

- (1) The Minister may delegate the exercise of any function of the Minister under this Act or the regulations (other than an excluded function) to—
  - (a) the Secretary, or any other member of staff, of the Department, or
  - (b) a public authority, or

(c) any person, or any class of persons, authorised for the purposes of this section by the regulations.

(2) Each of the following functions of the Minister is an ***excluded function***—

(a) a function under section 16 (Contravention of operating licence),

(b) the function of giving a direction under section 22 (Direction to enter into certain memoranda of understanding),

(c) the function of making an order under section 28 (Transfer of specified assets, rights and liabilities),

(d) the function of appointing persons under section 41 (Catchment health indicators),

(e) the function of appointing auditors under section 42 (Catchment audits),

(f) the function of giving a direction to IPART under section 57 (Operational and other audits),

(g) the power of delegation under subsection (1).

(3) In this section, ***the Minister*** includes the portfolio Minister.

### **111 Tabling of certain reports in Parliament when it is not sitting**

(1) This section applies with respect to the tabling by the Minister of a report that the Minister is required by section 27, 42, 59 or 61 to table (or cause to be tabled) in a House of Parliament.

(2) If a House of Parliament is not sitting when the Minister seeks to table the report, the Minister is to cause a copy of the report to be presented to the Clerk of that House of Parliament.

(3) A report presented under subsection (2)—

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

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

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

(d) is to be recorded—

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

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

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

(4) In this section, **the Minister** includes the portfolio Minister.

### **112 Service of notices**

(1) For the purposes of this Act, any notice or other document may be issued or given to, or served on, a person—

- (a) by delivering it personally to the person, or
- (b) by delivering it to the place of residence or business of the person and by leaving it there for the person with some other person, or
- (c) by posting it duly stamped and addressed to the person at the place last shown in the records of Water NSW as the person's place of residence or business, or
- (d) by posting it duly stamped and addressed to the person at the place indicated by the person as an address to which correspondence may be posted (including, for example, a post office box), or
- (e) by sending it by facsimile or electronic transmission (including, for example, over the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or
- (f) by leaving it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.

(2) This section does not affect any other mode of issuing, giving or serving a notice or other document under any other law.

### **113 Exclusion of personal liability**

(1) An act or omission of any of the following—

- (a) the Minister (including when acting as the Regulatory Authority),
- (b) the Regulatory Authority,
- (c) Water NSW or a director of Water NSW,
- (d) an authorised officer,
- (e) a member of staff of the Department (including the Secretary) or of Water NSW or

the Regulatory Authority,

- (f) a person acting under the direction of a person referred to in paragraph (a), (b), (c), (d) or (e),

does not subject the Minister, a director, authorised officer, member of staff or person so acting personally to any action, liability, claim or demand if the act or omission was done, or omitted to be done, in good faith for the purpose of executing this or any other Act.

- (2) In this section, **the Minister** includes the portfolio Minister.

#### **114 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 400 penalty units in the case of a corporation or 200 penalty units in any other case.

#### **115 Review of Act**

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

### **Schedule 1 Transfer of assets, rights and liabilities**

#### **1 Application**

This Schedule applies to—

- (a) the transfer of assets, rights or liabilities by an order made under a provision of this Act that provides for this Schedule to apply to the transfer (an **order transfer**), and
- (b) the transfer of assets, rights or liabilities by operation of a provision of this Act that provides for this Schedule to apply (an **automatic transfer**).

#### **2 Interpretation**

- (1) In this Schedule—

**assets** 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 (including money), and includes securities, choses in action and documents.

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

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

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

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

### 3 Vesting of undertaking in transferee

- (1) When any assets, rights or liabilities are transferred by a transfer to which this Schedule applies, the following provisions have effect—
- (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities of the transferor become by virtue of this Schedule the rights or 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) any 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 respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (e) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time the transfer took effect,

(f) a reference in any Act, in any instrument made under any Act or in any document of any kind to—

(i) the transferor, or

(ii) any predecessor of the transferor,

to the extent to which the reference relates to those assets, rights or liabilities, is taken to be, or include, a reference to the transferee.

(2) The operation of this Schedule is not to be regarded—

(a) as a breach of contract or confidence or otherwise as a civil wrong, or

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or

(c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or

(d) as an event of default under any contract or other instrument.

(3) No attornment to the transferee by a lessee from the transferor is required.

(4) An order transfer is subject to the terms and conditions of the order that gives rise to the transfer.

#### **4 No compensation payable**

(1) No compensation is payable to any person or body in connection with a transfer to which this Schedule applies except to the extent (if any) to which—

(a) in the case of an order transfer—the order giving rise to the transfer so provides, and

(b) in the case of an automatic transfer—the provision of this Act that gives rise to the transfer so provides.

(2) Despite subclause (1), if the transferor or transferee is a local authority, compensation may be paid in relation to any asset or right the subject of the transfer.

(3) Despite clause 7, the amount of any compensation payable under subclause (2) in relation to any such asset or right is to be determined by the Valuer-General.

#### **5 Transfer of interests in land**

(1) In the case of an order transfer, the order that gives rise to the transfer may transfer an interest in respect of 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 order operates to create the interest transferred in such terms as are specified in the order.

(3) This clause does not limit any other provision of this Act.

## **6 Date of vesting**

A transfer of assets, rights or liabilities to which this Schedule applies takes effect—

- (a) in the case of an order transfer—on the day specified by the order that gives rise to the transfer, and
- (b) in the case of an automatic transfer—on the day specified by the provision of this Act that gives rise to the transfer or, if no day is specified, on the commencement of the provision.

## **7 Consideration for vesting**

The portfolio Minister may, by order in writing, specify the consideration on which a transfer to which this Schedule applies is made and the value or values at which the assets, rights or liabilities are transferred.

## **8 State taxes not chargeable**

(1) State tax is not payable in relation to—

- (a) an exempt matter, or
- (b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.

(2) In this clause—

**exempt matter** means any of the following—

- (a) the transfer of any assets, rights or liabilities by operation of this Schedule (including, without limitation, any instrument executed only for a purpose ancillary to or consequential on the operation of this Schedule),
- (b) anything certified by the portfolio Minister in writing as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

**State tax** means application or registration fees, duty or any other tax, fee or charge imposed by any legislation or other law of the State.

## **9 Confirmation of vesting**

(1) The portfolio Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Schedule.

- (2) Such a notice is conclusive evidence of that transfer.

## **Schedule 2 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 enactment of this Act or any other Act that amends this Act.
- (2) If the regulations so provide, any such provision may—
- (a) have effect despite any specified provisions of this Act (including a provision of this Schedule), and
  - (b) take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) A regulation made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

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

#### **Division 1 Preliminary**

##### **2 Definitions**

- (1) In this Part—

**modification** includes addition, exception, omission or substitution.

**relevant day** means the day on which section 4 commences.

**repealed Act** means—

- (a) the repealed Catchment Management Act, or



(b) the repealed Corporation Act.

**repealed Catchment Management Act** means the [Sydney Water Catchment Management Act 1998](#) as in force immediately before its repeal.

**repealed Corporation Act** means the [State Water Corporation Act 2004](#) as in force immediately before its repeal.

**Sydney Catchment Authority** means the Sydney Catchment Authority constituted by the repealed Catchment Management Act.

- (2) For the purposes of this Part, a provision of this Act is a corresponding provision in relation to a provision of a repealed Act if the provision of this Act corresponds (or substantially corresponds) to the provision of the repealed Act.
- (3) If this Part provides for an event or other thing to occur on the relevant day, that event or thing is taken to occur at the beginning of that day.

## **Division 2 Constitution of State Water Corporation as Water NSW**

### **3 Board of Water NSW**

Each person who was an appointed director of the board of State Water Corporation immediately before the relevant day continues in office, on and from that day, as an appointed director of the board of Water NSW, until the person's term of office expires or he or she sooner vacates office as such.

### **4 Chief executive officer of Water NSW**

- (1) A person who held office as the chief executive officer of State Water Corporation immediately before the relevant day continues in office, on and from that day, as the chief executive officer of Water NSW, until the person's term of office expires or he or she sooner vacates office as such.
- (2) A person who held office as the acting chief executive officer of State Water Corporation immediately before the relevant day continues in office, on and from that day, as the acting chief executive officer of Water NSW, until the person's term of office expires or he or she sooner vacates office as such.

### **5 Operation of section 4 not affected**

Nothing in this Division limits the operation of section 4.

## **Division 3 Abolition of Sydney Catchment Authority**

### **6 Sydney Catchment Authority abolished on relevant day**

- (1) The Sydney Catchment Authority and the Sydney Catchment Authority Board are abolished on the relevant day.

- (2) Any person who held office as a member of the Sydney Catchment Authority Board immediately before the relevant day ceases to hold office as such on that day.
- (3) A person who held office as the Chief Executive of the Sydney Catchment Authority immediately before the relevant day ceases to hold office as such on that day.
- (4) A person who ceases to hold an office by operation of this clause is not entitled to any remuneration or compensation because of the loss of that office.

## **7 Transfer of Sydney Catchment Authority's assets, rights and liabilities to Water NSW**

- (1) The object of this clause is to make arrangements for the transfer to Water NSW of the assets, rights and liabilities of the Sydney Catchment Authority on its abolition.

### **Note—**

This clause is also intended to operate as an arrangement of the kind referred to in section 768AD (2) of the [Fair Work Act 2009](#) of the Commonwealth. See also clause 8.

- (2) The assets, rights and liabilities of the Sydney Catchment Authority are transferred to Water NSW on the relevant day.
- (3) Schedule 1 applies to the transfer of assets, rights and liabilities by operation of this clause.

## **8 Transfer of staff of Sydney Catchment Authority**

- (1) Without limiting section 31 of the [Interpretation Act 1987](#), the provisions of this clause are intended to operate concurrently with the provisions of Part 6-3A (Transfer of business from a State public sector employer) of the [Fair Work Act 2009](#) of the Commonwealth (the **federal transfer provisions**).

### **Note—**

Part 6-3A of the [Fair Work Act 2009](#) of the Commonwealth provides that certain terms and conditions of employment of a public sector employee are transferred when he or she is transferred to the employment of a national system employer. A statutory State owned corporation such as Water NSW is a national system employer for this purpose. Section 768AD of the [Fair Work Act 2009](#) of the Commonwealth sets out the circumstances in which Part 6-3A of that Act will be applicable to the transfer of a public sector employee.

- (2) The Minister may, by order in writing, transfer the employment of a person in the Public Service under the [Government Sector Employment Act 2013](#) (a **transferred employee**) to Water NSW if, in the Minister's opinion, the person was employed in the Public Service immediately before the relevant day primarily to enable the Sydney Catchment Authority to exercise its functions.
- (3) A transfer under this clause does not require the consent of the transferred employee.
- (4) On the day specified in the order (the **transfer day**)—
  - (a) the employment of the transferred employee in the Public Service is terminated,  
and

- (b) the transferred employee becomes an employee of Water NSW.
- (5) Without limiting any entitlements arising under the federal transfer provisions, on and from the transfer day for a transferred employee—
- (a) the transferred employee is entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which he or she was a contributor, member or employee (as an employee in the Public Service) immediately before the transfer day and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law, and
- (b) Water NSW is taken to be an employer for the purposes of any superannuation scheme in respect of which the transferred employee continues as a contributor, member or employee pursuant to an entitlement under this clause, and
- (c) the continuity of the transferred employee's contract of employment is taken not to have been broken by the transfer of employment, and service of the employee in the Public Service (including service deemed to be service with Water NSW) that is continuous service up to the time of transfer is taken for all purposes to be service with Water NSW, and
- (d) the transferred employee retains any rights to sick leave, annual leave or long service leave accrued or accruing immediately before the transfer day (except accrued leave for which the employee has, on ceasing to be employed in the Public Service, been paid the monetary value in pursuance of any other entitlement of the employee).
- (6) A transferred employee is not entitled in respect of the same period of service to claim a benefit under this clause and another law or instrument.
- (7) The Secretary of the Department may, in connection with the transfer of a transferred employee's employment under this clause, give a certificate in writing as to the extent of the accrued rights to annual leave, sick leave, extended or long service leave that are retained by the employee under this clause, and such a certificate is evidence of the matters certified.
- (8) In the event that the federal transfer provisions do not apply to a transferred employee, Water NSW is nevertheless required to provide the transferred employee with the same entitlements to which the employee would have been entitled under those provisions had they applied to the employee.
- (9) Nothing in this clause affects the continued application of clause 5 of Schedule 3 to the repealed Catchment Management Act to the determination of the entitlements of a transferred employee for the purposes of this clause if it applied to the employee immediately before the relevant day.

- (10) The following provisions apply in relation to the transfer of a transferred employee's employment under this clause—
- (a) the transfer has effect despite the *Government Sector Employment Act 2013*, *Industrial Relations Act 1996* or any other law, contract or instrument under a law,
  - (b) the termination of the employee's employment in the Public Service by operation of this clause does not preserve, or give rise to, any entitlements or rights other than those provided for by the *Fair Work Act 2009* of the Commonwealth and this clause,
  - (c) the transferred employee is not entitled to any payment or other benefit by reason only of having ceased to be an employee in the Public Service as a result of the transfer,
  - (d) a public sector agency is not required to make any payment to the transferred employee in relation to the transferred employee's accrued rights in respect of annual leave, sick leave or extended or long service leave.

(11) In this clause—

**public sector agency** means any of the following—

- (a) the State (including the Crown in right of the State),
- (b) a Minister,
- (c) the Ministerial Holding Corporation constituted by the *State Owned Corporations Act 1989*,
- (d) a public authority of the State,
- (e) any other person acting on behalf of the State (or the Crown in right of the State).

## 9 Sydney Catchment Management Fund

On the relevant day—

- (a) the Sydney Catchment Management Fund, as referred to in section 24A of the repealed Catchment Management Act, is abolished, and
- (b) any balance standing to the credit of that Fund becomes the money of Water NSW.

## 10 Existing arrangements

- (1) Any arrangement in force for the purposes of section 21A (3) or Division 4 of Part 3 of the repealed Catchment Management Act immediately before the relevant day is taken, on and from that day, to be an arrangement in force for the purposes of the corresponding provisions of this Act.

(2) Any such arrangement—

- (a) is taken to be with Water NSW rather than the Sydney Catchment Authority, and
- (b) may be reviewed, replaced and amended in accordance with the provisions of this Act.

## 11 Existing memoranda

(1) Any memoranda in force for the purposes of Division 4 of Part 4 of the repealed Catchment Management Act immediately before the relevant day is taken, on and from that day, to be memoranda in force for the purposes of the corresponding provisions of this Act.

(2) Any such memoranda—

- (a) is taken to be with Water NSW rather than the Sydney Catchment Authority, and
- (b) may be reviewed, replaced and amended in accordance with the provisions of this Act.

## Division 4 Existing operating licences

### 12 Application of Division and interpretation

(1) This Division applies to the following operating licences (**existing operating licences**)—

- (a) the operating licence issued to State Water Corporation under the repealed Corporation Act as in force immediately before the relevant day (the **existing State water operating licence**), and
- (b) the operating licence issued to the Sydney Catchment Authority under the repealed Catchment Management Act as in force immediately before the relevant day (the **existing Sydney catchment operating licence**).

(2) For the purposes of this Division, each of the following listed functions of Water NSW are the **Sydney catchment functions** of Water NSW, but only in such areas or circumstances (if any) specified for the exercise of the function—

- (a) to supply water to the Sydney Water Corporation,
- (b) to supply water to water supply authorities and to local councils or county councils prescribed by regulations made for the purposes of section 7 (1) (c),
- (c) to supply water to licensed operators and licensed retailers within the meaning of the [Water Industry Competition Act 2006](#),
- (d) to supply water to other persons and bodies, but under terms and conditions that

- prevent the person or body concerned from supplying the water for consumption by others within the State unless the person or body is authorised to do so by or under an Act,
- (e) to construct, maintain and operate water management works (including providing or constructing systems or services for supplying water) for the Sydney catchment area,
  - (f) to protect and enhance the quality and quantity of water in the Sydney catchment area,
  - (g) to manage and protect the Sydney catchment area and water management works vested in or under the control of Water NSW that are used within or for the purposes of that area,
  - (h) to undertake research on catchments generally, and in particular on the Sydney catchment area,
  - (i) to undertake an educative role within the community concerning the Sydney catchment area,
  - (j) to exercise any other function conferred or imposed by the operating licence in connection with the Sydney catchment area.
- (3) The water management works referred to in subclause (2) (e) and (g) include water management works (wherever located) that were owned, vested in or controlled by the Sydney Catchment Authority immediately before the relevant day.
- (4) For the purposes of this Division, each of the following listed functions of Water NSW are the **non-Sydney catchment functions** of Water NSW except to the extent that the function forms part of the Sydney catchment functions of Water NSW—
- (a) to capture and store water and to release water—
    - (i) to persons entitled to take the water, including release to regional towns, and
    - (ii) for any other lawful purpose, including the release of environmental water,
  - (b) to construct, maintain and operate water management works (including providing or constructing systems or services for supplying water),
  - (c) to undertake flood mitigation and management in its area of operations (other than the Sydney catchment area),
  - (d) to exercise any other function conferred or imposed by the operating licence.
- (5) The non-Sydney catchment functions and the Sydney catchment functions also include functions under section 7 (2) (the **ancillary functions**), but only to the extent

that the ancillary functions relate to the functions that form part of the non-Sydney catchment functions or Sydney catchment functions specified in subclause (2) or (4), respectively.

- (6) Subject to any amendments made on or after the relevant day, an existing operating licence that becomes an operating licence under this Act by operation of this Division does not operate to authorise Water NSW to exercise a listed function or ancillary function of Water NSW, or a part of such a function, unless (and to the extent that) it forms—
- (a) in relation to the existing State water operating licence—part of the non-Sydney catchment functions of Water NSW, or
  - (b) in relation to the existing Sydney catchment operating licence—part of the Sydney catchment functions of Water NSW.

### **13 Existing State water operating licence**

- (1) On and from the relevant day, the existing State water operating licence continues in force, subject to the modifications specified by or under subclause (2), as an operating licence under this Act.
- (2) The existing State water operating licence has effect subject to the following modifications—
- (a) any reference to State Water Corporation (however expressed) is to be read as a reference to Water NSW,
  - (b) any reference to a repealed Act (or a provision of a repealed Act) is to be read in accordance with the provisions of clause 24,
  - (c) any reference to the area of operations is to be read as a reference to the area of operations of Water NSW (but not so as to authorise the exercise of any Sydney catchment functions of Water NSW),
  - (d) any reference to the Sydney Catchment Authority is omitted,
  - (e) the functions that the licence authorises are limited to the non-Sydney catchment functions of Water NSW,
  - (f) any requirements concerning the carrying out of operational audits are limited to an audit of operations carried out for the purposes of the licence,
  - (g) any reporting requirements are limited to reports concerning operations carried out for the purposes of the licence,
  - (h) such other modifications as may be prescribed by the regulations.
- (3) If the Minister is not the portfolio Minister, the Minister is not to recommend the

making of a regulation for the purposes of subclause (2) (h) unless the Minister certifies that the Minister has consulted the portfolio Minister about the proposed modifications.

#### **14 Existing Sydney catchment operating licence**

- (1) On and from the relevant day, the existing Sydney catchment operating licence continues in force, subject to the modifications specified by or under subclause (2), as an operating licence under this Act.
- (2) The existing Sydney catchment operating licence has effect subject to the following modifications—
  - (a) any reference to the Sydney Catchment Authority (however expressed) is to be read as a reference to Water NSW,
  - (b) any reference to a repealed Act (or a provision of a repealed Act) is to be read in accordance with the provisions of clause 24,
  - (c) any reference to the area of operations is to be read as a reference to the Sydney catchment area and any other part of the area of operations of Water NSW with respect to which the Sydney catchment functions of Water NSW are exercisable,
  - (d) the functions that the licence authorises Water NSW to exercise are limited to the Sydney catchment functions of Water NSW,
  - (e) any requirements concerning the carrying out of operational audits are limited to an audit of operations carried out for the purposes of the licence,
  - (f) any reporting requirements are limited to reports concerning operations carried out for the purposes of the licence,
  - (g) such other modifications as may be prescribed by the regulations.
- (3) If the Minister is not the portfolio Minister, the Minister is not to recommend the making of a regulation for the purposes of subclause (2) (g) unless the Minister certifies that the Minister has consulted the portfolio Minister about the proposed modifications.

#### **15 Reissue of existing operating licences**

- (1) The Governor may, on the recommendation of the portfolio Minister, reissue an existing operating licence as an operating licence under this Act in the name of Water NSW (a ***reissued operating licence***).
- (2) A reissued operating licence must be in substantially the same terms as the operating licence it replaces.
- (3) A reissued operating licence is in ***substantially the same terms*** as the operating



licence only if—

- (a) the changes made to the licence are for the purpose of giving effect to the modifications specified by or under this Division for the licence, and
- (b) the original expiry date for the operating licence is retained.

#### **16 Amendment etc of converted operating licences**

Nothing in this Division prevents an existing operating licence that becomes an operating licence under this Act by operation of this Division from being amended, renewed, cancelled and enforced in accordance with the provisions of this Act relating to operating licences.

### **Division 5 Existing catchment, special and controlled areas**

#### **17 Existing Sydney catchment area**

- (1) The catchment area within the meaning of the repealed Catchment Management Act is taken, on and from the relevant day, to have been declared under this Act to be a declared catchment area known as the Sydney catchment area, and may be altered accordingly.

**Note—**

Section 40 (3) provides that an order revoking the declaration of the Sydney catchment area as a designated catchment area cannot be made unless authorised by an Act of Parliament.

- (2) The inner catchment area within the meaning of the repealed Catchment Management Act is taken, on and from the relevant day, to have been declared under this Act to be the inner catchment area for the Sydney catchment area, and may be altered or revoked accordingly.
- (3) The outer catchment area within the meaning of the repealed Catchment Management Act is taken, on and from the relevant day, to have been declared under this Act to be the outer catchment area for the Sydney catchment area, and may be altered or revoked accordingly.

#### **18 Existing special areas**

- (1) An area of land that was a special area within the meaning of the repealed Catchment Management Act immediately before the relevant day is taken, on and from that day, to have been declared under this Act to be a special area, and may be altered or revoked accordingly.
- (2) A plan of management in force for the purposes of section 49 of the repealed Catchment Management Act immediately before the relevant day is taken, on and from that day, to be a plan of management in force for the purposes of the corresponding provisions of this Act.

- (3) Any such plan of management may be reviewed, replaced and amended in accordance with the provisions of this Act.

### **19 Existing controlled areas**

An area of land that was a controlled area within the meaning of the repealed Catchment Management Act immediately before the relevant day is taken, on and from that day, to have been declared under this Act to be a controlled area, and may be altered or revoked accordingly.

## **Division 6 Miscellaneous**

### **20 Existing authorised officers**

- (1) A person who held office as an authorised officer under a repealed Act immediately before the relevant day ceases to hold office as such on that day.
- (2) A person who ceases to hold an office by operation of this clause is not entitled to any remuneration or compensation because of the loss of that office.

### **21 Existing notices**

- (1) Subject to the regulations, this clause applies to a notice given under a provision of a repealed Act in force immediately before the relevant day that—
  - (a) required a person to do, or not to do, things specified in the notice, and
  - (b) had not yet been complied with by that day.
- (2) A notice to which this clause applies is taken to have been given under the corresponding provision (if any) of this Act, and may be varied, revoked and enforced accordingly.

### **22 Exercise of existing regulatory functions**

- (1) This clause applies to each of the following functions (an ***existing regulatory function***)—
  - (a) a function conferred or imposed on the Sydney Catchment Authority as referred to in section 17, 19 or 61 of the repealed Catchment Management Act,
  - (b) a function conferred or imposed on the Sydney Catchment Authority by Division 2 of Part 5 of the repealed Catchment Management Act,
  - (c) a function conferred or imposed on the Sydney Catchment Authority by Part 6A or 6B of the repealed Catchment Management Act,
  - (d) a function conferred or imposed on the Sydney Catchment Authority by section 69 of the repealed Catchment Management Act,

(e) any other function of the Sydney Catchment Authority prescribed by the regulations.

(2) An existing regulatory function of the Sydney Catchment Authority that became exercisable before (but which had not yet been exercised by) the relevant day becomes, on and from that day, a function of the Regulatory Authority instead of the Sydney Catchment Authority, and is exercisable accordingly.

### **23 Sydney Water Catchment Management Regulation 2013**

On and from the relevant day, the *Sydney Water Catchment Management Regulation 2013* (as in force immediately before that day) is taken to be a regulation under this Act, and may be amended and repealed accordingly.

**Note—**

Schedule 3, as originally enacted, renamed the *Sydney Water Catchment Management Regulation 2013* as the *Water NSW Regulation 2013* and made various other amendments consequential on it becoming a regulation under this Act.

### **24 Updating of references to repealed Acts and former corporations**

(1) This clause applies in relation to—

(a) a provision of any other Act or any instrument made under any other Act (a **legislative provision**), and

(b) a provision of any other instrument or document (a **non-legislative provision**).

(2) On and from the relevant day (and except as otherwise provided by or under this clause)—

(a) subject to paragraph (b), a reference in a legislative provision to a repealed Act is to be read as a reference to this Act, and

(b) a reference in a legislative provision to a provision of a repealed Act is to be read as a reference to the corresponding provision (if any) of this Act, and

(c) a reference in a legislative provision to State Water Corporation or the Sydney Catchment Authority is to be read as a reference to—

(i) in the case of a provision that confers or imposes an existing regulatory function (within the meaning of clause 22)—the Regulatory Authority, and

(ii) in any other case—Water NSW.

(3) However, subclause (2) does not apply to any of the following—

(a) a legislative provision that contains a reference to which that subclause would otherwise have applied if that reference was inserted or substituted by, or retained despite, an amendment made to the provision by this Act,

- (b) a spent savings or transitional legislative provision,
  - (c) a provision of *State Environmental Planning Policy (Western Sydney Employment Area) 2009*,
  - (d) a provision of an Act that amends a repealed Act,
  - (e) a legislative provision (or a legislative provision belonging to a class of such provisions) prescribed by the regulations.
- (4) The regulations may make provision for or with respect to the updating of references to a repealed Act (or a provision of a repealed Act) or State Water Corporation or the Sydney Catchment Authority in—
- (a) a legislative provision to which subclause (2) does not apply, and
  - (b) a non-legislative provision.
- (5) Subject to this Part and the regulations, the provisions of this clause extend to a provision of an instrument made under a repealed Act that is continued in force or effect under this Act by this Part in the same way as they apply to legislative provisions.

## **25 (Repealed)**

## **26 Transferred easements**

For the purposes of any easement the benefit of which is transferred to Water NSW by or under this Act, Water NSW is taken to be a body representing the Crown.

## **27 Repeal of section 3A of *Sydney Water Act 1994***

The repeal of section 3A (*Sydney Water Catchment Management Act 1998*) of the *Sydney Water Act 1994* by this Act does not affect the validity or efficacy of—

- (a) any amendments made to an operating licence (or any substitution of an operating licence) under the authority of that section before its repeal, or
- (b) the divesting or transfer of any functions of the Sydney Water Corporation by operation of that section before its repeal.

## **28 General savings provision**

Subject to this Part and the regulations, anything done under or for the purposes of a provision of a repealed Act is, to the extent that the thing has effect immediately before the repeal of the provision, taken to have been done under or for the purposes of the corresponding provision (if any) of this Act.

## **Part 3 Provisions consequent on conferral of certain functions on**

## **Water NSW**

### **29 Pending applications and existing compliance notices**

- (1) This clause applies if, under section 12 (4), the terms of an operating licence confer on Water NSW specified functions of the kind referred to in that subsection (a **conferred function**).
- (2) If a conferred function relates to the process for determining or otherwise dealing with an application under the *Water Management Act 2000* or the *Water Act 1912*, Water NSW may, in the case of an application that was made but not determined before the conferral of the function on Water NSW, determine or otherwise deal with the application.
- (3) Any notice under the *Water Management Act 2000* or the *Water Act 1912* that relates to a conferred function is taken to have been given by Water NSW, and may be varied, revoked or enforced by Water NSW, if the notice—
  - (a) was given before the conferral of the function, and
  - (b) required a person to do, or not to do, things specified in the notice, and
  - (c) had not yet been complied with before the conferral of the function.

### **Schedules 3, 4 (Repealed)**