

# Water Management Amendment Act 2010

As at 27 June 2018

## See also:

*Government Sector Finance Legislation (Repeal and Amendment) Bill 2018*

## Note:

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the *Interpretation Act 1987 No 15* once the amendments have taken effect.

## Long Title

An Act to amend the *Water Management Act 2000* with respect to specific purpose access licences and other access licences, environmental water, offences relating to taking water and water meters and private irrigation and drainage bodies; and for other purposes.

## 1 Name of Act

This Act is the *Water Management Amendment Act 2010*.

## 2 Commencement

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

## Schedule 1 (Repealed)

## Schedule 2 Other amendments to Water Management Act 2000 No 92

### [1]-[45] (Repealed)

#### [46] Section 106 Land benefited by approval

Omit "private irrigation board, private drainage board" from section 106 (3).

Insert instead "private water corporation".

#### [47] Section 120A

Insert after section 120:

##### 120A Entry and investigation powers

(1) An irrigation corporation may appoint a person to act as an authorised officer of the corporation under this section. An appointment is to be in writing and to comply with any requirements of the regulations.

(2) An authorised officer of a corporation may enter land at any reasonable time if the authorised officer is reasonably of the opinion that the landholder has contravened an irrigation, water supply or drainage agreement with the corporation and that it is necessary to enter the land for the purpose of investigating that contravention.

(3) An authorised officer who enters land under this section may exercise the powers set out in section 339B (2) (a)-(g).

(4) Sections 339D, 339F and 340 apply to authorised officers appointed under this

section.

(5) A corporation, and authorised officers of a corporation, may exercise the functions conferred by this section only if authorised to do so by the operating licence of the corporation.

(6) This section does not empower an authorised officer to enter any part of premises used only for residential purposes.

(7) An irrigation corporation must compensate all interested parties for any damage caused by a person exercising a power of entry on to land under this section on behalf of the corporation (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the person in the exercise of the power of entry.

**[48] Section 125A**

Insert after section 125:

**125A Offence to contravene operating licence**

(1) An irrigation corporation must not contravene the operating licence of the corporation. Tier 2 penalty.

(2) Action may be taken both under this section and section 125 in respect of the same contravention of an operating licence.

**[49], [50] (Repealed)**

**[51] Section 136A**

Insert after section 136:

**136A Charges for water illegally taken and damage to works**

(1) An irrigation corporation may impose a charge on a person for water taken if the corporation is satisfied on the balance of probabilities that the person has knowingly taken water from a water management work that is owned by, or is under the control and management of, the corporation in contravention of this Act, the regulations or an agreement with the corporation.

(2) A corporation may impose a charge on a person for the repair or replacement of a work if the corporation is satisfied on the balance of probabilities that the person has destroyed, damaged or interfered with a work that is owned by, or is under the control or management of, the corporation.

(3) The charge imposed by the corporation may include a penalty component.

(4) The maximum charge that a corporation may impose under this section:

- (a) for the taking of water, is an amount not exceeding 5 times the value of the water so taken, as determined in accordance with the regulations, or
- (b) for destroying, damaging or interfering with a work, is an amount not exceeding 5 times the reasonable cost of the repair or replacement (as required) of the work.

(5) Action under this section may not be taken against a person unless the corporation:

- (a) has given written notice to the person that the corporation proposes to take such action, and
- (b) has given the person a reasonable opportunity to make submissions to the corporation with respect to the proposed action, and
- (c) has taken any such submissions into consideration.

(6) A charge imposed by a corporation under this section is recoverable in any court of competent jurisdiction as a debt due to the corporation.

(7) A corporation is not entitled to take action under this section unless the operating licence of the corporation authorises the corporation to take action under this section.

(8) Action may be taken under this section against a former member of the corporation.

(9) The exercise of powers by a corporation under this section is subject to any requirements of, or limits imposed by, the regulations or the operating licence of the corporation.

**[52] Section 137 Indemnities**

Insert after section 137 (2):

(3) This section does not apply to an action, liability, claim or demand referred to in section 137A.

**[53] Section 137A**

Insert after section 137:

**137A Liability for water source and other changes**

(1) An irrigation corporation, any officer or employee of an irrigation corporation or a person acting under the direction of a corporation, officer or employee is not subject to any action, liability, claim or demand arising:

- (a) from the unavailability of water, or
- (b) from the escape of water from a water management work owned by, or under the control or management of, the corporation, or
- (c) from a failure to supply, distribute or drain water that is authorised by its operating licence or this Act or the regulations,

as a consequence of anything done or omitted to be done in good faith by the corporation, officer, employee or person for the purposes of executing this Act or carrying out the functions of the corporation.

(2) This section does not limit section 397.

**[54] Chapter 4 Joint private works**

Omit Parts 2 and 3. Insert instead:

## **Part 2 – Private water corporations**

### **Division 1 – Preliminary**

139 Definitions In this Part: "**board**" means the board of a corporation. "**corporation**" means a private water corporation established under this Part and listed in Schedule 13. "**corporation work**" means a water management work, or a proposed water management work, specified in the works plan for a corporation. "**member's water entitlement**" means the part of the share component of the corporation's access licence that is available to a member. "**rules**" means the rules of a private water corporation, as in force from time to time. "**works plan**" means the works plan for a corporation specified for the corporation, as in force from time to time.

140 Requirements for access licences and approvals Nothing in this Part authorises a corporation or landholder to do anything for which this Act requires an access licence or approval unless the corporation or landholder holds an appropriate access licence or approval.

### **Division 2 – Constitution and management of private water corporations**

#### **141 Application for establishment of private water corporations**

(1) Two or more landholders of landholdings that are being worked on as 2 or more holdings may apply to the Minister to constitute a private water corporation in relation to those landholdings.

(2) An application is:

- (a) to be in the approved form, and
- (b) to be accompanied by a works plan for the corporation and proposed

- rules for the corporation, and
- (c) to be accompanied by any other information required by the Minister or prescribed by the regulations, and
- (d) to be accompanied by the fee (if any) prescribed by the regulations.

#### 142 Determination of application and constitution of corporation

- (1) The Minister may grant an application to establish a corporation if:
  - (a) the Minister is satisfied that the purpose of the corporation is to provide, maintain or operate any or all of a water supply system, water distribution system or drainage system, and
  - (b) the corporation and any proposed works plan and rules of the corporation comply with any requirements of this Act and the regulations.
- (2) A corporation is to be constituted by the Minister by order published on the NSW legislation website.
- (3) In addition to constituting the corporation, the order must specify the following:
  - (a) the name of the corporation,
  - (b) the water supply, water distribution or water drainage purposes of the corporation,
  - (c) the landholdings for which the corporation may exercise functions and the works plan for the corporation,
  - (d) the members of the corporation,
  - (e) the board members of the corporation, pending the first election of board members,
  - (f) the date, time and place of the first election of the board members of the corporation,
  - (g) the rules of the corporation.
- (4) On the order being published or on such later day as may be specified in the order:
  - (a) the corporation is constituted as a body corporate with the name specified in the order, and
  - (b) the members of the corporation are the members specified in the order, and
  - (c) the rules and works plan specified by the order take effect.
- (5) A corporation is not a NSW government agency.

#### 143 Functions of private water corporations

- (1) A corporation has the following functions:
  - (a) to provide, maintain or operate a water supply system, water distribution system or drainage system,
  - (b) any other function conferred or imposed on the corporation by or under this or any other Act.
- (2) A corporation may supply water:
  - (a) under an access licence or approval held by the corporation, or
  - (b) for the purpose of an access licence or approval held by a member whose member's water entitlement has been transformed under Division 4.
- (3) A corporation must exercise its functions in accordance with this Act, the regulations and the rules.

#### 144 Boards of private water corporations

- (1) There is to be a board of a corporation.
- (2) The board is to consist of not less than 3 and not more than 10 members of the corporation.
- (3) The board has the following functions:
  - (a) to direct, control and manage the affairs of the corporation, in

accordance with this Act, the regulations and the rules,

(b) any other functions conferred on the board by or under this Act.

(4) A board member holds office for the term prescribed by the rules.

(5) The regulations may prescribe the circumstances in which a board member ceases to be a board member.

#### 145 Rules of private water corporations

(1) A corporation may, from time to time, amend or replace the rules of the corporation.

(2) The rules may make provision for or with respect to the following matters:

(a) elections of the board,

(b) the members and procedure of the board,

(c) the members of the corporation,

(d) meetings of the corporation,

(e) the voting rights of members of the corporation, or classes of members of the corporation,

(f) new members of the corporation,

(g) the functions of the corporation that may be exercised only by resolution of the corporation at a meeting of the members of the corporation,

(h) the imposition of rates and charges on members of the corporation for services (including water) provided by the corporation,

(i) the regulation of a water supply, water distribution or drainage system provided by the corporation,

(j) the regulation of the supply, taking or use of water provided by a water supply or water distribution system provided by the corporation,

(k) the regulation of the draining or disposal of water through a drainage system provided by the corporation,

(l) the financial management and systems of the corporation,

(m) the manner in which the rules are to be amended or replaced,

(n) any other matters prescribed by the regulations,

(o) any other matters necessary for, or ancillary to, the purposes of the corporation.

(3) The rules must:

(a) not be inconsistent with this Act or the regulations, and

(b) comply with any requirements prescribed by the regulations.

(4) A corporation must notify changes to the rules, or replaced rules, in the manner prescribed by the regulations.

(5) The rules are binding on the members of the corporation, board members and landholders to whom the corporation provides services and it is presumed that the members and any such landholders have notice of the rules.

(6) A rule has no effect to the extent to which it is inconsistent with this Act or the regulations.

(7) A corporation must not make a change to a rule unless the proposed change has been approved by at least two thirds of the members of the corporation who are entitled to vote on the question or the change is authorised under the rules.

(8) The regulations may vary the proportion of members of a corporation who must approve any such change or any class of change.

#### 146 Corporation must provide copy of rules to Minister

(1) A corporation must, if required to do so by the Minister, provide the Minister with a copy of the rules of the corporation. Maximum penalty: 20 penalty units.

(2) A corporation must, on the request of a member and payment by the member of the fee (if any) prescribed by the rules of the corporation, provide the member

with a copy of the rules of the corporation.

147 Delegation by corporations and boards A corporation or a board may by instrument in writing delegate:

- (a) to any member of the corporation or board, or
- (b) to any employee of the corporation,

any of its functions, other than this power of delegation.

### **Division 3 – Operational functions**

148 Corporation works and other works

(1) A corporation may exercise the following functions for the purpose of its water supply, water distribution and drainage functions:

- (a) construct, install, maintain, operate and manage corporation works,
- (b) repair, replace, maintain, remove, extend, connect, disconnect, improve or do any other things in relation to corporation works that are necessary for the purposes of carrying out its functions.

(2) The corporation may enter into an arrangement with a landholder to provide services in relation to works that are not corporation works.

149 Members may be required to provide distribution works

(1) A corporation may require a member of the corporation, or a landholder who is supplied with water by the corporation, to do any of the following:

- (a) to provide water delivery systems on a landholding to enable the supply of water to the land at the rate specified by the corporation,
- (b) to provide water storage works in the locations, and of a kind, specified by the corporation for water supplied for stock or domestic purposes,
- (c) to maintain any water delivery systems or water storage works on the land so as to enable the corporation to properly exercise its functions in relation to the supply of water.

(2) The requirement is to be made by notice in writing given by the corporation to the member or landholder.

(3) A requirement may be made under this section only if it is necessary for the efficient or effective operation of corporation works or the carrying out of the corporation's functions.

150 Discontinuation of water supply by corporation

(1) A corporation may at any time suspend or restrict the supply of, or refuse to supply, water to a member or landholder if the corporation is reasonably satisfied that any of the following circumstances exist:

- (a) the water that is available to the corporation cannot meet the demand,
- (b) the water that is available to the corporation is not suitable for the required purpose,
- (c) the corporation is unable to provide sufficient conveyance water in connection with the operation of an irrigation system,
- (d) the corporation is not lawfully able to supply the quantity of water,
- (e) the member or landholder has failed to pay rates or charges for water or other services provided by the corporation,
- (f) the member or landholder has contravened or failed to comply with a condition on which water or drainage services are supplied by the corporation,
- (g) the member or landholder has contravened or failed to comply with a requirement of the corporation relating to the provision, maintenance or repair of distribution works or any other requirement made by the corporation in accordance with this Act, the regulations or the rules,
- (h) the member or landholder has contravened or failed to comply with a

requirement of this Act, the regulations or the rules,

(i) the corporation is unable to dispose of water draining into its drainage system because of the degraded quality of the water.

(2) A corporation that takes action under this section may reduce the amount of water available by different amounts or proportions according to such factors as the corporation thinks fit.

#### 151 Supply of services to other persons

(1) A corporation may enter into an agreement with a person who is not a member of the corporation to supply water for the purpose of irrigating land or other purposes, or to drain water from land, by means of a water supply, water distribution or drainage system provided and managed by the corporation.

(2) A corporation must not supply water for domestic purposes if a supply of water is available to the person from a local water utility or major utility.

#### 152 Powers of entry and inspection

(1) A corporation may, by its employees and agents, enter onto land on which corporation works are situated, or any other land, for the following purposes:

(a) to carry out any of its functions in relation to corporation works,

(b) to read a meter that measures water supplied by the corporation or monitors drainage for quantity or quality or both,

(c) to carry out investigations or inspections, take levels, drill test bore-holes, dig trenches, make surveys and marks, and fix pegs and stakes, for the purposes of designing, constructing or determining the site of a proposed corporation work,

(d) to remove samples of materials from the land for the purposes of carrying out the corporation's functions, but only if the landholder has been consulted and the views of the landholder have been considered,

(e) to exercise any other powers that are incidental to the corporation's functions or that are reasonably necessary for carrying out the corporation's functions.

(2) The powers of entry conferred by this section are not to be exercised for a purpose referred to in subsection (1) (a), (c) or (d) without prior notice to the landholder of the land.

(3) A corporation must ensure that as little damage as possible is caused by the exercise of powers under this section.

#### 153 Works plans

(1) A works plan for a corporation must:

(a) identify the water management works or proposed works that are the corporation works, and

(b) specify the location of, and describe, the works, and

(c) specify the land to which the works plan applies.

(2) A works plan must comply with any requirements prescribed by the regulations and the rules.

(3) A works plan may be amended or replaced if the amendment or replacement is consented to by any landholder on whose land an affected work is situated or is authorised by the rules.

(4) A works plan may specify works on land of former members of the corporation who have transformed their member's water entitlements.

(5) Regulations may be made for or with respect to the keeping of, and provision of, copies of works plans by corporations.

### **Division 4 – Sale and transformation of water entitlements**

#### 154 Water entitlements of members

(1) A corporation may, if requested to do so in writing by a member of the

corporation, determine the member's water entitlement.

(2) The corporation must determine an entitlement if the request is made by a member who is supplied by the corporation with water for irrigation.

(3) A corporation must have regard to the following matters when determining the member's water entitlement:

(a) the nature of agricultural activities on the land to which water is supplied,

(b) the amount of water currently supplied to the member,

(c) any present or past water sharing arrangements applicable to the member,

(d) any other matter it considers relevant,

(e) any other matter prescribed by the regulations.

(4) A determination may specify the different parts of the member's water entitlement that are available to the member for different purposes.

(5) A determination must be in writing and comply with the requirements prescribed by the regulations. Notice of a determination must be given in writing by the corporation to the member.

(6) A determination may be varied or redetermined only on a further application made by the member within 3 months of the determination or in the circumstances prescribed by the regulations.

(7) A person must not participate in a determination of a member's water entitlement if the person or a member of the person's immediate family (within the meaning of the regulations) has an interest in the entitlement.

155 Sale or transfer of group entitlement A corporation must not enter into a dealing to sell or mortgage the whole or part of its water entitlement under its access licence unless the dealing is permitted under, and is in accordance with, the rules of the corporation.

156 Sale or transfer of members' water entitlements

(1) A member of a corporation may sell or transfer the whole or any part of the member's water entitlement to another member or to the corporation.

(2) A member must not sell or transfer the whole or part of the member's water entitlement under this section unless the sale or transfer has been approved by the corporation in accordance with the rules or the regulations.

(3) A sale or transfer by a member does not affect the member's membership of the corporation, except as provided by this Act or the rules of the corporation.

157 Transformation of member's water entitlement

(1) A corporation may make an application under Division 4 of Part 2 of Chapter 3 for the purpose of wholly or partly transforming a member's water entitlement into an access licence under this Act.

(2) On transformation of the whole or part of a member's water entitlement to an access licence:

(a) the member is not entitled to vote (as a board member) or as a member of the corporation on any matter relating to the transformation of one or more other members' water entitlements or the supply of water to members who have not transformed their water entitlements, and

(b) the corporation may continue to exercise functions in relation to any corporation works that are located on the landholding (whether or not the corporation is to deliver the member's water entitlement under the access licence or the landholder is a member of the corporation).

(3) If the whole of a person's water entitlement is transformed and the person does not have a right to the delivery of that water by the corporation:

(a) the person ceases to be a member of the corporation, and

(b) the corporation must not fix rates and charges in respect of the person's



landholding for that water (other than termination charges).

(4) The rules may make provision for or with respect to other circumstances in which a person whose member's water entitlement has been transformed ceases to be a member of the corporation.

(5) A corporation may require a member to provide security as a condition of consent to transformation of the whole or part of the member's water entitlement, subject to the regulations.

(6) Without limiting subsection (5), the following kinds of security may be required by a corporation:

- (a) a charge over a part of an irrigation right that is not transformed,
- (b) a charge over an access licence or other entitlement to water acquired by the person and resulting from the transformation,
- (c) a guarantee by an authorised deposit-taking institution,
- (d) a deposit lodged with the corporation.

## **Division 5 – Changes to private water corporations**

### **158 Changes in membership requiring works plan changes**

(1) A corporation must not make a change in membership that requires a change to the works plan unless the proposed change to the works plan has been approved by at least two thirds of the members of the corporation who are entitled to vote on the question.

(2) The regulations may vary the proportion of members of a corporation who must approve any such change.

(3) Any change to the works plan takes effect from the date approval is given or such other date (being an earlier or later date) as is specified in the approval.

### **159 Application for amalgamation of private water corporations**

(1) Two or more corporations may apply to the Minister to constitute one private water corporation.

(2) An application is:

- (a) to be in the approved form, and
- (b) to be accompanied by a works plan for the land and proposed rules for the new corporation, and
- (c) to be accompanied by any other information required by the Minister or prescribed by the regulations, and
- (d) to be accompanied by the fee (if any) prescribed by the regulations.

### **160 Determination of application for amalgamation**

(1) The Minister may grant an application to amalgamate 2 or more corporations if:

- (a) the Minister is satisfied that the purpose of the amalgamated corporation is to provide, maintain or operate any or all of a water supply system, water distribution system or drainage system, and
- (b) the corporation and any proposed works plan or rules of the corporation comply with any requirements of this Act and the regulations.

(2) The amalgamated corporation is to be constituted by the Minister by order published on the NSW legislation website.

(3) In addition to constituting the corporation, the order must specify the following:

- (a) the name of the corporation,
- (b) the water supply, water distribution or water drainage purposes of the corporation,
- (c) the landholdings for which the corporation may exercise functions and the works plan of the corporation,
- (d) the members of the corporation,

- (e) the board members of the corporation, pending the first election of board members,
- (f) the date, time and place for the first election of the board members of the corporation,
- (g) the rules of the corporation.

(4) On the order being published or on such later day as may be specified in the order:

- (a) the new corporation is constituted as a body corporate with the name specified in the order, and
- (b) the members specified in the order are the members of the corporation, and
- (c) the rules and works plan specified by the order take effect, and
- (d) the amalgamated corporations are abolished, and
- (e) the new corporation is taken for all purposes to be a continuation of and the same legal entity as each of the amalgamated corporations.

(5) The new corporation is not a NSW government agency.

#### 161 Effect of sale of land

(1) If a member of a corporation sells to a person land to which the corporation provides or is able to provide water supply or drainage services:

- (a) the member ceases to be a member in respect of that land when that sale takes effect, and
- (b) the purchaser is taken to be a member of the corporation when the sale takes effect, and
- (c) the purchaser has all the entitlements and liabilities of the vendor as a member, in respect of the land, that the vendor had immediately before the sale took effect.

(2) A member of a corporation who sells land as referred to in this section must notify the corporation of the sale in accordance with any requirements of the regulations or the rules.

#### 162 Effect of subdivision The subdivision of land by a member of a corporation:

- (a) does not of itself entitle any other person to be a member of the corporation or entitle any other person to be supplied with water or provided with drainage or other services by the corporation, and
- (b) does not of itself affect any existing entitlement of any other person in relation to any such service, and
- (c) does not of itself affect any functions of the corporation in relation to corporation works.

### **Division 6 – Rates and charges**

#### 163 Fixing of rates and charges

(1) A corporation must for each year commencing on 1 July fix the rates and charges payable in respect of each landholding that is a landholding owned or occupied by its members for which the corporation may exercise functions, or for which it provides water or drainage services in that year.

(2) In determining the amount of rates and charges payable, the corporation must fix an amount that it considers is sufficient to meet the estimated costs of the following:

- (a) the corporation's likely costs in providing irrigation, water supply and drainage services for that year,
- (b) the liabilities of the corporation,
- (c) the corporation's likely costs relating to corporation works, including (but not limited to) maintenance, improvement and replacement of works and new works,

- (d) provision for a sinking fund (if necessary),
  - (e) any other matters prescribed by the regulations.
- (3) The rates and charges payable may (but are not required to) be fixed on the basis of any one or more of the following:
- (a) the volume or quality of water supplied or proposed to be supplied to a landholding,
  - (b) the area of a landholding,
  - (c) whether or not water or drainage services are or are proposed to be provided to a landholding,
  - (d) the purpose for which water services are supplied or proposed to be supplied to a landholding.
- (4) If rates and charges are payable on the basis of the area of a landholding, a landholding that has an area equal to a number of hectares and a remaining fraction of a hectare is to be rounded up to the nearest hectare.
- (5) A corporation may also fix the following charges:
- (a) termination charges payable by a member or former member in connection with the corporation ceasing to supply water to the member or former member (whether because of the transformation of the member's water entitlement to an access licence or otherwise),
  - (b) charges payable for the delivery of water to a member or former member after transformation of the whole or part of the member's water entitlement.
- (6) A corporation must give notice of its fees and charges for a year in the manner prescribed by the regulations and must specify in the notice the basis on which the rates and charges are calculated.
- (7) The rules of a corporation must provide for the procedures for setting rates and charges and the period within which rates and charges must be paid. The regulations may prescribe requirements for rules made under this section (see section 145 (3) (b)).

#### 164 Recovery of unpaid rates and charges

- (1) The owner or occupier of a landholding for which rates or charges are levied by a corporation must pay the rates and charges to the corporation.
- (2) If a landholding for which rates or charges are levied is owned or occupied by more than one person the following provisions apply:
  - (a) the rates or charges may be levied on one or more of those persons and may be recovered by the corporation from any one or more of those persons,
  - (b) the corporation is not entitled to recover more than the total amount of the rates and charges (and any interest payable).
- (3) If any land in a holding reverts to the Crown during any year for which rates or charges are or are to be assessed, the person who immediately before the reversion was the landholder of the land is liable for payment of only that part of the rates or charges proportionate to the part of the year for which the land was held by the person, and any excess payment by the person must be refunded to the person.

Rates and charges are a charge on the land, procedures for the sale of land for overdue rates are set out in Part 4 of Chapter 7.

#### 165 Abandonment of rates and charges

- (1) A corporation may, in accordance with the rules, waive or reduce rates, charges and interest due.
- (2) Rates and charges may be waived under this section only if the auditor of the corporation certifies that the waiver is in accordance with the rules and has been approved by the board of the corporation.

## Division 7 – Finance

### 166 Financial records

- (1) A corporation must cause proper accounts and records to be kept in relation to all its operations.
- (2) A corporation must prepare financial statements for each financial year of the corporation.
- (3) Sections 41B and 41BA of the *Public Finance and Audit Act 1983* apply to financial statements required to be prepared under this section in the same way that they apply to financial reports required to be prepared under that Act.
- (4) The financial statements must be submitted for verification and certification to an auditor appointed by the corporation in the manner prescribed by the rules of the corporation.
- (5) The regulations may provide for the qualifications for appointment as an auditor under this section.
- (6) A member of a corporation or a board member of the corporation must not be appointed to audit the financial statements of the corporation.

### 167 Auditor's right to access to information

- (1) An auditor of a corporation has a right of access at all reasonable times to the accounts and records of the corporation.
- (2) A board member, or an employee of, a corporation must comply with any reasonable request by the auditor of the corporation to provide information or documents relating to the accounts or financial statements or related records of the corporation. Maximum penalty: 20 penalty units.

### 168 Presentation of audited financial statements

- (1) A corporation must, at the request of the Minister, furnish to the Minister the audited financial statements and any other documents requested within the time specified in the request.
- (2) The audited financial statements must be laid before the annual general meeting of the corporation following their verification and certification by the auditor.

### 169 Borrowing and investment by corporations

- (1) A corporation may obtain financial accommodation, and may invest the funds of the corporation, in any manner it thinks fit.
- (2) A corporation may, for the purpose of obtaining financial accommodation:
  - (a) charge the whole or any part of any of its property (including any income arising from rates or charges) by debenture, mortgage or in any other manner, and
  - (b) enter into arrangements to provide guarantees or indemnities.
- (3) If a corporation defaults in carrying out its obligations under a debenture charged on income arising from rates or charges, the Supreme Court may, on the application of a creditor or a trustee for the debenture holders:
  - (a) direct the corporation to appropriate a specified portion of its income to satisfy its obligations under the debenture, or
  - (b) direct the corporation to raise a specified amount by way of charges and direct the amount to be applied towards satisfying those obligations, and may give any other ancillary or incidental directions that it thinks fit.
- (4) The rights of a creditor or trustee in subsection (3) are in addition to any other rights of the creditor or trustee.
- (5) The obligations of a corporation are not guaranteed by the State of New South Wales.
- (6) The State of New South Wales is not liable to any action, liability, claim or demand in respect of the exercise by or on behalf of a corporation of any function

under this Division.

(7) In this section: "**funds**" includes any funds under the control of the corporation and real property, securities or other property comprising an investment. "**obtaining of financial accommodation**" has the same meaning as it has in the *Public Authorities (Financial Arrangements) Act 1987*.

## **Division 8 – Enforcement powers**

### **170 Charges for water illegally taken and damage to works**

- (1) A corporation may impose a charge on a person for water taken if the corporation is satisfied on the balance of probabilities that the person has knowingly taken water from a water management work that is owned by, or is under the control and management of, the corporation in contravention of this Act, the regulations, the rules or an agreement with the corporation.
- (2) A corporation may impose a charge on a person for the repair or replacement of a work if the corporation is satisfied on the balance of probabilities that the person has destroyed, damaged or interfered with a work that is owned by, or is under the control or management of, the corporation.
- (3) The charge imposed by the corporation may include a penalty component.
- (4) The maximum charge that a corporation may impose under this section:
  - (a) for the taking of water, is an amount not exceeding 5 times the value of the water so taken, as determined in accordance with the regulations, or
  - (b) for destroying, damaging or interfering with a work, is an amount not exceeding 5 times the reasonable cost of the repair or replacement (as required) of the work.
- (5) Action under this section may not be taken against a person unless the corporation:
  - (a) has given written notice to the person that the corporation proposes to take such action, and
  - (b) has given the person a reasonable opportunity to make submissions to the corporation with respect to the proposed action, and
  - (c) has taken any such submissions into consideration.
- (6) A charge imposed by a corporation under this section is recoverable in any court of competent jurisdiction as a debt due to the corporation.
- (7) A corporation is not entitled to take action under this section unless the Minister has approved the application of this section to the corporation.
- (8) Action may be taken under this section against a former member of the corporation.
- (9) The exercise of powers by a corporation under this section is subject to any requirements of, or limits imposed by, the regulations or the rules of a corporation.

### **171 Entry and investigation powers**

- (1) A corporation may appoint a person to act as an authorised officer of the corporation under this section. An appointment is to be in writing and is to comply with any requirements of the regulations.
- (2) An authorised officer of a corporation may enter land at any reasonable time if the authorised officer is reasonably of the opinion that the landholder has contravened an irrigation, water supply, water distribution or drainage agreement with the corporation and that it is necessary to enter the land for the purpose of investigating that contravention.
- (3) An authorised officer who enters land under this section may exercise the powers set out in section 339B (2) (a)-(g).
- (4) Sections 339D, 339F and 340 apply to authorised officers appointed under this section.

(5) A corporation, and authorised officers of a corporation, may exercise the functions conferred by this section only if authorised to do so by the rules of the corporation.

(6) This section does not empower an authorised officer to enter any part of premises used only for residential purposes.

(7) A corporation must compensate all interested parties for any damage caused by a person exercising a power of entry on to land under this section on behalf of the corporation (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the person in the exercise of the power of entry.

#### 172 Ministerial directions about rules

(1) The Minister may, by notice in writing to a corporation, direct the corporation to comply with, or cease to contravene, the rules of the corporation.

(2) The notice may direct the corporation to take specified action or to cease to take specified action.

(3) A corporation must not contravene a direction under this section. Tier 2 penalty.

### **Division 9 – Winding up of private water corporations**

#### 173 Appointment of an administrator

(1) The Minister may, by order published in the Gazette, remove the members of the board of a corporation from office and appoint an administrator to conduct the affairs of the corporation.

(2) The Minister may make an order if the Minister is of the opinion that:

(a) the board or the corporation has failed, or is unable to, carry out its functions as required by or under this Act, or

(b) without limiting paragraph (a), the corporation has failed or is unable to provide or maintain water supply, water distribution or drainage services or corporation works, or

(c) the corporation is unable to pay its debts as they fall due, or

(d) the board or corporation has regularly or materially contravened this Act, the regulations or the rules of the corporation, or

(e) in all the circumstances of the case it is just and equitable to do so.

(3) Before making an order, the Minister must:

(a) cause notice of the proposed order to be published in a newspaper circulating in the local area in which the corporation provides services, and

(b) in that notice, invite submissions to be made to the Minister about the proposal within the period of 4 weeks following the publication of the notice, and

(c) consider any submissions made within that period.

(4) The Minister is not required to comply with subsection (3) if the Minister is of the opinion that the special circumstances of the case require the order to be made immediately.

#### 174 Functions of administrator

(1) The administrator of a corporation appointed under this Division holds office for such period as is specified in the order appointing the administrator. The administrator ceases to hold office if the Minister, by a subsequent order published in the Gazette, revokes the appointment or on the election of a new board under this section.

(2) The administrator has and may exercise the functions of the board of the corporation or corporation specified in the administrator's order of appointment (subject to any conditions specified in that order) but is not required to comply with the rules of the corporation.

- (3) The administrator may amend the rules of the corporation and take such other action as is necessary to enable the corporation to properly exercise its functions.
- (4) The administrator is entitled to be paid such remuneration, from the funds of the corporation, as the Minister may from time to time determine.
- (5) The Minister may at any time, by order published in the Gazette, extend the period of appointment of an administrator.
- (6) The administrator must, if required to do so by the Minister, report to the Minister on the administrator's conduct of the affairs of the corporation.
- (7) The administrator may at any time recommend to the Minister that elections be held for a new board or that the corporation be wound up.
- (8) The administrator must, if required to do so by the Minister, arrange for elections to be held for a new board.

175 Removed board members not eligible for re-election If the board of a corporation has been removed from office, each of the board members is ineligible for election to the board at any subsequent election, unless the Minister declares in writing that the board member is eligible for election at such an election.

176 Effect of administration on existing contracts On the appointment of an administrator of a corporation:

- (a) all contracts of employment with the corporation are terminated, and
- (b) the administrator may terminate any contract for the provision of services to or by the corporation.

177 Winding up of corporations

- (1) The Minister may, by order published in the Gazette, order that a corporation be wound up if:
  - (a) requested to do so by the corporation, after a resolution to wind up the corporation was passed at a meeting of the corporation by not less than 75% of the members, or
  - (b) the administrator of the corporation has recommended that the corporation be wound up.
- (2) The order must appoint a person as the liquidator of the corporation.
- (3) The regulations may make provision for or with respect to the winding up of a corporation and for the disposal of residual assets of the corporation.
- (4) The Minister may, by order published in the Gazette, abolish a corporation if satisfied that the winding up of the corporation under this section has been completed.

## **Division 10 – Miscellaneous**

178 Liability for water source and other changes

- (1) A corporation, any officer or employee of a corporation or a person acting under the direction of the corporation, officer or employee is not subject to any action, liability, claim or demand arising:
  - (a) from the unavailability of water, or
  - (b) from the escape of water from a corporation work, or
  - (c) from a failure to supply, distribute or drain water that is authorised by the rules, this Act or the regulations,
 as a consequence of anything done or omitted to be done in good faith by the corporation, officer, employee or person for the purposes of executing this Act or of carrying out the functions of the corporation.
- (2) This section does not limit section 397.

179 Amendment of Schedule 13 to insert, change, omit name of corporation The Minister may, by order published on the NSW legislation website, amend Schedule 13:

- (a) to insert the name of a private water corporation constituted under this Act, or
- (b) to change the name of a private water corporation constituted under this Act,

or

(c) to omit the name of a private water corporation, if the corporation is abolished.

**[55] Section 221 Definitions**

Insert in alphabetical order:

**"member's water entitlement"** means the part of the share component of an access licence held by or on behalf a private water trust that is available to a member. **"rules"** means the rules of a private water trust, as in force from time to time. **"trust work"** means a water management work, or a proposed water management work, specified in the works plan for a private water trust. **"works plan"** means the works plan for a private water trust specified for the trust, as in force from time to time.

**[56] Section 221**

Omit the definitions of **"member"** and **"water supply district"**.

Insert in alphabetical order:

**"trustee"** of a private water trust means a trustee elected under section 223.

**[57] Section 222 Requirements for access licences and approvals**

Insert ", the trustees of a trust" after "private water trust" where firstly occurring.

**[58] Section 222**

Omit "private water trust" where secondly occurring.

Insert instead "(or the trustees on behalf of the trust),".

**[59] Chapter 4, Part 4, Divisions 2-9**

Omit Chapter 4, Part 4, Divisions 2-6. Insert instead:

**Division 2 – Management of private water trusts**

**223 Trustees of private water trusts**

- (1) The number of trustees of a private water trust is to be the number when section 220 commenced.
- (2) The trustees of a trust are to be elected.
- (3) The trustees must elect one of the trustees as chairperson of the trust.
- (4) The trustees have the following functions:
  - (a) to direct, control and manage the affairs of the trust, in accordance with this Act, the regulations and the rules,
  - (b) any other functions conferred on the trustees by or under this Act.
- (5) The trustees are to act for and on behalf of the trust.
- (6) A trustee holds office for the term prescribed by the rules.
- (7) The regulations may prescribe the circumstances in which a trustee ceases to be a trustee.
- (8) For the purposes of this Act and the regulations, a trust is taken to be the holder of any access licence or approval that is held by any former or other current trustees on behalf of the trust.
- (9) A trustee must, as soon as practicable after ceasing to be a trustee, take all necessary action to transfer any interest in property held by the former trustee on behalf of the trust to the trustees of the trust or the trust.

**224 Water supply and other functions of trusts**

- (1) A private water trust has the following functions:
  - (a) to provide, maintain or operate a water supply system, water distribution system or drainage system,



(b) any other function conferred or imposed on the trust by or under this or any other Act.

(2) The trust may supply water:

(a) under an access licence or approval held by the trustees or trust, or

(b) for the purpose of an access licence or approval held by a member

whose member's water entitlement has been transformed under Division 4.

## 225 Rules of private water trusts

(1) A private water trust may, from time to time, amend or replace the rules of the trust.

(2) The rules may make provision for or with respect to the following matters:

(a) elections of trustees,

(b) the trustees and procedures of the trustees,

(c) the members of the trust,

(d) meetings of the trust,

(e) meetings of trustees of the trust,

(f) the voting rights of members of the trust, or classes of members of the trust,

(g) new members of the trust,

(h) the functions of the trust that may be exercised only by resolution at a meeting of the members of the trust,

(i) the imposition of rates and charges on members of the trust for services (including water) provided by the trust,

(j) the regulation of a water supply, water distribution or drainage system provided by the trust,

(k) the regulation of the supply, taking or use of water provided by a water supply or water distribution system provided by the trust,

(l) the regulation of the draining or disposal of water through a drainage system provided by the trust,

(m) the financial management and systems of the trust,

(n) the manner in which the rules are to be amended or replaced,

(o) any other matters prescribed by the regulations,

(p) any other matters necessary for, or ancillary to, the purposes of the trust.

(3) The rules must:

(a) not be inconsistent with this Act or the regulations, and

(b) comply with any requirements prescribed by the regulations.

(4) A trust must notify changes to the rules, or replaced rules, in the manner prescribed by the regulations.

(5) The rules are binding on the trustees and members of the trust and landholders to whom the trust provides services and it is presumed that the trustees, members and landholders have notice of the rules.

(6) A rule has no effect to the extent to which it is inconsistent with this Act or the regulations.

(7) A trust must not make a change to a rule unless the proposed change has been approved by at least two thirds of the members of the trust who are entitled to vote on the question or the change is authorised by the rules.

(8) The regulations may vary the proportion of members of a trust who must approve any such change or any class of change.

## 226 Trustees must provide copy of rules

(1) A trustee of a private water trust must, if required to do so by the Minister, provide the Minister with a copy of the rules of the trust. Maximum penalty: 20 penalty units.

- (2) A private water trust must, on the request of a member of the trust and payment by the member of the fee (if any) prescribed by the rules of the trust, provide the member with a copy of the rules of the trust.

227 Delegation A private water trust or the trustees of a trust may by instrument in writing delegate:

- (a) to any trustee or to any member of the trust, or
- (b) to any employee of the trust,

any of their functions, other than this power of delegation.

### **Division 3 – Operational functions**

228 Trust works and other works

- (1) A private water trust may exercise the following functions for the purpose of its water supply, water distribution and drainage functions:

- (a) construct, install, maintain, operate and manage trust works,
- (b) repair, replace, maintain, remove, extend, connect, disconnect, improve or do any other things in relation to trust works that are necessary for the purpose of carrying out their functions.

- (2) A private water trust may enter into an arrangement with a landholder to provide services in relation to works that are not trust works.

229 Members may be required to provide distribution works

- (1) A private water trust may require a member of the trust, or a landholder who is supplied with water by the trust, to do any of the following:

- (a) to provide water delivery systems on a landholding to enable the supply of water to the land at the rate specified by the trust,
- (b) to provide water storage works in the locations, and of a kind, specified by the trust for water supplied for stock or domestic purposes,
- (c) to maintain any water delivery systems or water storage works on the land so as to enable the trust to properly exercise functions in relation to the supply of water.

- (2) The requirement is to be made by notice in writing given by the trust to the member or landholder.

- (3) A requirement may be made under this section only if it is necessary for the efficient or effective operation of trust works or the carrying out of the trust's functions.

230 Discontinuation of water supply by trust

- (1) A private water trust may at any time suspend or restrict the supply of, or refuse to supply, water to a member or landholder if the trust is reasonably satisfied that any of the following circumstances exist:

- (a) the water that is available to the trust cannot meet the demand,
- (b) the water that is available to the trust is not suitable for the required purpose,
- (c) the trust is unable to provide sufficient conveyance water in connection with the operation of an irrigation system,
- (d) the trust is not lawfully able to supply the quantity of water,
- (e) the member or landholder has failed to pay charges or fees for water or other services provided by the trust,
- (f) the member or landholder has contravened or failed to comply with a condition on which water or drainage services are supplied by the trust,
- (g) the member or landholder has contravened or failed to comply with a requirement of the trust relating to the provision, maintenance or repair of distribution works or any other requirement made by the trust in accordance with this Act, the regulations or the rules,
- (h) the member or landholder has contravened or failed to comply with a

requirement of this Act, the regulations or the rules,

(i) the trust is unable to dispose of water draining into its drainage system because of the degraded quality of the water.

(2) A private water trust that takes action under this section may reduce the amount of water available by different amounts or proportions according to such factors as it thinks fit.

#### 231 Supply of services to other persons

(1) A private water trust may enter into an agreement with a person who is not a member of the trust to supply water for the purpose of irrigating land or other purposes, or to drain water from land, by means of a water supply, water distribution or drainage system provided and managed by the trust.

(2) A private water trust must not supply water for domestic purposes if a supply of water is available to the person from a local water utility or a major utility.

#### 232 Powers of entry and inspection

(1) A private water trust may, by its employees or agents, enter onto land on which trust works are situated, or any other land, for the following purposes:

(a) to carry out any of the trust's functions in relation to trust works,

(b) to read a meter that measures water supplied by the trust or monitors drainage for quantity or quality or both,

(c) to carry out investigations or inspections, take levels, drill test bore-holes, dig trenches, make surveys and marks, and fix pegs and stakes, for the purposes of designing, constructing or determining the site of a proposed trust work,

(d) to remove samples of materials from the land for the purpose of carrying out trust functions, but only if the landholder has been consulted and the views of the landholder have been considered,

(e) to exercise any other powers that are incidental to the trust's functions that are reasonably necessary for carrying out those functions.

(2) The powers of entry conferred by this section are not to be exercised for a purpose referred to in subsection (1) (a), (c) or (d) without prior notice to the landholder of the land.

(3) The trust must ensure that as little damage as possible is caused by the exercise of powers under this section and must repair any damage caused or pay compensation for the damage.

#### 233 Works plans

(1) A works plan for a trust must:

(a) identify the water management works or proposed works that are the trust works, and

(b) specify the location of, and describe, the works, and

(c) specify the land to which the works plan applies.

(2) A works plan must comply with any requirements prescribed by the regulations and the rules.

(3) A works plan may be amended or replaced if the amendment or replacement is consented to by any landholder on whose land affected works are situated or is authorised by the rules.

(4) A works plan may specify works on land of former members of the trust who have transformed their member's water entitlements.

(5) Regulations may be made for or with respect to the keeping of, and provision of, copies of works plans.

### **Division 4 – Sale and transformation of water entitlements**

#### 234 Water entitlements of members

(1) A private water trust may, if requested to do so by a member of the trust,

determine the member's water entitlement.

(2) The trust must determine a member's water entitlement if the request is made by a member who is supplied by the trust with water for irrigation.

(3) The trust must have regard to the following matters when determining the member's water entitlement:

(a) the nature of agricultural activities on the land to which water is supplied,

(b) the amount of water currently supplied to the member,

(c) any present or past water sharing arrangements applicable to the member,

(d) any other matter it considers relevant,

(e) any other matter prescribed by the regulations.

(4) A determination may specify the different parts of the member's water entitlement that are available to the landholding for different purposes.

(5) A determination must be in writing and comply with the requirements of the regulations. Notice of a determination must be given in writing by the trust to the member.

(6) A determination may be varied or redetermined only on a further application made by the member within 3 months of the determination or in the circumstances prescribed by the regulations.

(7) A person must not participate in a determination of a member's water entitlement if the person or a member of the person's immediate family (within the meaning of the regulations) has an interest in the entitlement.

235 Sale or transfer of group entitlement A private water trust must not enter into a dealing to sell or mortgage the whole or part of the water entitlement of a trust under an access licence unless the dealing is permitted under, and is in accordance with, the rules of the trust.

236 Sale or transfer of members' water entitlements

(1) A member of a private water trust may sell or transfer the whole or any part of the member's water entitlement to another member or to the trust.

(2) A member must not sell or transfer the whole or part of the member's water entitlement under this section unless the sale or transfer has been approved by the trust in accordance with the rules or the regulations.

(3) A sale or transfer by a member does not affect the member's membership of the trust, except as provided by this Act and the rules of the trust.

237 Transformation of member's water entitlements

(1) A private water trust may make an application under Division 4 of Part 2 of Chapter 3 for the purpose of wholly or partly transforming a member's water entitlement into an access licence under this Act.

(2) On transformation of the whole or part of a member's water entitlement to an access licence:

(a) the member is not entitled to vote (as a trustee) or as a member on any matter relating to the transformation of one or more other members' water entitlements or the supply of water to members who have not transformed their water entitlements, and

(b) the trust may continue to exercise functions in relation to any trust works that are located on the landholding (whether or not the trust is to deliver the member's water entitlement under the access licence or the landholder remains a member of the trust).

(3) If the whole of a person's water entitlement is transformed and the person does not have a right to the delivery of that water by the trust:

(a) the person ceases to be a member of the trust, and

- (b) the trust must not fix rates and charges in respect of the person's landholding for that water (other than termination charges).
- (4) The rules may make provision for or with respect to other circumstances in which a person whose member's water entitlement has been transformed ceases to be a member of the trust.
- (5) The trust may require a member to provide security as a condition of consent to transformation of the whole or part of the member's water entitlement, subject to the regulations.
- (6) Without limiting subsection (5), the following kinds of security may be required by the trust:
  - (a) a charge over a part of an irrigation right that is not transformed,
  - (b) a charge over an access licence or other entitlement to water acquired by the person and resulting from the transformation,
  - (c) a guarantee by an authorised deposit-taking institution,
  - (d) a deposit lodged with the trust.

## **Division 5 – Changes to private water trusts**

### **238 Changes in membership requiring works plan changes**

- (1) A private water trust must not make a change in membership that results in a consequential change to the works plan of the trust unless the proposed change to the works plan has been approved by at least two thirds of the members of the trust who are entitled to vote on the question.
- (2) The regulations may vary the proportion of the members of the trust who must approve any such change.
- (3) Any change to the works plan takes effect from the date approval is given or such other date (being an earlier or later date) as is specified in the approval.

### **239 Application for amalgamation of private water trusts**

- (1) Two or more private water trusts may apply to the Minister to constitute one private water trust.
- (2) An application is:
  - (a) to be in the approved form, and
  - (b) to be accompanied by a works plan and proposed rules for the new trust, and
  - (c) to be accompanied by any other information required by the Minister or prescribed by the regulations, and
  - (d) to be accompanied by the fee (if any) prescribed by the regulations.

### **239A Determination of application for amalgamation**

- (1) The Minister may grant an application to amalgamate 2 or more trusts if:
  - (a) the Minister is satisfied that the purpose of the amalgamated trust is to provide, maintain or operate any or all of a water supply system, water distribution system or drainage system, and
  - (b) the trust and any proposed works plan or rules of the trust comply with any requirements of this Act and the regulations.
- (2) The amalgamated private water trust is to be constituted by the Minister by order published on the NSW legislation website.
- (3) In addition to constituting the trust, the order must specify the following:
  - (a) the name of the trust,
  - (b) the water supply, water distribution or water drainage purposes of the trust,
  - (c) the landholdings for which the trust may exercise functions and the works plan of the trust,
  - (d) the members of the trust,
  - (e) the trustees of the trust, pending the first election of trustees,

- (f) the date, time and place for the first election of the trustees,
- (g) the rules of the trust.
- (4) On the order being published or on such later day as may be specified in the order:
  - (a) the new trust is constituted, and
  - (b) the members of the trust are the members specified in the order, and
  - (c) the rules and works plan specified by the order take effect, and
  - (d) the amalgamated trusts are abolished, and
  - (e) the new trust is taken for all purposes to be a continuation of and the same legal entity as each of the amalgamated trusts.
- (5) The new trust is not a NSW government agency.

#### 239B Effect of sale of land

- (1) If a member of a private water trust sells to a person land to which the trust provides or is able to provide water supply or drainage services:
  - (a) the member ceases to be a member in respect of that land when that sale takes effect, and
  - (b) the purchaser is taken to be a member of the trust when the sale takes effect, and
  - (c) the purchaser has all the entitlements and liabilities of the vendor as a member, in respect of the land, that the vendor had immediately before the sale took effect.
- (2) A member of a trust who sells land as referred to in this section must notify the trust of the sale in accordance with any requirements of the regulations or the rules.

#### 239C Effect of subdivision The subdivision of land by a member of a private water trust:

- (a) does not of itself entitle any other person to be a member of the trust or entitle any other person to be supplied with water or provided with drainage or other services by the trustees or trust, and
- (b) does not of itself affect any existing entitlement of any other person in relation to any such service, and
- (c) does not of itself affect any functions of the trustees or trust in relation to trust works.

#### 239D Conversion of private water trust to private water corporation

- (1) A private water trust may apply to the Minister to convert the trust to a private water corporation.
- (2) An application is:
  - (a) to be in the approved form, and
  - (b) to be accompanied by a works plan for the corporation and proposed rules for the corporation, and
  - (c) to be accompanied by any other information required by the Minister or prescribed by the regulations, and
  - (d) to be accompanied by the fee (if any) prescribed by the regulations.
- (3) The Minister must not grant the application unless the Minister is satisfied that not less than two thirds of the members of the trust have approved of the application being made.
- (4) The application is to be dealt with as if it were an application for the constitution of a corporation made in accordance with Part 2.
- (5) The regulations may make provision for or with respect to the following matters:
  - (a) the modification of the application of the provisions of Part 2 for the purposes of this section,
  - (b) provisions of a savings and transitional nature and any other matter

consequent on or ancillary to the creation of the corporation.

## **Division 6 – Rates and charges**

### **239E Fixing of rates and charges**

- (1) A private water trust must for each year commencing on 1 July fix the rates and charges payable in respect of each landholding owned or occupied by its members that is a landholding for which the trust may exercise functions, or for which it provides water or drainage services in that year.
- (2) In determining the amount of rates and charges payable, the trust must fix an amount that it considers is sufficient to meet the estimated costs of the following:
  - (a) the trust's likely costs in providing irrigation, water supply, drainage and flood control services for that year,
  - (b) the liabilities of the trust,
  - (c) the likely costs relating to trust works, including (but not limited to) maintenance, improvement and replacement of works and new works,
  - (d) provision for a sinking fund (if necessary),
  - (e) any other matters prescribed by the regulations.
- (3) The rates and charges payable may (but are not required to) be fixed on the basis of any one or more of the following:
  - (a) the volume or quality of water supplied or proposed to be supplied to a landholding,
  - (b) the area of a landholding,
  - (c) whether or not water or drainage services are or are proposed to be provided to a landholding,
  - (d) the purpose for which water services are supplied or proposed to be supplied to a landholding.
- (4) If rates and charges are payable on the basis of the area of a landholding, a landholding that has an area equal to a number of hectares and a remaining fraction of a hectare is to be rounded up to the nearest hectare.
- (5) The trust may also fix the following charges:
  - (a) termination charges payable by a member or former member in connection with the trust ceasing to supply water to the member or former member (whether because of the transformation of the member's water entitlement to an access licence or otherwise),
  - (b) charges payable for the delivery of water to a member after transformation of the whole or part of the member's water entitlement.
- (6) A trust must give notice of its fees and charges for a year in the manner prescribed by the regulations and must specify in the notice the basis on which the rates and charges are calculated.
- (7) The rules of a trust must provide for the procedures for setting rates and charges and the period within which rates and charges must be paid. The regulations may prescribe requirements for rules made under this section (see section 225 (3) (b)).

### **239F Recovery of unpaid rates and charges**

- (1) The owner or occupier of a landholding for which rates or charges are levied by a private water trust must pay the rates and charges to the trust.
- (2) If a landholding for which rates or charges are levied is owned or occupied by more than one person the following provisions apply:
  - (a) the rates or charges may be levied on one or more of those persons and may be recovered by the trust from any one or more of those persons,
  - (b) the trust is not entitled to recover more than the total amount of the rates and charges (and any interest payable).
- (3) If any land in a holding reverts to the Crown during any year for which rates or charges are or are to be assessed, the person who immediately before the

reversion was the landholder of the land is liable for payment of only that part of the rates or charges proportionate to the part of the year for which the land was held by the person, and any excess payment by the person must be refunded to the person.

Rates and charges are a charge on the land, procedures for the sale of land for overdue rates are set out in Part 4 of Chapter 7.

#### 239G Abandonment of rates and charges

- (1) A private water trust may, in accordance with the rules, waive or reduce rates, charges and interest due.
- (2) Rates and charges may be waived under this section only if the auditor of the private water trust certifies that the waiver is in accordance with the rules and has been approved by the trustees of the trust.

### **Division 7 – Finance**

#### 239H Financial records

- (1) A private water trust must cause proper accounts and records to be kept in relation to all the operations of the trust.
- (2) The trust must prepare financial statements for each financial year of the trust.
- (3) Sections 41B and 41BA of the *Public Finance and Audit Act 1983* apply to financial statements required to be prepared under this section in the same way that they apply to financial reports required to be prepared under that Act.
- (4) The financial statements must be submitted for verification and certification to an auditor appointed in the manner prescribed by the rules of the trust.
- (5) The regulations may provide for the qualifications for appointment as an auditor under this section.
- (6) A trustee of a trust or a member of a trust must not be appointed to audit the financial statements of the trust.

#### 239I Auditor's right to access to information

- (1) An auditor of a private water trust has a right of access at all reasonable times to the accounts and records of the trust.
- (2) A trustee of a trust must comply with any reasonable request by the auditor of the trust to provide information or documents relating to the accounts or financial statements or related records of the trust. Maximum penalty: 20 penalty units.

#### 239J Presentation of audited financial statements

- (1) A private water trust must, at the request of the Minister, furnish to the Minister the audited financial statements and any other documents requested within the time specified in the request.
- (2) The audited financial statement must be laid before the annual general meeting of the trust following their verification and certification by the auditor.

#### 239K Borrowing by private water trusts

- (1) A private water trust has and may exercise the following functions:
  - (a) to pay to the Treasury, at such times as may be fixed by the Minister, the interest and charges payable by the trust,
  - (b) to borrow money, but only as provided by this section.
- (2) A loan by way of limited overdraft may be obtained for the purpose of meeting necessary legitimate expenditure prior to the collection of rates or for the purpose of carrying out urgent works of renewal, or replacement, or other emergency, for which sufficient funds are not immediately available.
- (3) On application by a trust the Minister may issue a certificate of limit of overdraft, in which must be named the purpose in respect of which the loan may be obtained and the limit of the amount to be borrowed.
- (4) The sum to be stated in the certificate as the limit of the overdraft is in the discretion of the Minister, but must not exceed the estimated amount required for



the purpose mentioned therein plus 10% of such amount.

(5) The loan is subject to any conditions inserted by the Minister in the certificate, and the money borrowed is taken to be secured on the income of the trust and must be repaid within the time fixed in the certificate.

(6) All sums received on account of a trust's sinking fund must be carried by the Treasurer to a special account, to be called "The Water Supply Loan Redemption Fund", and all other sums to the Consolidated Fund.

(7) The regulations may make provision for or with respect to regulating the payment to the Crown of interest.

## **Division 8 – Winding up of private water trusts**

### **239L Appointment of an administrator**

(1) The Minister may, by order published in the Gazette, remove the trustees of a private water trust from office and appoint an administrator to conduct the affairs of the trust.

(2) The Minister may make an order if the Minister is of the opinion that:

(a) the trustees or the trust have failed, or are unable to, carry out their functions as required by or under this Act, or

(b) without limiting paragraph (a), the trustees or trust have failed or are unable to provide or maintain water supply, water distribution or drainage services or trust works, or

(c) the trust is unable to pay its debts as they fall due, or

(d) the trustees or trust have regularly or materially contravened this Act, the regulations or the rules of the trust, or

(e) in all the circumstances of the case it is just and equitable to do so.

(3) Before making an order, the Minister must:

(a) cause notice of the proposed order to be published in a newspaper circulating in the local area in which the trust provides services, and

(b) in that notice, invite submissions to be made to the Minister about the proposal within the period of 4 weeks following the publication of the notice, and

(c) consider any submissions made within that period.

(4) The Minister is not required to comply with subsection (3) if the Minister is of the opinion that the special circumstances of the case require the order to be made immediately.

### **239M Functions of administrator**

(1) The administrator of a private water trust appointed under this Division holds office for such period as is specified in the order appointing the administrator. The administrator ceases to hold office if the Minister, by a subsequent order published in the Gazette, revokes the appointment or on the appointment of new trustees under this section.

(2) The administrator has and may exercise the functions of the trust specified in the administrator's order of appointment (subject to any conditions specified in that order) but is not required to comply with the rules of the trust.

(3) The administrator may amend the rules of the trust and take such other action as is necessary to enable the trust to properly exercise its functions.

(4) The administrator is entitled to be paid such remuneration, from the funds of the trust, as the Minister may from time to time determine.

(5) The Minister may at any time, by order published in the Gazette, extend the period of appointment of an administrator.

(6) The administrator must, if required to do so by the Minister, report to the Minister on the administrator's conduct of the affairs of the trust.

(7) The administrator may at any time recommend to the Minister that new

trustees be appointed or that the trust be wound up.

(8) The administrator must, if required to do so by the Minister, arrange for elections to be held for new elected trustees.

**239N Removed trustees not eligible for re-election** If the trustees of a private water trust have been removed from office, each of the trustees is ineligible for subsequent appointment or election as a trustee of the trust, unless the Minister declares in writing that the trustee is eligible for subsequent appointment or election.

**239O Effect of administration on existing contracts** On the appointment of an administrator of a private water trust:

- (a) all contracts of employment by or on behalf of the trust are terminated, and
- (b) the administrator may terminate any contract for the provision of services to or by or on behalf of the trust.

**239P Winding up of private water trusts**

(1) The Minister may, by order published in the Gazette, order that a private water trust be wound up if:

- (a) requested to do so by the trustees after a resolution to wind up the trust was passed at a meeting of the trust by not less than 75% of the members of the trust, or
- (b) the administrator of the trust has recommended that the trust be wound up.

(2) The order must appoint a person as the liquidator of the trust.

(3) The regulations may make provision for or with respect to the winding up of a trust and for the disposal of residual assets held by or on behalf of the trust.

(4) The Minister may, by order published in the Gazette, abolish a trust if satisfied that the winding up of the trust under this section has been completed.

## **Division 9 – Miscellaneous**

**239Q Liability for water source and other changes**

(1) A private water trust, the trustees of a trust, any officer or employee of the trustees of a trust or a person acting under the direction of the trust, trustees, officer or employee is not subject to any action, liability, claim or demand arising:

- (a) from the unavailability of water, or
- (b) from the escape of water from a trust work, or
- (c) from a failure to supply, distribute or drain water that is authorised by the rules, this Act or the regulations,

as a consequence of anything done or omitted to be done in good faith by the trust, trustees, officer or employee or person for the purposes of executing this Act or of carrying out the functions of the trust.

(2) This section does not limit section 397.

**239R Ministerial directions about rules**

(1) The Minister may, by notice in writing to a private water trust or the trustees of a trust, direct the trust or trustees to comply with, or cease to contravene, the rules of the trust.

(2) The notice may direct the trust or trustees to take specified action or to cease to take specified action.

(3) A trust or the trustees of a trust must not contravene a direction under this section. Tier 2 penalty.

**239S Name changes** The Minister may, by order published in the Gazette, change the name of a private water trust, if the change has been approved by the voting members in accordance with the rules of the trust.

**239T Private trusts not NSW government agencies** A private water trust is not a NSW government agency.

**[62] Section 342 Destruction, damage and interference with certain works**

Omit "a private irrigation board, a private drainage board" wherever occurring in section 342 (1) and (2).

Insert instead "a private water corporation".

**[63] Section 343 Taking water from public or private works**

Omit "a private irrigation board, a private drainage board" from section 343 (1).

Insert instead "a private water corporation".

**[64] Section 343 (1)**

Omit "corporation, board,". Insert instead "corporation,".

**[65], [66] (Repealed)**

**[67] Section 354 Definition**

Omit "a private irrigation board, a private drainage board".

Insert instead "a private water corporation".

**[68] Section 359 Sale of land for unpaid rates and charges**

Insert ", private water corporation or private water trust" after "authority" wherever occurring in section 359 (1) and (3) (a)-(c).

**[69], [70] (Repealed)**

**[71] Section 368 Appeals to Land and Environment Court**

Insert after section 368 (1) (o):

(p) a decision by the Minister to give a direction to a private water corporation, private water trust or the trustees of a trust to comply with, or to cease to contravene, the rules of the corporation or trust.

**[72] Section 368 (1A)**

Insert after section 368 (1):

(1A) An appeal lies to the Land and Environment Court against any of the following decisions:

- (a) a decision by a private water corporation or an irrigation corporation to impose a charge under section 136A or 170 on a member, landholder or other person,
- (b) a decision by a private water corporation as to a member's water entitlement,
- (c) a decision by a private water trust or the trustees of a trust as to a member's water entitlement.

**[73] Section 375 Acquisition of land**

Omit "private irrigation board" wherever occurring in section 375 (2).

Insert instead "private water corporation".

**[74] Section 375 (2A)**

Insert after section 375 (2):

(2A) The acquisition of land by the Ministerial Corporation for the purposes of a private water trust is taken to be for the purposes of this Act if the purpose of the acquisition is to enable the trustees of the trust or the trust to exercise functions under this Act.

[75] (Repealed)

[76] Section 397 Exclusion of personal liability

Insert "or trustee" after "member" in section 397 (1) (b).

[77] Section 397 (2) (f) and (g)

Omit the paragraphs. Insert instead:

(f) a private water corporation, or

(g) the administrator of a private water corporation or a private water trust, or

[78] (Repealed)

[79] Schedule 9

Insert at the end of the Schedule with appropriate Part and clause numbering:

## **Part – Provisions consequent on enactment of Water Management Amendment Act 2010**

Definitions In this Part: "**new corporation**" means a private water corporation constituted under this Part. "**the 2010 amending Act**" means the *Water Management Amendment Act 2010*.

Continuing application of provisions to private irrigation boards, private irrigation districts and private drainage boards

(1) Parts 2 and 3 of Chapter 4 of the Act, and any regulations made for the purposes of those Parts, as in force immediately before the repeal of those Parts, continue to apply to a private irrigation board and its private irrigation district, or a private drainage board, until they are wound up, abolished, or converted to private water corporations under this Part (whichever occurs first).

(2) This clause is subject to this Part.

Conversion of existing private irrigation boards and districts and private drainage boards

(1) This clause applies to a private irrigation board and a private irrigation district, or a private drainage board, in existence immediately before the repeal of Parts 2 and 3 of Chapter 4 of the Act by the 2010 amending Act.

(2) On the commencement of this clause:

(a) each private irrigation board and each private drainage board is constituted as a body corporate that is a private water corporation, and

(b) each private irrigation board and its associated private irrigation district and each private drainage board are abolished.

(3) Each private water corporation constituted by this clause:

(a) has the same name as the private irrigation board or private drainage board it replaces, unless the Minister otherwise approves, and

(b) is taken for all purposes to be a continuation of and the same legal entity as the private irrigation board or private drainage board it replaces.

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

(a) deeming provisions of an instrument under this Act or an instrument of the relevant board to be rules of the corporation,

(b) deeming works (including works for which the board exercises functions after transformation of a landholder's entitlement) to be corporation works of the corporation,

(c) specifying works and other matters that are deemed to comprise the works plan of the corporation,

(d) the landholdings for which the corporation may exercise functions,

- (e) deeming existing rates and charges to be rates and charges of the corporation,
- (f) deeming existing members of private irrigation boards and private drainage boards to be board members of the corporation, pending the first election of board members,
- (g) the date, time and place for the first election of the board members of the corporation,
- (h) the members of the corporation,
- (i) requirements for the preparation and adoption of a works plan and rules of the corporation,
- (j) provisions of a savings or transitional nature and any other matter consequent on or ancillary to the creation of a new corporation.

(5) A corporation constituted under this clause is not a NSW government agency.

#### Conversion of private water trusts to private water corporations

- (1) The members of a private water trust may apply to the Minister to convert the trust to a private water corporation.
- (2) If an application is made under this clause, the Minister may convert the trust to a private water corporation under section 239D and may dispense with any of the requirements of that section.
- (3) The Minister may approve an application under this clause subject to conditions requiring compliance with those requirements within a period specified by the Minister.
- (4) The regulations may make provision for or with respect to the following matters:

- (a) deeming provisions of an instrument under this Act or an instrument of the trust to be rules of the corporation,
- (b) deeming works (including works for which the trust exercises functions after transformation of a landholder's entitlement) to be corporation works of the corporation,
- (c) specifying works and other matters that are deemed to comprise the works plan of the corporation,
- (d) the landholdings for which the corporation may exercise functions,
- (e) deeming existing rates and charges to be rates and charges of the corporation,
- (f) deeming existing members of trusts or trustees to be board members of the corporation, pending the first election of board members,
- (g) the date, time and place for the first election of the board members of the corporation,
- (h) the members of the corporation,
- (i) requirements for the preparation and adoption of a works plan and rules of the corporation,
- (j) provisions of a savings or transitional nature and any other matter consequent on or ancillary to the creation of the corporation.

(5) This clause ceases to have effect 24 months after the commencement of section 239D, as inserted by the 2010 amending Act.

**Existing chairpersons of private water trusts** The substitution of section 223 by the 2010 amending Act does not affect the appointment of any chairperson of a private water trust who held office as chairperson immediately before that substitution.

#### Existing members of trusts

- (1) A member of a trust who held office immediately before the commencement of section 223, as inserted by the 2010 amending Act, is taken to have been elected as a trustee of the trust for the period ending on the expiry of the period of

the person's last appointment, or until elections are held for trustees of the trust, whichever first occurs.

(2) A reference in any instrument to a member of a private water trust (other than a voting member of such a trust) is taken to be a reference to a trustee of a private water trust.

#### Rules of private water trusts

(1) Clauses 50, 53-55, Divisions 6-12 of Part 7 and Part 9 (other than Division 2) of the *Water Management (General) Regulation 2004*, as in force immediately before the commencement of section 225 (as inserted by the 2010 amending Act), continue to apply to or in respect of the trustees of a private water trust and private water trusts and are taken to be the rules of the trust until they are amended or replaced under section 225 (as inserted by the 2010 amending Act).

(2) This clause is subject to the regulations.

#### Works plans of private water trusts

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

(a) deeming works (including works for which a private water trust exercises functions after transformation of an entitlement) to be trust works of a private water trust,

(b) specifying the works and other matters that are deemed to comprise the works plan of a private water trust,

(c) the landholding for which a private water trust may exercise functions.

#### Existing rates and charges of private water trusts

(1) The rates and charges fixed by a private water trust, and in force immediately before the commencement of section 239E, as inserted by the 2010 amending Act, continue to apply until new rates and charges are fixed under this Act.

(2) Until rules are adopted for a trust for the purposes of Division 6 of Part 4 of Chapter 4, as substituted by the 2010 amending Act:

(a) sections 232 and 233, as in force immediately before that substitution, continue to apply to or in respect of the trust and its water supply district, and

(b) sections 239E and 239F, as inserted by the 2010 amending Act, do not apply to or in respect of the trust.

(3) This clause is subject to the regulations.

#### Transfer of property by former trust members

(1) This clause applies to a former member of a private water trust who had ceased to be such a member before the commencement of section 223, as inserted by the 2010 amending Act.

(2) The former member must take all action necessary to transfer any interest in property held by the former member on behalf of the private water trust to the trust or as directed in writing by the current trustees.

#### References to adaptive environmental water conditions

A reference in any instrument to an adaptive environmental water condition is taken to be a reference to a condition referred to in section 8 (1) (b) (i), as inserted by the 2010 amending Act.

#### Application of new defences

Sections 91A (4) and (5), 91B (5) and 91I (3), as inserted by the 2010 amending Act, do not apply to proceedings for offences commenced before the commencement of those subsections.

**[80], [81] (Repealed)**

**[82] Schedule 13**

Insert after Schedule 12:

## **Schedule 13 Private water corporations**

(Sections 139 and 179)

**[83]-[85] (Repealed)**

**[86] Dictionary, definitions of "private drainage board" and "private irrigation board"**

Omit the definitions. Insert instead:

**"private water corporation"** means a private water corporation constituted under Part 2 of Chapter 4.

## **Schedule 3 Amendment of other Acts**

### **3.1 – Farm Water Supplies Act 1946 No 22**

**[1] Section 16A Loan to private water corporation**

Omit the definition of **"Board"** from section 16A (1).

Insert in alphabetical order:

**"private water corporation"** means a private water corporation within the meaning of the *Water Management Act 2000*.

**[2] Section 16A (2), (4) and (6)**

Omit "Board" wherever occurring.

Insert instead "private water corporation".

**[3] Section 16A (5)**

Omit "Board" where firstly occurring.

Insert instead "private water corporation".

**[4] Section 16A (5)**

Omit "Board" where secondly occurring.

Insert instead "corporation".

### **3.2 – Land and Environment Court Act 1979 No 204**

**Section 17 Class 1--environmental planning and protection appeals**

Omit "section 368" from section 17 (c).

Insert instead "section 368 (1) and (1A)".

### **3.3 – Roads Act 1993 No 33**

**Section 99 Private bodies to maintain or repair certain water supply and drainage works**

Omit "a private irrigation board, a private drainage board" from section 99 (1).

Insert instead "a private water corporation".

### **Historical notes**

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules

Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Water Management Amendment Act 2010 No 133*.

Assented to 7.12.2010. Date of commencement, Schs 2 and 3 excepted, 17.12.2010, sec 2 and 2010 (721) LW 17.12.2010; date of commencement of Sch 2 [1]-[15] [17]-[35] [37]-[45] [49] [50] [60] [61] [65] [66] [69] [70] [75] [78] [79] (to the extent that it inserts the Part heading and the cll entitled "Definitions", "References to adaptive environmental water conditions" and "Application of new defences") [80] [81] and [83]-[85], 4.4.2011, sec 2 and 2011 (146) LW 3.3.2011; date of commencement of Sch 2 [16], 1.3.2013, sec 2 and 2013 (71) LW 1.3.2013; Sch 2 [36] was not commenced and was repealed by the *Water Management Amendment Act 2018 No 31*; date of commencement of Sch 2 [46]-[48] [51]-[59] [62]-[64] [67] [68] [71]-[74] [76] [77] [79] (except to the extent that it inserts the Part heading and the cll entitled "Definitions", "References to adaptive environmental water conditions" and "Application of new defences") [82] and [86], and the heading to Sch 2, and Sch 3: not in force. This Act has been amended as follows:

2011	No 62	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2011</i> . Assented to 16.11.2011. Date of commencement of Sch 1, 6.1.2012, sec 2 (1).
2015	No 58	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2015</i> . Assented to 24.11.2015. Date of commencement of Sch 1, 8.1.2016, sec 2 (1).
2018	No 31	<i>Water Management Amendment Act 2018</i> . Assented to 27.6.2018. Date of commencement of Sch 2.5, assent, sec 2 (2).

This Act has been amended by sec 30C of the *Interpretation Act 1987 No 15*.

Table of amendments

Sch 1	Rep 1987 No 15, sec 30C.
Sch 2	Am 1987 No 15, sec 30C; 2011 No 62, Sch 1.24 [1] [2]; 2015 No 58, Sch 1.15; 2018 No 31, Sch 2.5.