Water Management Act 2000 No 92

[2000-92]

New South Wales

Status Information

Currency of version

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Provisions in force

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

Notes—

- **Does not include amendments by**
  Sch 8.30 [2] to this Act (not commenced)
  Central Coast Water Corporation Act 2006 No 105 (amended by *Statute Law (Miscellaneous Provisions) Act 2009* No 56 and *Central Coast Water Corporation Amendment Act 2010* No 89), Sch 7.2 [1] [2] and [4] (not commenced)
  Water Management Amendment Act 2010 No 133 (amended by *Statute Law (Miscellaneous Provisions) Act (No 2) 2011* No 62, *Statute Law (Miscellaneous Provisions) Act (No 2) 2015* No 58 and *Government Sector Finance Legislation (Repeal and Amendment) Act 2018* No 70), Sch 2[47] [48] [51]–[53] and [58] (not commenced)
  Water Management Amendment Act 2014 No 48, Schs 1.5, 1.7, 1.8 [4], 1.10 [5] [26] and 1.14 [2] (not commenced)
  Water Management Amendment Act 2018 No 31, Sch 1 [26] [32] [37] [55] [71] [72] [77] and [81]–[84] (not commenced)

Responsible Minister

- Minister for Water

For full details of Ministerial responsibilities, see the Administrative Arrangements (Minns Ministry—Administration of Acts) Order 2023.

Authorisation

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

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Water Management Act 2000 No 92

New South Wales

Contents

Long title 26

Chapter 1 Preliminary 26

1 Name of Act 26
2 Commencement 26
3 Objects 26
4 Interpretation 27
4A Meaning of “overland flow water” 27

Chapter 2 Water management planning 28

Part 1 General 28

Division 1 Water management principles 28

5 Water management principles 28

Division 2 State Water Management Outcomes Plan and water source classification

..... 30
6 State Water Management Outcomes Plan 30
7 Classification of water sources 31
8 Environmental water 31
8A Planned environmental water 32
8B Adaptive environmental water through dedication of existing water entitlements 33
8C Adaptive environmental water through system improvements 33

8D Adaptive environmental water conditions after surrender of licences 33
8E General provisions relating to access licences with adaptive environmental water conditions 33
8F Auditing of compliance with extraction limits 34

Division 3 General 35

9 Act to be administered in accordance with water management principles and State Water Management Outcomes Plan 35
10 Review of work and activities of Department 35

Part 2 Management committees 35

11 Constitution of water management areas 35
12 Establishment of management committees 35
13 Membership of committee 36
14 Functions of management committees 37

Part 3 Management plans 37

Division 1 Preliminary 37

15 Preparation of draft management plan 37
16 Management plans to be consistent with other instruments 38
17 Provisions applicable to all management plans 38
18 Matters for consideration 38

Division 2 Water sharing 39

19 Application of Division 39
20 Core provisions 39
21 Additional provisions 40

Division 3 Water use 41

22 Application of Division 41
23 Core provisions 41
24 Additional provisions 41

Division 4 Drainage management 42

25 Application of Division 42
26 Core provisions 42

27 Additional provisions 42

Division 5 Floodplain management 43

28 Application of Division 43
29 Core provisions 43
30 Additional provisions 43

Division 6 Controlled activities and aquifer interference activities 44

31 Application of Division 44
32 Core provisions 44
33 Additional provisions 44

Division 7 Environmental protection 45

34 Environmental protection provisions 45

Division 8 Procedures for making management plans 45

35 Format of management plan 45
36 Notification of certain persons and bodies 46
37 Reference of draft management plan to Minister 46
38 Public exhibition of draft management plan 47
39 Submissions on draft management plan 47
40 Resubmission of draft management plan to Minister 47
41 Making of management plan 48
42 Amendment of management plans 48
43 Duration of management plans 48
43A Extension of duration of management plan dealing with water sharing 49
44 Periodic auditing of management plans 50

Division 9 Amendment of management plans by Minister 50

45 Minister may amend or repeal management plan 50
45A Consolidation of management plans 51

Division 10 (Repealed) 52

Division 11 Miscellaneous 52

46 Making or amendment of management plan 52

47 Validity of management plans and exercise of plan-making functions 53
48 Effect of management plans on exercise of Minister's functions 54
49 Consideration of management plans by public authorities 54
49A Suspension of management plans during severe water shortages 55
49B Suspension of Basin management plans during extreme events 55

Part 4 Minister's plans 56

50 Minister's plan 56

Part 5 Implementation programs 57

51 Implementation programs 57

Chapter 3 Water management implementation 58

Part 1 Basic landholder rights 58

Division 1 Domestic and stock rights 58

52 Domestic and stock rights 58

Division 2 Harvestable rights 59

53 Harvestable rights 59
54 Harvestable rights orders 60

Division 3 Native title rights 61

55 Native title rights 61

Part 2 Access licences 62

Division 1 Preliminary 62

55A Application of Part 62
56 Access licences 62
57 Categories of licence 64
57A Special provisions relating to floodplain harvesting access licences 64
58 Priorities between different categories of licence 65
59 Available water determinations 66
60 Rules of distribution applicable to making of available water determinations 67

Division 1A Offences 68

60A Taking water without, or otherwise than authorised by, an access licence 68

60B Contravention of terms and conditions of access licence 70

60C Taking water for which there is no, or insufficient, water allocation 70

60D Taking water otherwise than by or from water supply work or extraction point nominated in access licence 72

60E Liability of occupier of premises for certain offences 72

60F General defence 73

60G Minister may charge for water illegally taken 73

60H Application of Division in relation to interstate licences 74

60I Access licence required for water used in mining activities 74

Division 2 Granting of access licences 75

61 Applications for granting of access licences 75

62 Objections to granting of access licences 76

63 Determination of applications 77

63A Commonwealth and other access licences arising from arrangements 78

63B Licences arising out of State arrangements or agreements 78

64 Notice of decision 79

65 Controlled allocation of access licences 79

Division 3 Conditions, duration and amendment of access licences 79

Note 79

66 Conditions of access licence generally 80

66A Imposition of conditions on granting of access licence 81

67 Imposition of conditions after access licence is granted 81

68 Revocation of conditions 82

68A Amendment of share or extraction components of access licences and other actions by Minister 82

68B Increase of share components of Commonwealth and other access licences arising from arrangements 83

69 Duration of access licence 84

70 Special provisions with respect to supplementary water 84

Division 3A Water Access Licence Register 84

Subdivision 1 Keeping of the Access Register 84

71 Water Access Licence Register 84

71A Dealings and other matters that must be recorded in the Access Register 84

71B When matters required to be recorded in General Division of Access Register have effect 85

71C Provisions with respect to registration of dealings, security interests, caveats and other matters in the Access Register 85

Subdivision 2 Registration of security interests 85

71D Creation of registered security interests by recording in Access Register 85

Subdivision 3 Registration of caveats 86

71E Minister may register caveats 86

71F Effect of a caveat 87

Subdivision 4 Miscellaneous 87

71G Minister may require production or surrender of access licence certificate before recording matters in Access Register 87

71H Searches of the Access Register 88

71I Correction and amendment of Access Register 88

71J Access to the Access Register 88

71K Minister to supply reasons for certain decisions in relation to Access Register 88

Division 4 Dealings with access licences 89

71L How does a dealing take effect? 89

71M Transfer of access licences 90

71N Term transfers of entitlements under access licences 91

71O Conversion of access licence to new category 92

71P Subdivision and consolidation of access licences 92

71Q Assignment of rights under access licence 93

71QA Assignment of individual daily extraction component 94

71R Amendment of share component of access licence 95

71S Amendment of extraction component of access licence 95

71T Assignment of water allocations between access licences 96
71U Interstate transfer of access licences 96
71V Interstate assignment of water allocations 96
71W Access licence may nominate water supply works and extraction points 97
71X Dealings on default 98
71Y General 100
71Z Access licence dealing principles 100
71ZA (Repealed) 101

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

..... 101
72 Devolution of access licences 101
72A Special provisions relating to co-holdings in access licences 102
73 Changes in co-holder’s tenancy arrangements 102
74 Exit from co-held access licence 103

Division 5 Water return flows 104

75 Water return flow rules 104
76 Water allocations may be credited 104

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

..... 104
77 Surrender of access licences 104
77A Cancellation of access licences that can no longer be used or are no longer required 105
78 Suspension and cancellation of access licences 105
78A Notification of intention to suspend, cancel or require payment of penalty 106
79 Compulsory acquisition of access licences 107

Divisions 7, 8 (Repealed) 108

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

..... 108
84 Register of available water determinations 108

85 Keeping of water allocation accounts 108
85AA Daily extraction accounts 109
85A Authorisation to take water from uncontrolled flows 109
85B (Repealed) 109

Division 9 Compensation relating to access licences 109

86 Definitions 110
87 Compensation payable in certain circumstances for reductions in water allocations arising during initial period for which management plan is in force 110
87AA Compensation payable in certain circumstances for reductions in water allocations arising after initial period that management plan is in force 111
87AB Compensation is not payable in relation to certain conduct 113
87AC No compensation payable for reductions in water allocations under certain replacement management plans 114
87A No compensation payable in relation to access licence 114

Division 10 Miscellaneous 114

87B Access licence certificate 114
87C Offences with respect to the Access Register 115
88 Regulations 115

Part 3 Approvals 116

Division 1 Preliminary 116

88A Application and objects of Part 116
89 Water use approvals 116
90 Water management work approvals 117
91 Activity approvals 117
91AA Consultation with Dams Safety NSW in relation to approvals for dams and flood retarding basins 117

Division 1A Offences 118

91A Using water without, or otherwise than as authorised by, a water use approval 118
91B Constructing or using water supply work without, or otherwise than as authorised by, a water supply work approval

..... 119
91C Constructing or using drainage work without, or otherwise than as authorised by, a drainage work approval
..... 119
91D Constructing or using flood work without, or otherwise than as authorised by, a flood work approval
..... 120
91E Carrying out controlled activity without, or otherwise than as authorised by, a controlled activity approval
..... 121
91F Carrying out aquifer interference activity without, or otherwise than as authorised by, an aquifer interference approval
..... 121
91G Contravention of terms and conditions of approval 122
91H Failure to install, use or maintain metering equipment 122
91I Taking water when metering equipment not working 123
91IA Failure to report metering equipment not working 124
91J Metering records 124
91K Meter tampering 124
91L Liability of occupier of premises for certain offences 125
91M General defence 126
91N Corporations not required to hold approvals 126

Division 2 Applications for and granting of approvals 126

92 Applications for approvals 126
93 Objections to applications for approvals 127
94 Determination of applications affected by reviews by Planning Assessment Commission 128
95 Determination of applications 128
96 Matters affecting consideration of applications 129
97 Grounds of refusal of certain applications 129
98 Notice of decision 130
99 Procedures in relation to integrated development 130
99A Granting of combined approvals 130

Division 3 Conditions and duration of approvals 132

100 Conditions of approvals generally 132
100A Imposition of conditions on granting of approval 133

101 Conditions of approval for joint schemes 133
101A Metering equipment condition 133
102 Imposition or change of conditions after approval is granted 134
103 Revocation of conditions 134
104 Duration of approval 134
105 Extension of approvals 135
106 Land benefited by approval 136

Division 4 Amendment, surrender, suspension and cancellation of approvals

..... 137
107 Amendment of approvals 137
108 Surrender of approvals 138
109 Suspension and cancellation of approvals 138

Division 5 Embargoes on applications for approvals 139

110 Temporary embargo 139
111 Permanent embargo 140
112 Operation of embargo 140

Division 6 Registers 141

113 Register of approvals 141

Part 4 Finance 141

114 Minister may impose fees and charges 141

Part 5 Conditions imposed by regulations 141

115 Regulations may impose mandatory conditions 141
115A Regulations relating to mandatory and other licence conditions 142

Part 6 Regulations relating to water management works 142

115B Metering equipment 142

Chapter 4 Joint private works 143

Part 1 Irrigation corporations 143

Division 1 Preliminary 143

116 Application of Part 143

117 Definitions 143

118 Requirements for access licences and approvals 144

Division 2 Irrigation corporations 144

119 Assets of irrigation corporations 144

120 Entry on to land 144

121 Ceasing to be an irrigation corporation 145

Division 3 Operating licences 145

122 Authority conferred by operating licence 145

123 Terms and conditions of operating licence 146

124 Term of operating licence 147

125 Contravention of operating licence 147

126 Cancellation of operating licence 147

127 Irrigation corporation may make arrangements with subsidiaries 148

Division 4 Inclusion of land within irrigation corporation’s area of operations

..... 148

128 Applications to include land within area of operations 148

129 Objections to inclusion of land within area of operations 149

130 Inclusion of land in area of operations 149

131 (Repealed) 149

Division 5 Exclusion of land from irrigation corporation’s area of operations

..... 149

132 Applications to exclude land from area of operations 149

133 Objections to exclusion of land from area of operations 149

134 Exclusion of land from area of operations 150

135 (Repealed) 150

Division 6 Miscellaneous 150

136 Successor in title liable for unpaid contract charges 150
137 Indemnities 150
138 Register of licences, audits and management programs 150

Part 2 Private water corporations 151

Division 1 Preliminary 151

139 Definitions 151
140 Requirements for access licences and approvals 151

Division 2 Constitution and management of private water corporations 151

141 Application for establishment of private water corporations 151
142 Determination of application and constitution of corporation 152
143 Functions of private water corporations 153
144 Boards of private water corporations 153
145 Rules of private water corporations 153
146 Corporation must provide copy of rules to Minister 155
147 Delegation by corporations and boards 155

Division 3 Operational functions 155

148 Corporation works and other works 155
149 Members may be required to provide distribution works 155
149A (Repealed) 156
150 Discontinuation of water supply by corporation 156
151 Supply of services to other persons 157
152 Powers of entry and inspection 157
153 Works plans 158

Division 4 Sale and transformation of water entitlements 158

154 Water entitlements of members 158
155 Sale or transfer of group entitlement 159
156 Sale or transfer of members’ water entitlements 159
157 Transformation of member’s water entitlement 159

Division 5 Changes to private water corporations 160

158 Changes in membership requiring works plan changes 160
159 Application for amalgamation of private water corporations 160
160 Determination of application for amalgamation 161
161 Effect of sale of land 162
162 Effect of subdivision 162

Division 6 Rates and charges 162

163 Fixing of rates and charges 162
164 Recovery of unpaid rates and charges 164
165 Abandonment of rates and charges 164

Division 7 Finance 164

166 Financial records 164
167 Auditor’s right to access to information 165
168 Presentation of audited financial statements 165
169 Borrowing and investment by corporations 165

Division 8 Enforcement powers 166

170 Charges for water illegally taken and damage to works 166
171 Entry and investigation powers 167
172 Ministerial directions about rules 168

Division 9 Winding up of private water corporations 168

173 Appointment of an administrator 168
174 Functions of administrator 169
175 Removed board members not eligible for re-election 169
176 Effect of administration on existing contracts 169
177 Winding up of corporations 169

Division 10 Miscellaneous 170

178 Liability for water source and other changes 170
179 Amendment of Schedule 13 to insert, change, omit name of corporation 170
180–190 (Repealed) 170

Divisions 10A, 11 (Repealed) 171

Part 3 (Repealed) 171

Part 4 Private water trusts 171

Division 1 Preliminary 171

220 Application of Part 171
221 Definitions 171
222 Requirements for access licences and approvals 171

Division 2 Management of private water trusts 172

223 Trustees of private water trusts 172
224 Water supply and other functions of trusts 172
225 Rules of private water trusts 173
226 Trustees must provide copy of rules 174
227 Delegation 174

Division 3 Operational functions 174

228 Trust works and other works 174
229 Members may be required to provide distribution works 175
230 Discontinuation of water supply by trust 175
231 Supply of services to other persons 176
232 Powers of entry and inspection 176
233 Works plans 176

Division 4 Sale and transformation of water entitlements 177

234 Water entitlements of members 177
235 Sale or transfer of group entitlement 178
236 Sale or transfer of members’ water entitlements 178
237 Transformation of member’s water entitlements 178

Division 5A (Repealed) 179

Division 5 Changes to private water trusts 179

238 Changes in membership requiring works plan changes 179
238A (Repealed) 179
239 Application for amalgamation of private water trusts 179

239A Determination of application for amalgamation 180
239B Effect of sale of land 181
239C Effect of subdivision 181
239D Conversion of private water trust to private water corporation 181

Division 6 Rates and charges 182

239E Fixing of rates and charges 182
239F Recovery of unpaid rates and charges 183
239G Abandonment of rates and charges 184

Division 7 Finance 184

239H Financial records 184
239I Auditor’s right to access to information 184
239J Presentation of audited financial statements 184
239K Borrowing by private water trusts 185

Division 8 Winding up of private water trusts 185

239L Appointment of an administrator 185
239M Functions of administrator 186
239N Removed trustees not eligible for re-election 187
239O Effect of administration on existing contracts 187
239P Winding up of private water trusts 187

Division 9 Miscellaneous 187

239Q Liability for water source and other changes 187
239R Ministerial directions about rules 188
239S Name changes 188
239T Private trusts not NSW government agencies 188

Chapter 5 Public works 188

Part 1 (Repealed) 188

Part 2 Hunter Valley flood mitigation works 188

Division 1 Preliminary 188

253 Application of Part 188

254 Definitions 189

Division 2 Powers of Minister 189

255 Restriction on use of lands adjacent to levee banks 189

256 Construction of fences, structures and flood works 190

Division 3 Finance 190

257 Accounts to be kept in Special Deposits Account 190

258 Allocation of money 191

259 Cost of works generally 191

260 Cost of works to protect towns and villages 191

261 Cost of protective works 191

262 Annual contribution to works program by Local Land Services 192

263 Consultation with Local Land Services as to works program 192

264 Consultation with local council as to works program 192

265 Payment of contribution towards maintenance by a local council 193

266 Consultation with local council as to maintenance program 194

267 Urgent maintenance works 194

268 Payments to be duly made 194

Division 4 Miscellaneous 195

269 Works to protect public and local government works to be approved by Minister 195

270 Major floodgates to be maintained and operated by local councils 195

271 Maintenance of minor floodgates 196

272 Application of Public Works Act 1912 196

273 Evidence of cost of works 196

Part 3 (Repealed) 196

Chapter 6 Public utilities 197

Part 1 Major utilities 197

281 Major utilities 197

282 Review of activities of major utilities 197

Part 2 Water supply authorities 198

Division 1 Preliminary 198

283 Definitions 198

284 Requirements for access licences and approvals 200

Division 2 Water supply authorities 200

285 Water supply authorities 200

286 Constitution of water supply authorities 200

287 Statutory body may be water supply authority 201

288 Provisions relating to constitution and procedure of water supply authorities 201

289 Area of operations 201

290 Staff 202

291 Delegation 202

Division 3 Functions of water supply authorities 202

292 Functions of water supply authority 202

293 Exercise of functions by a water supply authority 203

294 Commercial operations 203

295 Assistance to statutory body 203

296 Entry on land to read meters or carry out works 204

297 Entry on land for inspections 205

298 Power to break up roads 206

299 Altering position of conduits 207

300 Obstruction of works 207

301 Finding source of pollution of water supply 208

301A Power to give directions 208

Division 4 Special areas 208

302 Special areas 208

303 Crown land in special areas 208

304 Exercise of certain functions in special areas 209

Division 5 Developer contributions to the construction of works 209

305 Application for certificate of compliance 209

306 Authority may impose certain requirements before granting certificate of compliance 209

307 Granting of certificates of compliance 210

Division 6 Finance 211

308 Orders for purpose of service charges 211
309 Connections 211
310 Authority may levy service charges and impose fees and other charges 212
311 Land in respect of which a water supply authority may levy service charges 213
312 Certain land exempt from service charges 213
313 Classification of lands 214
314 Basis of levying service charges 214
315 Determinations by water supply authority 214
316 Assessment of service charges 216
317 Re-assessment of service charges 216

Division 7 Miscellaneous 217

318 Acquisition and divesting of land 217
318A Exposure of underground pipes 217
318B Unlicensed plumbing work 217
319 Compensation for interference or damage 218
320 Efficiency review 218
321 Appointment of administrator 218
322 Regulations 219

Chapter 7 Enforcement 220

Part 1 Directions to landholder and other persons 220

Division 1 Preliminary 220

323 Definitions 220

Division 2 Conservation of water, metering and audits 220

324 Temporary water restrictions 220
325 Directions concerning waste of water 221
326 Directions to install, replace, use and maintain metering equipment 222
326A Compliance audits 223
326B Use of information 223

Division 3 Unlawful works and activities 223

327 Stop work order regarding unlawful construction or use of water management work 223

328 Stop work order regarding unlawful controlled activity or aquifer interference activity 224

329 Removal of unlawful water management works 224

Division 4 Temporary stop work orders 225

330 Temporary stop work order to protect public interest 225

Division 5 Protection of public health, public safety and the environment

..... 225

331 Directions to holders of basic landholder rights 225

332 Directions concerning damage caused by straying stock 226

333 Directions to protect water sources 226

334 Directions to prepare reports 227

Division 6 Enforcement by Land and Environment Court 227

335 Land and Environment Court may grant injunctions 227

336 Restraint of breaches of this Act 228

Division 7 General 228

336A Remedial measures may be taken by Minister 228

336B Mandatory guidelines 229

336C Contravention of certain directions 230

336D Prior notice of direction not required 230

Division 8 Enforceable undertakings 230

336E Enforcement of undertakings 230

336F Notice of decision and reasons for decision 231

Part 2 Other enforcement powers 231

Division 1 Preliminary 231

337 Purposes for which powers under Part may be exercised 231

337A Effect on other functions 232

337B Extended meaning of “occupier” 232

Division 2 Powers to require information or records 232

338 Application of Division 232

338A Powers of authorised officers to require information and records 232

338B Power of authorised officers to require answers 233

338C Recording of evidence 234

338D Power of authorised officers to demand name and address 234

Division 3 Powers of entry and search of premises 235

339 Powers of authorised officers to enter premises 235

339A Entry into residential premises only with permission or warrant 235

339B Powers of authorised officers to do things at premises 235

339C Search warrants 236

339D Authorised officers may request assistance 237

339E Assistance to be given to authorised officers 237

339F Care to be taken 237

339G Compensation 237

Division 4 General 237

340 Identification 238

340A Offences 238

340B Provisions relating to requirements to furnish records, information or answer questions 238

340C Revocation or variation 239

340D Extraterritorial application 239

Part 3 Offences 239

341 (Repealed) 239

342 Destruction, damage and interference with certain works 239

343 Taking water from public or private works 240

344 False or misleading information 240

345 Harm to aquifers and waterfront land 240

346 Unlicensed bore drilling 241

347 Ancillary offences 241

347A–352 (Repealed) 242

Part 3A Court orders in connection with offences 242

353 Operation of Part 242
353A Orders generally 242
353B Orders for restoration and prevention 242
353C Orders for costs, expenses and compensation at time offence proved 242
353D Recovery of costs, expenses and compensation after offence proved 243
353E Orders regarding costs and expenses of investigation 243
353F Orders regarding monetary benefits 244
353G Additional orders 244
353H Offence 245

Part 4 Recovery of rates, charges and other money 245

Division 1 Recovery of rates, charges and other amounts by charging authorities

..... 245
354 Definition 245
355 Certain rates and charges to be a charge on land 245
356 Interest on rates and charges 245
357 Recovery of rates, charges and other money 245
358 Joint owners 246
359 Sale of land for unpaid rates and charges 246
360 Certificate as to amount due 246
361 Liability where an estate or interest is transferred 247
362 Liability where a person becomes entitled to an estate or interest 247

Division 2 Provisions relating to access licences 247

362A Joint owners 248
362B Certificate as to charges outstanding in relation to access licences 248
362C Unpaid fees, charges and civil penalties 248

Part 5 Legal proceedings and appeals 248

Division 1 Legal proceedings 248

363 Offences by corporations 248
363A Offences by joint holders of access licence or approval 249
363B Penalties 249

364 Proceedings for offences 250
364A Matters to be considered in imposing penalty 251
365 Penalty notices 252
365A Continuing offences 252
366 Legal proceedings do not affect, and are unaffected by, other action under this Act 253
367 Evidentiary certificates 253
367A Evidence of analysts 255
367B Rebuttable presumptions 256

Division 2 Appeals 257

368 Appeals to Land and Environment Court 257

Chapter 8 Administration 260

Part 1 (Repealed) 260

Part 2 Water Administration Ministerial Corporation 260

371 Constitution of Water Administration Ministerial Corporation 260
372 Functions of Ministerial Corporation 261
372A Metering equipment functions 261
372B Interests and rights in metering equipment 262
373 Commercial operations 263
374 Application of Public Works Act 1912 263
375 Acquisition of land 263
376 Staff of Ministerial Corporation 263
377 Delegation of functions 264

Part 3 Water investment trust 264

378 Definitions 264
379 Constitution of Trust 264
380 Objects of Trust 264
381 Functions of Trust 265
382 Staff of Trust 265
383 Delegation 265
384 Water Investment Trust Fund 265
385 Investments 266

386 Investment levies on water users 266

Part 3A Murray-Darling Basin 266

386A Definitions 266
386B Appointments to Basin Officials Committee 266
386C Minister may act for Government of NSW 267
386D Authorisation of works, operations and measures under the Agreement 267
386E Constructing Authority for NSW 267
386F Certain documents to be tabled in Parliament 267

Part 4 General administration 268

387 Expert advisory panels 268
387A Water Innovation Council 268
388 Committees 269
389 Delegation 269
389A Conferral of water management functions on public authorities 269
389B Gas and other petroleum activities—enforcement by EPA 269
390 Authorised officers and analysts 270
391 Resolution of disputes between public authorities 270
391A Interstate arrangements in relation to access licences and approvals 270

Chapter 9 Miscellaneous 270

392 State’s water rights 270
393 Abolition of common law riparian rights 271
394 Service of documents 271
395 Publication of notices, orders and proclamations in authorised manner 272
395A Continuing effect of directions and conditions 272
396 Act binds Crown 272
397 Exclusion of personal liability 272
398 Exclusion of Crown liability 273
399 Annual reporting information for Department 274
400 Regulations 274
400A Excluded matters 275
400B Displacement of Commonwealth water legislation 275
401 Repeals 275

402 Amendment of other Acts 276
403 Savings, transitional and other provisions 276
404 Review of Act 276

Schedule 1A Access Register 276

Schedule 1B Provisions relating to exit from co-held access licence 282

Schedule 1 Irrigation corporations 284

Schedule 2 Major utilities 285

Schedule 3 Water supply authorities 286

Schedule 4 Land exempt from water supply authority service charges 286

Schedule 5 Constitution and procedure of water supply authorities 288

Schedule 6 Management committees 297

Schedule 7 Repeals 301

Schedule 8 Amendment of other Acts 302

Schedule 9 Savings, transitional and other provisions 303

Schedule 9A Transferred provisions 326

Schedule 10 Conversion of former entitlements to access licences and approvals 326

Schedule 11 Categories of access licence 346

Schedule 12 Amendment of management plans or orders 350

Schedule 13 Private water corporations 380

Dictionary 383

Water Management Act 2000 No 92

New South Wales

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

Chapter 1 Preliminary

1 Name of Act

This Act is the *Water Management Act 2000*.

2 Commencement

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

(2) Different days may be appointed for the commencement of a single provision of Schedule 7 or 8 for the purpose of commencing the repeals or amendments effected by the provision on different days.

3 Objects

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

(a) to apply the principles of ecologically sustainable development, and

(b) to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality, and

(c) to recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including—

(i) benefits to the environment, and

(ii) benefits to urban communities, agriculture, fisheries, industry and recreation, and

(iii) benefits to culture and heritage, and

(iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water,

(d) to recognise the role of the community, as a partner with government, in resolving issues relating to the management of water sources,

(e) to provide for the orderly, efficient and equitable sharing of water from water sources,

(f) to integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna,

(g) to encourage the sharing of responsibility for the sustainable and efficient use of water between the Government and water users,

(h) to encourage best practice in the management and use of water.

4 Interpretation

(1) Words and expressions that are defined in the Dictionary at the end of this Act have the meanings set out in that Dictionary.

(1A) A word or expression (not being a word or expression defined in the Dictionary to this Act) that is used in this Act and that is defined in the *Real Property Act 1900* has the same meaning in this Act in relation to an access licence (or holding in an access licence) or dealing in such a licence (or holding) as it has in that Act in relation to land or an estate or interest in land.

(1B) Subsection (1A) applies except in so far as the context or subject-matter otherwise indicates or requires.

(2) Notes in the text of this Act do not form part of this Act.

4A Meaning of "overland flow water"

(1) In this Act, ***overland flow water*** means water (including floodwater, rainfall run-off and urban stormwater) that is flowing over or lying on the ground as a result of—

(a) rain or any other kinds of precipitation, or

(b) rising to the surface from underground, or

(c) any other process or action of a kind prescribed by the regulations.

(2) Water is flowing over the ground for the purposes of subsection (1) even if it flows over the ground by means of artificial structures such as roads, canals or road gutters.

(3) However, subsection (1) does not include—

(a) water that is collected from a roof (including water collected from a roof using a rainwater tank), or

(b) water that is flowing over or lying on the bed of a river, lake or estuary, or

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

Chapter 2 Water management planning

Part 1 General

Division 1 Water management principles

5 Water management principles

(1) The principles set out in this section are the water management principles of this Act.

(2) Generally—

(a) water sources, floodplains and dependent ecosystems (including groundwater and wetlands) should be protected and restored and, where possible, land should not be degraded, and

(b) habitats, animals and plants that benefit from water or are potentially affected by managed activities should be protected and (in the case of habitats) restored, and

(c) the water quality of all water sources should be protected and, wherever possible, enhanced, and

(d) the cumulative impacts of water management licences and approvals and other activities on water sources and their dependent ecosystems, should be considered and minimised, and

(e) geographical and other features of Aboriginal significance should be protected, and

(f) geographical and other features of major cultural, heritage or spiritual significance should be protected, and

(g) the social and economic benefits to the community should be maximised, and

(h) the principles of adaptive management should be applied, which should be responsive to monitoring and improvements in understanding of ecological water requirements.

(3) In relation to water sharing—

(a) sharing of water from a water source must protect the water source and its dependent ecosystems, and

(b) sharing of water from a water source must protect basic landholder rights, and

(c) sharing or extraction of water under any other right must not prejudice the

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

(4) In relation to water use—

(a) water use should avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land should be rehabilitated, and

(b) water use should be consistent with the maintenance of productivity of land in the long term and should maximise the social and economic benefits to the community, and

(c) the impacts of water use on other water users should be avoided or minimised.

(5) In relation to drainage management—

(a) drainage activities should avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land should be rehabilitated, and

(b) the impacts of drainage activities on other water users should be avoided or minimised.

(6) In relation to floodplain management—

(a) floodplain management must avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land must be rehabilitated, and

(b) the impacts of flood works on other water users should be avoided or minimised, and

(c) the existing and future risk to human life and property arising from occupation of floodplains must be minimised.

(7) In relation to controlled activities—

(a) the carrying out of controlled activities must avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land must be rehabilitated, and

(b) the impacts of the carrying out of controlled activities on other water users must be avoided or minimised.

(8) In relation to aquifer interference activities—

(a) the carrying out of aquifer interference activities must avoid or minimise land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity and, where possible, land must be rehabilitated, and

(b) the impacts of the carrying out of aquifer interference activities on other water users must be avoided or minimised.

Division 2 State Water Management Outcomes Plan and water source classification

6 State Water Management Outcomes Plan

(1) The Governor may, by order published in the Gazette, establish a State Water Management Outcomes Plan for the development, conservation, management and control of the State's water resources in furtherance of the objects of this Act.

(2) The objects of a State Water Management Outcomes Plan are as follows—

(a) to set the over-arching policy context, targets and strategic outcomes for the management of the State's water sources, having regard to—

(i) relevant environmental, social and economic considerations, and

(ii) the results of any relevant monitoring programs,

(b) to promote the water management principles established by this Act,

(c) to give effect to any State government policy statement in relation to salinity strategies.

(3) The State Water Management Outcomes Plan must be consistent with—

(a) government obligations arising under any inter-governmental agreement to which the government is a party, such as the Murray-Darling Basin Agreement set out in Schedule 1 to the *Water Act 2007* of the Commonwealth, and

(b) government obligations arising in connection with any international agreement to which the government of the Commonwealth is a party, and

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

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

(5) The regulations may make provision for or with respect to the public consultation procedures to be complied with in relation to the establishment or amendment of a State Water Management Outcomes Plan.

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

7 Classification of water sources

(1) The Minister may, by order published in the Gazette, classify water sources for the purposes of this Act.

(2) Such an order may only be made with the concurrence of the Minister for the Environment.

(3) Water sources are to be classified as follows—

(a) as to the extent to which they are at risk (that is, the extent to which harm to the water source or its dependent ecosystems is likely to occur),

(b) as to the extent to which they are subject to stress (that is, the extent to which harm to the water source or its dependent ecosystems has occurred or is occurring),

(c) as to the extent of their conservation value (that is, the extent to which their intrinsic value merits protection from risk and stress).

(4) It is the intention of Parliament that, within 12 months after the date of assent to this Act—

(a) the water sources of the State be classified in accordance with this section, and

(b) bulk access regimes be established for such of those water sources as are classified high risk, high stress or high conservation value.

(5) A bulk access regime referred to in subsection (4) (b) is to be established by means of a Minister's plan made, in the case of a water source that is within a water management area for which a management committee has been established, in consultation with that committee.

(6) A bulk access regime referred to in subsection (4) (b) has effect for 10 years from the date on which it is established, but may be varied under section 45 as if it had been established by a management plan, in which case section 87 applies accordingly.

(7) The regulations may prescribe rules in accordance with which water sources are to be classified for the purposes of this Act.

8 Environmental water

(1) For the purposes of this Act, ***environmental water*** comprises the following—

(a) water that is committed by management plans for fundamental ecosystem health or other specified environmental purposes, either generally or at specified times or

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

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

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

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

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

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

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

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

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

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

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

(4) (Repealed)

8A Planned environmental water

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

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

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

8B Adaptive environmental water through dedication of existing water entitlements

(1) The holder of an access licence may request that the Minister impose an adaptive environmental water condition in respect of the whole or a part of the access licence.

(2) A condition imposed under this section may be amended, and is to be revoked, by the Minister at the request in writing of the holder of the access licence, except as provided by the regulations.

8C Adaptive environmental water through system improvements

(1) The Minister may grant an access licence of a category or subcategory determined by the Minister to the Minister, Local Land Services or another public body, without the need for an application to be made for the licence in accordance with Part 2 of Chapter 3, so long as—

(a) works or other actions result in water savings in the system being made in the water source in respect of which the licence is granted, and

(b) the share component of the licence is equivalent to the value of water savings in the system made, and

(c) an adaptive environmental water condition is imposed on the licence.

(2) In this section, ***system*** means that part of a water source to which a management plan applies that is not identified by the plan for commitments to basic landholder rights and for sharing and extraction under any other rights.

8D Adaptive environmental water conditions after surrender of licences

(1) The Minister may keep an access licence surrendered by the holder of the licence or transfer it to Local Land Services or another public body, and may change the licence to a different category or subcategory, if—

(a) the share component of the licence is equivalent to the share component of the surrendered licence (subject to the application of any conversion factor prescribed by the access licence dealing principles or the regulations), and

(b) an adaptive environmental water condition is or has been imposed on the licence.

(2) The Minister may cancel an access licence surrendered by the holder of the licence and transfer the share component of the surrendered licence (subject to the application of any conversion factor prescribed by the access licence dealing principles or the regulations) to another licence if an adaptive environmental water condition is or has been imposed on the licence.

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

conditions

(1) This section applies to access licences that are subject to an adaptive environmental water condition.

(2) For the purposes of this Act (but subject to section 8B (2)), an adaptive environmental water condition is a mandatory condition.

(3) The terms of an adaptive environmental water condition imposed in respect of an access licence are to further the objectives of the relevant management plan.

(4) If the adaptive environmental water condition on an access licence requires the water to be left in the water source for environmental purposes, then the water allocation account is to be debited when the water is available in accordance with the condition.

(5) If the adaptive environmental water condition requires the environmental water to be taken from the water source then the water allocation account is to be debited when it is taken.

(6) (Repealed)

(7) Before imposing an adaptive environmental water condition on an access licence, the Minister is to approve a plan for the implementation of the condition.

(8) The Minister is to ensure that the plan referred to in subsection (7), and a requirement to comply with the plan, forms part of the adaptive environmental water condition.

(9) An access licence to which this section applies, or a part of such a licence to which the adaptive environmental water condition concerned is expressed to relate, may be the subject of a dealing in accordance with this Act if the plan approved under subsection (7) so provides.

8F Auditing of compliance with extraction limits

(1) This section applies for the purpose of auditing compliance with the long-term extraction limit (however expressed) under a management plan.

(2) The long-term extraction limit is taken to be varied by the amount of any change to the amount of water committed as licensed environmental water.

(3) The variation in the long-term extraction limit is to be determined in accordance with a methodology approved by the Minister and published in the Gazette.

(4) To avoid doubt, water savings in a system (within the meaning of section 8C) are not to be taken into account when determining the variation.

(5) Water committed as licensed environmental water is not to be accounted for as extraction.

Division 3 General

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

(1) It is the duty of all persons exercising functions under this Act—

(a) to take all reasonable steps to do so in accordance with, and so as to promote, the water management principles of this Act, and

(b) as between the principles for water sharing set out in section 5 (3), to give priority to those principles in the order in which they are set out in that subsection.

(2) It is the duty of all persons involved in the administration of this Act to exercise their functions under this Act in a manner that gives effect to the State Water Management Outcomes Plan.

10 Review of work and activities of Department

(1) The Minister is to ensure that the work and activities of the Department are reviewed at intervals of not more than 5 years for the purpose of determining whether they have been effective in giving effect to the water management principles of this Act and the State Water Management Outcomes Plan.

(2) The results of each review under this section are to be included in the relevant annual reporting information prepared for the Department under the *Government Sector Finance Act 2018*.

Part 2 Management committees

11 Constitution of water management areas

(1) The Minister may, by order published in the Gazette, constitute any land as a water management area.

(2) An order under this section must name the area and fix its boundaries.

12 Establishment of management committees

(1) The Minister may, by order published in the Gazette—

(a) establish a management committee to carry out a specific task in relation to water management in a water management area, and

(b) set terms of reference in accordance with which the committee is to carry out that task.

(2) The task for which a management committee is appointed may relate to any aspect of water management, including (without limitation) water sharing, water source

protection, floodplain management and drainage management.

(3) At any time the Minister may, by order published in the Gazette, abolish a management committee, and may do so whether or not it has completed the task for which it was established.

(4) Nothing in this section prevents the establishment of two or more committees for the same water management area so long as they do not have overlapping functions.

13 Membership of committee

(1) A management committee consists of at least 12, but not more than 20, members appointed by the Minister, of whom—

(a) at least two are to be persons appointed to represent the interests of environmental protection groups, and

(b) at least two are to be persons appointed to represent the interests of water user groups, and

(c) at least two are to be persons appointed to represent the interests of local councils, and

(d) at least one is to be a person nominated by Local Land Services, and

(e) at least two are to be Aboriginal persons appointed to represent the interests of Aboriginal persons, and

(f) at least one is to be a member of staff of the Department, and

(g) at least one is to be a person nominated by the Minister for the Environment, and

(h) such other persons as are appointed to represent such interests as the Minister considers require representation, and

(i) one is to be a person (not being a member of staff of the Department) who is appointed as an independent chairperson for the committee.

(2) The regulations may make provision with respect to qualifications for appointment as a member of a management committee.

(3) The members appointed as referred to in subsection (1) (a)–(e) should, as far as practicable, be persons who reside within the water management area for which the management committee is being constituted.

(4) Schedule 6 has effect with respect to the constitution and procedure of a management committee.

14 Functions of management committees

(1) The principal function of a management committee is to carry out the task for which it is appointed.

(2) The task for which a committee is appointed may include any one or more of the following—

(a) to prepare a draft management plan for the whole or any part of the management area or of the water sources in the area,

(b) to review a management plan that is in force in the water management area,

(c) to investigate such matters affecting the management of the water management area as the Minister refers to it for investigation,

(d) to report to the Minister on such matters affecting the management of the water management area as the Minister refers to it for report,

(e) to advise the Minister on such matters affecting the management of the water management area as the Minister refers to it for advice.

(3) It is the duty of a management committee to exercise its functions consistently with the principles of ecologically sustainable development.

Part 3 Management plans

Division 1 Preliminary

15 Preparation of draft management plan

(1) The Minister may, by the order by which a management committee is established or by a subsequent order in writing—

(a) direct the committee to prepare a draft management plan, and review any related implementation program, on any aspect of water management, including (but not limited to)—

(i) water sharing, and

(ii) water source protection, and

(iii) drainage management, and

(iv) floodplain management, and

(b) set terms of reference in accordance with which such a plan is to be prepared.

(2) A management committee to which such an order is given is to prepare a draft management plan in accordance with the terms of reference specified in the order.

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

(4) (Repealed)

16 Management plans to be consistent with other instruments

(1) A management plan must be consistent with—

(a) the State Water Management Outcomes Plan, and

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

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

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

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

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

17 Provisions applicable to all management plans

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

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

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

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

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

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

18 Matters for consideration

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

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

(1A) In formulating a draft management plan, the management committee must also have due regard to the provisions of any relevant local strategic plan under the *Local Land Services Act 2013*.

(2) Due regard may also be had, in the formulation of the plan's proposals, to the effect within each water management area or water source to which the plan applies of activities occurring, or likely to occur, outside each such area or water source.

Division 2 Water sharing

19 Application of Division

(1) This Division applies to the provisions of a management plan to the extent to which they deal with water sharing.

(2) The water sharing provisions of a management plan may apply to the whole or any part of a water management area, or to the whole or any part of one or more water sources within a water management area.

20 Core provisions

(1) The water sharing provisions of a management plan for a water management area or water source must deal with the following matters—

(a) the establishment of environmental water rules for the area or water source,

(b) the identification of requirements for water within the area, or from the water source, to satisfy basic landholder rights,

(c) the identification of requirements for water for extraction under access licences,

(d) the establishment of access licence dealing rules for the area or water source,

(e) the establishment of a bulk access regime for the extraction of water under access licences, having regard to the rules referred to in paragraphs (a) and (d) and the requirements referred to in paragraphs (b) and (c).

(2) The bulk access regime referred to in subsection (1) (e)—

(a) must recognise and be consistent with any limits to the availability of water that are set (whether by the relevant management plan or otherwise) in relation to the water sources to which the regime relates, and

(b) must establish rules according to which access licences are to be granted and managed and available water determinations to be made, and

(c) must recognise the effect of climatic variability on the availability of water, and

(d) may establish rules with respect to the priorities according to which water allocations are to be adjusted as a consequence of any reduction in the availability of water, and

(e) may contain provisions with respect to the conditions that must (as mandatory conditions) be imposed on access licences under section 66 (1), including conditions providing for the variation, from time to time, of the share and extraction components of access licences, and

(f) must be consistent with the water management principles.

(3) The rules referred to in subsection (2) (d) must comply with the priorities established under section 58.

(4) The access licence dealing rules established under subsection (1) (d)—

(a) must comply with the access licence dealing principles, and

(b) must not deal with any matter for which the access licence dealing principles may make provision under section 71Z (2), and

(c) subject to paragraph (b) and the access licence dealing principles, may regulate or prohibit any dealing under Division 4 of Part 2 of Chapter 3.

21 Additional provisions

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

(a) the rates, times and circumstances under which water may be taken from any water source in the area, or the quantity of water that may be taken from any water source in the area or delivered through the area,

(b) the kinds of water supply works that may be constructed and used in the area,

(c) the operation of water accounts for the area or water source, such as the carrying over of credits from one accounting period to the next, the maximum credit that may be allowed to accumulate in any account and the withdrawal of water from any account by reason of evaporation or dam spill or in such other circumstances as may be prescribed by the regulations,

(d) water sharing measures for the protection and enhancement of the quality of water in the water sources in the area or for the restoration or rehabilitation of water sources or their dependent ecosystems,

(e) measures to give effect to the water management principles and the objects of this Act,

(e1) measures, not inconsistent with this Act, that are necessary because of requirements arising under the *Water Act 2007* of the Commonwealth,

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

Division 3 Water use

22 Application of Division

(1) This Division applies to the provisions of a management plan to the extent to which they deal with water use.

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

23 Core provisions

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

(a) the identification of existing and potential water use practices and related activities,

(b) the identification of those uses and activities which have adverse impacts, including cumulative impact, on water sources or their dependent ecosystems or on other water users,

(c) the identification of the occurrence of land degradation, including soil erosion, compaction, geomorphic instability, contamination, acidity, waterlogging, decline of native vegetation or, where appropriate, salinity within the area and any impacts on water sources.

24 Additional provisions

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

(a) best practice for water conservation, water efficiency and total water cycle management,

(b) prevention of off-site impacts of water use,

(c) requirements for the restoration or rehabilitation of land or water sources or their dependent ecosystems,

(d) protection of the habitats or pathways of animals and plants,

(e) the preservation and enhancement of the quality of water of the water sources in the area affected by water use and related practices,

(f) structural or operational modifications for existing works,

(g) other measures to give effect to the water management principles and the objects of this Act,

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

Division 4 Drainage management

25 Application of Division

(1) This Division applies to the provisions of a management plan to the extent to which they deal with drainage management.

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

26 Core provisions

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

(a) the identification of the existing and natural hydrological regimes in the area,

(b) the identification of existing drainage works in the area and the way they are managed,

(c) the ecological impacts and impacts on water quality, including cumulative impacts, of the drainage works in the area.

27 Additional provisions

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

(a) proposals for the construction of new drainage works,

(b) the modification or removal of existing drainage works,

(c) restoration or rehabilitation of land, habitats, water sources or their dependent ecosystems,

(d) the preservation and enhancement of the quality of water of the water sources in the area affected by drainage management,

(e) other measures to give effect to the water management principles and the objects of this Act,

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

Division 5 Floodplain management

28 Application of Division

(1) This Division applies to the provisions of a management plan to the extent to which they deal with floodplain management.

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

29 Core provisions

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

(a) identification of the existing and natural flooding regimes in the area, in terms of the frequency, duration, nature and extent of flooding,

(b) the identification of the ecological benefits of flooding in the area, with particular regard to wetlands and other floodplain ecosystems and groundwater recharge,

(c) the identification of existing flood works in the area and the way they are managed, their benefits in terms of the protection they give to life and property, and their ecological impacts, including cumulative impacts,

(d) the risk to life and property from the effects of flooding.

30 Additional provisions

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

(a) proposals for the construction of new flood works,

(b) the modification or removal of existing flood works,

(c) restoration or rehabilitation of land, water sources or their dependent ecosystems, in particular in relation to the following—

(i) the passage, flow and distribution of floodwater,

(ii) existing dominant floodways and exits from floodways,

(iii) rates of flow, floodwater levels and duration of inundation,

(iv) downstream water flows,

(v) natural flood regimes, including spatial and temporal variability,

(d) the control of activities that may affect or be affected by the frequency, duration,

nature or extent of flooding within the water management area,

(e) the preservation and enhancement of the quality of water in the water sources in the area during and after flooding,

(f) other measures to give effect to the water management principles and the objects of this Act,

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

Division 6 Controlled activities and aquifer interference activities

31 Application of Division

(1) This Division applies to the provisions of a management plan to the extent to which they deal with controlled activities and aquifer interference activities.

(2) The controlled activity and aquifer interference activity provisions of a management plan may apply to the whole or any part of a water management area.

32 Core provisions

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

(a) identification of the nature of any controlled activities or aquifer interference causing impacts, including cumulative impacts, on water sources or their dependent ecosystems, and the extent of those impacts,

(b) specification of controlled activities or aquifer interferences which are to require controlled activity approvals or aquifer interference approvals in the area.

33 Additional provisions

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

(a) the undertaking of work for the purpose of restoring or rehabilitating a water source or its dependent ecosystems,

(b) protecting, restoring or rehabilitating the habitats or pathways of animals and plants,

(c) specific controls on activities causing unacceptable impacts,

(d) the preservation and enhancement of the quality of water in the water sources in the area affected by controlled activities or aquifer interference,

(e) other measures to give effect to the water management principles and the objects of this Act,

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

Division 7 Environmental protection

34 Environmental protection provisions

(1) A management plan for a water management area, or any part of a water management area, may contain the following provisions (***environmental protection provisions***) in respect of any aspect of water management—

(a) provisions identifying zones in which development should be controlled in order to minimise any harm to water sources in the area or to minimise any threat to the floodplain management provisions of the plan,

(b) provisions identifying development that should be controlled in any such zone,

(c) provisions identifying the manner in which any such development should be controlled in any such zone,

(d) provisions to which State agencies and local authorities (including local councils) should be subject when taking action and making decisions concerning any such development,

(e) provisions requiring development consent to the carrying out of any such development,

(f) provisions requiring the Minister's concurrence to the granting of any such development consent,

(g) provisions requiring the establishment of action plans to encourage the abandonment of existing uses that cause harm to water sources, and to encourage the carrying out of remedial measures to minimise or alleviate any harm already caused to water sources by the continuance of existing uses.

(2) In this section, ***control***, ***development***, ***development consent*** and ***existing use*** have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

Division 8 Procedures for making management plans

35 Format of management plan

(1) A management plan must include the following components—

(a) a vision statement,

(b) objectives consistent with the vision statement,

(c) strategies for reaching those objectives,

(d) performance indicators to measure the success of those strategies.

(2) In the case of a water management area for which an equivalent management plan is already in force, the draft management plan may be in the form of—

(a) an amendment to the existing management plan, or

(b) a new plan to replace the existing management plan.

(3) Subject to subsections (1) and (2), the format of a management plan is to be as determined by the Minister.

36 Notification of certain persons and bodies

(1) In preparing a draft management plan, the following information must be notified to each person or body referred to in subsection (2)—

(a) the general aims and objectives of the draft plan,

(b) a description of the water management area to which the draft plan is intended to apply,

(c) such other matters as the Minister thinks fit.

(2) The persons and bodies to be notified are as follows—

(a) each local council within whose area the water management area is located,

(b) Local Land Services,

(c) each holder of an access licence or approval in respect of land within the water management area,

(d) such other persons or bodies as the Minister may determine in relation to the plan.

(3) Failure to notify a person or body referred to in subsection (2) does not affect the validity of a management plan.

(4) A person to whom information is notified under this section may make written submissions to the Minister in relation to the preparation of the draft management plan within 28 days (or such longer period as may be determined by the Minister) after the information is notified.

37 Reference of draft management plan to Minister

(1) After a draft management plan has been prepared, including a draft management plan that has been referred back to it under this section, the management committee must submit the plan to the Minister.

(2) If the Minister is of the opinion that the draft plan does not comply with the requirements of this Part, the Minister is to refer the draft plan back to the management committee for further consideration.

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

38 Public exhibition of draft management plan

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

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

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

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

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

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

(c) must be published in the authorised manner.

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

39 Submissions on draft management plan

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

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

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

40 Resubmission of draft management plan to Minister

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

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

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

41 Making of management plan

(1) After complying with the requirements of this Part, the Minister—

(a) may, by order published on the NSW legislation website, make a management plan in accordance with the draft plan, as finally submitted to the Minister, or

(b) may, by order published on the NSW legislation website, make a management plan in accordance with the draft plan, as finally submitted to the Minister, but with such alterations as the Minister thinks fit, or

(c) may cause the draft management plan to be re-exhibited (with such alterations as the Minister thinks fit) and resubmitted in accordance with this Part, or

(d) may decide not to proceed with the draft management plan.

(2) Before making a management plan, the Minister must obtain the concurrence of the Minister for the Environment to the making of the plan.

(3) A management plan commences on the date on which it is published on the NSW legislation website or on such later date as may be specified in the plan.

42 Amendment of management plans

(1) A management plan may be amended by a subsequent management plan made in accordance with this Part.

(2) This section does not limit the operation of Division 9.

(3) Each management plan specified in Schedule 12 is amended as set out in that Schedule.

(4) The amendment of a management plan by this or any other Act does not prevent its later amendment or repeal in accordance with this Act.

43 Duration of management plans

(1) Subject to section 43A, a management plan has effect for—

(a) if the plan commenced on 1 July in any year—10 years commencing on that date, or

(b) in any other case—10 years commencing on 1 July next after the date the plan commenced.

(2) In the 5 years before its expiry, the Minister is to review each management plan (other than provisions dealing with water sharing) for the purpose of ascertaining whether its provisions remain adequate and appropriate for ensuring the effective

implementation of the water management principles.

(3) Such a review is to be conducted in consultation with the Minister for the Environment and the Natural Resources Commission.

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

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

(1) The Minister may, on the recommendation of the Natural Resources Commission and by notice published in the Gazette before its expiry under section 43 or this section, extend a management plan that deals with water sharing for a further period of 10 years after the plan was due to expire.

(2) More than one such extension of a management plan that deals with water sharing may be made.

(3) Before deciding whether to extend a management plan that deals with water sharing or to make a new management plan, the Minister is to consider a report of the Natural Resources Commission that reviews (within the previous 5 years) the following—

(a) the extent to which the water sharing provisions have materially contributed to the achievement of, or the failure to achieve, environmental, social and economic outcomes,

(b) whether changes to those provisions are warranted.

(3A) If a report of the Natural Resources Commission under subsection (3) recommends changes to a management plan that will result in a reduction of water allocations in relation to which compensation might be payable under section 87AA, the Commission is to state in the report whether the purpose of the proposed changes is—

(a) to restore water to the environment because of natural reductions in inflow to the relevant water source, including but not limited to changes resulting from climate change, drought or bushfires, or

(b) to provide additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate.

(4) For the purposes of a report under subsection (3)—

(a) the Natural Resources Commission is to call for public submissions and to have regard to any duly received, and

(b) the Natural Resources Commission is to have regard to any other relevant State-

wide and regional government policies or agreements that apply to the catchment management area.

(5) A report of the Natural Resources Commission under subsection (3) is to be made public after the decision of the Minister with respect to the extension of the management plan or on the expiration of 6 months after the report is received by the Minister, whichever first occurs.

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

44 Periodic auditing of management plans

(1) The Minister is to ensure that a management plan is audited, within the first 5 years of the plan, for the purpose of ascertaining whether its provisions are being given effect to.

(2) An audit under this section is to be carried out by the Natural Resources Commission.

(3) In setting terms of reference for the preparation of a management plan to replace an existing management plan, the Minister must have regard to the results of the most recent audit conducted under this section in relation to the existing management plan.

Division 9 Amendment of management plans by Minister

45 Minister may amend or repeal management plan

(1) The Minister may at any time, by order published on the NSW legislation website, amend a management plan—

(a) if satisfied it is in the public interest to do so, or

(b) in such circumstances, in relation to such matters and to such extent as the plan so provides, or

(c) if the amendment is required to give effect to a decision of the Land and Environment Court relating to the validity of the plan, or

(d) if satisfied that it is necessary to do so because of requirements arising under the *Water Act 2007* of the Commonwealth.

(2) (Repealed)

(3) Before amending a management plan, the Minister must obtain the concurrence of the Minister for the Environment to the amendment.

(4) The date of commencement of a management plan may, but the duration of a

management plan may not, be extended by an amendment of the plan under this section.

(5) The Minister may at any time, by order published on the NSW legislation website, repeal a management plan (other than a management plan that deals with water sharing).

(5A) The Minister may at any time, by order published on the NSW legislation website, repeal a management plan that deals with water sharing if satisfied that it is necessary to do so because of requirements arising under the *Water Act 2007* of the Commonwealth.

(6) The amendment or repeal of a management plan under this section takes effect on the date the order is published on the NSW legislation website or on a later date specified in the order.

(7) An order under subsection (1) (a) varying a bulk access regime is not to be made in relation to a water management area for which a management committee for water sharing is constituted unless the Minister has consulted with the committee in relation to the proposed amendment.

(8) A provision of a management plan that authorises the amendment of the plan in accordance with section 42 (2) of this Act is to be construed as a reference to an amendment authorised by subsection (1) (b).

45A Consolidation of management plans

(1) The Minister may, by order published on NSW legislation website, consolidate 2 or more management plans by—

(a) repealing one or more management plans and amending another management plan to make provision with respect to the matters dealt with by the repealed plan or plans, or

(b) amending a management plan to make provision with respect to the matters dealt with by one or more other plans that have expired (or are to expire) by operation of section 43.

(2) A consolidated management plan may contain provisions of a savings or transitional nature consequent on the consolidation.

(3) The provisions of Division 9 (Compensation relating to access licences) of Part 2 of Chapter 3 in relation to the consolidation of management plans under this section have effect subject to the following—

(a) subject to paragraph (b), the consolidation of the management plans does not affect any right to compensation that the holder of an access licence would have had under section 87 or 87AA had the consolidation not occurred,

(b) the commencement of the 10-year period referred to in section 87AA (6) (b) in its application to an expired or repealed plan is to be calculated by reference to the 10-year period commencing on the date on which the expired or repealed plan was due to expire rather than the date on which the plan into which the provisions were consolidated ceases to be in force.

(4) Section 45 does not limit the circumstances in which the Minister may repeal or amend a management plan under this section (including a management plan that deals with water sharing).

Division 10

(Repealed)

Division 11 Miscellaneous

46 Making or amendment of management plan

(1) If the Minister makes a replacement management plan or amends a management plan and the replacement plan or amendment will result in a reduction of water allocations in relation to which compensation might be payable under section 87AA, the Minister is to include in the order in which the replacement plan or amendment is made, or in another order, a statement as to whether—

(a) the purpose of the reduction to water allocations is to restore water to the environment because of natural reductions in inflow to the relevant water source, including but not limited to changes resulting from climate change, drought or bushfires, or

(b) the purpose of the reduction to water allocations is to provide additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate, but not if that purpose is also the purpose referred to in paragraph (d), or

(c) the reduction to water allocations results from a change in State government policy, or

(d) the purpose of the reduction to water allocations is to enable the replacement plan or amended plan, as the case may be, to be accredited under the *Water Act 2007* of the Commonwealth.

(2) A statement referred to in subsection (1)—

(a) need not be made if the reduction concerned arises from circumstances referred to in section 87AA (3) (a) or (b), and

(b) in a case where the reduction is made for more than one of the purposes referred

to in subsection (1), is to specify each of the relevant purposes and the extent to which the reduction relates to each of those relevant purposes.

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

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

(2) The judicial review period in respect of a management plan is—

(a) the period of 3 months after the date the plan was published on the NSW legislation website, except as provided by paragraph (b), or

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

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

(3) The judicial review period cannot be extended by the Land and Environment Court or any other court, despite any other Act or law.

(4) Without limiting subsection (1), the exercise by a designated person of any plan-making function may not be—

(a) challenged, reviewed, quashed or called into question before any court in any proceedings, or

(b) restrained, removed or otherwise affected by any proceedings,

other than before the Land and Environment Court in proceedings commenced within the judicial review period.

(5) The provisions of or made under this Act and the rules of natural justice (procedural fairness), so far as they apply to the exercise of any plan-making function, do not place on a designated person any obligation enforceable in a court (other than in the Land and Environment Court in proceedings commenced within the judicial review period).

(6) Accordingly, no court (other than the Land and Environment Court in proceedings commenced within the judicial review period) has jurisdiction or power to consider any question involving compliance or non-compliance, by a designated person, with those provisions or with those rules so far as they apply to the exercise of any plan-making function.

(7) This section is not to be construed as applying the rules of natural justice to the

exercise of plan-making functions for the purposes of proceedings instituted within the judicial review period.

(8) In this section—

court includes any court of law or administrative review body.

designated person means the Minister, a management committee, the Secretary or any person or body assisting or otherwise associated with any of them.

exercise of functions includes the purported exercise of functions and the non-exercise or improper exercise of functions.

judicial review period—see subsection (2).

management plan includes purported management plan.

plan-making function means—

(a) a function under this Act relating to the making of a management plan (including relating to the amendment, replacement or repeal of a management plan or the extension of the duration of a management plan), or

(b) a function under section 46 of this Act relating to the statement of the purpose for which any provision of a management plan has been made.

proceedings includes—

(a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and

(b) without limiting paragraph (a), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the *Supreme Court Act 1970*.

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

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

49 Consideration of management plans by public authorities

(1) When exercising its functions, a public authority must have regard to the provisions of any management plan to the extent to which they apply to the public authority.

(2) For the purposes of this section, a management plan may be expressed so as to apply—

(a) to a specified public authority, to a specified class of public authorities or to public

authorities generally, and

(b) to a specified function, to a specified class of functions or to functions generally.

(3) This section neither restricts a public authority's statutory discretions nor authorises a public authority to do anything inconsistent with its statutory or other legal obligations.

49A Suspension of management plans during severe water shortages

(1) If satisfied that there is a severe water shortage in relation to a particular water management area or water source, the Minister may, by order published in the Gazette, suspend the operation of any management plan, either in whole or in part, in relation to that or any other water management area or water source.

(2) Before suspending the operation of a management plan in relation to a water management area or water source, the Minister must obtain the concurrence of the Minister for the Environment.

(3) As soon as practicable after an order under this section is published in the Gazette, a copy of the order must be published in the authorised manner.

(4) An order under this section expires (unless sooner revoked) at the end of 30 June following the date on which it is made or, if made on or after 1 April in any year, at the end of 30 June of the following year.

(5) An order may not be made under this section or section 49B in relation to a management plan that has, at any time during the previous 12 months, been subject to a prior order under this section or section 49B unless the Minister is satisfied, for reasons specified in the order, that there is no need for the plan to be amended under Division 9.

49B Suspension of Basin management plans during extreme events

(1) If satisfied that there is an extreme event in relation to a particular Basin management area or part of the Basin water resources, the Minister may, by order published in the Gazette, suspend the operation of any Basin management plan, either in whole or in part, in relation to that or any other Basin management area or water source or part of a water source that is part of the Basin water resources.

(2) Before suspending the operation of a Basin management plan in relation to a Basin management area or part of the Basin water resources, the Minister must obtain the concurrence of the Minister for the Environment.

(3) As soon as practicable after an order under this section is published in the Gazette, a copy of the order must be published—

(a) in the authorised manner, or

(b) on a publicly accessible website that, in the opinion of the Minister, is appropriate for the publication of orders of that kind.

(4) An order under this section expires (unless sooner revoked) at the end of 30 June following the date on which it is made or, if made on or after 1 April in any year, at the end of 30 June of the following year.

(5) An order may not be made under this section in relation to a Basin management plan that has, at any time during the previous 12 months, been subject to an order under this section or section 49A unless the Minister is satisfied, for reasons specified in the order, that there is no need for the plan to be amended under Division 9.

(6) Except as provided by subsection (5), this section does not prevent a Basin management area or part of the Basin water resources from being the subject of an order under section 49A.

Part 4 Minister’s plans

50 Minister’s plan

(1) The Minister may, by order published on the NSW legislation website, make a plan (a ***Minister’s plan***)—

(a) for any part of the State that is not within a water management area, or

(b) for any water management area or water source, or part of a water management area or water source, for which a management plan is not in force, or

(c) for any water management area or water source, or part of a water management area or water source, for which a management plan is in force, but only so as to deal with matters not dealt with by the management plan.

(1A) A Minister’s plan may be made for more than one water management area or water source or for parts of more than one water management area or water source.

(2) A Minister’s plan must in general terms deal with any matters that a management plan is required to deal with, and may also deal with any other matters that a management plan is authorised to deal with, other than matters that are already dealt with by a management plan.

(2A) Part 3 (except sections 15 and 36–41) applies to a Minister’s plan. However, the Minister—

(a) may adopt any of the provisions of sections 36–41 in a particular case, and

(b) may dispense with a particular requirement of Part 3 in the case of a Minister’s plan referred to in subsection (1A).

(3) Before making a Minister's plan, the Minister must obtain the concurrence of the Minister for the Environment to the making of the plan.

(4) Except to the extent to which this Act otherwise provides, a Minister's plan has the same effect as a management plan.

(5) The Minister may decide whether to make a Minister's plan or a management plan in respect of any matter (whether or not any draft management plan has been submitted to the Minister).

Part 5 Implementation programs

51 Implementation programs

(1) The Minister may, by order in writing, establish a program for implementing a management plan or Minister's plan (an ***implementation program***).

(2) Before establishing the first implementation program for a management plan, the Minister must consult with the management committee by which the plan was prepared.

(3) An implementation program must set out the means by which the Minister intends that the objectives of the relevant management plan or Minister's plan are to be achieved.

(4) On establishing an implementation program, the Minister must ensure that—

(a) notice of that fact is published in the authorised manner to persons in the area to which the program relates, and

(b) copies of the program (as currently in force) are made available for inspection during normal office hours, free of charge, at suitable locations within the area.

(5) The Minister is to ensure that the implementation program is reviewed each year for the purpose of determining whether the implementation program is effective in implementing the management plan or Minister's plan to which it relates.

(6) The results of each review under this section are to be included in the relevant annual reporting information prepared for the Department under the *Government Sector Finance Act 2018*.

Chapter 3 Water management implementation

Part 1 Basic landholder rights

Division 1 Domestic and stock rights

52 Domestic and stock rights

(1) Subject to subsection (2), an owner or occupier of a landholding is entitled, without the need for an access licence, water supply work approval or water use approval—

(a) to take water from any river, estuary or lake to which the land has frontage or from any aquifer underlying the land, and

(b) to construct and use a water supply work for that purpose, and

(c) to use the water so taken for domestic consumption and stock watering, but not for any other purpose.

(2) Subsection (1) does not allow a landholder—

(a) to take or use water in contravention of any mandatory guidelines established under section 336B, or

(b) to construct a dam or water bore without a water supply work approval, or

(c) in the case of the owner or occupier of a landholding arising from a subdivision effected on or after 1 July 2004, to take or use water in contravention of any prohibition or restriction imposed by or under the regulations (including any prohibition or restriction that the Minister is authorised by the regulations to impose), or

(d) to carry out a controlled activity without a controlled activity approval.

(3) In this section—

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

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

Division 2 Harvestable rights

53 Harvestable rights

(1) An owner or occupier of a landholding within a harvestable rights area is entitled, without the need for any access licence, water supply work approval or water use approval, to do each of the following in accordance with the harvestable rights order by which the area is constituted—

(a) to construct and use one or more water supply works for the purpose of capturing and storing water of a kind specified by the harvestable rights order,

(b) to take and use that water.

(2) One or more water supply works may be constructed and used under subsection (1) (a) for the storage of both water that has been captured in exercise of a harvestable right and other water that has been lawfully taken from a water source if the capacity of the work or works does not exceed the maximum harvestable right volume specified by the harvestable rights order.

(3) The following provisions apply where the capacity of the water supply work or works by means of which water is to be captured or stored in exercise of a harvestable right exceeds the maximum harvestable right volume specified by the harvestable rights order for works constructed under the authority of this section—

(a) an access licence or water use approval is not required for water that is captured or stored by the work or works in exercise of a harvestable right,

(b) if water (other than water captured or stored in exercise of a harvestable right) is also captured or stored by the work or works—an access licence and water use approval is required to authorise the taking and use of water from that source for any volume taken and stored in excess of the maximum harvestable right volume unless the water is taken under the authority of a domestic and stock right or native title right,

(c) a water supply work approval for the water supply work or works is required despite subsection (1).

(4) Without limiting subsection (1), a single water supply work may be used by 2 or more landholders regardless of who constructed it if the shared use is permitted by the harvestable rights order.

(5) This section does not allow a landholder—

(a) to supply any other land with water that has been captured and stored in exercise of a harvestable right, or

(b) to construct or use a water supply work in a river unless the river is declared by

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

(6) In this section—

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

54 Harvestable rights orders

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

(a) constitute any land as a harvestable rights area, and

(b) name the area that is constituted, and

(c) fix the boundaries of the area that is constituted.

Note—

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

Editorial note—

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

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

(a) the kinds of water (such as overland flow water) that may be captured and stored in the area in exercise of harvestable rights, and

(b) the method for calculating the maximum harvestable right volume for works constructed or used in exercise of harvestable rights on landholdings in the area by reference to a proportion (not being less than 10%) of the average regional overland flow waters for that area.

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

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

(a) the types and locations of water supply works that may be used by a landholder to capture and store water,

(b) the means by which the maximum capacity of a water supply work that may be constructed or used by a landholder to capture and store water is to be calculated,

(c) the arrangements that may be made by landholders for the shared use of a water

supply work that straddles their landholdings,

(d) the method for accounting for water that is captured or stored in the circumstances referred to in section 53 (3),

(e) the procedures to be followed for calculating the average overland flow water for a landholding in the area,

(f) rules about the purposes for which water may be captured, taken, stored or used,

(g) such other matters as are necessary or convenient to give effect to the order.

(5) For the purpose of calculating any matter under an order under this section, a reference in the order to an area of land is, in the case of a landholding, a reference to the area of the landholding.

(6) An order under this section may deal with any matter by reference to a map held by the Department.

(7) Any map that is referred to as provided by subsection (6) is to be available for public inspection, free of charge, by either or both of the following means—

(a) at the appropriate regional office of the Department for the area to which the relevant order relates, during normal office hours,

(b) on the website of the Department or any other website that the Minister considers to be readily accessible by members of the public.

Division 3 Native title rights

55 Native title rights

(1) A native title holder is entitled, without the need for an access licence, water supply work approval or water use approval, to take and use water in the exercise of native title rights.

(2) This section does not authorise a native title holder—

(a) to construct a dam or water bore without a water supply work approval, or

(b) to construct or use a water supply work otherwise than on land that he or she owns.

(3) The maximum amount of water that can be taken or used by a native title holder in any one year for domestic and traditional purposes is the amount prescribed by the regulations.

Part 2 Access licences

Division 1 Preliminary

55A Application of Part

(1) This Part applies to—

(a) each part of the State or each water source, and

(b) each category or subcategory of access licence that relates to that part of the State or that water source,

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

Editorial note—

For declarations proclaimed under this subsection see Gazettes No 110 of 1.7.2004, p 5004; No 120 of 29.9.2006, p 8440; No 127 of 27.10.2006, pp 8906, 8907; No 83 of 29.6.2007, p 3967; No 11 of 31.1.2008, p 213; No 76 of 27.6.2008, p 5871; No 93 of 26.6.2009, p 3581 and No 109 of 31.7.2009, p 4665, and proclamations published on the NSW legislation website: 2010 (342) LW 1.7.2010; 2010 (739) LW 17.12.2010; 2011 (152) LW 3.3.2011; 2011 (153) LW 3.3.2011; 2011 (521) LW 30.9.2011; 2011 (576) LW 11.11.2011; 2011 (677) LW 16.12.2011; 2012 (28) LW 27.1.2012; 2012 (135) LW 30.3.2012; 2012 (231) LW 1.6.2012; 2012 (352) LW 3.8.2012; 2012 (464) LW 14.9.2012; 2012 (496) LW 4.10.2012; 2016 (350) LW 24.6.2016; 2016 (600) LW 30.9.2016; 2019 (318) LW 5.7.2019 and 2020 (290) LW 19.6.2020. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

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

Editorial note—

See Gazette No 263 of 20.12.2002, p 10752 for proclamation applying section 71L (renumbered as section 71Z) to the whole of the State on and from 20 December 2002. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

(3) To avoid doubt, the repeal, replacement or amendment of a management plan so as to remove, add or change the description of a water source described in a proclamation made under this section does not affect the application of this Part to the water source as effected by a proclamation previously made under this Part.

56 Access licences

(1) An access licence entitles its holder—

(a) to specified shares in the available water within a specified water management area or from a specified water source (the ***share component***), and

(b) to take water—

(i) at specified times, at specified rates or in specified circumstances, or in any combination of these, and

(ii) in specified areas or from specified locations,

(the ***extraction component***).

(2) Without limiting subsection (1) (a), the share component of an access licence may be expressed—

(a) as a specified maximum volume over a specified period, or

(b) as a specified proportion of the available water, or

(c) as a specified proportion of the storage capacity of a specified dam or other storage work and a specified proportion of the inflow to that dam or work, or

(d) as a specified number of units.

(3) Shares in available water may be assigned generally or to specified categories of access licence.

(4) In the case of a local water utility licence, its share component is to be expressed as a specified volume per year.

(4A) Without limiting subsection (1) (b), the extraction component of an access licence may authorise the taking of water from a water source specified in the share component of the licence and from another water source not so specified if those water sources are vertically abutting (either wholly or partly) water sources.

(4B) In the circumstances referred to in subsection (4A), the water source specified in the share component of the access licence is to be the water source that is the main source for the extraction of water by the holder of the licence.

(5) For the purposes of this Act, an access licence may also be referred to as a ***water access licence*** or a ***WAL***.

(6) (Repealed)

Note—

An access licence—

(a) does not confer a right on any person to use water for any particular purpose (that right is conferred by a water use approval), and

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

57 Categories of licence

(1) There are the following categories of access licences—

(a) regulated river (high security) access licences,

(b) regulated river (general security) access licences,

(c) regulated river (conveyance) access licences,

(d) unregulated river access licences,

(e) aquifer access licences,

(f) estuarine water access licences,

(g) coastal water access licences,

(h) supplementary water access licences,

(i) major utility access licences,

(j) local water utility access licences,

(k) domestic and stock access licences,

(k1) floodplain harvesting (regulated river) access licences,

(k2) floodplain harvesting (unregulated river) access licences,

(l) such other categories of access licence as may be prescribed by the regulations.

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

57A Special provisions relating to floodplain harvesting access licences

(1) The regulations may make provision for or with respect to the conversion of actual or proposed floodplain water usage by landholders into any of the following categories or subcategories of floodplain harvesting access licences (***replacement floodplain harvesting access licences***)—

(a) floodplain harvesting (regulated river) access licences,

(b) floodplain harvesting (unregulated river) access licences,

(c) any other categories or subcategories of floodplain harvesting access licences prescribed for the purposes of section 57 (1) (l) or (2).

(2) Without limiting subsection (1), the regulations may make provision for or with respect to the following—

(a) the circumstances in which actual or proposed floodplain water usage by landholders will give rise to replacement floodplain harvesting access licences,

(b) the terms and conditions of replacement floodplain harvesting access licences,

(c) the share components of replacement floodplain harvesting access licences (including the process for the determination of such share components),

(d) the determination of applications for approvals for flood works or other works (whether made under this Act or the *Water Act 1912*) in connection with floodplains in respect of which replacement floodplain harvesting access licences will arise,

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

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

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

Note—

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

(5) In this section—

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

Note—

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

58 Priorities between different categories of licence

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

(a) local water utility access licences, major utility access licences and domestic and

stock access licences have priority over all other access licences,

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

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

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

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

(3) In relation to the water management area or water source to which it applies, a management plan may provide for different rules of priority to those established by subsection (1).

(4) If a management plan so provides for different rules of priority, those different rules are taken to have been established by this section.

59 Available water determinations

(1) From time to time, the Minister may, by order in writing, make either or both of the following determinations (an ***available water determination***)—

(a) a determination as to the availability of water for one or more categories or subcategories of access licences in relation to one or more specified water management areas or water sources,

(b) while an order is in force under section 49A (1) or 49B (1), a determination as to the availability of water for one or more individual access licences in relation to one or more specified water management areas or water sources.

(1A) An available water determination that is made in relation to a particular category of access licence applies to all subcategories of that category except to the extent to which it otherwise provides.

(2) The regulations may make provision for or with respect to the manner in which an available water determination is to be notified.

(3) If the extraction component of an access licence authorises the taking of water from a water source specified in the share component of the licence and from another water source not so specified and those water sources are vertically abutting (either wholly or partly) water sources, the available water determinations that apply to the licence are those made in relation to the water source specified in the share component of the licence.

(4) If the Minister consents to the amendment of an access licence to enable water to be taken by a nominated water supply work located in some other water management area or water source than that to which the licence relates, the available water determinations applicable to water taken by means of the work are those made in relation to the relevant category or subcategory of access licence in relation to that other water management area or water source.

60 Rules of distribution applicable to making of available water determinations

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

(a) the rules of priority established by section 58,

(b) the provisions of any relevant bulk access regime,

(c) the provisions of any relevant management plan,

(d) the provisions of any relevant implementation program.

(2) (Repealed)

(3) While an order under section 49A is in force, the following rules of distribution apply to the making of an available water determination—

(a) first priority is to be given to—

(i) the taking of water for domestic purposes by persons exercising basic landholder rights, and

(ii) the taking of water for domestic purposes or essential town services authorised by an access licence,

(b) second priority is to be given to the needs of the environment,

(c) third priority is to be given to—

(i) the taking of water for stock purposes by persons exercising basic landholder rights, and

(ii) in the case of regulated rivers, the taking of water for purposes (other than domestic purposes) authorised by a regulated river (high security) access licence, and

(iii) the taking of water for the purposes of supply of commercial and industrial activities authorised by a major utility access licence or local water utility access licence, subject to the water made available being in accordance with any drought management strategy established by the Minister for that

purpose, and

(iv) the taking of water for the purposes of electricity generation authorised by a major utility access licence, and

(v) the taking of water for purposes authorised by a domestic and stock access licence or by persons exercising any other water rights in relation to stock, and

(vi) the taking of water for purposes authorised by a conveyance access licence in connection with the supply of water for any other purpose or need referred to in this paragraph,

(d) fourth priority is to be given to the taking of water for purposes authorised by any other category or subcategory of access licence.

(3A) While an order under section 49B is in force, the following rules of distribution apply to the making of an available water determination—

(a) first priority is to be given to meeting critical human water needs,

(b) second, third, fourth and fifth priorities are to be given to the matters set out in subsection (3) (a), (b), (c) and (d), respectively, to the extent that those matters are not critical human water needs.

(3B) In a case where orders under both sections 49A and 49B are in force in relation to the same water management area or water source, the rules set out in subsection (3A) prevail.

(3C) In this section—

critical human water needs means the needs for a minimum amount of water, that can only reasonably be provided from the Basin water resources, required to meet—

(a) core human consumption requirements in urban and rural areas, and

(b) those non-human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs.

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

Division 1A Offences

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

(1) A person—

(a) who takes water from a water source to which this Part applies, and

(b) who does not hold an access licence for that water source, and

(c) who intentionally or negligently takes that water without obtaining an access licence for that water source,

is guilty of an offence.

Tier 1 penalty.

(2) A person—

(a) who takes water from a water source to which this Part applies, and

(b) who does not hold an access licence for that water source,

is guilty of an offence.

Tier 2 penalty.

(3) A holder of an access licence—

(a) who takes water from a water source to which this Part applies otherwise than as authorised by the licence, and

(b) who intentionally or negligently takes that water without obtaining an access licence that authorises the taking of that water,

is guilty of an offence.

Tier 1 penalty.

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

Tier 2 penalty.

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

(6) Without limiting subsections (3), (4) and (5), a person takes water otherwise than as authorised by a supplementary water access licence if the person takes water otherwise than in such circumstances as may be authorised by provisions of the relevant management plan that are made for the purposes of section 70.

(7) It is a defence to a prosecution under this section in relation to the taking of water from a water source to which this Part applies if the accused person establishes that the water was taken—

(a) by means of a nominated water supply work for that water source, or

(b) by means of a water supply work that, at all material times, was nominated in

relation to the interstate equivalent of an access licence,

and was otherwise taken in accordance with the terms and conditions of the access licence in connection with which it is nominated.

(8) The defence established by subsection (7) (b) is not available unless the Minister has been duly notified that the relevant water supply work has been nominated as referred to in that paragraph.

60B Contravention of terms and conditions of access licence

(1) A person (other than the holder) who takes water pursuant to an access licence is guilty of an offence if the person contravenes any term or condition of the licence.

Tier 2 penalty.

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

Tier 2 penalty.

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

(a) that the contravention of the term or condition was caused by another person, and

(b) that the other person was not associated with the holder at the time the term or condition was contravened, and

(c) that the holder took all reasonable steps to prevent the contravention of the term or condition.

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

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

(1) **Offences involving allocations under a single access licence** A person who takes water from a water source to which this Part applies otherwise than in accordance with the water allocation for the access licence by which the taking of water from that water source is authorised and—

(a) who intentionally or negligently fails to ascertain whether the taking of water is in accordance with the water allocation, or

(b) who knows or has reasonable cause to believe that the taking of the water is not in accordance with the water allocation,

is guilty of an offence.

Tier 1 penalty.

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

Tier 2 penalty.

(3) If a person who has the control or management of a water supply work takes water by means of that work in contravention of subsection (2), and the water supply work is nominated in relation to an access licence held by some other person, both persons are taken to have contravened that subsection.

(4) Either person referred to in subsection (3) may be proceeded against and convicted for an offence under subsection (2), as the case requires, whether or not the other person has been proceeded against or convicted for such an offence.

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

(a) who intentionally takes water by means of that work from the source or sources concerned in excess of the combined water allocations for the access licences, or

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

is guilty of an offence.

Tier 1 penalty.

(6) A holder of 2 or more access licences that nominate the same water supply work to take water from one or more water sources under this Part is guilty of an offence if the holder takes water by means of that work from the source or sources concerned in excess of the combined water allocations for the access licences.

Tier 2 penalty.

(7) A holder of 2 or more access licences that authorise the holder to take water from the same water source under this Part—

(a) who intentionally takes water from that water source in excess of the combined water allocations for the access licences, or

(b) who knows or has reasonable cause to believe that the taking of the water from that source is in excess of the combined water allocations for the access licences,

is guilty of an offence.

Tier 1 penalty.

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

Tier 2 penalty.

(9) If a person who has the control or management of a water supply work takes water by means of that work in contravention of subsection (6), and the water supply work is nominated in relation to an access licence held by some other person, both persons are taken to have contravened that subsection.

(10) Either person referred to in subsection (9) may be proceeded against and convicted for an offence under subsection (6), as the case requires, whether or not the other person has been proceeded against or convicted for such an offence.

60D Taking water otherwise than by or from water supply work or extraction point nominated in access licence

A person who takes water from a water source to which this Part applies otherwise than by means of a water supply work, or from an extraction point, that is nominated in an access licence is guilty of an offence.

Tier 2 penalty.

60E Liability of occupier of premises for certain offences

(1) The occupier of premises at or from which water is taken in contravention of a provision of this Division is taken to have contravened that provision unless it is established that—

(a) the water was taken by another person, and

(b) the other person was not associated with the occupier at the time the water was taken, and

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

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

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

60F General defence

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

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

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

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

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

(a1) that the water was taken in circumstances for which provision is made in a management plan pursuant to section 85A(2), or

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

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

60G Minister may charge for water illegally taken

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

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

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

(2) Action under this section may not be taken against a person unless the Minister—

(a) has given written notice to the person that the Minister proposes to take such action, and

(b) has given the person a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and

(c) has taken any such submissions into consideration.

(3) For the purposes of taking action under this section, the Minister may determine the quantity of water taken by estimating the quantity in accordance with a methodology prescribed by the regulations for the purposes of this section.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

60H Application of Division in relation to interstate licences

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

(a) that is granted under the law of another State or Territory, and

(b) that is declared by the regulations to have the same effect as an access licence for the purposes of this Division.

60I Access licence required for water used in mining activities

(1) A person who takes water in the course of carrying out a mining activity is, for the purposes of this Act, taking water from a water source.

(2) Without limiting the generality of subsection (1), a person ***takes water in the course of carrying out a mining activity*** if, as a result of or in connection with, the activity or a past mining activity carried out by the person, water is removed or diverted from a water source (whether or not water is returned to that water source) or water is re-located from one part of an aquifer to another part of an aquifer.

(3) To avoid doubt, a person who takes water in the course of carrying out a mining activity as referred to in subsection (2) is required to hold an access licence authorising the taking of that water.

(4) In this section—

mineral has the same meaning as it has in the *Mining Act 1992*.

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

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

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

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

(c) the rehabilitation of land affected by mining.

mining activity means any of the following—

(a) mining,

(b) mineral exploration,

(c) petroleum exploration.

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

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

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

Division 2 Granting of access licences

61 Applications for granting of access licences

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

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

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

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

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

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

(2) (Repealed)

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

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

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

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

(4) (Repealed)

(5) The Minister—

(a) may require an applicant for an access licence to provide additional information within a specified time if of the opinion that additional information would be relevant to consideration of the application, and

(b) may delay consideration of the application until the information is provided or, if the information is not provided within the time specified, may refuse to consider the application.

(6) The Minister may refuse to accept an application for an access licence if it appears to the Minister that the application is incomplete.

(7) An applicant for an access licence may, by notice in writing to the Minister, amend or withdraw the application for the access licence at any time before the application is determined.

62 Objections to granting of access licences

(1) Any person may, in accordance with the regulations, object to the granting of an access licence—

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

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

(2) The Minister must inform the applicant for the access licence of the grounds of any objection to the granting of the licence and must allow the applicant a specified time within which to make a written response to the Minister in relation to the objection.

(3) The Minister—

(a) may require an objector or applicant to provide additional information within a specified time if of the opinion that additional information would be relevant to consideration of the objection or response, and

(b) may delay consideration of the objection or response until the information is provided or, if the information is not provided within the time specified, may refuse to consider the objection or response.

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

(5) Before making a decision on an application for an access licence in respect of which any objection has been made, the Minister must endeavour to resolve the issues

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

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

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

63 Determination of applications

(1) The Minister may determine an application for an access licence by granting or refusing to grant the licence.

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

(2) An access licence is not to be granted unless the Minister is satisfied that—

(a) the application has been made as provided by section 61 (1) (a), (b) or (c), and

(b) adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source as a consequence of water being taken from the water source under the licence.

(3) Despite subsection (1)—

(a) a local water utility access licence may only be granted to a local water utility, and

(b) a major utility access licence may only be granted to a major utility.

(c) (Repealed)

(4) An access licence must specify—

(a) in relation to its share component, the water management area or water source to which it relates, and

(b) in relation to its extraction component, the times, rates or circumstances in which, and the areas or locations from which, water may be taken under the licence.

(5) An access licence may be issued with a zero share component or zero extraction component (or both) but, even if it is issued with a zero share component, must still specify the water management area or water source to which it relates.

(6) Two or more co-holders of an access licence granted under this section are taken to

hold the access licence—

(a) as provided by the application for the access licence, or

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

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

(8)–(10) (Repealed)

63A Commonwealth and other access licences arising from arrangements

(1) The Minister may grant an access licence to the Commonwealth, or a person nominated by the Commonwealth, at the Minister's discretion, if the Minister is satisfied that—

(a) the licence is required in order to give effect to an agreement or other arrangement (including, but not limited to, a funding agreement or arrangement) entered into by or on behalf of the State, and

(b) the licence is to form part of the Commonwealth environmental water holdings within the meaning of the *Water Act 2007* of the Commonwealth.

(2) Sections 61 and 63 (1) and (2) do not apply to an access licence granted under this section.

63B Licences arising out of State arrangements or agreements

(1) The Minister may grant an access licence to the State or a public authority prescribed by the regulations, at the Minister's discretion, if the Minister is satisfied that the licence is required in order to give effect to an agreement or other arrangement (including, but not limited to, a funding agreement or arrangement) entered into by or on behalf of the State.

(2) A licence granted by the Minister under this section—

(a) may be granted subject to an adaptive environmental water condition, or

(b) may be a licence of an environmental subcategory, or

(c) may be for water taken or permitted to be taken under a licence of a class prescribed by the regulations for environmental purposes.

(3) Sections 61 and 63 (1) and (2) do not apply to an access licence granted under this section.

64 Notice of decision

(1) After determining an application under this Division, the Minister must cause notice of the determination to be given to the applicant and, if the application relates to—

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

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

to each person who has made an objection in connection with the application.

(2) (Repealed)

(3) A notification under subsection (1) must be given within 7 days of the determination.

65 Controlled allocation of access licences

(1) The Minister may, by order published in the Gazette, declare that the right to apply for an access licence for a specified water management area or water source is to be acquired by auction, tender or other means specified in the order.

(2) An order under this section—

(a) may relate to one or more particular access licences, or a particular class of access licences or all access licences, for a specified water management area or water source (or part of such an area or source), and

(b) may specify a limited period for which such an access licence is to have effect, and

(c) may set a minimum price for the acquisition of the right to apply for the access licence or licences concerned, and

(d) may set a fee for participation in the auction, tender or other means specified by the order with respect to the access licence or licences concerned.

(3) For the avoidance of doubt, the Independent Pricing and Regulatory Tribunal does not have jurisdiction under the *Independent Pricing and Regulatory Tribunal Act 1992* to investigate or determine minimum prices for the purposes of this section.

(4) (Repealed)

Division 3 Conditions, duration and amendment of access licences

Note—

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

66 Conditions of access licence generally

(1) An access licence is subject to such conditions as the Minister may from time to time impose—

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

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

(i) conditions to give effect to any agreement between an applicant and objector under section 62 (5), and

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

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

(1AA) An access licence is subject to any mandatory conditions imposed by this Act or the regulations.

(1A) Mandatory conditions (other than conditions imposed by the regulations) do not have effect in relation to an access licence unless they are included in the terms of the licence.

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

Note—

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

(2A) When granting a specific purpose access licence, the Minister is to impose a condition on the licence so as to ensure that the licence is used for the purpose for which it is granted. Such a condition may limit the operation of the licence to a particular location.

(3) At the end of each 5-year period, the Minister is to vary each local water utility licence so as to reflect any variation in population, together with any variation in associated commercial activities, that has occurred during that period in the area in which domestic water is supplied under the licence.

(3A) In subsection (3), ***associated commercial activities*** means activities within the following categories recognised in the *Australian and New Zealand Standard Industry Classification* (ANZSIC), 1993 edition (Australian Bureau of Statistics publication, Catalogue No 1292.0)—

(a) construction (category E),

(b) wholesale trade (category F),

(c) retail trade (category G),

(d) accommodation, cafes and restaurants (category H),

(e) communication services (category J),

(f) finance and insurance (category K),

(g) property and business services (category L),

(h) government administration and defence (category M),

(i) education (category N),

(j) health and community services (category O),

(k) cultural and recreational services (category P),

(l) personal and other services (category Q).

(4) On the application of a local water utility, the Minister may at any time increase the utility's entitlement to water under a local water utility licence so as to reflect any rapid growth of population within the utility's area requiring an immediate increase in the availability of water for supply by that utility.

(5) In this section, ***mandatory condition*** means a condition referred to in subsection (1) (a) or (1AA) or imposed under section 8E.

66A Imposition of conditions on granting of access licence

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

67 Imposition of conditions after access licence is granted

(1) The Minister may impose discretionary conditions on an access licence after it has been granted, but only if the Minister—

(a) has given written notice to the holder of the access licence that the Minister proposes to impose such conditions, and

(b) has given the holder of the access licence a reasonable opportunity to make submissions to the Minister with respect to the proposed conditions, and

(c) has taken any such submissions into consideration.

(2) Subsection (1) does not apply to conditions imposed on an access licence—

(a) at the request of the holder of the access licence, or

(b) as a result of action taken under section 66 (3), or

(c) when the access licence is amended under section 68B, or

(d) in connection with a dealing under Division 4.

(3) Mandatory conditions referred to in section 66 (1) (a) of an access licence may be imposed, amended, revoked or suspended by the Minister whenever it is necessary to do so in order to enable compliance with or to give effect to this Act, the regulations or a relevant management plan.

(4) The Minister must cause written notice of any conditions imposed, amended, revoked or suspended under this section to be served on the holder of the access licence concerned.

(5) A condition imposed or a change referred to in subsection (4) takes effect on the day on which the notice referred to in that subsection is served on the holder of the access licence or on such later day as may be specified in the notice in that regard.

(6) The regulations may make provision for or with respect to the manner in which written notices may be given for the purposes of this section.

68 Revocation of conditions

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

68A Amendment of share or extraction components of access licences and other actions by Minister

(1) The Minister may amend the share component or extraction component of an access licence in accordance with this Act or the relevant management plan.

(1A) The Minister may amend the share component or extraction component (or both) of an access licence so as to alter the water management area or water source to which the share component of the licence relates, or the locations from which water may be taken in accordance with the extraction component of the licence.

(1B) An amendment may only be made under subsection (1A) if—

(a) the amendment is for the purpose of enabling the holder of the licence to take water from a different water source to that authorised by the licence because erroneous location data has resulted in the holder taking water from that different source, and

(b) at the time at which the granting of the access licence was recorded in the Access Register, an access licence could have been granted to the holder authorising the taking of water from that different water source.

(1C) The Minister may amend the share component of a specific purpose access licence.

(1D) An amendment may only be made under subsection (1C) if that part of the share component that is the subject of the amendment is no longer necessary for the purpose for which the specific purpose access licence was granted.

(1E) The Minister may amend an access licence by withdrawing the nomination of a specified water supply work as a work by means of or from which water may be taken under the licence, if the work is the subject of an approval that has expired or has been cancelled or surrendered.

(1F) The Minister may amend an access licence or approval under subsection (1C) or (1E) at the Minister's discretion or at the request of the holder of the licence or approval.

(2) The Minister must cause written notice of an amendment of an access licence under this section to be served on the holder of the licence and any security holder in relation to the licence.

(3) An amendment under this section has no effect until it is recorded in the Access Register.

Note—

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

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

(1) The Minister may amend an access licence held by the Commonwealth (or a person nominated by the Commonwealth), at the Minister's discretion, by increasing the share component of the licence if the Minister is satisfied that—

(a) the amendment is required in order to give effect to an agreement or other arrangement (including, but not limited to, a funding agreement or arrangement) entered into by or on behalf of the State, and

(b) the licence forms part of the Commonwealth environmental water holdings within the meaning of the *Water Act 2007* of the Commonwealth.

(2) The Minister may amend an access licence held by the State (or a public authority prescribed by the regulations), at the Minister's discretion, by increasing the share component of the licence if—

(a) the Minister is satisfied that the amendment is required in order to give effect to an agreement or other arrangement (including, but not limited to, a funding agreement or arrangement) entered into by or on behalf of the State, and

(b) the licence—

(i) is subject to an adaptive environmental water condition, or

(ii) is of an environmental subcategory, or

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

69 Duration of access licence

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

70 Special provisions with respect to supplementary water

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

Division 3A Water Access Licence Register

Subdivision 1 Keeping of the Access Register

71 Water Access Licence Register

(1) The Minister is to keep a Water Access Licence Register for the purposes of this Act (the ***Access Register***).

(2) In the Access Register, there is to be a division recording the matters specified in section 71A (1) (the ***General Division***) and a division recording the matters specified in section 71A (2) (the ***Assignment Division***).

(3) The Access Register is to be kept in the form and manner determined by the Minister.

(4) Without limiting subsection (3), the Access Register may be kept in the form of a computer record.

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

(1) The following matters relating to an access licence (including a replacement access licence) or a holding in an access licence must be recorded in the General Division of the Access Register—

(a) Ministerial action in relation to the licence or holding,

(b) any general dealing in the licence or holding,

(c) any dealing on default in relation to the licence or holding,

(d) any caveat lodged in relation to the licence or holding,

(e) any security interest held over the licence or holding,

(f) any devolution of the licence or holding as referred to in section 72,

(g) any alteration in co-holder's tenancy arrangements in relation to the licence or holding, as referred to in section 73,

(h) any other matter prescribed by the regulations.

(2) The following matters are to be recorded in the Assignment Division of the Access Register in such manner as the Minister considers appropriate—

(a) any assignment dealing in an access licence,

(b) any other matter prescribed by the regulations.

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

(1) Subject to this section, any matter required to be recorded in the General Division of the Access Register—

(a) has no effect unless it is so recorded, and

(b) takes effect on being recorded.

(2) An assignment dealing in relation to an access licence takes effect when details of the assignment are entered in the water allocation account for the access licence.

(3) If an application for the extension of a term transfer under section 71N is received before the expiry of the term transfer, the extension is to be recorded in the Access Register as taking effect from the end of the current term of the term transfer.

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

Schedule 1A has effect.

Subdivision 2 Registration of security interests

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

(1) A registered security interest over an access licence (or a holding in an access licence that is held as a tenancy in common) is created by—

(a) execution of an instrument in the approved form evidencing the existence of a security interest over the licence or holding, and

(b) registering the security interest by recording it in the Access Register in accordance with Part 1 of Schedule 1A.

Note—

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

(2) Subsection (1) does not apply to—

(a) a specific purpose access licence, or

(b) a security interest referred to in clause 19 of Schedule 10.

Note—

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

(3) For the purposes of Chapter 7 of the *Duties Act 1997*—

(a) a registered security interest over an access licence or holding in an access licence is taken to be a security by way of mortgage or charge over property wholly or partly in New South Wales, and

(b) the liability date is the date on which the registered security interest is first recorded in the Access Register,

except as provided by the regulations.

Subdivision 3 Registration of caveats

71E Minister may register caveats

(1) The Minister may, on the application in the approved form of an affected person, record a caveat on an access licence (or holding in an access licence) in the Access Register in such manner as appears to the Minister to be appropriate.

(2) Without limiting subsection (1), the Minister may (whether or not on the application of an affected person) record a caveat in the Access Register—

(a) on behalf of any person with a legal disability or on behalf of the Crown, or

(b) if it appears to the Minister that any error has been made by misdescription or otherwise in relation to an access licence, or to prevent any fraud or improper dealing with a licence.

(3) In this section—

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

(a) the holder or a co-holder of the licence or holding,

(b) a holder of a security interest over the licence or holding (whether or not registered),

(c) a party to a dealing, or prospective dealing, in the licence or holding,

(d) a person entitled, or claiming to be entitled, to be registered as a holder or co-holder of the licence or holding by devolution as referred to in section 72,

(e) any other person of a class prescribed by the regulations.

71F Effect of a caveat

(1) A caveat on an access licence (or holding in an access licence) prohibits the recording in the Access Register of any general dealing, security interest or change in co-holder's tenancy arrangements in relation to the licence or holding that interferes with the entitlements or rights in respect of the licence or holding claimed by the person by or on whose behalf the caveat is lodged (the ***caveator***).

(2) A caveat on an access licence or holding in an access licence does not affect the recording in the Access Register of any Ministerial action, devolution, assignment dealing or dealing on default in relation to the licence or holding.

(3) Subsection (1) does not prohibit the registration of any matter if—

(a) the caveator consents to the registration, or

(b) a court of competent jurisdiction orders the registration, or makes an order that by necessary implication requires it, despite the caveat, or

(c) the matter is required to be registered expressly or by necessary implication by any enactment of the State or the Commonwealth, or

(d) in such other circumstances as are prescribed by the regulations.

(4) Subsection (1) does not prohibit registration of any matter in relation to the access licence or holding in an access licence the subject of a caveat if the matter was lodged for registration before the caveat was lodged.

Note—

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

Subdivision 4 Miscellaneous

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

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

(2) The Minister may require the access licence certificate for an access licence to be surrendered to the Minister before the Minister records the surrender of the access

licence to which that certificate relates in the Access Register.

71H Searches of the Access Register

(1) The Minister may, on application made by a person in the approved form for a search of any information recorded in the Access Register, cause—

(a) a search to be made of the Access Register, and

(b) a certificate of the result of the search to be issued to the person.

(2) The search is to be authenticated in such manner as the Minister considers appropriate.

(3) The Minister is not required to cause a search to be carried out, or a certificate to be issued, under this section, unless—

(a) the approved fee (if any) for the search or certificate has been paid, or

(b) the Minister is satisfied that the fee will be paid in accordance with arrangements approved by the Minister.

71I Correction and amendment of Access Register

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

71J Access to the Access Register

(1) The Minister is to make the information recorded in the Access Register available to any member of the public at the times and in the manner and on payment of the fee (if any) approved by the Minister.

(2) The information may be made available in accordance with such conditions as are determined by the Minister.

(3) The conditions may—

(a) require the payment, whether on a periodic or other basis, of fees and charges, and

(b) restrict access to information in the Access Register or any part of the Register.

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

(1) A person who is dissatisfied with any decision of the Minister in relation to the keeping of the Access Register may apply to the Minister for a copy of the Minister’s reasons for the decision.

(2) It is the Minister’s duty to provide the person with those reasons.

Division 4 Dealings with access licences

71L How does a dealing take effect?

(1) **General dealings requiring consent** A general dealing in an access licence or holding in an access licence that requires the Minister's consent takes effect as follows—

(a) application is made to the Minister in the approved form, and accompanied by the approved fee, for consent to the dealing,

(b) the Minister grants consent, but only if—

(i) the dealing complies with section 71Y (General) and with the other provisions of this Division that are applicable to the dealing, and

(ii) in the case of an access licence that is co-held—each co-holder of the licence has (subject to sections 71M and 71N) consented to the application,

(c) if an access licence or holding in an access licence is subject to a registered security interest, the security holder consents to the recording of the dealing in the Access Register,

(d) application is made to the Minister in accordance with subsection (2) to record the dealing in the Access Register,

(e) the dealing takes effect on registration (subject to and in accordance with this Act) in the Access Register.

(2) An application to record a dealing requiring the Minister's consent in the Access Register must be lodged with the Minister within 6 months (or such other period as is prescribed by the regulations) after consent is granted. Consent is taken to be revoked if an application is not lodged within that period.

(3) **Dealings on default and general dealings not requiring consent** A dealing on default or general dealing in an access licence or holding in an access licence that does not require the Minister's consent takes effect as follows—

(a) in the case of a general dealing in an access licence that is co-held—each co-holder of the licence has (subject to sections 71M and 71N) consented to the recording of the dealing in the Access Register,

(b) in the case of a general dealing in an access licence or holding in an access licence that is the subject of a registered security interest—consent to the recording of the dealing in the Access Register is obtained from the security holder,

(c) in the case of a dealing on default in an access licence or holding in an access licence—the dealing complies with section 71X (1),

(d) the dealing on default or general dealing complies with any other provisions of this Division that are applicable to the dealing,

(e) an application is made to the Minister to record the dealing in the Access Register,

(f) the dealing takes effect on registration (subject to and in accordance with this Act) in the Access Register.

(4) **Assignment dealings** An assignment dealing in an access licence takes effect as follows—

(a) an application is made to the Minister in the approved form for consent to the dealing,

(b) if the Minister grants consent, details of the assignment are entered in the water allocation account for the access licence and the dealing takes effect on that entry.

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

(1) Access licences may be transferred in accordance with this section.

(2) A local water utility access licence may be transferred only if the transferee is a local water utility.

(3) A major utility access licence may be transferred only if the transferee is a major utility.

(4) The consent of the Minister is required before—

(a) the transfer of an access licence of a category or subcategory prescribed by the regulations, or

(b) the transfer of an access licence in circumstances prescribed by the regulations.

(5) The consent of the proposed transferee is required before the transfer of any access licence.

(6) Two or more co-holders of an access licence that is transferred under this section are taken to hold the licence in the way recorded in the Access Register.

(7) This section applies to the transfer of a holding in an access licence in the same way as it applies to the transfer of an access licence held by a single person. However, holdings in access licences may be transferred only if the co-holders hold as tenants in common.

(8) A person who is the holder of a holding in an access licence may transfer it without the consent of any other persons who are co-holders of the access licence concerned.

71N Term transfers of entitlements under access licences

(1) This section applies to access licences except local water utility access licences and major utility access licences.

(2) The holder of an access licence to which this section applies (the ***actual holder of the licence***) may transfer the water entitlements conferred by the licence to another person for a specified period of not less than 6 months (a ***term transfer***).

(3) The consent of the proposed transferee to the term transfer is required.

(4) The consent of the Minister is required before—

(a) the term transfer of an access licence of a category or subcategory prescribed by the regulations, or

(b) the term transfer of an access licence in circumstances prescribed by the regulations.

(5) During the period for which a term transfer has effect, the transferee is taken to be the holder of the access licence concerned in relation to any water entitlements (to the exclusion of the actual holder of the licence) for the following purposes—

(a) any entitlements conferred by the licence on the holder of the licence,

(b) the payment of fees and charges under the licence,

(c) compliance with the terms and conditions of the licence,

(d) compliance with any order or direction issued under this Act with which the holder of the licence must comply,

(e) Division 1A of this Part,

(f) an application under section 71W (Access licence may nominate water supply works) or 71T (Assignment of water allocations between access licences),

(g) any other purpose prescribed by the regulations.

(6) The period for which a term transfer is in force may be reduced with the consent of the transferee.

(7) Despite subsection (6), the Minister may consent to a reduction of the period of a term transfer without the consent of the transferee if satisfied that the transferee has failed to comply with any obligations imposed on the transferee under subsection (5).

(7A) The period for which a term transfer has effect may be extended, with the consent of the transferee, while the term transfer remains in force.

(8) During the period for which a term transfer is in force, the actual holder of the licence

is entitled to apply in accordance with this Act for registration of any dealing with respect to the licence, but, in the case of a dealing other than a dealing under section 71M, only with the written consent of the transferee.

(9) This section applies to a term transfer of such water entitlements as are conferred by a holding in an access licence in the same way as it applies to the transfer of the whole of the water entitlements conferred by an access licence. In so applying this section, a reference in this section to the holder of an access licence is to be read as the holder of the holding in the access licence.

(10) However, holdings in access licences may be the subject of a term transfer only if the co-holders hold as tenants in common.

(11) A person who holds a holding in an access licence may transfer such water entitlements as are conferred by the holding without the consent of any of the other co-holders of the access licence.

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

(1) On the application of the holder of an access licence, the Minister may consent to the cancellation of the licence and the grant of a new licence of a different category or subcategory.

(2) Subsection (1) does not apply to a local water utility access licence or to a supplementary water access licence.

(3) An access licence arising under this section may only be granted—

(a) subject to the mandatory conditions applicable to the category or subcategory of licence to which it belongs, and

(b) for a period no greater than the residue of the period for which the cancelled access licence would have had effect if it had not been cancelled.

(4) An access licence arising under this section may only be granted in relation to the same water management area or water source as the cancelled access licence.

(5) Any interests that subsisted in the cancelled access licence, as in force immediately before it was cancelled, become equivalent interests in the new access licence.

(6) (Repealed)

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

(1) On the application of the holder of the access licence or access licences concerned, the Minister may consent—

(a) to the subdivision of an access licence—by cancelling the licence and granting two or more access licences in its place, or

(b) to the consolidation of two or more access licences that relate to the same water management area or water source and are of the same category or subcategory—by cancelling the licences and granting a single licence in their place.

(2) Access licences arising from a subdivision referred to in subsection (1) (a) may only be granted—

(a) with combined share components and combined extraction components no greater than the corresponding components of the cancelled access licence, and

(b) subject to the same mandatory conditions as those to which the cancelled access licence was subject, and

(c) for a period no greater than the residue of the period for which the cancelled access licence would have had effect if it had not been cancelled.

(3) Access licences arising from a consolidation referred to in subsection (1) (b) may only be granted—

(a) with combined share components and combined extraction components no greater than the sum of the corresponding components of the cancelled access licences, and

(b) subject to conditions consistent with those to which the cancelled access licences were subject, and

(c) for a period no greater than the residue of the period for which the earliest expiring of the cancelled access licences would have had effect if they had not been cancelled.

(4) An access licence arising from a subdivision or consolidation may only be granted in relation to the same water management area or water source as the cancelled access licence or licences.

(5) Any interests that subsisted in the cancelled access licences, as in force immediately before they were cancelled, become equivalent interests in the new access licences.

(6) (Repealed)

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

(1) On the application of the holder or holders of two or more access licences of the same category with respect to the same water management area or water source, the Minister may consent to the assignment of rights between the access licences concerned by—

(a) reduction of the share or extraction component, or both, of one or some of the

licences, and

(b) a corresponding increase in the share or extraction component, or both, of the others.

(2)–(4) (Repealed)

(5) This section does not authorise the reduction of the share or extraction component, or both, of a local water utility access licence.

(6) An access licence whose share or extraction component is varied under this section is to be made subject to the mandatory conditions applicable to an access licence with a share or extraction component as so varied.

(7) An access licence is not cancelled merely because, as a result of an assignment under this section, it has a zero share component or zero extraction component (or both) for the time being.

71QA Assignment of individual daily extraction component

(1) For the purposes of this section, an ***individual daily extraction component*** means an entitlement of the holder of an access licence to take a specified volume of water on a specified day, whether or not it is limited to specified rates or in specified circumstances.

(2) The holders of 2 or more access licences may apply to the Minister for consent to the assignment of the rights to individual daily extraction components between one or more of the licences.

(3) An application may be made to assign an individual daily extraction component for a specified day or a specified period, or in specified circumstances, or any or all of them, and may relate to the whole or part of an individual daily extraction component.

(4) The Minister may consent to the assignment of rights between the access licences concerned by—

(a) a reduction or removal of the whole or part of one or more individual daily extraction components of one or more of the licences, and

(b) a corresponding increase in the individual daily extraction components of the others.

(5) A reduction or increase may be specified by the Minister to have effect for a specified period, or in specified circumstances, or both.

(6) The assignment of a right to an individual daily extraction component does not entitle the assignee to take water in excess of the volume the assignee is otherwise authorised to take.

(7) A holder of an access licence may acquire a right to an individual daily extraction component whether or not the holder has any available water allocation credited to the holder's water allocation account.

(8) An access licence is not cancelled merely because, as a result of an assignment under this section, it has a zero extraction component for the time being.

(9) This section is taken to authorise the amendment of a management plan to provide for access licence dealing rules relating to dealings under this section as if the amendment were authorised by the plan and section 45 (1) (b) applies accordingly.

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

(1) On the application of the holder of an access licence, the Minister may consent to the cancellation of the access licence and the grant of a new access licence with a share component specifying a different water source or water management area.

(2) Subsection (1) does not apply to a local water utility access licence or supplementary water access licence.

(3) An access licence arising under this section may only be granted—

(a) subject to the mandatory conditions applicable to an access licence of the same category or subcategory for the water management area or water source specified in its share component, and

(b) for a period no greater than the residue of the period for which the cancelled access licence would have had effect if it had not been cancelled.

(4) Any interests that subsisted in the cancelled access licence, as in force immediately before it was cancelled, become equivalent interests in the new access licence.

(5) (Repealed)

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

(1) On the application of the holder of an access licence, the Minister may consent to the amendment of the extraction component of the licence so as—

(a) to vary the times, rates or circumstances specified in the licence with respect to the taking of water under the licence, or

(b) to vary the areas or locations specified in the licence as the areas or locations from which water may be taken under the licence.

(2) The area or location arising from a variation referred to in subsection (1) (b) must relate to the same water management area or water source as that to which the original area or location related.

(3) An access licence that is amended under this section is subject to the mandatory conditions applicable to the licence as so amended.

(4) The Minister may, by order published in the Gazette, declare that the right to apply for an amendment of the extraction component of an access licence for a specified water management area or water source is to be acquired by auction, tender or other means specified in the order.

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

(1) Water allocations may be assigned from one access licence to another in accordance with this section.

(2) The holders of two or more access licences may apply to the Minister for consent to the assignment of water allocations between the water allocation accounts for their respective access licences.

(3) Such an application may only be made with respect to water allocations currently credited to the water allocation account for the access licence from which water allocations are to be assigned.

(4) On completing an assignment to which consent has been given under this section, the parties to the assignment must cause notice of that fact to be given to the Minister.

(5) (Repealed)

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

(1) The Minister may enter into an agreement with a Minister of any other State or Territory for the interstate transfer of access licences and their corresponding interstate equivalents.

(2) On an application made pursuant to such an agreement, the Minister may consent to the grant or cancellation of an access licence to give effect to such a transfer.

(3) In respect of each access licence arising under this section, the Minister—

(a) must impose on the licence such mandatory conditions as any relevant management plan may require to be imposed on the licence, and

(b) (Repealed)

(4) The provisions of section 63 (4), (5), (6) and (7) and Part 5 of Chapter 3 apply to an access licence arising under this section in the same way as they apply to an access licence granted under section 63.

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

(1) The Minister may enter into an agreement with a Minister of any other State or

Territory for the interstate assignment of water allocations and their corresponding interstate equivalents.

(2) On an application made pursuant to such an agreement, the Minister may consent to the crediting of water allocations to the water allocation account for an access licence, or the debiting of water allocations from the water allocation account for an access licence, to give effect to such an assignment.

(3) Such an application may only be made with respect to water allocations currently credited to the water allocation account for the access licence from which water allocations are to be assigned.

71W Access licence may nominate water supply works and extraction points

(1) On the application of the holder of an access licence made in accordance with the regulations, the Minister may consent to the amendment of the licence so as—

(a) to nominate a specified water supply work or extraction point in the water management area or water source nominated by the licence as a work or point by means of or from which water credited to the licence may be taken, or

(b) to nominate a specified water supply work or extraction point in another water management area or another water source as a work or point by means of or from which water credited to the licence may be taken, or

(c) to nominate a specified water supply work or extraction point in a NSW water tagging zone as a work or point by means of or from which water credited to the licence may be taken, or

(d) to nominate a specified extraction point in an interstate water tagging zone as an extraction point from which water credited to the licence may be taken,

or so as to withdraw such a nomination.

(2) For the avoidance of doubt, a water supply work may be nominated under subsection (1) even though no approval is required to be held in relation to the work.

(3) The relevant notifier for a water supply work must notify the Minister, in accordance with the regulations, of any of the following—

(a) that the work has been nominated (whether by reference to the work itself or by reference to an extraction point at which it is located) as a work from which water credited to the interstate equivalent of an access licence may be taken,

(b) that such a nomination has been withdrawn.

Tier 3 penalty.

(4) The regulations may make provision for or with respect to—

(a) the making of nominations referred to in subsection (1), including—

(i) the identification of water supply works or extraction points for the purposes of nominations, and

(ii) the circumstances in which particular nominations are, or are not, permitted under that subsection, and

(b) the giving of notifications to the Minister under subsection (3), including the form and timing of such notifications.

(5) In this section—

relevant notifier for a water supply work means—

(a) if an approval is in force for the work—the holder of the approval, or

(b) if there is no approval in force for the work—the owner of the work.

water supply work includes a reference to a group of such works.

71X Dealings on default

(1) A security holder (or a receiver referred to in section 115A of the *Conveyancing Act 1919*) may transfer the access licence or holding in an access licence over which the security interest is held under this section if—

(a) default is made in the payment of any debt or performance of any other obligation under a contract or other legally enforceable arrangement secured by the security interest, and

(b) notice is served, in accordance with the regulations, on the holder or co-holder of the licence who is in default (the ***defaulter***), on any other person having a registered security interest (whether or not having less priority), or who has registered a caveat, over the licence or holding and on the Minister, and

(c) the defaulter fails, for a period of not less than 30 days after service of the notice, to rectify the default, and

(d) the security holder or receiver offers the licence or holding for sale, and

(e) the security holder or receiver takes all reasonable steps to secure the highest possible amount by the sale, and

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

(2) The purchase money from a sale under this section is to be applied as follows—

(a) firstly, in payment of any outstanding fees, charges or civil penalties incurred in respect of the licence or holding,

(b) secondly, in payment of the expenses of the sale and costs of the transfer,

(c) thirdly, in payment of money then due or owing to any holders of registered security interests over the licence or holding in order of their priority,

(d) fourthly, in payment of any residue to the defaulter.

(3) For the purposes of a transfer under this section, the security holder is taken to be the holder or co-holder of the licence and, accordingly—

(a) the security holder may do any thing necessary to effect the transfer and may give any discharge to the transferee that could be given by the holder or co-holder of the licence, and

(b) the transferee need make no enquiry in relation to the sale that the purchaser would not be required to make of the holder or co-holder of the licence.

(4) On registration of the transfer, the licence or holding is held by the transferee freed and discharged from the registered security interest and any other registered security interest over the licence or holding of less priority. Otherwise the transferee holds the licence or holding with an equivalent interest in the licence or holding to the interest held by the defaulter and subject to the same conditions and obligations (including the payment of any outstanding fees, charges or civil penalties incurred in respect of the licence or holding) to which the defaulter would, but for the transfer, be subject under this Act.

(5) An affected person may apply, in accordance with rules of court, to the Land and Environment Court for an order prohibiting the registration of the transfer of an access licence or holding in an access licence under this section. The Court may make such an order if it is satisfied that the security holder or receiver has failed to comply with the requirements of subsection (1) or (2) with respect to the transfer of the licence or holding.

(6) If a security holder or receiver fails to comply with the requirements of subsection (1) or (2) with respect to the transfer of an access licence or holding in an access licence under this section, the security holder is liable to pay to any affected person who suffers pecuniary loss that is attributable to that failure compensation with respect to that loss.

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

(8) In this section—

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

71Y General (cf former s 71K)

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

(a) the water management principles, and

(b) the access licence dealing principles, and

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

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

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

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

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

are each relevant management plans.

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

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

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

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

(1) The Minister may, by order published on the NSW legislation website, establish access licence dealing principles—

(a) to regulate or prohibit the kinds of access licence dealing rules that may be

established by a management plan, and

(b) to regulate or prohibit the kinds of dealings that may be effected under this Division, and

(c) to establish conversion factors applicable to the share components of access licences in respect of which dealings are effected under this Division.

(2) The access licence dealing principles may include provisions relating to any or all of the following—

(a) the establishment of interstate water tagging zones,

(b) the establishment of NSW water tagging zones,

(c) the criteria to be considered for the granting of an application with respect to a nomination referred to in section 71W (1) (b), (c) or (d).

(3) The access licence dealing principles prevail over the access licence dealing rules to the extent of any inconsistency.

71ZA (Repealed)

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

72 Devolution of access licences

(1) A person to whom an access licence or holding in an access licence has devolved by operation of law may apply to the Minister in the approved form to be recorded in the Access Register as the holder or a co-holder of the licence or holding.

(2) Without limiting subsection (1), such an application may be made—

(a) by an executor, administrator or other person claiming to be entitled to be registered on the death, will or intestacy of the holder or co-holder of the licence or holding, or otherwise, as the holder or co-holder, or

(b) by or on behalf of a person who was a co-holder as joint tenant of an access licence or holding in an access licence on the death of a person recorded in the Access Register with the person as a co-holder as joint tenant of the licence or holding, or

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

(3) The application must be supported by such evidence of the applicant’s entitlement to be recorded in the Access Register as a holder or co-holder as the Minister may require.

(4) The Minister is to record the person as the holder or co-holder of the licence or holding—

(a) if satisfied that the applicant is entitled to be recorded in the Access Register as the holder or co-holder, and

(b) if nothing recorded in the Access Register prevents the registration.

(5) This section applies to 2 or more persons to whom rights have devolved in the same way as it applies to a single person to whom rights have devolved.

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

(1) Subject to sections 71M, 71N and 74, any dealing in relation to an access licence held by co-holders, and any application for the Minister's consent to such a dealing, requires the consent of all of the co-holders (a ***co-holder's consent***).

(2) A co-holder of an access licence may, in accordance with the regulations—

(a) appoint another co-holder (the first co-holder's ***nominee***), to give, on his or her behalf, any co-holder's consent required by subsection (1) in relation to an application for the Minister's consent to a dealing, and

(b) revoke any appointment that the co-holder has made under paragraph (a).

(3) The same person may be nominee for more than one co-holder.

(4) Any co-holder's consent given by the co-holder's nominee in relation to an application for the Minister's consent to a dealing in an access licence is taken to have been given by the co-holder.

(5) The revocation of a nominee's appointment under subsection (2) (b) does not affect any co-holder's consent given by the nominee before the revocation took effect.

73 Changes in co-holder's tenancy arrangements

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

(2) The alteration to the co-holder's tenancy arrangement takes effect when it is recorded in the Access Register.

(3) The Minister must not record the alteration unless—

(a) each co-holder of the licence that is affected by the alteration has consented to it being recorded, and

(b) any holder of a security interest over the licence or a holding in the licence that is affected by the alteration has consented to it being recorded.

(4) Subsection (3) (a) does not apply where a joint tenant unilaterally wishes to sever a joint tenancy by relinquishing the joint tenancy.

(5) The Minister may require an applicant to verify any information provided for the purposes of this section by statutory declaration.

74 Exit from co-held access licence

(1) On the application of one or more of the co-holders of an access licence (***the original access licence***), the Minister may consent to the extinguishment of the holdings of one or more co-holders in the licence and the granting of a new access licence in accordance with Schedule 1B.

(2) If the Minister extinguishes holdings in the original licence and grants a new access licence under subsection (1), the Minister is to reduce the entitlements under the original access licence to the extent necessary to reflect the entitlements conferred by the new licence.

(3) An application may not be made under subsection (1) without the consent in writing of all of the co-holders of the access licence concerned or of co-holders who hold a majority share of the holdings under the licence.

(4) On the application of one or more co-holders of an access licence, the Supreme Court may, if it considers it just and equitable to do so, order that the consent referred to in subsection (3) need not be obtained and may make ancillary orders for the purposes of this section.

(5) When determining such an application where the water supply work nominated by the access licence concerned is shared by some or all of the co-holders of the licence, the Supreme Court is to take into consideration the likely effect that the taking of action under subsection (1) would have on the use of that work and the co-holders who have the benefit of it.

(6) This section does not apply to an access licence if—

(a) there is any money due under this Act in respect of the access licence, including any civil penalties imposed under this Act, or

(b) the co-holders hold the licence as joint tenants, or

(c) the access licence dealing principles or the access licence dealing rules prevent an application being made under this section.

(7) Schedule 1B has effect.

Division 5 Water return flows

75 Water return flow rules

(1) The regulations may establish water return flow rules for the purposes of this Division.

(2) Such a regulation may not be made except with the concurrence of the Minister for the Environment.

76 Water allocations may be credited

(1) Water allocations that have been used by the holder of a prescribed access licence may be regained in accordance with this section.

(2) The holder of a prescribed access licence may apply to the Minister for used water allocations to be recredited to the water allocation account for the licence.

(3) An application under this section is to be dealt with in accordance with the water return flow rules.

(4) In this section—

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

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

77 Surrender of access licences

(1) Subject to subsection (2B), the holder of an access licence may surrender the licence at any time by notice in writing sent to the Minister.

(2) In the case of an access licence in respect of which any third party interest is entered on the Access Register of access licences, the notice of surrender must be accompanied by documentary evidence that the holder of that interest consents to the licence being surrendered.

(2B) The Minister may, by written notice served on the holder of the access licence, refuse to accept the surrender of the access licence if the Minister considers it appropriate to do so or in such other circumstances as may be prescribed by the regulations.

(3) If the notice of surrender of an access licence provides that the surrender is not to take effect until after a date specified in the notice, the Minister is not to record the surrender under section 71A in the Access Register before that date.

(4) Without limiting section 77A or 78, the Minister may—

(a) cancel a surrendered access licence, or

(b) record in the Access Register that the Minister is the holder of the surrendered access licence.

(5) Subsection (4) (b) does not prevent the Minister from subsequently dealing with a surrendered access licence in any manner that a holder of the licence may deal with it (for example, transferring the licence).

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

(1) The Minister is to cancel a supplementary water access licence when the relevant management plan ceases to make provision for the extraction of water under such an access licence unless the access licence is a regulated river supplementary water access licence.

(2) The Minister is to cancel a specific purpose access licence if the Minister is of the opinion that the purpose for which the licence was granted no longer exists.

(2A) Subsection (2) does not apply to an access licence in relation to which action is taken by the Minister under section 8D.

(3) The regulations may prescribe criteria which the Minister is to consider when determining under subsection (2) whether the purpose for which a specific purpose access licence was granted no longer exists.

(4) The Minister is to cancel an access licence of a category prescribed by regulations referred to in section 57 (1) (l) (other than a specific purpose access licence) if the regulations prescribe the period for which such a licence is to have effect and the period has expired.

(5) The Minister is to cancel an access licence if the period for which the licence is to have effect was specified in an order under section 65 and the period has expired.

(6) The Minister may cancel any access licence of which the Minister is the holder.

78 Suspension and cancellation of access licences

(1) The Minister may suspend or cancel an access licence on any one or more of the following grounds—

(a) that the holder of the licence has failed to comply with any term or condition to which the licence is subject,

(b) that the holder of the licence has been convicted of an offence against this Act or the regulations,

(c) if any fees, charges or civil penalties in respect of the licence have not been paid, whether or not those fees, charges or civil penalties were incurred by the current

holder of the licence,

(d) that the holder of the licence has failed to comply with any direction given to the holder under this Act in connection with the licence,

(e) that the licence was granted as a result of false, misleading or materially inaccurate information supplied by or on behalf of the applicant.

(2) Instead of or in addition to suspending or cancelling an access licence, the Minister may order a major utility or local water utility to pay to the Minister a civil penalty of an amount not exceeding $500,000 and a further civil penalty of an amount not exceeding $20,000 for each day that the circumstances giving rise to the initial civil penalty continue to exist.

(3) During any period of suspension of an access licence—

(a) the holder of the licence is not authorised by the licence to order or take any water credited to the water allocation account for the licence, and

(b) the holder of the licence is not entitled to apply for the registration of any dealing with respect to the licence, and

(c) appropriate water allocations continue to accrue to the water allocation account for the licence, and

(d) fees and charges payable under this Act in respect of the licence will continue to apply.

(4) (Repealed)

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

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

(1) Action under section 77A or 78 may not be taken in relation to an access licence unless the Minister—

(a) has given written notice to the holder of the access licence, and if there are security holders in relation to the access licence to those security holders, that the Minister proposes to take such action, and

(b) has given any such person that has been notified a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and

(c) has taken any such submissions into consideration.

(1A) If the Minister fails to give notice to the holder of an access licence or a security holder before taking action under section 77A or 78, the Minister is taken to have

complied with subsection (1) (a)–(c) in relation to that holder if the Minister took all reasonable steps to give notice under subsection (1) to the holder within the period of 28 days before taking the action.

(2) Subsection (1) (b) and (c) do not apply to the cancellation of an access licence under section 77A (1), (4), (5) or (6).

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

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

79 Compulsory acquisition of access licences

(1) The Minister may, by notice in writing served on their holders, compulsorily acquire access licences if of the opinion that, in the special circumstances of the case, the public interest requires their compulsory acquisition.

(2) A person from whom an access licence is compulsorily acquired under subsection (1) is entitled to compensation from the State for the market value of the licence as at the time it was compulsorily acquired.

(3) The amount of compensation payable is to be determined by agreement between the Minister and the person entitled to compensation or, if agreement cannot be reached, is to be determined by the Valuer-General.

(4) A person who is dissatisfied with the amount of compensation offered to the person under this section, or with any delay in the payment of compensation, may appeal to the Land and Environment Court.

(5) The regulations may make provision for or with respect to the payment of compensation under this section.

(6) Nothing in this section prevents the Ministerial Corporation from acquiring an access licence by way of transfer.

(7) For the avoidance of doubt, it is declared that a reduction of the water entitlements and allocations under an access licence as a consequence of a variation in the mandatory conditions of the licence does not constitute the compulsory acquisition of an access licence or any part of an access licence.

Divisions 7, 8

80–83A (Repealed)

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

84 Register of available water determinations

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

(2) The regulations may make provision for or with respect to the form in which such a register is to be kept and the particulars that are to be recorded in such a register.

(3) The register must be made available for public inspection during normal business hours at such places as may be prescribed by the regulations.

85 Keeping of water allocation accounts

(1) For each access licence, the Minister is to cause an account to be kept of—

(a) the water allocations that are acquired under section 71T or 71V in relation to the water allocation account for the licence or otherwise credited from time to time to the water allocation account for the licence, and

(b) the water allocations that are taken or assigned under section 71T or 71V or otherwise debited or withdrawn from time to time in relation to the water allocation account for the licence, and

(c) the water allocations that are recredited to the water allocation account for the licence from time to time under section 76.

(2) Water allocations are to be credited to the water allocation account for an access licence in accordance with any relevant available water determination.

(3) Despite subsection (2), an amount of water may be credited to the water allocation account for an access licence as a result of arrangements made with the Minister for the early release of water by Snowy Hydro Limited. However, the same amount of water as is so credited is to be debited subsequently in accordance with the directions of the Minister.

(4) The first amount of water to be credited to the water allocation account of an access licence granted part of the way through an accounting period is to bear the same proportion to the amount of available water that would be allocated to the licence if it had existed for the whole of the accounting period as the part of the accounting period remaining when the licence was granted bears to the whole of the accounting period.

(5) Water allocations in a water allocation account may be withdrawn by the Minister to the extent provided by the relevant management plan, as referred to in section 21 (c).

(6) The regulations may make provision for or with respect to the form in which a water allocation account is to be kept under this section and the particulars that are to be recorded in such a water allocation account.

85AA Daily extraction accounts

(1) Individual daily extraction components imposed on an access licence are to be recorded in the water allocation account.

(2) For each access licence, the Minister is to cause an account to be kept of—

(a) any individual daily extraction component that is acquired under section 71QA, and

(b) any individual daily extraction component that is assigned under section 71QA.

(3) The regulations may make provision for or with respect to the particulars that are to be recorded in a water allocation account for the purposes of this section.

85A Authorisation to take water from uncontrolled flows

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

(2) The management plan may make provision for or with respect to the circumstances in which the holders of one or more of the following licences that relate to a water source to which this section applies are authorised to take water from the water source that has not been credited to the water allocation accounts of those licences—

(a) regulated river (high security) access licences,

(b) regulated river (general security) access licences,

(c) floodplain harvesting access licences,

(d) any other access licences prescribed by the regulations.

(3) The management plan may make provision for or with respect to subsequent adjustments to the water allocation accounts for the licences.

(4)–(7) (Repealed)

85B (Repealed)

Division 9 Compensation relating to access licences

86 Definitions

In this Division—

compensation includes damages or any other form of monetary compensation.

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

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

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

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

(a) (Repealed)

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

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

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

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

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

(4) The Minister may determine whether or not compensation should be paid and, if so, the amount of any such compensation and the manner and timing of any such payments.

(5) The amount of any such compensation is to be determined on the advice of the Valuer-General.

(6) In formulating advice for the Minister, the Valuer-General is to have regard to the market value of the water foregone to the claimant for compensation as a consequence of the variation of the bulk access regime.

(7) A person who is dissatisfied with the amount of compensation offered to the person under this section, or with any delay in the payment of compensation, may appeal to the Land and Environment Court.

(8) Payment of compensation under this section is to be made out of the Consolidated Fund which is, to the extent necessary, appropriated accordingly.

(9) Despite the other provisions of this section, compensation may be claimed under this section only in respect of a reduction in water allocations occurring during the period for which the first management plan that established the bulk access regime concerned is in force (excluding any period for which that plan is extended under section 43A (1)).

(10) Despite subsection (9), if the first management plan that is established for a bulk access regime is repealed under section 45 (5A) and replaced, compensation under this section may be claimed in respect of a reduction in water allocations occurring during the period of the replacement plan that ends on the day on which the first management plan would have ended if it had not been repealed.

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

(1) This section applies to the following categories and subcategories of access licence—

(a) regulated river (high security) access licences,

(b) regulated river (general security) access licences,

(c) Murrumbidgee Irrigation (conveyance) access licences,

(d) Coleambally Irrigation (conveyance) access licences,

(e) unregulated river access licences,

(f) aquifer access licences,

(f1) floodplain harvesting (regulated river) access licences,

(f2) floodplain harvesting (unregulated river) access licences,

(f3) regulated river supplementary water access licences,

(g) any other category or subcategory of access licence that is prescribed by the regulations (other than excluded supplementary water access licences or specific purpose access licences).

(2) A holder of an access licence to which this section applies whose water allocations are reduced because of a change to provisions of the relevant management plan dealing with water sharing is entitled to compensation as assessed by the Minister in

accordance with subsections (5) and (6).

(3) Despite subsection (2), the holder of an access licence is not entitled to compensation under this section if—

(a) the reduction in water allocations occurred while the first management plan (excluding any period for which that plan was extended under section 43A (1)) was in force or during the period during which compensation is payable under section 87 (10), or

(b) the reduction in water allocations occurred as a result of an amendment of a management plan by the Minister under section 45 that is authorised by the plan or that is required to give effect to a decision of the Land and Environment Court relating to the validity of the plan, or

(c) the reduction in water allocations is for the purpose of restoring water to the environment because of natural reductions in inflow to the water source, including but not limited to changes resulting from climate change, drought or bushfires.

(4) A reference in subsection (2) to a change in the provisions of a management plan includes a change between the provisions of the management plan concerned and provisions of the management plan that it replaced.

(5) Compensation is payable to the holder of an access licence whose water allocations are reduced because of a change in the provisions of a management plan as a result of an amendment that is specified under section 46 (1) (c) by the Minister as due to a change in State government policy.

(6) Compensation is payable as follows for a reduction in water allocations that is specified under section 46 (1) (b) by the Minister as being for the purpose of providing additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate—

(a) no compensation is payable for reductions of 3% or less,

(b) compensation is payable for reductions of more than 3% over any 10-year period commencing on or after the expiration of the period for which the first management plan for the relevant area was in force (including any period for which that plan was extended under section 43A (1)),

(c) only one third of the compensation payable for a reduction of more than 3% but not more than 6% over any applicable 10-year period is liable to be paid under this section,

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

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

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

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

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

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

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

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

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

(11) In this section—

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

87AB Compensation is not payable in relation to certain conduct

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

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

(a) any act or omission, whether unconscionable, misleading, deceptive or otherwise,

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

(3) This section has effect despite section 87.

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

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

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

87A No compensation payable in relation to access licence

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

(a) the suspension or cancellation of an access licence,

(b) any error, misdescription or omission in the Access Register,

(c) the registration in the Access Register of any person as the holder of an access licence or a security interest in an access licence,

(d) the registration of a caveat in the Access Register.

Division 10 Miscellaneous

87B Access licence certificate

(1) The Minister may from time to time issue a certificate in the approved form in respect of an access licence (an ***access licence certificate***).

(2) If the Minister issues an access licence certificate, the Minister must cancel, wholly or partially as the case requires, any access licence certificate superseded by the new certificate that is available to the Minister. For that purpose, the Minister may require production to the Minister of the superseded certificate.

(3) If an access licence certificate is lost, mislaid or destroyed, the person to whom it was issued (or a person having legal authority to act on the person’s behalf) may apply in the approved form to the Minister for the issue of a new access licence certificate.

(4) The application is to be supported by such evidence as the Minister may require.

(5) The Minister may, if satisfied that an access licence certificate has been lost, mislaid or destroyed, issue a new access licence certificate or new access licence certificates for the licence or holding in an access licence to which the lost, mislaid or destroyed

certificate relates and may record in the Access Register that the new certificate or certificates have been issued.

87C Offences with respect to the Access Register

(1) A person must not—

(a) fraudulently obtain, or assist in fraudulently obtaining—

(i) the issue or delivery of an access licence certificate, or

(ii) a recording in the Access Register, or

(iii) any alteration in any instrument or approved form issued by the Minister, or

(b) fraudulently use, or assist in fraudulently using, any approved form issued by the Minister, or

(c) by any false statement or misrepresentation obtain, or attempt to obtain, an access licence certificate or instrument evidencing any matter that may be recorded in the Access Register.

Tier 2 penalty.

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

88 Regulations

(1) The regulations may make provision for or with respect to the following matters—

(a) the procedures to be followed in relation to the making of applications under this Part,

(b) the procedures to be followed in relation to the granting and transfer of access licences,

(c) the procedures to be followed in relation to the transfer of water allocations in the water allocation account for an access licence,

(d) the procedures to be followed in relation to the recrediting of water allocations in the water allocation account for an access licence,

(e) the recording of any dealing, caveat, security interest, devolution, change in co-holder’s tenancy arrangements or other matter in relation to an access licence or holding in an access licence in the Access Register.

(2) Without limiting subsection (1) (e), the regulations may, for the purposes of this Part, apply, adopt or incorporate, whether with or without modification, any provision of the *Real Property Act 1900* or the regulations made under that Act.

(3) The regulations may exclude a specified class of licence granted under this Act from the operation of section 11 (1) (h) of the *Duties Act 1997*.

Part 3 Approvals

Division 1 Preliminary

88A Application and objects of Part

(1) This Part applies to—

(a) each part of the State or each water source, and

(b) each type or kind of approval that relates to that part of the State or that water source,

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

Editorial note—

For declarations proclaimed under this subsection see Gazettes No 110 of 1.7.2004, p 5004; No 120 of 29.9.2006, p 8441; No 127 of 27.10.2006, pp 8906, 8907; No 83 of 29.6.2007, p 3967; No 10 of 25.1.2008, p 151; No 11 of 31.1.2008, p 213; No 76 of 27.6.2008, p 5871; No 93 of 26.6.2009, p 3581 and No 109 of 31.7.2009, p 4665, and proclamations published on the NSW legislation website: 2010 (342) LW 1.7.2010; 2010 (739) LW 17.12.2010; 2011 (104) LW 28.2.2011; 2011 (152) LW 3.3.2011; 2011 (153) LW 3.3.2011; 2011 (521) LW 30.9.2011; 2011 (576) LW 11.11.2011; 2011 (677) LW 16.12.2011; 2012 (28) LW 27.1.2012; 2012 (135) LW 30.3.2012; 2012 (231) LW 1.6.2012; 2012 (352) LW 3.8.2012; 2012 (464) LW 14.9.2012; 2012 (496) LW 4.10.2012; 2015 (558) LW 18.9.2015; 2016 (350) LW 24.6.2016; 2016 (600) LW 30.9.2016; 2019 (318) LW 5.7.2019 and 2020 (290) LW 19.6.2020. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

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

(2A) To avoid doubt, the repeal, replacement or amendment of a management plan so as to remove, add or change the description of a water source described in a proclamation made under this section does not affect the application of this Part to the water source as effected by a proclamation previously made under this Part.

(3) Without limiting section 3, the objects of this Part include ensuring that matters relating to safety are taken into consideration in granting water management work approvals for certain dams and flood retarding basins.

89 Water use approvals

(1) A water use approval confers a right on its holder to use water for a particular purpose at a particular location.

(2) A water use approval may authorise the use within New South Wales of water taken

from a water source outside New South Wales.

90 Water management work approvals

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

(2) A water supply work approval authorises its holder to construct and use a specified water supply work at a specified location.

(3) A drainage work approval confers a right on its holder to construct and use a specified drainage work at a specified location.

(4) A flood work approval confers a right on its holder to construct and use a specified flood work at a specified location.

91 Activity approvals

(1) There are two kinds of activity approvals, namely, controlled activity approvals and aquifer interference approvals.

(2) A controlled activity approval confers a right on its holder to carry out a specified controlled activity at a specified location in, on or under waterfront land.

(3) An aquifer interference approval confers a right on its holder to carry out one or more specified aquifer interference activities at a specified location, or in a specified area, in the course of carrying out specified activities.

Note—

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

91AA Consultation with Dams Safety NSW in relation to approvals for dams and flood retarding basins

(1) This section applies in relation to the following kinds of water management work approvals—

(a) a water supply work approval for the construction or use of a water supply work comprising—

(i) a declared dam within the meaning of the *Dams Safety Act 2015*, or

(ii) a dam or proposed dam that is of a class prescribed by the regulations,

(b) a flood work approval for the construction or use of a flood retarding basin that is of a class prescribed by the regulations.

(2) Without limiting any other provision of this Part, the Minister must, before granting a

water management work approval to which this section applies or before amending any such approval—

(a) refer the application for the approval or amendment to Dams Safety NSW, and

(b) take into consideration any matters that are raised by Dams Safety NSW in relation to the application within 28 days (or such other period as is agreed between the Minister and Dams Safety NSW) after the application is referred to Dams Safety NSW.

(3) In this section—

(a) a reference to a water management work of any kind includes a reference to a corresponding kind of work to which Part 2 or 8 of the *Water Act 1912* extends, and

(b) a reference to a water management work approval includes a reference to an entitlement (within the meaning of clause 2 of Schedule 10) that confers a corresponding authority, and

(c) a reference to the Minister includes, in the case of any such entitlement that confers a corresponding authority, a reference to the Ministerial Corporation.

Division 1A Offences

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

(1) A person—

(a) who uses water from a water source to which this Part applies, and

(b) who does not hold a water use approval for that use,

is guilty of an offence.

Tier 2 penalty.

(2) A holder of a water use approval who uses water from a water source to which this Part applies—

(a) otherwise than as authorised by the approval, or

(b) if an access licence specifies or restricts the purposes for which the water may be used, otherwise than as authorised by the licence,

is guilty of an offence.

Tier 2 penalty.

(3) Without limiting subsection (2), a person uses water otherwise than as authorised by

a water use approval if the person uses water while the approval is suspended.

(4) It is a defence to a prosecution under subsection (1) if the accused person establishes that the water was used pursuant to a basic landholder right.

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

(a) that the contravention of the subsection was caused by another person, and

(b) that the other person was not associated with the accused person at the time the subsection was contravened, and

(c) that the accused person took all reasonable steps to prevent the commission of the offence.

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

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

(1) A person—

(a) who constructs or uses a water supply work, and

(b) who does not hold a water supply work approval for that work,

is guilty of an offence.

Tier 2 penalty.

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

Tier 2 penalty.

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

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

(5) It is a defence to a prosecution under subsection (1) if the accused person establishes that the water supply work was constructed or used pursuant to a basic landholder right.

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

drainage work approval

(1) A person—

(a) who constructs or uses a drainage work, and

(b) who does not hold a drainage work approval for that work,

is guilty of an offence.

Tier 2 penalty.

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

Tier 2 penalty.

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

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

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

(1) A person—

(a) who constructs or uses a flood work, and

(b) who does not hold a flood work approval for that work,

is guilty of an offence.

Tier 2 penalty.

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

Tier 2 penalty.

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

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

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

(1) A person—

(a) who carries out a controlled activity in, on or under waterfront land, and

(b) who does not hold a controlled activity approval for that activity,

is guilty of an offence.

Tier 2 penalty.

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

Tier 2 penalty.

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

(4) This section does not prevent a person—

(a) from constructing and using a water management work in accordance with a water management work approval, or

(b) from carrying out an aquifer interference activity in accordance with an aquifer interference approval.

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

(1) A person—

(a) who carries out an aquifer interference activity, and

(b) who does not hold an aquifer interference approval for that activity,

is guilty of an offence.

Tier 2 penalty.

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

Tier 2 penalty.

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

out such an activity while the approval is suspended.

(4) This section does not prevent a person—

(a) from constructing and using a water management work in accordance with a water management work approval, or

(b) from carrying out a controlled activity in accordance with a controlled activity approval, or

(c) from using a building or work that has been erected or carried out in accordance with a controlled activity approval.

91G Contravention of terms and conditions of approval

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

Tier 2 penalty.

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

Tier 2 penalty.

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

(a) that the contravention of the term or condition was caused by another person, and

(b) that the other person was not associated with the holder at the time the term or condition was contravened, and

(c) that the holder took all reasonable steps to prevent the contravention of the term or condition.

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

91H Failure to install, use or maintain metering equipment

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

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

(b) a direction under section 326, or

(c) a regulation made under Part 6 of Chapter 3,

the person is required to install or use in connection with a water management work.

Tier 2 penalty.

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

Tier 2 penalty.

(3) A person is guilty of an offence if the person fails to comply with any regulation setting out a standard or requirement for the installation or location of metering equipment, or setting out any other standard or requirement relating to metering equipment, used in connection with a water management work.

Tier 2 penalty.

(4) It is a defence to an offence under subsection (3) if the accused person establishes that the failure to comply with the regulation was caused by work done to the metering equipment by a duly qualified person.

91I Taking water when metering equipment not working

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

(a) who intentionally or negligently fails to ascertain whether the metering equipment is not operating properly or is operating, or

(b) who knows or has reasonable cause to believe that the metering equipment is not operating properly or is not operating,

is guilty of an offence.

Tier 1 penalty.

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

Tier 2 penalty.

(3) Subsections (1) (b) and (2) do not apply if the person who takes the water complies with any requirements set out in the regulations for the purposes of this subsection.

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

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

91IA Failure to report metering equipment not working

A person is guilty of an offence if—

(a) the person is the holder of an approval for a work in connection with which any metering equipment has been installed, and

(b) the person fails to give notice, in accordance with regulations made for the purposes of this section, that the metering equipment is not operating properly, or is not operating, within 24 hours of becoming aware of that fact.

Tier 2 penalty.

91J Metering records

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

Tier 2 penalty.

(2) A person must not in or in connection with a metering record required to be kept under this Act, or a requirement of a regulation in connection with metering equipment, make a statement or furnish any information that the person knows to be false or misleading in a material particular.

Tier 2 penalty.

91K Meter tampering

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

Tier 1 penalty.

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

Tier 2 penalty.

(3) Without limiting subsections (1) and (2), a person interferes with metering equipment

if the person unseals any sealed component of the equipment, blocks any part of the equipment, attaches to the equipment any device that is likely to affect the operation of the equipment or disconnects the equipment from its source of power.

(4) This section does not apply to anything—

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

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

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

(5) (Repealed)

91L Liability of occupier of premises for certain offences

(1) The occupier of premises at which—

(a) a water management work has been constructed or used in contravention of a provision of this Division, or

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

is taken to have contravened that provision.

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

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

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

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

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

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

91M General defence

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

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

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

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

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

91N Corporations not required to hold approvals

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

Division 2 Applications for and granting of approvals

92 Applications for approvals

(1) Subject to any embargo, any person may apply for an approval.

(2) An application for an approval must be made to the Minister in accordance with the regulations.

(3) The regulations may require the application to be accompanied by a management program for the land to which the application relates.

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

(5) The Minister—

(a) may require an applicant for an approval to provide additional information within a specified time if of the opinion that additional information would be relevant to consideration of the application, and

(b) may delay consideration of the application until the information is provided or, if the information is not provided within the time specified, may refuse to consider

the application.

(6) The Minister may refuse to accept an application for an approval if it appears to the Minister that the application is incomplete.

(7) The regulations may require any application, or any specified class of applications, to be advertised.

(8) An applicant for an approval may, by notice in writing to the Minister, amend or withdraw the application for the approval at any time before the application is determined.

Note—

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

93 Objections to applications for approvals

(1) Any person may, in accordance with the regulations, object to the granting of an approval that has been advertised pursuant to section 92.

(2) The Minister must inform the applicant for an approval of the grounds of any objection to the granting of the approval and must allow the applicant a specified time within which to make a written response to the Minister in relation to the objection.

(3) The Minister—

(a) may require an objector or applicant to provide additional information within a specified time if of the opinion that additional information would be relevant to consideration of the objection or response, and

(b) may delay consideration of the objection or response until the information is provided or, if the information is not provided within the time specified, may refuse to consider the objection or response.

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

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

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

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

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

94 Determination of applications affected by reviews by Planning Assessment Commission

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

(2) The Minister—

(a) must refer to the Independent Planning Commission of New South Wales—

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

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

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

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

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

(4) (Repealed)

95 Determination of applications

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

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

(b) by refusing the application.

Note—

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

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

(2) (Repealed)

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

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

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

96 Matters affecting consideration of applications

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

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

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

97 Grounds of refusal of certain applications

(1) A water use approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source, or its dependent ecosystems, as a consequence of the proposed use of water on the land in respect of which the approval is to be granted.

(2) A water management work approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source, or its dependent ecosystems, as a consequence of the construction or use of the proposed water management work.

(3) (Repealed)

(4) A controlled activity approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to any waterfront land as a consequence of the carrying out of the proposed controlled activity.

(5) A water management work approval for a water management work that is, or is proposed to be, situated on land not owned by the applicant is not to be granted unless the Minister is satisfied—

(a) that the applicant is likely to become the owner of the land within a reasonable time, or

(b) that the land is subject to an easement that authorises the construction and use of such a work for the benefit of the applicant’s land, or

(c) that the applicant is otherwise entitled (whether under this or any other Act or under an agreement applying to the land) to construct and use such a work.

(6) An aquifer interference approval is not to be granted unless the Minister is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to the aquifer, or its dependent ecosystems, as a consequence of its being interfered with in the course of the activities to which the approval relates.

98 Notice of decision

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

99 Procedures in relation to integrated development

(1) In this section, ***consent authority***, ***development consent*** and ***integrated development*** have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

(2) The provisions of this Act with respect to the advertising of an application for an approval do not apply if the application relates to integrated development.

(3) If a consent authority grants development consent to integrated development, either as a consequence of having obtained the general terms of any approval proposed to be issued by the Minister or as a consequence of the Minister having failed to inform the consent authority as to whether or not an approval will be granted—

(a) no person has any right to lodge an objection under this Act to the granting of the approval, and

(b) no person has any right under this Act to appeal to the Land and Environment Court against the granting of the approval.

(4) Subsection (3) (b) does not affect any right of appeal to which an objector may be entitled under section 98 of the *Environmental Planning and Assessment Act 1979*.

99A Granting of combined approvals

(1) The Minister may, on application or on the Minister's own motion, grant 2 or more approvals by means of a single approval document (a ***combined approval***).

(2) A combined approval may be granted—

(a) at the time an application for one or more of the approvals is granted, or

(b) by amending an existing approval (whether or not a combined approval) to include additional approvals.

Note—

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

(3) A combined approval that is granted by amending an existing approval must provide for a common expiry date for all of the approvals.

(4) A combined approval may—

(a) deal with approvals with respect to the same or different kinds of approvals or the same or different kinds of uses, works or activities, and

(b) provide for common terms and conditions, or different terms and conditions, for some or all of the approvals granted.

(5) A combined approval is taken to have effect for the purposes of this Act as if it were—

(a) to the extent it contains an approval for water use—a water use approval, or

(b) to the extent it contains an approval for the construction and use of a water supply work—a water supply work approval, or

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

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

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

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

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

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

(8) Nothing in this section—

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

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

Division 3 Conditions and duration of approvals

100 Conditions of approvals generally

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

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

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

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

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

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

(1AA) An approval is subject to any mandatory conditions imposed by this Act or the regulations.

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

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

(3) Without limiting the types of conditions relating to the protection of the environment that the Minister may impose under this section on a water management work approval, those conditions may include conditions relating to any or all of the following matters—

(a) the undertaking of an investigation of the environmental impact of cold water releases and the options for mitigation of that impact,

(b) the preparation of a program to mitigate the impact of cold water releases and the obtaining of approval to the program from the Minister,

(c) the implementation of the program,

(d) the monitoring and reporting on actions taken to implement the program and the impact of those actions on the environment,

(e) the carrying out of new works or the making of alterations to existing works, or both,

(f) the method of operation of water management works.

(4) In this section, ***mandatory condition*** means a condition referred to in subsection (1)(a) or (1AA) or imposed under section 101A.

Note—

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

100A Imposition of conditions on granting of approval

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

101 Conditions of approval for joint schemes

(1) This section applies to a water management work approval granted in relation to a joint scheme, that is, a scheme under which landholders of different parcels of land hold a single water management work approval for a water management work located on, passing through or otherwise benefiting or affecting those parcels.

(2) A water management work approval for a water management work the subject of a joint scheme is subject to such conditions as the regulations require and to such other conditions as the landholders concerned agree.

(3) A regulation referred to in subsection (2) may impose conditions, in relation to the rights and duties of the landholders concerned in the joint scheme, with respect to the following matters—

(a) the granting of access to the work,

(b) the operation of the work,

(c) the apportionment of water supplied by means of the work,

(d) the apportionment of the cost of constructing and maintaining the work,

(e) the apportionment of such other costs with respect to work as are prescribed by the regulations,

(f) the exclusion of land from the joint scheme.

101A Metering equipment condition

(1) It is a mandatory condition of a water supply work approval that metering equipment is installed, used and properly maintained in connection with the work.

(1A) On the imposition of the condition by this section, any other condition relating to the installation, use and maintenance of metering equipment in connection with the work imposed on the water supply work approval under this Act, or any other instrument made under this Act, ceases to have effect.

(2) The holder of a water supply work approval is taken to have complied with a particular aspect of the condition imposed by this section if the holder has complied with the applicable requirements (if any) prescribed by the regulations.

(3) The regulations may provide that the condition does not apply to holders of approvals, or works, specified by the regulations, or in circumstances specified by the regulations.

102 Imposition or change of conditions after approval is granted

(1) The Minister may impose discretionary conditions on an approval after it has been granted, or may amend a discretionary condition, but only if the Minister—

(a) has given written notice to the holder of the approval that the Minister proposes to impose such conditions or make such an amendment, and

(b) has given the holder of the approval a reasonable opportunity to make submissions to the Minister with respect to the proposed conditions or amendment, and

(c) has taken any such submissions into consideration.

(2) Subsection (1) does not apply to conditions imposed on an approval, or an amendment made, at the request of or with the consent of the holder of the approval.

(3) Mandatory conditions of an approval referred to in section 100 (1) (a) may be imposed, amended, revoked or suspended by the Minister whenever it is necessary to do so in order to enable compliance with or to give effect to this Act, the regulations or a relevant management plan.

(4) The Minister must cause written notice of any conditions imposed, amended, revoked or suspended under this section to be served on the holder of the approval concerned.

(5) A condition imposed or a change referred to in subsection (4) takes effect on the day on which the notice referred to in that subsection is served on the holder of the approval or on such later day as may be specified in the notice in that regard.

(6) The regulations may make provision for or with respect to the manner in which written notices may be given for the purposes of this section.

103 Revocation of conditions

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

104 Duration of approval

(1) Subject to this section, an approval has effect for such period as is specified in the approval (being a period not exceeding 10 years) or, if the period of the approval is

extended under section 105, that extended period.

(2) An approval granted to a major utility or a local water utility has effect for a period of 20 years or, if that 20-year period is extended under section 105, that extended period.

(3) A water supply work approval for a water bore that is used solely for accessing water to which the holder is entitled as a basic landholder right (other than water from the Great Artesian Basin) has effect until it is cancelled.

(4) If an application for extension of an approval is lodged before the approval expires, the term of the expiring approval is extended until—

(a) the date of the final decision on the application, or

(b) a date fixed by the Minister for the approval,

whichever is the later date.

(5) If—

(a) an approval expires without an application for its extension being made, and

(b) an application for its extension is subsequently made by the former holder of an approval and is accompanied by a written statement of the reasons for the delay in making the application, and

(c) the reasons are accepted by the Minister,

the term of the approval is taken to have been extended, and the application may be dealt with, as if the application had been made before the approval expired.

105 Extension of approvals

(1) The holder of an approval may, in accordance with the regulations, apply for an extension of the period for which the approval has effect.

(2) A period for which an approval has effect may be extended more than once under this section, but each extension may not exceed the period for which an approval of that type could have originally been granted.

(3) An application for an extension must be granted unless—

(a) the relevant management plan provides, or the regulations provide, that an extension of such an approval must be assessed as if it were an application for a new approval, or

(b) the application is required to be refused under subsection (4).

(4) An application for an extension must be refused if—

(a) in the case of a water use approval, the applicant has not certified that the extension is necessary because the particular purpose for which the approval was granted still exists, or

(b) in the case of a water management work approval, the Minister is not satisfied that the applicant complies with section 97 (5), or

(c) the applicant has not certified that the terms and conditions of the approval have been complied with.

(5) If assessment of an application for extension of an approval (the ***original approval***) is required, the provisions of section 92 (2)–(6) apply to the application and the application is to be assessed as if the application were an application for the granting of a new approval to authorise—

(a) in the case of a water use approval, the continuing use of the water for the particular purpose and at the particular location specified in the original approval, or

(b) in the case of a water management work approval, the continuing maintenance and use of the work to which the original approval relates, or

(c) in the case of an activity approval, the continuing carrying out of the activity to which the original approval relates in the same location or area specified in the original approval.

106 Land benefited by approval

(1) An approval is taken to be held by, and for the benefit of, each successive landholder for the time being of the land specified in the approval as the land benefited by the approval.

(2) While the approval is in force, each such landholder—

(a) is under a duty to comply with the conditions to which the approval is subject, and

(b) is entitled to commence and maintain legal proceedings against any co-holder of the approval with respect to that co-holder’s failure to comply with those conditions.

(3) For the purposes of this section, a major utility, local water utility, irrigation corporation, private water corporation or private water trust is taken to be a landholder of land in respect of which a water use approval or water management work approval held by it is in force.

(4) This section does not apply in such circumstances, or to such types or kinds of approvals, as may be prescribed by the regulations.

Division 4 Amendment, surrender, suspension and cancellation of approvals

107 Amendment of approvals

(1) Without limiting any other power conferred by another provision of this Act, the Minister may amend an approval—

(a) on the application of the holder of the approval, or

(b) to create 2 or more approvals from a single approval in such circumstances as may be prescribed by the regulations, or

(c) in such other circumstances as may be prescribed by the regulations.

Note—

Section 109 (2A) also enables the Minister to amend an approval to give effect to the suspension or cancellation of part of the approval.

(1A) Action under subsection (1) (b) or (c) may not be taken in relation to an approval unless the Minister—

(a) has given written notice to the holder of the approval that the Minister proposes to take such action, and

(b) has given the holder of the approval a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and

(c) has taken any such submissions into consideration.

(2) Without limiting subsection (1), an approval may be amended to alter, remove, add to or reduce any of the uses, works, activities or land to which the approval relates.

(3) An amendment of an approval must not result in the approval relating to any additional land, or authorising the extension, construction or use of a water management work on any additional land, unless the additional land adjoins the land to which the unamended approval relates and is lawfully occupied by the holder of the approval.

(4) Subsection (3) does not apply to an amendment to an approval in respect of a joint scheme (referred to in section 101 (1)) that results in the approval applying to additional land.

(5) If the granting of an application under this section would result in the approval concerned relating to additional uses, works, activities or land, the application is to be advertised, assessed and determined in accordance with this Part in the same way as an application for a new approval, but only in relation to the additional uses, works, activities or land.

(6) In considering any application under this section, the Minister is to have regard to any order of the Supreme Court under section 74 that affects the matters covered by the application.

108 Surrender of approvals

(1) Subject to subsection (1A), the holder of an approval may surrender the approval at any time by notice in writing sent to the Minister.

(1A) The Minister may, by written notice served on the holder of the approval, refuse to accept the surrender of the approval if the Minister considers it appropriate to do so or in such other circumstances as may be prescribed by the regulations.

(2) The surrender takes effect on the date on which the notice is received by the Minister or such later date as is specified in the notice.

(3) Without limiting section 109, the Minister may—

(a) cancel a surrendered approval, or

(b) transfer the surrendered approval to the Minister or to another person.

109 Suspension and cancellation of approvals

(1) The Minister may suspend or cancel an approval (or any part of an approval) on any one or more of the following grounds—

(a) that the holder of the approval has failed to comply with any term or condition to which the approval is subject,

(b) that the holder of the approval has been convicted of an offence against—

(i) this Act or the regulations, or

(ii) the *Plumbing and Drainage Act 2011* or the regulations under that Act,

(c) that the holder of the approval has failed to make due payment with respect to any fee or charge that is payable under this Act in relation to the approval,

(c1) in the case of an approval granted in relation to a water supply work, if—

(i) the holder of the approval is also the holder of an access licence for which the water supply work has been nominated under section 71W (Access licence may nominate water supply works), and

(ii) the holder of the access licence has failed to make due payment with respect to any fees, charges or civil penalties that are payable in respect of the licence (whether or not those fees, charges or civil penalties were incurred by the current holder of the approval),

(c2) in the case of an approval granted in relation to a water supply work referred to in section 104 (3), if—

(i) the holder of the approval cannot, on the written request of the Minister, demonstrate that the water bore the subject of the approval is being maintained in accordance with the conditions of the approval, or

(ii) the water bore has been decommissioned,

(d) in the case of an approval granted in relation to a water management work, the holder of the approval has failed to comply with any direction given to the holder under this Act in connection with the work,

(e) that the approval was granted as a result of false, misleading or materially inaccurate information supplied by or on behalf of the applicant.

(2) Instead of or in addition to suspending or cancelling an approval, the Minister may order a major utility to pay to the Minister a civil penalty not exceeding $500,000 and, in the case of a continuing offence, a further penalty not exceeding $20,000 for each day for which the offence continues.

(2A) If the Minister suspends or cancels a part of an approval, the Minister may amend the approval so as to give effect to that suspension or cancellation.

(3) Action under this section may not be taken in relation to an approval unless the Minister—

(a) has given written notice to the holder of the approval that the Minister proposes to take such action, and

(b) has given the holder of the approval a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and

(c) has taken any such submissions into consideration.

(4) If the Minister fails to give notice to the holder of an approval before taking action under this section, the Minister is taken to have complied with subsection (3) (a)–(c) in relation to that holder if the Minister took all reasonable steps to give notice under subsection (3) to the holder within the period of 28 days before taking the action.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

Division 5 Embargoes on applications for approvals

110 Temporary embargo

(1) The Minister may, by order published in the Gazette, declare an embargo on the

making of applications for approvals with respect to any water management area.

(1A) Such an order may apply to the whole of a water management area or to any specified part of a water management area, and to approvals generally or to any specified type or kind of approvals.

(2) An order under this section may relate to all applications, to applications of a specified kind or to all applications other than applications of a specified kind.

(3) As soon as practicable after an order under this section is published in the Gazette, notice of the order must be published in the authorised manner.

(4) An order under this section takes effect at the beginning of the date on which it is published in the Gazette and, unless sooner revoked, expires at the end of 2 years after that date.

111 Permanent embargo

(1) The Governor may, by proclamation published in the Gazette, declare an embargo on the making of applications for approvals with respect to any water management area.

(1A) Such a proclamation may apply to the whole of a water management area or to any specified part of a water management area, and to approvals generally or to any specified type or kind of approvals.

(2) A proclamation under this section may relate to all applications, to applications of a specified kind or to all applications other than applications of a specified kind.

(3) As soon as practicable after a proclamation under this section is published in the Gazette, notice of the proclamation must be published in the authorised manner.

(4) A proclamation under this section takes effect at the beginning of the date on which it is published in the Gazette and continues in force until it is revoked by a further proclamation so published.

112 Operation of embargo

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

(a) an application to amend an application made before that date, or

(b) an application for the extension of the period for which an approval has effect, or

(c) any other application of a kind prescribed by the regulations.

(2) An application to which an embargo applies is a nullity and is not revived merely because the embargo is subsequently revoked.

Division 6 Registers

113 Register of approvals

(1) The Minister is to cause a register to be kept of—

(a) every application for an approval that is duly made under this Act, and

(b) every approval that is granted, extended, amended, transferred, surrendered, suspended or cancelled under this Act, and

(c) every agreement entered into by landholders under section 101 (2).

(2) The regulations may make provision for or with respect to the form in which such a register is to be kept and the particulars that are to be recorded in such a register.

(3) The register must be made available for public inspection during normal business hours at such places as may be prescribed by the regulations.

Part 4 Finance

114 Minister may impose fees and charges

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

Note—

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

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

Part 5 Conditions imposed by regulations

115 Regulations may impose mandatory conditions

(1) The regulations may impose mandatory conditions on access licences and approvals relating to the following—

(a) metering equipment or any other means of measuring water flows,

(b) requiring notice to be given of a change to or the replacement of a water supply work, or any part of it, that results in an increase in the capacity of the work to take water,

(c) reporting by holders of access licences or approvals as to water taken,

(d) measures recommended by the Natural Resources Access Regulator to improve compliance with and enforcement of this Act.

(2) A mandatory condition may be imposed on particular access licences or approvals or classes of access licences or approvals.

(3) A mandatory condition may be imposed on all access licences or approvals for a specified water source or access licences or approvals within a specified part of the State.

(4) A mandatory condition, other than a condition that is of a machinery nature or is minor in its effect, must not be prescribed unless the proposed condition has been publicly exhibited for not less than 28 days in accordance with any requirements of the regulations.

115A Regulations relating to mandatory and other licence conditions

The regulations may provide for the following—

(a) notification to holders of approvals or access licences of mandatory conditions imposed under this Part,

(b) the imposition of a mandatory condition under this Part on a licence or other entitlement in force under the *Water Act 1912* and deeming any such condition to be imposed under that Act,

(c) that a mandatory condition imposed under this Part has effect despite any other approval or licence or condition of an approval or licence under this Act or the *Water Act 1912* or any other instrument made under this Act or that Act,

(d) the amendment of management plans or licences or approvals to remove or vary conditions that are covered by, or are inconsistent with, mandatory conditions imposed by the regulations under this Part.

Part 6 Regulations relating to water management works

115B Metering equipment

(1) This section applies to a water management work, whether or not an approval is required to install or use the work.

(2) Regulations may be made for or with respect to metering equipment in connection with works to which this section applies.

(3) In particular, and without limiting subsection (2), regulations may be made for or with respect to the following—

(a) requiring persons who have control and management of works to install, use and maintain metering equipment,

(b) setting out standards and other requirements for metering equipment to be used

in connection with works,

(c) setting out standards and other requirements for the location and installation of metering equipment,

(d) the keeping of metering records relating to maintenance of metering equipment and taking of water during periods when metering equipment is not able to be used and relating to any other matters specified by the regulations,

(e) the taking of water by means of a metered work while its metering equipment is not operating properly or is not operating,

(f) requiring the owners of metering equipment, holders of approvals or other persons to provide information obtained from or about the equipment,

(g) the provision of information derived from or about metering equipment to the holders of approvals for works in connection with which the equipment is installed.

(4) The regulations are to provide for a review of the operation of regulations made under this section as soon as practicable after 5 years after the first regulations are made under this section.

Chapter 4 Joint private works

Part 1 Irrigation corporations

Division 1 Preliminary

116 Application of Part

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

117 Definitions

In this Part—

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

irrigation corporation means a corporation named in Schedule 1.

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

118 Requirements for access licences and approvals

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

Division 2 Irrigation corporations

119 Assets of irrigation corporations

(1) An irrigation corporation is the owner of all water management works installed in or on land by the corporation (whether or not the land is owned by the corporation).

(2) The provisions of Part 5 and section 88 of the *Irrigation Corporations Act 1994*, as in force immediately before their repeal, continue to apply for the purpose of enabling the Ministerial Corporation to transfer to an irrigation corporation any of its assets, rights and liabilities with respect to an irrigation scheme area with which the irrigation corporation was formerly connected.

120 Entry on to land

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

(a) to install, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that the corporation considers are necessary or appropriate to any of its water management works or to construct new water management works and, for these purposes, to carry out any work on, below or above the surface of the land,

(b) to read a meter that—

(i) measures water supplied by the corporation, or

(ii) monitors drainage for quantity or quality or both,

(c) to find the source of pollution of water within the area of operations of the corporation,

(d) to ascertain whether a water supply contract or other contract for the provision of services by the corporation is being breached,

(e) to rectify defective or improper work that has not been rectified by a customer in accordance with a notice served by the corporation on the customer under a water supply contract or other contract,

(f) to ascertain the character and condition of the land or any building on the land, or the condition and location of any pipe, sewer, drain, channel or fitting or other work used in connection with the land or building, so as to enable the

corporation—

(i) to install, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect or improve its systems and services, or

(ii) to construct new water management works,

in accordance with the obligations imposed on it by its operating licence,

(g) to carry out any investigation or inspection, take levels, drill test bore-holes, make surveys and marks, and fix pegs and stakes, for the purpose of determining the site of any proposed water management work.

(2) An irrigation corporation must ensure that as little damage as possible is caused by the exercise of powers under this section and must repair any damage caused or pay compensation for the damage.

(3) The powers of entry conferred by this section are not to be exercised for a purpose referred to in subsection (1) (a), (f) or (g) without prior notice to the occupier of the land.

(4) A person must not threaten, hinder, obstruct or delay any person in the exercise of an irrigation corporation's functions under this section.

Tier 2 penalty.

121 Ceasing to be an irrigation corporation

(1) A corporation ceases to be an irrigation corporation if its particulars are removed from Schedule 1.

(2) The Governor may remove an irrigation corporation's particulars from Schedule 1 by proclamation published on the NSW legislation website, but only—

(a) on application made by the irrigation corporation to the Minister, or

(b) if the irrigation corporation ceases to exist.

(3) The Governor may by proclamation published on the NSW legislation website amend Schedule 1 so as to reflect a change in an irrigation corporation's name.

(4) The regulations may make provision, not inconsistent with the *Corporations Act 2001* of the Commonwealth, for or with respect to any matters that are consequential on a corporation ceasing to be an irrigation corporation.

Division 3 Operating licences

122 Authority conferred by operating licence

The operating licence for an irrigation corporation authorises the corporation to carry on

the business of supplying water provided to it by the Ministerial Corporation and to exercise its functions under this Part.

123 Terms and conditions of operating licence

(1) An operating licence is subject to the terms and conditions determined by the Governor.

(2) Examples of terms and conditions that may be included are as follows—

(a) a requirement that the irrigation corporation will (in accordance with any applicable management program and the corporation's business plan) provide, construct, maintain, manage and operate—

(i) efficient, co-ordinated and commercially viable systems and services for supplying water from both surface and subsurface sources, and

(ii) surface and subsurface drainage networks that have sufficient capacity having regard to specified factors, including the amount of water supplied by the corporation to users,

(b) a requirement that the irrigation corporation must be the holder of all relevant licences or other authorities,

(c) a requirement that the irrigation corporation is to comply with the provisions of any applicable management program, either in all respects or in certain respects,

(d) a requirement that, in supplying water to its members, the irrigation corporation is to give priority to certain councils or other local water utilities for domestic water supply,

(e) a requirement as to how the irrigation corporation is to spend and otherwise deal with any money provided to it out of money appropriated from the Consolidated Fund or other public money.

(3) An operating licence may be amended only in the manner specified in the operating licence.

(4) Despite subsection (3), the Minister may amend an irrigation corporation's operating licence so as to give effect to matters agreed to by or on behalf of the State pursuant to, or in connection with, the National Water Initiative.

(5) In determining the terms of the amendment, the Minister must have regard to any submissions made by the irrigation corporation.

(6) In this section, ***National Water Initiative*** means the Intergovernmental Agreement on a National Water Initiative between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, South Australia, Western

Australia, Tasmania, the Australian Capital Territory and the Northern Territory (as amended from time to time).

124 Term of operating licence

(1) An operating licence has effect for the period specified in the licence in that regard, but may be renewed at the end of that period.

(2) An operating licence may be renewed even if its term has expired.

(3) The Governor may refuse an application for the renewal of an operating licence on such grounds as the Governor considers appropriate.

125 Contravention of operating licence

(1) If, in the opinion of the Minister, an irrigation corporation contravenes an operating licence, the Governor may direct that one of the following is to apply—

(a) a letter of reprimand by the Minister is to be served on the irrigation corporation,

(b) the Minister is to cause a notice to be served on the irrigation corporation requiring it to rectify the contravention within a specified period.

(2) If, in the opinion of the Minister, an irrigation corporation continues to contravene an operating licence after the issue of a letter under subsection (1) (a) or fails to rectify a contravention as required by a notice under subsection (1) (b), the Governor may do either or both of the following—

(a) the Governor may direct that the irrigation corporation is to pay a monetary penalty of an amount (not exceeding $150,000) to be determined by the Governor,

(b) the Governor may cancel the operating licence.

(3) The fact that the Governor has directed that action be taken under this section does not prevent the Governor directing that the same or other action under this section be taken if the contravention continues or a fresh contravention occurs.

(4) An operating licence may make provision for advice to be furnished to the Minister in connection with the exercise of the Minister’s functions under this section.

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

126 Cancellation of operating licence

(1) An operating licence may be cancelled by the Governor, but only—

(a) if the irrigation corporation fails or ceases to hold a relevant licence or other authority, or

(b) if the irrigation corporation is, in the opinion of the Minister, in material default in compliance with the operating licence, viewed in terms of the operation of the operating licence as a whole, or

(c) if the irrigation corporation is an externally-administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, or

(d) if the irrigation corporation has been convicted of a criminal offence that is punishable by a fine of at least $10,000 or, if the corporation were a natural person, imprisonment for 12 months or more, or

(e) in the circumstances set out in section 125 (2).

(2) An operating licence may not be cancelled on the ground referred to in subsection (1) (a) if an appeal against a decision not to renew or to cancel the relevant licence or other authority has been made but not determined or withdrawn.

(3) Subsection (1) (d) does not apply where the offence is unconnected with the functions of the irrigation corporation relating to the supply or drainage of water.

127 Irrigation corporation may make arrangements with subsidiaries

(1) An irrigation corporation may arrange, whether by an agency agreement or in any other way (except by assignment), for a subsidiary of the irrigation corporation to exercise any or all of the irrigation corporation's functions under this Part or under an operating licence.

(2) The Minister may treat any act or omission of the subsidiary of an irrigation corporation as an act or omission of the irrigation corporation for the purpose of determining—

(a) whether the irrigation corporation has contravened its operating licence, or

(b) whether the licence should be suspended or cancelled,

but only if the irrigation corporation has made arrangements for the exercise of functions by the subsidiary.

(3) In this section, ***subsidiary*** means a corporation that is a subsidiary of a corporation as determined in accordance with the *Corporations Act 2001* of the Commonwealth or any other applicable law.

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

128 Applications to include land within area of operations

(1) An application for the inclusion of land within an irrigation corporation's area of

operations may be made to the Minister by means of a joint application made by the corporation and by the owner or owners of the land concerned.

(2) The application must identify the land proposed to be included in the corporation's area of operations.

(3) The procedures for making and advertising an application are to be as prescribed by the regulations.

129 Objections to inclusion of land within area of operations

(1) Any person may object to the inclusion of land within the proposed extension of an irrigation corporation's area of operations.

(2) The procedures for making an objection are to be as prescribed by the regulations.

130 Inclusion of land in area of operations

(1) The Minister may determine an application for the inclusion of land within an irrigation corporation's area of operations by granting or refusing the application.

(2) If the Minister grants the application, the Minister must, by order published in the Gazette, include the land within the irrigation corporation's area of operations.

131 (Repealed)

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

132 Applications to exclude land from area of operations

(1) An application for the exclusion of land from an irrigation corporation's area of operations may be made to the Minister by means of a joint application made by the corporation and by the owner or owners of the land concerned.

(2) The application must identify the land proposed to be excluded from the corporation's area of operations.

(3) The procedures for making and advertising an application are to be as prescribed by the regulations.

133 Objections to exclusion of land from area of operations

(1) Any person may object to the proposed exclusion of land from an irrigation corporation's area of operations.

(2) The procedures for making an objection are to be as prescribed by the regulations.

134 Exclusion of land from area of operations

(1) The Minister may determine an application for the exclusion of land from an irrigation corporation's area of operations by granting or refusing the application.

(2) If the Minister grants the application, the Minister must, by order published in the Gazette, exclude the land from the irrigation corporation's area of operations.

135 (Repealed)

Division 6 Miscellaneous

136 Successor in title liable for unpaid contract charges

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

137 Indemnities

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

(a) the design, construction, alteration, maintenance, non-maintenance, operation, repair, disrepair or non-repair of a water management work owned or controlled by the irrigation corporation, or

(b) the destruction or damage, or partial destruction or partial damage, by flood, storm, tempest or otherwise of a water management work owned or controlled by the irrigation corporation, or

(c) the exercise, in respect of a water management work owned or controlled by the irrigation corporation, by the irrigation corporation of any function conferred or imposed on the irrigation corporation under this or any other Act.

(2) Section 733 of the *Local Government Act 1993* applies to and in respect of an irrigation corporation in the same way as it applies to and in respect of a council.

138 Register of licences, audits and management programs

(1) The Ministerial Corporation must maintain at its head office a register containing copies of the following—

(a) operating licences,

(b) audit reports,

(c) applicable management programs,

(d) recommendations of the Minister to the Governor under this Part.

(2) The register must be made available for public inspection during normal business hours.

(3) Any person may obtain a copy of any information on the register on payment of the reasonable cost of providing the copy.

Part 2 Private 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.

149A (Repealed)

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.

Note—

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.

Note—

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) Section 7.6 of the *Government Sector Finance Act 2018* applies to financial statements required to be prepared under this section in the same way that it applies

to annual GSF financial statements 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 borrowings, and may invest the funds of the corporation, in any manner it thinks fit.

(2) A corporation may, for the purpose of obtaining borrowings—

(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—

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

funds includes any funds under the control of the corporation and real property, securities or other property comprising an investment.

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.

180–190 (Repealed)

Divisions 10A, 11

190A–196 (Repealed)

Part 3

197–219 (Repealed)

Part 4 Private water trusts

Division 1 Preliminary

220 Application of Part

This Part applies to all private water trusts under Part 3 of the former *Water Act 1912* that were in existence immediately before the repeal of that Part, but does not authorise the establishment of any new private water trusts.

221 Definitions

In this Part—

landholder's water entitlement means the part of the share component of an access licence held by or on behalf of a private water trust that is available to a landholder for irrigation.

member'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.

private water trust means a trust constituted under Part 3 of the former *Water Act 1912*.

ratepayer means person paying rates in respect of land within a water supply district.

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.

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

works plan means the works plan for a private water trust specified for the trust, as in force from time to time.

222 Requirements for access licences and approvals

Nothing in this Part authorises a private water trust, the trustees of a trust or landholder to do anything for which this Act requires an access licence or approval unless the private water trust or landholder holds an appropriate access licence or approval.

Division 2 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 5A

237A, 237B (Repealed)

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.

238A (Repealed)

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.

Note—

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.

Note—

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) Section 7.6 of the *Government Sector Finance Act 2018* applies to financial statements required to be prepared under this section in the same way that it applies to annual GSF financial statements 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.

Chapter 5 Public works

Part 1

240–252 (Repealed)

Part 2 Hunter Valley flood mitigation works

Division 1 Preliminary

253 Application of Part

This Part applies to and in respect of land in the Hunter Valley.

254 Definitions

In this Part—

Hunter River includes all tributaries that, directly or indirectly, flow into the Hunter River, and includes the estuary of the Hunter River and all arms and branches of that estuary.

Hunter Valley means the catchment area of the Hunter River, and includes the land shown on the plan marked “DWR PLA No 20/2551” held by the Department, and also includes such other land as is declared by the regulations to form part of the Hunter Valley.

levee bank means a levee bank designed or intended for the purpose of or that could or might have the effect of excluding or partially excluding the waters of the Hunter River or waters overflowing from the Hunter River from any land.

protective works means works for the protection of any works vested in or otherwise under the control of a public authority—

(a) against flooding by waters overflowing from the Hunter River, or

(b) against the effects of any such flooding, or

(c) against the effects of river bank erosion.

tree includes sapling and shrub.

Division 2 Powers of Minister

255 Restriction on use of lands adjacent to levee banks

(1) If a levee bank has been constructed adjacent to the Hunter River, the Minister may, by notice in writing to—

(a) the landholder of the land on which the levee bank has been constructed, or

(b) the landholder of any land adjacent to the levee bank, or

(c) the landholder of the whole or any part of the land lying between the levee bank and the Hunter River,

impose such conditions and restrictions on the use of such levee bank or land as the Minister considers necessary or desirable to ensure the stability of the levee bank and in the interests of flood prevention or mitigation within the Hunter Valley generally.

(2) The Minister may in the like manner revoke or vary any notice given in pursuance of this section.

(3) If any landholder to whom such a notice has been given contravenes any condition or restriction imposed by the notice, the Minister—

(a) may authorise any person to enter the land to which such notice relates, and to take such remedial measures on that land as the Minister considers necessary, and

(b) may recover any cost incurred in so doing from the landholder in any court of competent jurisdiction as a debt due and owing to the Crown.

(4) If under this section conditions or restrictions on the use of any levee bank or land are imposed by the Minister, the landholder of the levee bank or land is entitled to claim and be paid compensation for any loss sustained by reason of those conditions or restrictions.

256 Construction of fences, structures and flood works

(1) A person must not—

(a) construct any building, fence or structure in, on, or adjacent to, a levee bank, or

(b) construct a flood work on a floodplain,

except with the consent of the Minister.

Tier 2 penalty.

(2) The Minister's consent may be given unconditionally or subject to conditions.

(3) An authorised officer—

(a) may enter any lands on which any building, fence or flood work has been constructed otherwise than in accordance with the Minister's consent, and

(b) may take such measures as are necessary to demolish or remove the building, fence or flood work or to render the flood work ineffective.

(4) The costs incurred by an authorised officer under this section are recoverable from the landholder as a debt in a court of competent jurisdiction.

(5) The Minister may, by notice published in the Gazette, exclude any lands from a floodplain.

(6) In this section, ***floodplain*** means any lands declared to be within the floodplain of the Hunter River by a proclamation in force under section 16 of the former *Hunter Valley Flood Mitigation Act 1956*, other than lands excluded from the floodplain by a notice published under this section.

Division 3 Finance

257 Accounts to be kept in Special Deposits Account

There is to be established in the Special Deposits Account an account to be called the

"Hunter Valley Flood Mitigation Account".

258 Allocation of money

(1) Within the Hunter Valley Flood Mitigation Account is to be kept an account to be called the "Hunter Valley Flood Mitigation Working Account", in this Part referred to as the ***Working Account***.

(2) Any amount paid to the Minister by Local Land Services is to be paid into the Working Account, from which account may be made, in such manner as the Treasurer determines, any payments that the Minister is required to make under or for the purposes of this Part.

259 Cost of works generally

(1) This section applies to all flood works that are constructed or maintained by the Minister, other than those for which Local Land Services is liable to make contribution under some other provision of this Division.

(2) Local Land Services is liable to contribute one-quarter of the cost to the Minister of constructing and maintaining any flood work to which this section applies.

260 Cost of works to protect towns and villages

(1) This section applies to all flood works constructed or maintained by the Minister for the purpose of protecting a town or village from flooding, being works that have been constructed at the request or with the concurrence of the local council within whose area the town or village is situated.

(2) Of the cost to the Minister of constructing and maintaining any flood work to which this section applies—

(a) the local council is liable to contribute such percentage (not exceeding 12%) as the Minister may determine, and

(b) Local Land Services is liable to contribute one-quarter of the balance.

261 Cost of protective works

(1) Of the cost to the Minister of constructing and maintaining any protective works—

(a) the public authority whose works are protected by the protective works is liable to contribute such percentage as the Minister may determine, and

(b) Local Land Services is liable to contribute one-quarter of the balance.

(2) The Minister may pay to any public authority that constructs or maintains any protective works such amount as the Minister considers appropriate towards the cost to the public authority of so doing.

(3) Local Land Services is liable to pay to the Minister one-quarter of any amount paid to a public authority under subsection (2).

262 Annual contribution to works program by Local Land Services

(1) Local Land Services is liable to pay to the Minister in each financial year—

(a) one-quarter of the estimated cost of constructing any flood works that the Minister proposes to construct during that financial year, and

(b) one-quarter of the estimated cost of maintaining any flood works that the Minister proposes to maintain during that financial year.

(2) The following amounts are to be deducted from the estimated costs for the purpose of calculating Local Land Services' liability under this section—

(a) any contribution to those costs for which a local council will be liable under this Division,

(b) any amount that Local Land Services has paid to the Minister under this section during the previous financial year but that remained unexpended at the end of that year.

(3) Any estimates are to be made by the Minister whose decision is final.

263 Consultation with Local Land Services as to works program

(1) Before the beginning of each financial year or as soon as practicable thereafter, the Minister must submit to Local Land Services a program of the flood works that the Minister proposes to construct or maintain during that year.

(2) Such a program must be consistent with any management plan that applies to the land on which the works or proposed works are situated.

(3) Such a program must be accompanied by a statement setting out the following particulars—

(a) the estimated cost of constructing any work,

(b) the estimated annual cost of maintaining any work,

(c) the amount for which Local Land Services will be liable,

(d) such other particulars as may be prescribed by the regulations.

264 Consultation with local council as to works program

(1) This section applies to all flood works constructed or maintained by the Minister for the purpose of protecting a town or village from flooding, being works that have been constructed at the request or with the concurrence of the local council within whose

area the town or village is situated.

(2) Before the beginning of each financial year or as soon as practicable thereafter, the Minister must submit to the local council concerned a program of the flood works that the Minister proposes to construct or maintain during that year.

(3) Such a program must be consistent with any management plan that applies to the land on which the works or proposed works are situated.

(4) Such a program must be accompanied by a statement setting out the following particulars—

(a) the estimated cost of constructing any work,

(b) the estimated annual cost of maintaining any work,

(c) the percentage that the Minister has determined that the council should contribute to the cost of the construction and maintenance of the work,

(d) the amount for which the council will be liable,

(e) such other particulars as may be prescribed by the regulations.

(5) Any estimates are to be made by the Minister whose decision is final.

(6) When the work has been completed, the Minister must notify the local council of the actual cost of the work.

(7) If the amount paid by the local council in respect of the work is more than the amount for which the council is liable, the Minister must repay to the council the amount of such excess.

(8) If the amount paid by the local council in respect of the work is less than the amount for which the council is liable, the council must pay to the Minister the amount of the shortfall.

(9) Any amount paid to the Minister by a local council under this section is to be paid into the Hunter Valley Flood Mitigation Working Account.

265 Payment of contribution towards maintenance by a local council

(1) A local council that is liable to contribute to the cost of maintenance of any flood work must pay to the Minister in each financial year the same percentage of the estimated cost of maintenance as the council is liable to contribute to the actual cost of maintenance of that work.

(2) In calculating the local council’s liability under this subsection in respect of any financial year there is to be deducted any amount that the council has paid to the Minister in respect of any flood work during any previous financial year and that

remained unexpended at the end of the immediately preceding financial year.

(3) Any estimate is to be made by the Minister whose decision is final.

266 Consultation with local council as to maintenance program

(1) Before the beginning of each financial year, the Minister must furnish the local council with a statement setting out the following particulars—

(a) the amount that the council will be liable to pay under this Division for that financial year,

(b) such other particulars as may be prescribed by the regulations.

(2) The local council must pay to the Minister the amount referred to in subsection (1) (a).

(3) Any such amount is to be paid into the Hunter Valley Flood Mitigation Working Account.

267 Urgent maintenance works

(1) If in the opinion of the Minister it becomes necessary to carry out urgent maintenance on any flood work, the Minister may carry out the maintenance, despite maintenance not having been included in any program of works or any statement furnished to a local council.

(2) When the maintenance has been completed, the Minister must determine the total amount paid in respect of such maintenance and notify any local council affected by the work and Local Land Services of the respective amounts that they are required to contribute in accordance with this Division.

(3) Any money paid to the Minister under this section is to be paid into the Hunter Valley Flood Mitigation Working Account.

268 Payments to be duly made

Any amount that is payable to the Minister under this Division—

(a) by Local Land Services, or

(b) by a local council, or

(c) by any other public authority,

is payable at such times, and in such instalments, as the Minister may determine.

Division 4 Miscellaneous

269 Works to protect public and local government works to be approved by Minister

(1) A public authority must not construct any protective works unless the Minister has approved of the site, nature, dimensions and design of the works.

(2) In giving approval, the Minister may require such amendment of the site, nature, dimensions or design of the protective works as the Minister considers necessary, and the public authority must comply with that requirement accordingly.

(3) The Minister may by notice in writing require the public authority by which any protective works have been constructed to take specified measures for the proper upkeep, preservation and maintenance of the protective works.

(4) The public authority must comply with the requirements specified in the notice in such manner and within such time as is so specified.

(5) If a public authority fails to comply with the terms of the notice, the Minister—

(a) may authorise any person to enter the land on which the protective works are located and carry out the measures specified in such notice, and

(b) may recover any cost incurred in so doing from the public authority in any court of competent jurisdiction as a debt due to the Crown.

270 Major floodgates to be maintained and operated by local councils

(1) If in the opinion of the Minister any floodgate operates for the protection of lands other than lands owned by one landholder or a small localised group of landholders, the Minister may by notice in writing to the local council declare the floodgate to be a major floodgate.

(2) It is the duty of the local council—

(a) to keep any major floodgate at all times in a good and proper state of repair and working order, and

(b) to maintain and operate it in accordance with any directions that may from time to time be given by the Minister.

(3) If the local council fails to perform that duty, the Minister—

(a) may authorise any person to enter the land on which the major floodgate is located and to take such measures as to the maintenance, operation or repair of the floodgate as the Minister considers necessary, and

(b) may recover any cost incurred in so doing from the council in any court of competent jurisdiction as a debt due to the Crown.

271 Maintenance of minor floodgates

(1) In this section, ***minor floodgate*** means any floodgate that is not a major floodgate.

(2) It is the duty of each landholder for the protection of whose land a minor floodgate operates to keep the floodgate at all times in a good and proper state of repair and working order.

(3) If any such landholder fails to perform that duty, the Minister may by notice in writing direct the landholder to take such measures as to the maintenance, operation or repair of the floodgate as may be specified in the notice.

(4) If any landholder fails to comply with the terms of the notice, the Minister—

(a) may authorise any person to enter the land on which the minor floodgate is located and to take such measures as to the maintenance, operation or repair of the floodgate as the Minister considers necessary, and

(b) may recover any cost incurred in so doing from the landholder in any court of competent jurisdiction as a debt due to the Crown.

(5) In the case of multiple landholders, the liability imposed on them under this section is joint and several but, as between themselves, each is liable only for such share of the liability as bears the same proportion to the total liability as the area of the person's land for the protection of which the floodgate operates bears to the total area of land for the protection of which the floodgate operates.

(6) If any landholder pays to the Minister more than the person's share of the total liability the landholder may recover the excess by way of contribution from the others.

272 Application of Public Works Act 1912

Sections 91–95 of the *Public Works Act 1912* do not apply to any works constructed under this Part.

273 Evidence of cost of works

If the Minister is empowered to recover any cost incurred in carrying out any work or measure, a certificate by the Minister of the amount of such cost is evidence of that cost.

Part 3

274–280 (Repealed)

Chapter 6 Public utilities

Part 1 Major utilities

281 Major utilities

(1) This Part applies to each body referred to in Schedule 2 (referred to as a ***major utility***).

(2) The Governor may by proclamation published on the NSW legislation website amend Schedule 2 so as—

(a) to add the corporate name of any body that is to become a major utility for the purposes of this Part, or

(b) to vary the name of any major utility as a consequence of any change in its corporate name, or

(c) to omit the corporate name of any body.

282 Review of activities of major utilities

(1) The activities of a major utility under this Act—

(a) may be reviewed at any time, and

(b) must be reviewed—

(i) before the end of the 6 month period following the date on which its first approval was granted under section 95, and

(ii) before the end of each 5 year period following the date on which its current approval was granted.

(2) For the purpose of conducting such a review, the Minister must cause notice to be published—

(a) in the Gazette, and

(b) in the authorised manner,

inviting written submissions from interested persons in relation to the activities of the major utility during the period under review.

Part 2 Water supply authorities

Division 1 Preliminary

283 Definitions

In this Part—

area of operations of a water supply authority means the area of operations prescribed by the regulations in relation to that authority.

charging year, in relation to a water supply authority, means—

(a) the period of 12 months declared by an order in force under Division 6 to be the charging year for the water supply authority, or

(b) if the charging year is changed under that Division by a further order, the period between the end of one charging year and the beginning of the next.

development area means an area of land declared by an order in force under Division 6 to be a development area.

drainage area means an area of land declared by an order in force under Division 6 to be a drainage area.

drainage service means that part of drainage pipework up to its point of connection to a water supply authority's drainage system.

drainage service pipe means a pipe connecting a drainage service to a water supply authority's drainage system, and includes the plumbing fittings connected to the pipe.

floodplain means an area of land declared by an order in force under Division 6 to be a floodplain.

meter includes any measuring device.

plumbing fitting includes any pipe, apparatus or fixture used for plumbing work.

plumbing work means work comprising or affecting—

(a) a water supply service pipe or its connection (whether directly or indirectly) with a water supply authority's water supply system, or

(b) a sewerage service pipe or its connection (whether directly or indirectly) with a water supply authority's sewerage system, or

(c) a drainage service pipe or its connection (whether directly or indirectly) with a water supply authority's drainage system.

river management area means an area of land declared by an order in force under

Division 6 to be a river management area.

service charge means any of the following—

(a) a water service charge,

(b) a sewerage service charge,

(c) a drainage service charge,

(d) a loan service charge,

(e) a developmental works service charge,

(f) a flood mitigation service charge,

(g) a river management service charge, or

(h) a special industry service charge,

that may be levied under Division 6.

sewage work means a work (such as a pump, pipe or channel) for the purpose of removing sewage or other waste matter from land, including a reticulated system of such works, and includes—

(a) all associated pipes, valves, pumps and other equipment, and

(b) all sewage treatment or sewage processing plants and their outfalls and drainage beds,

but does not include any work declared by the regulations not to be a sewage work.

sewerage service means that part of sewerage pipework, including all sanitary fixtures, up to its point of connection to a water supply authority’s sewerage system.

sewerage service pipe means a pipe connecting a sewerage service to a water supply authority’s sewerage system, and includes the plumbing fittings connected to the pipe.

special area means an area of land declared under Division 4 to be a special area.

special industry means an industry declared by an order in force under Division 6 to be a special industry.

water management work means a water supply work, drainage work, sewage work or flood work, and includes a work in the nature of a water supply work (being a work that receives water from a water supply work under the control or management of a water supply authority).

water supply service means that part of water supply pipework from its point of

connection to a water supply authority's water supply system up to and including its outlet valves.

water supply service pipe means a pipe connecting a water supply service to a water supply authority's water supply system, and includes the plumbing fittings connected to the pipe.

water supply work includes any work that receives water from a water supply work under the control or management of a water supply authority.

284 Requirements for access licences and approvals

Nothing in this Part authorises a water supply authority to do anything for which this Act requires an access licence or approval unless the water supply authority holds an appropriate access licence or approval.

Division 2 Water supply authorities

285 Water supply authorities

(1) The corporations listed in Schedule 3 are water supply authorities.

(2) A corporation listed in Part 1 of Schedule 3 is, for the purposes of any Act, a statutory body representing the Crown.

(3) (Repealed)

286 Constitution of water supply authorities

(1) The Governor may, by proclamation published on the NSW legislation website—

(a) name a water supply authority proposed to be constituted under this section, and

(b) specify the number of members, the qualification for each member and whether or not the member is a full-time member or a part-time member, and

(c) amend Schedule 3 by adding the name of the water supply authority to Part 1 of that Schedule.

(2) The members are to be appointed by the Governor and, on their appointment, the water supply authority is constituted as a corporation.

(3) The corporate name for the water supply authority is the name of the water supply authority stated in the proclamation.

(4) On a change of area of operations or functions for a water supply authority listed in Part 1 of Schedule 3, the Governor may, by proclamation published in the Gazette, do either or both of the following—

(a) change the number of part-time members of the water supply authority,

(b) change the qualifications for part-time members of the water supply authority.

(5) A change referred to in subsection (4) does not affect the identity of the water supply authority.

287 Statutory body may be water supply authority

(1) The Governor may, by proclamation published on the NSW legislation website with the consent of the Minister administering the Act by or under which a statutory body is constituted, amend Schedule 3 by adding the name of the statutory body to Part 2 of that Schedule.

(2) On the addition of the name of a statutory body to Part 2 of Schedule 3, it becomes a water supply authority but still has its other functions.

288 Provisions relating to constitution and procedure of water supply authorities

(1) Part 1 of Schedule 5 has effect with respect to the members of the water supply authorities listed in Part 1 of Schedule 3.

(2) Part 2 of Schedule 5 has effect with respect to the Australian Inland Energy Water Infrastructure.

(3) Part 3 of Schedule 5 has effect with respect to the Cobar Water Board.

(4) Parts 2 and 3 of Schedule 5 do not affect the operation of the other provisions of this Part in relation to the water supply authorities to which those Parts relate.

289 Area of operations

(1) The area of operations of a water supply authority is such as may be prescribed by the regulations for the water supply authority.

(2) If a regulation so provides, a water supply authority has, and may exercise, in its area of operations or a specified part of its area of operations—

(a) only such of the functions of a water supply authority as are specified in the regulation, or

(b) all functions of a water supply authority other than functions specified in the regulation.

(3) A regulation made for the purposes of subsection (2) may make provision for or with respect to—

(a) matters affecting revenue, assets, rights, liabilities and employees of a water supply authority, and

(b) procedures to be adopted for the purposes of paragraph (a).

(4) Within the area of operations of a water supply authority, a function under this Part may be exercised only by the water supply authority unless—

(a) the function is exercisable by the Minister, or

(b) the function is exercised by Local Land Services under the *Local Land Services Act 2013*, or

(c) with the consent of the Minister, the function is exercised by another Minister, by the delegate of another Minister or by a statutory body, or

(d) this Part provides otherwise.

(5) With the consent of the Minister, a water supply authority may exercise a function outside its area of operations.

(6) Until a regulation is made for the purposes of subsection (1), the area of operations of a water supply authority is the same as it was immediately before the commencement of this Part.

290 Staff

Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable a corporation listed in Part 1 of Schedule 3 to exercise its functions.

Note—

Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services a water supply authority makes use of) may be referred to as officers or employees, or members of staff, of the water supply authority. Section 47A of the *Constitution Act 1902* precludes a water supply authority from employing staff.

291 Delegation

A water supply authority may delegate to a person the exercise of any of its functions, other than this power of delegation.

Division 3 Functions of water supply authorities

292 Functions of water supply authority

(1) A water supply authority has the following functions—

(a) subject to the Minister’s approval, to construct, maintain and operate water management works and other associated works,

(b) to conduct research, collect information and develop technology in relation to water management,

(c) to do anything for the purpose of enabling the objects of this Act to be attained.

(2) A water supply authority may exercise its functions within and beyond its area of operations.

(2A) A water supply authority must not exercise any function beyond its area of operations in such a way as to limit its capacity to exercise that function within that area.

(3) It is the duty of a water supply authority to exercise its functions consistently with the principles of ecologically sustainable development.

293 Exercise of functions by a water supply authority

(1) A water supply authority—

(a) has and may exercise the functions conferred or imposed on it by or under this or any other Act, and

(b) in the exercise of its functions (except in relation to the contents of a report or recommendation made by it) is subject to the control and direction of the Minister.

(1A) Subsection (1) (b) does not apply to a water supply authority listed in Part 3 of Schedule 3.

(2) If a function conferred or imposed on a water supply authority by this Part is inconsistent with a function conferred or imposed on the water supply authority by or under another Act, this Part prevails.

294 Commercial operations

(1) With the approval of the Governor, a water supply authority may enter into commercial operations with respect to—

(a) any services developed in connection with the exercise of its functions, or

(b) any products or by-products (including intellectual property) resulting from the exercise of its functions, or

(c) such other matters as may be prescribed by the regulations.

(2) With the approval of the Governor, a water supply authority may form, or join in forming, a company, partnership or trust for the purpose of exercising its functions under this Part.

295 Assistance to statutory body

A water supply authority may, at the request of a statutory body and with the consent of the Minister, exercise any of the functions of the statutory body in a part of its area of operations in respect of which the statutory body may exercise different functions, even if, but for the request, the water supply authority would not have exercised the function.

296 Entry on land to read meters or carry out works

(1) A water supply authority may, by its employees and agents—

(a) enter and occupy land and there exercise any of its functions, including the carrying out of any work on, below or above the surface of the land, and

(b) divert water from, or alter the course of, a stream, and

(c) impound or take water on, in or under the surface of any land.

(2) The power conferred by this section is sufficient authority for an employee or agent to enter and occupy land or any part of a building (except an enclosed part occupied as a separate dwelling) in the exercise of a water supply authority's functions during daylight for the purpose of—

(a) reading a meter, or

(b) ascertaining whether trade waste is present or is being (or has recently been) discharged to a work of the authority, or

(c) making a valuation,

unless the employee or agent is refused access by the lawful occupier of the land.

(3) A water supply authority may, in accordance with the regulations, attach a ventilating shaft, pipe or tube for a sewer to the wall of a building.

(4) A water supply authority may remove or use anything dug up or obtained in the exercise of its powers under this section.

(5) A water supply authority—

(a) must do as little damage as practicable in exercising its powers under this section, and

(b) must compensate all persons who suffer damage by the exercise of the powers,

in relation to the land entered.

(6) Compensation may be made by reinstatement or repair, by construction of works or by payment.

(7) If a water supply authority provides a sewer, compensation is required only if—

(a) the sewer causes injury to, or interference with, a building or other structure, or

(b) a manhole or main ventilator is constructed on the land.

(8) A claim for compensation—

(a) is ineffective unless made in writing not later than 6 months after the damage was suffered, and

(b) in the absence of agreement on the compensation, must be dealt with as if it were a claim for compensation for the acquisition of land for public purposes under the *Public Works Act 1912*.

297 Entry on land for inspections

(1) A water supply authority may at any time, by its employees or agents, enter any land (except an enclosed part occupied as a separate dwelling) for the purpose of finding out—

(a) the character and condition of the land or building, or

(b) the condition or location of any water management work used in connection with the land or building, or

(c) whether any use, consumption, waste, misuse or undue consumption of water supplied by a water supply authority is occurring, or

(d) whether any offence against this Act has been, or is being, committed.

(2) A water supply authority must not exercise the powers conferred by subsection (1) unless—

(a) reasonable written notice of its intention to do so has first been given to the landholder of the land, building or dwelling-house, or

(b) it authorises the entry after forming the opinion that the giving of the notice would cause undue delay.

(3) Reasonable force may be used to enter land, or a building other than a dwelling-house, under this section.

(4) If the powers of entry under this section are exercised—

(a) without notice being given, or

(b) by force,

the water supply authority must, without delay, notify such persons as it considers appropriate of the action taken.

(5) The water supply authority may, by notice in writing given to the landholder of the land or building, require all defective or improper work discovered on an inspection to be repaired, altered or removed within 24 hours or such longer period as is stated in the notice.

(6) If a notice under subsection (5) is not complied with, the water supply authority may, by its employees and agents, enter the land, building or dwelling-house and repair, alter or remove the defective or improper work.

(7) If a notice is given under subsection (5)—

(a) the costs and expenses of the entry and inspection by the water supply authority, and

(b) if the notice is not complied with, the costs and expenses of the water supply authority in acting under subsection (6),

are recoverable from the landholder as a service charge.

(8) If, on an inspection under this section—

(a) no defective or improper work is discovered, and

(b) no waste, misuse or undue consumption of water supplied by the water supply authority is occurring, and

(c) no offence against this Act is discovered,

the water supply authority must make good any damage or disturbance caused by it for the purposes of the inspection.

(9) In exercising its powers under this section, a water supply authority must do as little damage as practicable.

298 Power to break up roads

(1) A water supply authority may, on giving reasonable notice to persons likely to be affected, open and break up—

(a) the soil and pavement of a public road or public reserve, and

(b) any sewer, drain or tunnel in or under a public road or public reserve,

for the purpose of exercising its functions.

(2) The statutory body having the control and management of a public road or public reserve may, as prescribed by the regulations, require a water supply authority to comply with conditions in exercising its powers under subsection (1), including conditions for restoration of the surface and removal of rubbish.

(3) If a public road or public reserve is damaged by a leakage from, or a bursting of, a water supply authority’s water main or sewer main, the statutory body having the control and management of the public road or public reserve may require the water supply authority to make good the damage without delay.

(4) If a water supply authority fails—

(a) to comply with a condition in force under subsection (2), or

(b) to comply with a requirement under subsection (3),

the statutory body affected by the failure may remedy it and recover the cost of doing so as a debt owed to the statutory body by the water supply authority.

299 Altering position of conduits

(1) If—

(a) a water supply authority, in order to exercise its functions, needs an alteration to be made in the position of a conduit owned by another person, and

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

the water supply authority may serve on the person a written notice that complies with subsection (2).

(2) A notice must—

(a) specify the alteration needed, and

(b) require the alteration to be made within a reasonable time stated in the notice, and

(c) include an undertaking by the water supply authority to pay the reasonable cost of the alteration.

(3) If the alteration is not made as required by the notice, the water supply authority may make the alteration in such a manner as not to damage the conduit permanently or adversely affect its operation on completion of the alteration.

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

300 Obstruction of works

(1) If a person places a structure or other thing in or near a water supply authority’s water management work in such a manner as to interfere with the work, the water supply authority may—

(a) demolish and remove the structure or other thing, and

(b) repair the work, and

(c) recover the cost of doing so as a debt owing to the water supply authority by the person who placed the structure or other thing there.

(2) A water supply authority may apply for and obtain an injunction to prevent a structure or other thing being placed as referred to in subsection (1).

301 Finding source of pollution of water supply

(1) If water supplied by a water supply authority is being polluted, the water supply authority may, after giving reasonable notice to persons likely to be affected by its action, dig up the ground and try to find the source of the pollution.

(2) If it is found that a person given notice under this section is not responsible for the pollution, the water supply authority must bear the expenses of—

(a) the digging, examination, repair and reinstatement of the broken ground, and

(b) the repair of any damage caused by the water supply authority to the property of the person.

(3) A water supply authority may recover the expenses incurred by it as a debt due to the water supply authority by any person responsible for the pollution.

301A Power to give directions

(1) Without limiting Part 1 of Chapter 7, the Minister’s power to give directions under that Part may be exercised in relation to a water supply authority’s sewage work as if it were a water management work within the meaning of that Part.

(2) An appeal lies to the Land and Environment Court against the Minister’s decision to give such a direction in the same way as it lies against the Minister’s decision to give a direction under Part 1 of Chapter 7.

Division 4 Special areas

302 Special areas

(1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land described in the order to be a special area for a water supply authority.

(2) The Minister may recommend an order only if of the opinion that the exercise of the State’s water rights could be adversely affected unless the order is made.

303 Crown land in special areas

(1) Action may not be taken under the *Crown Land Management Act 2016* in respect of land within a special area for a water supply authority unless—

(a) a water supply authority has given its approval in writing, and

(b) any conditions to which the approval is subject are complied with.

(2) A water supply authority may, in a special area, exercise the functions of a Crown land manager under the *Crown Land Management Act 2016* without being appointed as such.

304 Exercise of certain functions in special areas

(1) A public agency may not, in relation to land within a special area for a water supply authority, exercise functions other than functions under this Part unless notice is first given, as prescribed by the regulations, to the water supply authority.

(2) On receipt of such a notice, the water supply authority may make such representations to the public agency as it thinks fit.

(3) A public agency may not exercise functions contrary to any such representations made by a water supply authority unless—

(a) at least 14 days' notice has been given to the water supply authority of the functions intended to be exercised, and

(b) that period has expired without the matter being referred to the Minister as a dispute for determination.

(4) In this section, ***public agency*** means—

(a) the Governor, or

(b) a Minister of the Crown, or

(c) a statutory body.

Division 5 Developer contributions to the construction of works

305 Application for certificate of compliance

(1) A person may apply to a water supply authority for a certificate of compliance for development carried out, or proposed to be carried out, within the water supply authority's area.

(2) An application must be accompanied by such information as the regulations may prescribe.

306 Authority may impose certain requirements before granting certificate of compliance

(1) This section applies to such kinds of development as are prescribed by the regulations for the purposes of this section.

(2) As a precondition to granting a certificate of compliance for development, a water supply authority may, by notice in writing served on the applicant, require the applicant to do either or both of the following—

(a) to pay a specified amount to the water supply authority by way of contribution towards the cost of such water management works as are specified in the notice, being existing works or projected works, or both,

(b) to construct water management works to serve the development.

(3) In calculating an amount for the purposes of subsection (2) (a)—

(a) the value of existing water management works and the estimated cost of projected water management works may be taken into consideration, and

(b) the amount of any government subsidy or similar payment is not to be deducted from the relevant value or cost of the water management works, and

(c) consideration is to be given to any guidelines issued for the time being for the purposes of this section by the Minister.

(4) If a water supply authority imposes a requirement under this section on the Crown, the Crown may request the Minister for Urban Affairs and Planning to determine whether such a requirement should be imposed and, if so, in what terms.

(5) The determination made by the Minister for Urban Affairs and Planning in response to such a request is final and is taken to be the determination of the water supply authority.

(6) Any water management works constructed in compliance with a requirement under this section are the property of the water supply authority.

307 Granting of certificates of compliance

(1) A water supply authority must grant a certificate of compliance for development—

(a) within 60 days after an application for the granting of such a certificate is made, or

(b) if, within that period, the water supply authority imposes a requirement on the applicant under this Division, as soon as it is satisfied that the requirement has been complied with.

(2) A water supply authority may be satisfied that a requirement under this Division has been complied with if the applicant lodges with the water supply authority such security for compliance with the requirement as the water supply authority may approve.

(3) If a water supply authority fails or refuses to give a compliance certificate within the

period of 60 days after an application is duly made in that regard, the applicant may appeal to the Land and Environment Court, within 12 months after the expiration of that period, against the failure or refusal.

Division 6 Finance

308 Orders for purpose of service charges

(1) The Governor may, by order published in the Gazette, declare any land described in the order to be a development area for the purposes of this Part.

(2) The Minister may, by order published in the Gazette, declare any land described in the order to be a drainage area, floodplain or river management area for the purposes of this Part.

(3) The Minister may, by order published in the Gazette, declare any industry specified in the order to be a special industry for the purposes of this Part.

(4) The Minister may, by order published in the Gazette, declare a period of 12 months to be the charging year for a water supply authority.

309 Connections

(1) On a water supply authority’s water main or a sewer main becoming available for connection, the water supply authority may—

(a) publish in the Gazette notice of its availability, and

(b) give such other notices as may be prescribed.

(2) A landholder of land to which a notice under subsection (1) (a) relates becomes liable—

(a) in the case of a water main, to payment of water service charges after the expiration of 21 days from publication of the notice, or

(b) in the case of a sewer main, to payment of sewerage service charges after the expiration of 21 days from publication of the notice.

(3) If a landholder does not make a connection to the water supply authority’s water main or sewer main before becoming liable under subsection (2), the water supply authority may make the connection at the expense of the landholder.

(4) Any amount due to a water supply authority for a connection made under subsection (3) is a charge on the land connected and may be recovered as a debt owed to the water supply authority by the landholder of the land.

(5) If a landholder of land fails—

(a) to connect the land to a water supply authority's water main or sewer main before becoming liable under subsection (2), or

(b) to do any work that by this Part is required to be done by the landholder,

the occupier of the land may make the connection or do the work and, in accordance with subsection (6), recover the cost from the landholder.

(6) An amount (including interest) recoverable under subsection (5) by an occupier from a landholder may be recovered—

(a) by deducting it from any rent from time to time payable to the landholder by the occupier, or

(b) as a debt owed to the occupier by the landholder.

(7) Any person desiring to connect premises with a water supply authority's water main or sewer main may (subject to such conditions as may be imposed by law) open up the surface and soil of any road or way, public or private, or any footpath or public reserve to the extent required to make the connection.

(8) Nothing in this section requires a water supply authority to allow a person to connect premises with the water supply authority's water main or sewer main.

310 Authority may levy service charges and impose fees and other charges

(1) A water supply authority may, in accordance with this Part, levy the following service charges on land within its area of operations—

(a) water service charges,

(b) sewerage service charges,

(c) drainage service charges,

(d) loan service charges,

(e) developmental works service charges,

(f) flood mitigation service charges,

(g) river management service charges,

(h) special industry service charges.

(2) A water supply authority may, in accordance with the regulations, impose fees and charges for any service or thing supplied or provided by it in the exercise of its functions under this Part.

(3) Without limiting subsection (2), a water supply authority may impose fees and

charges with respect to discharges into its sewerage system.

311 Land in respect of which a water supply authority may levy service charges

(1) A water supply authority may only levy water service charges on land—

(a) to which water is supplied, or

(b) to which, in the opinion of the water supply authority, it is reasonably practicable for water to be supplied,

from one of the water supply authority's water mains.

(2) A water supply authority may only levy sewerage service charges on land—

(a) from which sewage is discharged, or

(b) from which, in the opinion of the water supply authority, it is reasonably practicable for sewage to be discharged,

into one of the water supply authority's sewer mains.

(3) A water supply authority may only levy drainage service charges on land that is within a drainage area.

(4) A water supply authority may only levy developmental works service charges on land within a development area.

(5) A water supply authority may only levy flood mitigation service charges on land within a floodplain.

(6) A water supply authority may only levy river management service charges on land within a river management area.

(7) A water supply authority may only levy special industry service charges on land on which a special industry is conducted.

312 Certain land exempt from service charges

(1) A water supply authority may not levy service charges in respect of the lands described in Schedule 4.

(2) Subsection (1) does not apply to the following land—

(a) land that is within a public reserve or park that is the subject of a lease, licence or other authority under which a person carries on a trade or business,

(b) land that is vested in the Crown or a public body leased to any person for private purposes,

(c) land that is used or occupied by the Crown in connection with an undertaking declared by the Governor by proclamation published in the Gazette to be an industrial undertaking for the purposes of this section.

313 Classification of lands

(1) The regulations must specify the factor or factors according to which a water supply authority may classify land for the purpose of levying service charges.

(2) Without limiting the generality of subsection (1), the regulations may specify that a water supply authority may classify land according to any one or more of the following factors—

(a) the purpose for which the land is actually being used,

(b) the intensity with which the land is being used for that purpose,

(c) the purposes for which the land is capable of being used,

(d) the nature and extent of the water or sewerage services connected to the land.

(3) For the purposes of subsection (2) (c), land is not capable of being used for a purpose if the use of the land for that purpose would be in contravention of—

(a) the *Environmental Planning and Assessment Act 1979*, or

(b) any environmental planning instrument in force under that Act, or

(c) any other Act or law relating to the use of land.

314 Basis of levying service charges

The regulations must specify the basis or bases according to which a water supply authority may levy service charges.

315 Determinations by water supply authority

(1) Not later than 1 month before the beginning of each charging year a water supply authority must, in accordance with the regulations, determine the following matters for that charging year—

(a) the amount of money that it proposes to raise by way of service charges levied on land within its area of operations,

(b) the factor or factors according to which land within its area of operations is to be classified for the purposes of levying service charges,

(c) the basis or bases according to which service charges are to be levied,

(d) the rate at which service charges are to be levied on, or the maximum or

minimum service charges that are to be applicable to, land within its area of operations.

(2) In making a determination under this section, a water supply authority may have regard to the following—

(a) its estimation of the degree of benefit that accrues to land in respect of each service for which a charge is to be levied,

(b) its estimation of the degree to which each service is or may be used in relation to land in respect of which a charge is to be levied,

(c) its estimation of the cost involved in the construction, maintenance and operation of each service for which a charge is to be levied,

(d) such other matters as it considers relevant to the levying of charges for each such service.

(3) A determination under this section—

(a) is required to be approved by the Minister and does not have effect unless it is so approved, and

(b) must be published in the Gazette before the commencement of the charging year to which it relates, and

(c) takes effect on the commencement of the charging year to which it relates.

(4) A determination does not fail merely because it is not published in the Gazette before the commencement of the charging year to which it relates but, in that event, no person is liable for payment of the service charges to which the determination relates until the determination is published in the Gazette.

(5) A service charge determined under this section is levied on publication of the determination in the Gazette.

(6) If, for any reason—

(a) a determination under this section is not made before the charging year to which it relates, or

(b) there is any irregularity or alleged irregularity in the making of any such determination,

the Governor may extend the time for making the determination (whether or not that time has expired) and may authorise the water supply authority concerned to do anything necessary to cure any irregularity and to make a valid determination.

316 Assessment of service charges

(1) A water supply authority—

(a) must classify each parcel of land within its area of operations in respect of which a service charge is to be levied, and

(b) must assess the service charges payable for each such parcel of land,

in accordance with its determination under this Division.

(2) After it makes an assessment under this section, a water supply authority must, in accordance with the regulations, cause a notice to be served on the landholder of each parcel of land in respect of which a service charge has been levied.

(3) Such a notice must include information as to the following—

(a) the factor or factors according to which the parcel of land has been classified for the purposes of the levying of service charges,

(b) the basis or bases according to which service charges have been levied in respect of the parcel of land,

(c) if service charges have been levied on the basis of the value of the parcel of land, the value of the parcel on which those service charges have been levied,

(d) the rate at which service charges have been levied on, or the maximum or minimum service charges that are applicable to, the parcel of land,

(e) the amounts payable in respect of each service charge that has been levied in respect of the parcel of land.

(4) On service of such a notice, the landholder of the land to which the notice relates becomes liable for payment of the service charges specified in the notice.

317 Re-assessment of service charges

(1) This section applies to any land in respect of which a service charge has been levied on the basis of the value of the land.

(2) If a water supply authority becomes aware that the value (as calculated in accordance with this Division) of any parcel of land in respect of which it has levied a service charge for any charging year differs from the value (as so calculated) as at the date on which the service charge was originally assessed, the water supply authority may re-assess the service charge on the basis of the different value.

(3) A service charge may only be re-assessed as from the date from which the revised calculation of the value of the land has effect.

(4) After it makes a re-assessment under this section, a water supply authority must, in accordance with the regulations, cause a notice to be served on the landholder of the parcel of land in respect of which the re-assessment has been made.

(5) Such a notice must specify—

(a) the revised calculation of the value of the land, and

(b) the date from which the revised calculation of the value of the land has effect, and

(c) the revised assessment of the amounts payable in respect of each service charge that has been levied on that land.

(6) On service of such a notice, the service charges for which the landholder of the land to which the notice relates is liable are varied in accordance with the terms of the notice.

Division 7 Miscellaneous

318 Acquisition and divesting of land

(1) A water supply authority may acquire land (or an interest in land) for the purposes of this Part by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

(2) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be for an authorised work and the water supply authority is, in relation to that authorised work, taken to be the Constructing Authority.

(3) Part 3 of the *Public Works Act 1912* does not apply in respect of works constructed under this Part.

(4) With the consent of the local council concerned, the Governor may, by proclamation published in the Gazette, vest in a local council the estate or interest of a water supply authority in any land on which is situated a work of the water supply authority (whether wholly or partly completed).

318A Exposure of underground pipes

A person must not, except in an emergency or with lawful excuse, open any ground so as to expose a water supply authority’s pipe or other work unless the person has given the water supply authority at least 2 days’ written notice of his or her intention to do so.

Tier 2 penalty.

318B Unlicensed plumbing work

A person must not do any kind of plumbing work unless the person—

(a) holds an endorsed contractor licence or a supervisor certificate under the *Home Building Act 1989* that authorises the holder to do that kind of work, or

(b) does the work under the immediate supervision of the holder of such a licence or certificate, or

(c) holds a tradesperson certificate under the *Home Building Act 1989* that authorises the holder to do that kind of work under supervision, and does the work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).

Tier 3 penalty.

319 Compensation for interference or damage

(1) If—

(a) a person does, or causes to be done, any work that interferes with, or damages, any property of a water supply authority, and

(b) there was reasonable cause to believe that the interference or damage would result from the doing of the work,

the person is liable to compensate the water supply authority for the interference or damage.

(2) A water supply authority is not entitled to compensation both under this section and another provision of this Part for the same interference or damage.

320 Efficiency review

(1) The Minister may appoint a person to investigate and review the efficiency of a water supply authority in exercising its functions.

(2) A water supply authority must bear the costs of an investigation and review under this section that is requested by it.

(3) This section does not apply to a water supply authority listed in Part 3 of Schedule 3.

321 Appointment of administrator

(1) If a water supply authority refuses or fails to comply with a direction or requirement given or made by the Minister in relation to this Part, the Minister may, by order published in the Gazette—

(a) in the case of a water supply authority listed in Part 1 of Schedule 3, appoint an administrator to exercise all the functions, or specified functions, of the water supply authority, or

(b) in the case of a statutory body listed in Part 2 of Schedule 3, with the consent of

the Minister administering the Act by which the statutory body is constituted, appoint an administrator to exercise all the functions, or specified functions, of the water supply authority under this Part.

(2) An administrator has, during his or her term of office and to the exclusion of the water supply authority, the functions the administrator was appointed to exercise.

(3) Regulations may be made for or with respect to—

(a) the accommodation (if any) to be provided at the offices of a water supply authority for the administrator and his or her assistants, and

(b) requiring the employees of a water supply authority to assist, and to refrain from obstructing, the administrator in the exercise of his or her functions.

(4) This section does not apply to a water supply authority listed in Part 3 of Schedule 3.

322 Regulations

(1) The regulations may make provision for or with respect to the following matters—

(a) fees and charges, including charges for the supply of water,

(b) the imposition of water use restrictions,

(c) (Repealed)

(d) the carrying out of plumbing work,

(e) the planning and management of water supply, sewerage and drainage systems,

(f) the design and construction of water supply, sewerage and drainage systems,

(g) the establishment and enforcement of customer service standards,

(h) the regulation and prohibition of discharges into sewerage and drainage systems,

(i) the waiver, reduction, deferral and refund of fees, service charges and other charges,

(j) the control and management of special areas.

(2) A regulation made for or with respect to a special area prevails to the extent of any inconsistency with a statutory instrument made under another Act, other than a SEPP made under the *Environmental Planning and Assessment Act 1979*.

(3) If any requirement with respect to plumbing work imposed by the regulations is inconsistent with the requirements imposed by the *Plumbing and Drainage Act 2011* or the regulations under that Act with respect to the same work, that Act and any regulations under that Act prevail to the extent of the inconsistency.

Chapter 7 Enforcement

Part 1 Directions to landholder and other persons

Division 1 Preliminary

323 Definitions

(1) In this Part—

landholder, in relation to land, includes any person having the care, control or management of the land.

specified measures include measures that involve doing, or refraining from doing, any act.

(2) In this Part—

(a) a power to direct a person to take specified measures includes a power to direct in what circumstances, in what order and in what manner those measures are to be taken, and

(b) a reference to a water management work of any kind includes a reference to a corresponding kind of work to which Part 2, 5 or 8 of the *Water Act 1912* extends, and

(b1) a reference to an approval or an access licence includes a reference to an entitlement (within the meaning of clause 2 of Schedule 10) that confers a corresponding authority, and

(c) a reference to this Act or the regulations extends to the *Water Act 1912* and the regulations under that Act.

(3) For the purpose of applying this Part to the *Water Act 1912* and the regulations under that Act, references to this Act in section 390 of this Act, and in the definition of ***authorised officer*** in the Dictionary to this Act, extend to the *Water Act 1912* and the regulations under that Act.

Division 2 Conservation of water, metering and audits

324 Temporary water restrictions

(1) If satisfied that it is necessary to do so in the public interest (such as (but not limited to) to cope with a water shortage, threat to public health or safety or to manage water for environmental purposes), the Minister may, by order in writing, direct that, for a specified period, the taking of water from a specified water source is prohibited, or is subject to specified restrictions, as the case requires.

(2) If satisfied that it is necessary to do so—

(a) to maintain or protect water levels in an aquifer, or

(b) to maintain, protect or improve the quality of water in an aquifer, or

(c) to prevent land subsidence or compaction in an aquifer, or

(d) to protect groundwater-dependent ecosystems, or

(e) to maintain pressure, or to ensure pressure recovery, in an aquifer,

the Minister may, by order in writing, direct that, within a specified area and for a specified period, the taking of water from that aquifer, or from any other aquifer that is above, below or adjacent to that aquifer, is prohibited, or is subject to specified restrictions, as the case requires.

(3) The Minister must cause a copy of an order under this section to be published in the Gazette and notice of the order to be published in the authorised manner.

(4) If satisfied that circumstances require publication of an order under subsection (1) or (2) sooner than can be achieved under subsection (3), the Minister may, prior to its publication under that subsection, cause notice of the order to be broadcast by a television or radio station transmitting to the part or parts of the State within which the water source is situated.

(5) An order under this section takes effect when it is first published or broadcast in accordance with subsection (3) or (4), as the case may be, or at such later date or time as may be specified in the order.

(6) Unless sooner repealed, an order under this section ceases to have effect on the expiry of the period specified in the order.

(7) In the event of any inconsistency between an order under this section and any other provision of this Act relating to the distribution, sharing or taking of water (including any order made, or any condition imposed on an access licence or approval, under this Act), the order under this section prevails to the extent of the inconsistency.

(8) Nothing in this section gives rise to a claim for compensation under Division 9 of Part 2 of Chapter 3.

325 Directions concerning waste of water

The Minister may, by order in writing served on a landholder, direct the landholder to take specified measures to ensure that—

(a) water taken and used under the authority of—

(i) a domestic and stock right, or

(ii) a domestic and stock access licence,

is taken and used in accordance with the mandatory guidelines established under section 336B, and

(b) water taken and used under the authority of—

(i) a domestic and stock right, or

(ii) a domestic and stock access licence,

is beneficially used, and is not wasted or improperly used, and

(c) water taken by means of a water supply work situated on the land, or used under the authority of a water use approval applying to the land, is beneficially used, and is not wasted or improperly used.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

326 Directions to install, replace, use and maintain metering equipment

(1) The Minister may, by order in writing served on—

(a) a landholder on whose land is situated a water supply work, or

(b) any person having the control and management of such a work,

direct the landholder or person to take specified measures to install, replace, use or to properly maintain metering equipment for use in connection with that work.

(2) Unless the direction otherwise specifies, a direction to take specified measures to install or replace metering equipment is taken to include—

(a) a direction that the equipment be properly maintained, and

(b) a direction that the equipment not be used unless it is properly sealed.

(2A) A direction under this section may specify the only person or persons who may install, replace, maintain or seal metering equipment.

(3) Metering equipment is properly maintained and properly sealed only if it is maintained and sealed by a duly qualified person or a person specified under subsection (2A).

(4) (Repealed)

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

326A Compliance audits

(1) The Minister may, by order in writing served on the holder of an access licence or an approval, direct the holder to undertake a compliance audit to the satisfaction of the Minister.

(2) The direction may require the audit to be undertaken by either or both the holder or a compliance auditor and may require compliance audits to be undertaken at intervals specified by the direction.

(3) A compliance audit is an evaluation of the activities of the holder in relation to the taking of water and other activities regulated under this Act to provide information to the holder and to the persons administering this Act on compliance with legal requirements under this Act relating to those activities.

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

(a) the payment of the costs of compliance audits by holders,

(b) requirements for the form and content of compliance audits,

(c) certification of compliance audits,

(d) persons who are qualified to undertake compliance audits.

326B Use of information

(1) Any information in an audit report or other document supplied to the Minister in connection with a compliance audit may be taken into consideration by the Minister and used for the purposes of this Act.

(2) Without limiting the above, any such information is admissible in evidence in any prosecution of the holder of an access licence or approval for any offence (whether under this Act or otherwise).

Division 3 Unlawful works and activities

327 Stop work order regarding unlawful construction or use of water management work

(1) This section applies to a water management work that, in the Minister’s opinion, is being constructed or used, or is about to be constructed or used, in contravention of this Act.

(2) The Minister may, by order in writing served on any person having control or management of the water management work, direct the person to take specified measures—

(a) to prohibit or discontinue its construction or use, or

(b) to construct or use the work only as specified.

(3) Without limiting subsection (2), the landholder on whose land the water management work is situated, or is proposed to be situated, is taken to have control and management of the work.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

328 Stop work order regarding unlawful controlled activity or aquifer interference activity

(1) This section applies to a controlled activity or aquifer interference activity that, in the Minister's opinion, is being carried out, or is about to be carried out, in contravention of this Act.

(2) The Minister may, by order in writing served on any person carrying out the controlled activity or aquifer interference activity, direct the person to take specified measures—

(a) to prohibit or discontinue that activity, or

(b) to carry out that activity only as specified.

(3) Without limiting subsection (2), the landholder on whose land a controlled activity or aquifer interference activity is being carried out, or is proposed to be carried out, is taken to be carrying out that activity.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

329 Removal of unlawful water management works

(1) This section applies to a water management work for which no water management work approval is in force.

(2) The Minister may, by order in writing served on any person having control or management of the work, direct the person to take specified measures to demolish, remove, modify or dismantle the work or otherwise render it ineffective.

(3) Such a direction may be given even if the work is not being used or is not capable of being used.

(4) Such a direction may not be given in relation to a water supply work that is being used solely—

(a) to take water from a water source pursuant to a landholder's domestic and stock rights, or

(b) to capture and store overland flow water pursuant to a landholder's harvestable

rights.

(5) Without limiting subsection (2), the landholder on whose land the work is situated is taken to have control and management of the work.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

Division 4 Temporary stop work orders

330 Temporary stop work order to protect public interest

(1) If satisfied that the public interest so requires, the Minister may, by order in writing served on—

(a) a landholder on whose land is situated a water management work, or

(b) any person having the control or management of such a work, or

(c) any person by whom a controlled activity or aquifer interference activity is being carried out,

direct that, for a specified period, the use of that work, or the carrying out of that activity, is prohibited, or is subject to specified restrictions or specified measures, as the case requires.

(2) Such a direction may be given in relation to a flood work only so as to regulate the use of those parts of the work (including, without limitation, sluices and flood gates) as are capable of being operated to influence the flow of water.

Division 5 Protection of public health, public safety and the environment

331 Directions to holders of basic landholder rights

The Minister may, by order in writing served on—

(a) a landholder on whose land is situated a water supply work that is being used—

(i) to take water from a water source pursuant to the landholder’s domestic and stock rights, or

(ii) to capture and store overland flow water pursuant to the landholder’s harvestable rights, or

(b) any person having the control or management of such a work,

direct the landholder or person to take specified measures to protect the environment, to preserve basic landholder rights or to overcome a threat to public health.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

332 Directions concerning damage caused by straying stock

The Minister may, by order in writing served on any landholder, direct the landholder to take specified measures—

(a) to prevent stock from straying from the landholder's land into or onto a water management work that is owned by, or is under the control or management of, the Ministerial Corporation, or

(b) to repair any damage caused to any such water management work as a consequence of stock having strayed from the landholder's land.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

333 Directions to protect water sources

(1) This section applies if the Minister is of the opinion that—

(a) the construction or use of a water management work, or

(b) a controlled activity or aquifer interference activity,

is having, has had, or is likely to have, an adverse effect on a water source or waterfront land.

(2) The Minister may, by order in writing served on—

(a) the person having control or management of the water management work, or

(b) the person who has carried out, is carrying out or proposes to carry out the controlled activity or aquifer interference activity,

direct the person to take specified measures to prevent, minimise or mitigate any adverse effect on the water source or waterfront land as a consequence of the construction or use of the work or the carrying out of the activity.

(3) Without limiting subsection (2), the measures that may be specified in a direction under this section include—

(a) a direction to repair any damage caused by the construction or use of the water management work or the carrying out of the controlled activity or aquifer interference activity, and

(b) a direction to rehabilitate any water source or waterfront land that has been adversely affected by the construction or use of the water management work or

the carrying out of the controlled activity or aquifer interference activity, and

(c) a direction to ensure that the construction or use of the water management work, or the carrying out of the controlled activity or aquifer interference activity, will not in future adversely affect any water source or waterfront land.

(4) Without limiting subsection (2)—

(a) the person who, at the time of the construction or use of a water management work to which this section applies, was the landholder on whose land the work was situated is taken to have control and management of the work, and

(b) the landholder on whose land a water management work is situated, or is proposed to be situated, is taken to have control and management of the work, and

(c) the person who, at the time a controlled activity or aquifer interference activity to which this section applies, was the landholder on whose land the activity was carried out is taken to be carrying out the activity, and

(d) the landholder on whose land a controlled activity or aquifer interference activity is carried out, or is proposed to be carried out, is taken to be carrying out the activity.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

334 Directions to prepare reports

(1) A direction served on a person under this Part may require the person to prepare, and submit to the Minister, reports as to any of the following—

(a) the measures the person proposes to take for the purpose of complying with the direction,

(b) the progress made by the person in implementing any such measures.

(2) The direction may also prohibit the person from implementing any such measures until they have been approved by the Minister.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

Division 6 Enforcement by Land and Environment Court

335 Land and Environment Court may grant injunctions

On the application of the Minister, the Land and Environment Court may grant an

injunction directing any person to whom a direction has been given under this Part to comply with the direction.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

336 Restraint of breaches of this Act

(1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations.

(2) Any such proceedings may be brought whether or not proceedings have been instituted for an offence against this Act or the regulations.

(3) Any such proceedings may be brought whether or not any right of the person has been or may be infringed by or as a consequence of the breach.

(4) Any such proceedings may be brought by a person on the person's own behalf or on behalf of another person (with their consent), or of a body corporate or unincorporate (with the consent of its committee or other controlling body), having like or common interests in those proceedings.

(5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

(6) If the Land and Environment Court is satisfied that a breach has been committed or that a breach will, unless restrained by the order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.

(7) In this section, ***breach*** includes a threatened or apprehended breach.

Division 7 General

336A Remedial measures may be taken by Minister

(1) If a person fails to take the measures specified in a direction under this Part, the Minister may authorise any other person to take those measures.

(2) The amount of any costs and expenses incurred by the authorised person as a result of the taking of those measures is recoverable in a court of competent jurisdiction as a debt due to the Ministerial Corporation from the person on whom the direction was served.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

336B Mandatory guidelines

(1) The Minister may, by order published on the NSW legislation website, establish mandatory guidelines with respect to the taking and use of water for domestic consumption and stock watering by landholders or other persons authorised to take and use water for either or both of those purposes under—

(a) a domestic and stock right, or

(b) a domestic and stock access licence.

(2) Before establishing any guidelines under this section, the Minister must prepare draft guidelines.

(3) The Minister—

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

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

(4) The public notice referred to in subsection (3) (a)—

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

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

(c) must be published in the authorised manner.

(5) During the submission period, any person may make written submissions to the Minister on the draft guidelines.

(6) After complying with the requirements of this section, the Minister—

(a) may establish guidelines under this section in accordance with the draft guidelines, or

(b) may establish guidelines under this section in accordance with the draft guidelines, but with such alterations as the Minister thinks fit, or

(c) may decide not to proceed with the draft guidelines.

(7) The Minister is to cause—

(a) a copy of any guidelines established under this section as in force from time to time to be published on the Department’s internet site, and

(b) copies of the guidelines as in force from time to time to be made available for inspection by members of the public during ordinary business hours at such places as the Minister directs.

(8) A failure to comply with subsection (7) does not affect the validity of any guidelines established under this section.

(9) In this section—

domestic consumption, in relation to land, includes (but is not limited to) domestic consumption within the meaning of section 52.

stock watering, in relation to land, includes (but is not limited to) stock watering within the meaning of section 52.

336C Contravention of certain directions

(1) A person who fails to comply with a direction under this Part is guilty of an offence.

Tier 2 penalty.

(2) For the avoidance of doubt, a person fails to comply with a direction under this Part if the direction requires compliance within a specified period and the direction is not fully complied with within that period.

336D Prior notice of direction not required

The Minister is not required to notify any person who may be affected by a direction under this Part before giving the direction.

Division 8 Enforceable undertakings

336E Enforcement of undertakings

(1) The Minister may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Minister, the Ministerial Corporation, the Natural Resources Access Regulator or any other public authority has a function under this Act.

(2) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Minister. The consent of the Minister is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.

(3) The Minister may apply to the Land and Environment Court for an order under subsection (4) if the Minister considers that the person who gave the undertaking has breached any of its terms.

(4) The Land and Environment Court may make all or any of the following orders if it is

satisfied that the person has breached a term of the undertaking—

(a) an order directing the person to comply with that term of the undertaking,

(b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,

(c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,

(d) an order requiring the person to prevent, control, abate or mitigate any actual or likely damage to the built or natural environment caused by the breach,

(e) an order requiring the person to make good any actual or likely damage to the built or natural environment caused by the breach,

(f) any other order the Court considers appropriate.

(5) The Ministerial Corporation, the Natural Resources Access Regulator or another public authority may recommend that the Minister accept an undertaking under this section that the Ministerial Corporation, the Natural Resources Access Regulator or public authority has negotiated with a person proposing to give the undertaking in connection with a function of the public authority under this Act.

(6) Nothing in this section prevents proceedings being brought for the contravention or alleged contravention of this Act to which the undertaking relates.

336F Notice of decision and reasons for decision

The Minister must give the person seeking to make an undertaking written notice of the Minister’s decision to accept or reject the undertaking and of the reasons for the decision.

Part 2 Other enforcement powers

Division 1 Preliminary

337 Purposes for which powers under Part may be exercised

(1) Powers may be exercised under this Part for any of the following purposes—

(a) for determining whether there has been compliance with or a contravention of this Act or the regulations or any access licence, approval, notice or requirement issued or made under this Act,

(b) for obtaining information or records for purposes connected with the administration of this Act,

(c) generally for administering this Act and protecting the environment.

(2) In this Part, a reference to this Act or the regulations extends to the *Water Act 1912* and the regulations under that Act.

(3) For the purpose of applying this Part to the *Water Act 1912* and the regulations under that Act, references to this Act in section 390 of this Act, and in the definition of ***authorised officer*** in the Dictionary to this Act, extend to the *Water Act 1912* and the regulations under that Act.

337A Effect on other functions

Nothing in this Part affects any function under any other provision of this Act or under any other Act.

337B Extended meaning of "occupier"

In this Part, ***occupier***, in relation to land, includes any person having the care, control or management of the land.

Division 2 Powers to require information or records

338 Application of Division

This Division applies whether or not a power of entry under Division 3 is being or has been exercised.

338A Powers of authorised officers to require information and records

(1) The Minister may, by notice in writing given to a person, require the person to furnish to the Minister such information or records (or both) as he or she may require for the purposes of this Act.

(2) An authorised officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as he or she may require for the purposes of this Act.

(3) A notice under this Division must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.

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

(5) The person to whom any record is furnished under this Division may take copies of it.

(6) If any record required to be furnished under this Division is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

338B Power of authorised officers to require answers

(1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Act to answer questions in relation to those matters.

(2) The Minister may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.

(3) Answers given by a person nominated under subsection (2) bind the corporation.

(4) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.

(5) The place and time at which a person may be required to attend under subsection (4) is to be—

(a) a place or time nominated by the person, or

(b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the authorised officer that is reasonable in the circumstances.

(6) The authorised officer may, in the notice under subsection (4) or in a subsequent notice, authorise the person to answer the questions using an audio link or audio visual link of a kind approved by the authorised officer.

(7) If the questions are to be answered by the person using an audio link or audio visual link—

(a) the place at which the person is required to attend is taken to be any place having adequate facilities for the answering of questions in that way at the time nominated under subsection (5), and

(b) the person must ensure the audio link or audio visual link is operated appropriately so that the answers given to the questions are clear to the authorised officer.

(8) In this section—

audio link means technology that enables continuous and contemporaneous audio communication between persons at different places, including telephones.

audio visual link means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video conferencing.

(9) (Repealed)

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

338C Recording of evidence

(1) An authorised officer may cause any questions and answers to questions given under this Division to be recorded if the officer has informed the person who is to be questioned that the record is to be made.

(2) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the authorised officer.

(3) A copy of any such record must be provided by the authorised officer to the person who is questioned as soon as practicable after it is made.

(4) A record may be made under this section despite the provisions of any other law.

338D Power of authorised officers to demand name and address

(1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have committed, or to be committing, an offence against this Act or the regulations to state his or her full name and residential address.

(2) An authorised officer may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence to fail to comply with any such request.

(3) A person who, being required to do so under this section—

(a) refuses to state his or her name or residential address, or

(b) states a name or residential address that in the opinion of the authorised officer is false,

may without any other warrant than this Act be apprehended by the authorised officer and taken before a Magistrate or court officer to be dealt with according to law.

(4) A Magistrate or court officer before whom a person is taken under subsection (3) may make a bail decision under the *Bail Act 2013* in respect of the person.

(5) If the person has not been charged with an offence, the *Bail Act 2013* applies as if the person were accused of an offence.

(6) For the purpose of applying the *Bail Act 2013*, a court officer has the same functions as an authorised justice under that Act.

(7) In this section—

court officer means an authorised officer under the *Criminal Procedure Act 1986*.

Division 3 Powers of entry and search of premises

339 Powers of authorised officers to enter premises

(1) An authorised officer may enter any premises at any reasonable time.

(2) A power to enter premises conferred by this Act authorises entry by foot, by vehicle, vessel or aircraft or by any other means.

(3) Entry may be effected under this Act by an authorised officer with the aid of such police officers as the authorised officer considers necessary and with the use of reasonable force.

(4) Entry may be effected to any premises with the authority of a search warrant under section 339C.

339A Entry into residential premises only with permission or warrant

This Division does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under section 339C.

339B Powers of authorised officers to do things at premises

(1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).

(2) An authorised officer may do any or all of the following—

(a) examine and inspect any works,

(b) take and remove samples,

(c) make such examinations, inquiries and tests as the authorised officer considers necessary,

(d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,

(e) require records to be produced for inspection,

(f) examine and inspect any records,

(g) copy any records,

(h) seize anything that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations,

(i) for the purposes of paragraph (h), direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier,

(j) do any other thing the authorised officer is empowered to do under this Part.

(3) The power to seize anything connected with an offence includes a power to seize—

(a) a thing with respect to which the offence has been committed, and

(b) a thing that will afford evidence of the commission of the offence, and

(c) a thing that was used for the purpose of committing the offence.

(4) In this section, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

339C Search warrants

(1) An authorised officer under this Act may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant if the authorised officer under this Act believes on reasonable grounds that—

(a) a provision of this Act or the regulations is being or has been contravened at any premises, or

(b) there is in or on any premises matter or a thing that is connected with an offence under this Act or the regulations.

(2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer under this Act named in the warrant—

(a) to enter the premises, and

(b) to exercise any function of an authorised officer under this Division.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) In this section—

matter or a thing connected with an offence means—

(a) a matter or a thing with respect to which the offence has been committed, or

(b) a matter or a thing that will afford evidence of the commission of an offence, or

(c) a matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.

offence includes an offence that there are reasonable grounds for believing has been, or is to be, committed.

339D Authorised officers may request assistance

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

339E Assistance to be given to authorised officers

(1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Division in connection with any premises.

(2) The Minister may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.

(3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

339F Care to be taken

In the exercise of a power of entering or searching premises under this Division, the authorised officer must do as little damage as possible.

339G Compensation

The Minister must compensate all interested parties for any damage caused by the authorised officer in exercising a power of entering premises (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the authorised officer in the exercise of the power of entry.

Division 4 General

340 Identification

(1) Every authorised officer is to be provided with evidence of his or her authority as an authorised officer.

(2) In the course of exercising the functions of an authorised officer, the officer must, if requested to do so by any person affected by the exercise of any such function, produce to the person the officer's evidence of authority.

340A Offences

(1) A person must not, without lawful excuse, neglect or fail to comply with a requirement made of the person under this Part.

Tier 2 penalty.

(2) A person must not furnish any information or do any other thing in purported compliance with a requirement made under this Part, knowing that it is false or misleading in a material respect.

Tier 2 penalty.

(3) A person must not threaten, hinder, obstruct or delay an authorised officer in the exercise of the authorised officer's powers under this Part.

Tier 2 penalty.

(4) A person must not impersonate an authorised officer.

Tier 2 penalty.

340B Provisions relating to requirements to furnish records, information or answer questions

(1) A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

(2) A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.

(3) However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if—

(a) the person objected at the time to doing so on the ground that it might incriminate the person, or

(b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.

(4) Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

(5) Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground—

(a) that the record or information had to be furnished or the answer had to be given, or

(b) that the record or information furnished or answer given might incriminate the person.

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

340C Revocation or variation

(1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.

(2) A notice may be varied by modification of, or addition to, its terms and specifications.

(3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.

(4) A notice may only be revoked or varied by the Minister or by the person who gave it.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

340D Extraterritorial application

An order, direction or notice may be given under this Chapter to a person in respect of a matter even though the person is outside the State or the matter occurs or is located outside the State, so long as the matter affects a matter to which this Act relates.

Part 3 Offences

341 (Repealed)

342 Destruction, damage and interference with certain works

(1) A person must not destroy, damage or interfere with—

(a) any work that is owned by, or is under the control and management of, the Minister, the Ministerial Corporation, a water supply authority, an irrigation corporation, a private water corporation or a private water trust, or

(b) any mark, peg, stake or level fixed for the purposes of this Act.

Tier 2 penalty.

(2) A person must not deposit anything in any work that is owned by, or is under the control and management of, the Minister, the Ministerial Corporation, a water supply authority, an irrigation corporation, a private water corporation or a private water trust.

Tier 2 penalty.

(3) A person is not guilty of an offence against this section if the person establishes that the act giving rise to the alleged offence was done with lawful authority.

343 Taking water from public or private works

(1) A person must not take water from any water supply work that is owned by, or is under the control and management of, the Minister, the Ministerial Corporation, a water supply authority, an irrigation corporation, a private water corporation or a private water trust, except with the authority of the Minister, that corporation, authority or trust.

Tier 2 penalty.

(2) A person is not guilty of an offence against this section if the person establishes that the act giving rise to the alleged offence was done with lawful authority.

(3) In subsection (1), a reference to a water supply work, in relation to a water supply authority, is a reference to a water supply work within the meaning of Part 2 of Chapter 6.

344 False or misleading information

A person must not, in or in connection with any application under this Act or the regulations, make a statement that the person knows to be false or misleading in a material particular.

Tier 2 penalty.

345 Harm to aquifers and waterfront land

(1) A person who harms an aquifer or waterfront land, and does so intentionally or negligently, is guilty of an offence.

Tier 1 penalty.

(2) A person who harms an aquifer or waterfront land is guilty of an offence.

Tier 2 penalty.

(3) It is a defence to a prosecution under this section if the accused person establishes that the conduct that harmed the aquifer or waterfront land—

(a) was essential for the carrying out of—

(i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or

(ii) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or

(iii) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or

(iv) a project approved under Part 3A of that Act, or

(v) infrastructure approved under Part 5.1 of that Act, or

(b) was authorised to be done by or under the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or

(c) was authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

(4) In this section, ***harm***, in relation to an aquifer or waterfront land, means any act or omission that adversely affects, the capacity of the aquifer or waterfront land to hold or carry water.

346 Unlicensed bore drilling

A person must not construct a water bore otherwise than in accordance with a bore driller’s licence that is held by that person and that authorises the person to construct water bores.

Tier 2 penalty.

347 Ancillary offences

A person who—

(a) causes or permits the commission of an offence against this Act or the regulations, or

(b) aids, abets, counsels or procures another person to commit an offence against this Act or the regulations, or

(c) attempts to commit an offence against this Act or the regulations, or

(d) conspires to commit an offence against this Act or the regulations,

is guilty of that offence and liable to the penalty prescribed by this Act or the regulations in relation to that offence.

347A–352 (Repealed)

Part 3A Court orders in connection with offences

353 Operation of Part

(1) This Part applies where a court finds a person guilty of an offence against this Act.

(2) In this Part—

harm to the environment includes harm to any water source or to any waterfront land.

the court means the court that finds the offence proved.

the offender means the person who is found to have committed the offence.

353A Orders generally

(1) One or more orders may be made under this Part against the offender.

(2) Orders may be made under this Part in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

353B Orders for restoration and prevention

The court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow)—

(a) to prevent, control, abate or mitigate any harm to the environment caused by the commission of the offence, or

(b) to make good any resulting environmental damage, or

(c) to prevent the continuance or recurrence of the offence.

353C Orders for costs, expenses and compensation at time offence proved

(1) The court may, if it appears to the court that—

(a) a public authority has incurred costs and expenses in connection with—

(i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or

(ii) making good any resulting environmental damage, or

(b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.

(2) The Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the jurisdictional limit of the Local Court under the *Civil Procedure Act 2005*.

353D Recovery of costs, expenses and compensation after offence proved

(1) If, after the court finds the offence proved—

(a) a public authority has incurred costs and expenses in connection with—

(i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or

(ii) making good any resulting environmental damage, or

(b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

the public authority or person may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.

(2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

353E Orders regarding costs and expenses of investigation

(1) The court may, if it appears to the court that the Minister has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Minister the costs and expenses so incurred in such amount as is fixed by the order.

(2) In this section—

costs and expenses, in relation to the investigation of an offence, means the costs and expenses—

(a) in taking any sample or conducting any inspection, test, measurement or analysis, or

(b) of transporting, storing or disposing of evidence,

during the investigation of the offence.

353F Orders regarding monetary benefits

(1) The Land and Environment Court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.

(2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.

(3) In this section—

monetary benefits means monetary, financial or economic benefits.

the court does not include the Local Court.

353G Additional orders

(1) The court may do any one or more of the following—

(a) it may order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its environmental and other consequences and any other orders made against the offender,

(b) it may order the offender to carry out, or contribute a specified amount to the cost of carrying out, a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,

(c) it may order the offender to attend, or cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court.

(2) The Local Court is not authorised to make an order referred to in subsection (1) (b) or (c).

(3) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.

(4) If the offender fails to comply with an order under subsection (1) (a), the prosecutor or a person authorised by the prosecutor may take action to carry out the order.

(5) The reasonable cost of taking action referred to in subsection (4) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.

353H Offence

A person who fails to comply with an order under this Part (except an order under section 353C, 353D or 353E) is guilty of an offence.

Tier 2 penalty.

Part 4 Recovery of rates, charges and other money

Division 1 Recovery of rates, charges and other amounts by charging authorities

354 Definition

In this Part, ***charging authority*** means the Minister, an irrigation corporation, a private water corporation, a private water trust or a water supply authority.

355 Certain rates and charges to be a charge on land

(1) A rate or charge imposed on the owner of any land is a charge on the land to which the charge relates.

(2) A charge imposed for a service or thing supplied or provided in connection with a specific parcel of land is a charge on the land.

(3) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

356 Interest on rates and charges

A charging authority may charge interest on overdue rates and charges at a rate not exceeding the rate of interest payable for the time being on an unpaid judgment of the Supreme Court.

357 Recovery of rates, charges and other money

(1) Any rate or charge or other money due to a charging authority under this Act may be recovered in any court of competent jurisdiction as if it were a debt due to the charging authority.

(2) An unsatisfied judgment or order of any court for the recovery of any rate or charge from any person is not a bar to its recovery from any other person who is liable under this Act for its payment.

358 Joint owners

(1) If land is owned or held jointly by two or more persons, such persons are jointly and severally liable to the charging authority for the rate, but as between themselves each are only be liable for such part of the rate as is proportionate to his or her interest in the land.

(2) If any of such persons pays to the charging authority more than his or her proportionate part, he or she may recover the excess by way of contribution from the others.

359 Sale of land for unpaid rates and charges

(1) This section applies to rates and charges imposed under this Act by the Minister or by a water supply authority, private water corporation or private water trust.

(2) The provisions of Division 5 of Part 2 of Chapter 17 of the *Local Government Act 1993* apply to land in respect of which a rate or charge (being a rate or charge that is, by virtue of this Part, a charge on land) remains unpaid in the same way as they apply to land in respect of which rates and charges under that Act remain unpaid.

(3) For the purpose of applying the provisions of Division 5 of Part 2 of Chapter 17 of the *Local Government Act 1993* to land in respect of which a rate or charge remains unpaid—

(a) a reference in those provisions to a council is to be read as a reference to the Minister or to a water supply authority, private water corporation or private water trust, as the case requires, and

(b) a reference to a general manager or public officer is to be read as a reference to the Secretary or to the principal officer of a water supply authority, private water corporation or private water trust, as the case requires, and

(c) a reference to a member of staff of a council is to be read as a reference to a member of staff of the Department or to an employee of a water supply authority, private water corporation or private water trust, as the case requires, and

(d) a reference to a rating authority is to be read as including a reference to a council.

360 Certificate as to amount due

(1) A charging authority must, on written application being made to it and payment of the fee determined by it, issue to the applicant a certificate—

(a) containing particulars of any amounts payable to the authority in respect of a parcel of separately assessed land, or

(b) to the effect that there are no such amounts.

(2) An application for a certificate must—

(a) specify the name and address of the applicant, and

(b) identify the land to which the application relates.

(3) Such a certificate is conclusive proof, in favour of a purchaser in good faith and for value of the land to which the certificate relates that, at the date of its issue, no amounts were payable to the charging authority in respect of that land other than such amounts as are specified in the certificate.

361 Liability where an estate or interest is transferred

(1) A person who disposes of his or her estate or interest in any land in respect of which any rates or charges have been or may be levied remains liable for rates or charges to the same extent as if the person had not disposed of his or her estate or interest in the land, if the rates or charges are levied either—

(a) before the person disposed of his or her estate or interest in the land, or

(b) before the person has given to the charging authority the prescribed notice of disposal.

(2) If any person who disposes of land to another person pays any amount to the charging authority in respect of rates or charges levied after the land disposed of but before the prescribed notice is given to the authority, the person by whom the amount was paid may recover the amount from the person to whom the land was disposed.

(3) As between an owner of land and any other person from or to whom the owner derives or disposes of his or her estate or interest in the land, rates or charges under this Act are to be considered as accruing from day to day and are apportionable accordingly.

362 Liability where a person becomes entitled to an estate or interest

(1) An owner of land is liable for all arrears of rates and charges owing by any previous owner of the land, despite the fact that the new owner acquired the land after the rates or charges were levied.

(2) If any person who becomes an owner of land pays to the charging authority any rates or charges in respect of that land that were levied before the person became the owner, the person may recover from the previous owner such part of the rates or charges as was levied in respect of the period during which the previous owner was the owner of the land.

Division 2 Provisions relating to access licences

362A Joint owners

(1) If an access licence is co-held by two or more co-holders, those co-holders are jointly and severally liable to the Minister for the fees, charges and civil penalties relating to the licence, but as between themselves each are only liable for such part of those fees, charges and civil penalties as is proportionate to his or her interest in the licence.

(2) If any of those co-holders pays to the Minister more than his or her proportionate part, he or she may recover the excess by way of contribution from the others.

362B Certificate as to charges outstanding in relation to access licences

(1) The Minister may, in relation to any access licence, issue a certificate to the effect that, as at the date on which the certificate is issued—

(a) a specified amount is payable in relation to the access licence pursuant to fees, charges and civil penalties imposed under this Act, or

(b) no amount is so payable.

(2) Such a certificate is conclusive proof that, as at the date on which it was issued, no amounts were payable in respect of the access licence other than such amounts as are specified in the certificate.

362C Unpaid fees, charges and civil penalties

(1) Any civil penalty imposed by the Minister under this Act that remains unpaid is recoverable in any court of competent jurisdiction as a debt due to the Crown.

(2) If a fee, charge or civil penalty imposed by the Minister under this Act relates to an access licence, the fee, charge or civil penalty may be recovered from the holder of the licence who incurred the fee, charge or penalty or the holder of the licence for the time being.

(3) Despite subsection (2), if a person surrenders an access licence, any fee, charge or civil penalty imposed by the Minister under this Act that relates to the licence may be recovered from that person.

Part 5 Legal proceedings and appeals

Division 1 Legal proceedings

363 Offences by corporations

(1) If a corporation commits an offence against this Act or the regulations—

(a) each person who is a director of the corporation, and

(b) each person who is concerned in the management of the corporation,

is taken to have committed the same offence if the person knowingly authorised or permitted the act or omission constituting the offence.

(2) A person may be proceeded against and convicted under this section whether or not the corporation has been proceeded against or convicted.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation.

363A Offences by joint holders of access licence or approval

(1) If an offence against this Act or the regulations arises in relation to an access licence or approval, each co-holder of the licence or approval is taken to have committed the offence.

(2) A co-holder of a licence or approval is not guilty of such an offence if the co-holder establishes that—

(a) the offence was committed by some other person (whether or not another co-holder of the licence or approval), and

(b) the other person was not associated with the co-holder at the time the offence was committed, and

(c) the co-holder took all reasonable steps to prevent the offence from being committed.

(3) A person is associated with a co-holder of a licence or approval for the purposes of subsection (2) (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the co-holder.

(4) A person may, under this section, be proceeded against and convicted for an offence whether or not any other person has been proceeded against or convicted for the offence.

363B Penalties

For the purposes of this Act—

(a) a Tier 1 penalty corresponds to a maximum penalty of—

(i) in the case of a corporation, 45,500 penalty units and, in the case of a continuing offence, a further penalty of 2,400 penalty units for each day the offence continues, or

(ii) in any other case, imprisonment for 2 years or 10,000 penalty units, or both, and, in the case of a continuing offence, a further penalty of 1,200 penalty units for

each day the offence continues, and

(b) a Tier 2 penalty corresponds to a maximum penalty of—

(i) in the case of a corporation, 18,200 penalty units and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, or

(ii) in any other case, 4,550 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues, and

(c) a Tier 3 penalty corresponds to a maximum penalty of 100 penalty units.

364 Proceedings for offences

(1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily—

(a) by the Local Court, or

(b) by the Land and Environment Court in its summary jurisdiction.

(2) Proceedings for an offence against this Act or the regulations may be commenced at any time within, but not later than, 3 years after the date on which the offence is alleged to have been committed.

(3) Proceedings for an offence against this Act or the regulations may also be commenced at any time within, but not later than, 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer.

(4) If subsection (3) is relied on for the purpose of commencing proceedings for an offence, the process by which the proceedings are commenced must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer and need not contain particulars of the date on which the offence was committed.

(5) The date on which evidence first came to the attention of any relevant authorised officer is the date specified in the process by which the proceedings are commenced, unless the contrary is established.

(6) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Act or the regulations is—

(a) the lesser of the following—

(i) 200 penalty units,

(ii) the maximum monetary penalty specified in respect of the offence, and

(b) in the case of a continuing offence, 10 per cent of the further monetary penalty specified in respect of the offence for each day the offence continues.

(7) The maximum penalty that may be imposed by the Land and Environment Court in proceedings for an offence against this Act or the regulations is the maximum penalty specified in respect of the offence.

(8) In this section, ***evidence*** of an offence means evidence of any act or omission constituting the offence.

364A Matters to be considered in imposing penalty

(1) In imposing a penalty on a person for an offence against this Act or the regulations, the court is to take into consideration the following (so far as they are relevant)—

(a) the impact of the offence on other persons' rights under this Act,

(b) the market value of any water that has been lost, misused or unlawfully taken as a consequence of the commission of the offence,

(c) the extent of the harm caused or likely to be caused to the environment (including, in particular, any water source or waterfront land) by the commission of the offence,

(d) the practical measures that may be taken to prevent, control, abate or mitigate that harm,

(e) the extent to which the person could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence,

(f) the extent to which the person had control over the causes that gave rise to the offence,

(g) whether the offence was committed during a severe water shortage or an extreme event (that is, in contravention of an order in force under section 49A, 49B or 324),

(h) the person's intentions in committing the offence,

(i) whether, in committing the offence, the person was complying with orders from an employer or supervising employee,

(j) in the case of an offence of taking water in contravention of this Act, whether the water so taken had been released for environmental purposes and, if so, whether the person was aware of that fact,

(k) any civil penalty that has been imposed on the person under section 60G in relation to the conduct from which the offence arises.

(2) The court may take into consideration other matters that it considers relevant.

365 Penalty notices

(1) An authorised officer may issue a penalty notice to a person if it appears to the authorised officer that the person has committed a penalty notice offence.

(2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

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

Note—

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

(4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).

(5) The Minister may withdraw a penalty notice within 28 days after the date on which the penalty notice is issued.

(6) If the penalty notice is withdrawn—

(a) the amount payable under the penalty notice ceases to be payable, and

(b) any amount paid under the penalty notice is repayable to the person by whom it was paid, and

(c) further proceedings in respect of the alleged offence may be taken against any person (including against the person to whom the notice was issued) as if the notice had never been issued.

(7) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

365A Continuing offences

(1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or stop doing something (whether or not within a specified period or before a particular time)—

(a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and

(b) is guilty of a continuing offence for each day the contravention continues.

(2) This section does not apply to the extent that a requirement of a notice is revoked.

366 Legal proceedings do not affect, and are unaffected by, other action under this Act

The prosecution of a person for an offence against this Act or the regulations, or the issue of a penalty notice in respect of such an offence, does not affect, and is unaffected by, any other action taken under this Act in relation to the act or omission giving rise to the offence.

367 Evidentiary certificates

(1) A certificate that is issued by the Minister and that states—

(a) that an instrument, a copy of which is set out in or annexed to the certificate, being an instrument purporting—

(i) to be issued, made or given for the purposes of this Act, and

(ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,

was issued, made or given on a specified day, or

(b) that a document, a copy of which is set out in or annexed to the certificate, is a copy of part of, or an extract from, a register or water allocation account kept under this Act, or

(c) that an image, a copy of which is set out in or annexed to the certificate—

(i) is a photograph or other remotely-sensed image of a specified kind, and

(ii) portrays specified land as at a specified date, or

(d) that an amount payable under this Act by a specified person has, or has not, been paid,

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

(2) A certificate that is issued by the Minister and that states that, on a date or during a period specified in the certificate—

(a) a specified person was, or was not, the holder of a specified access licence or approval, or

(b) a specified access licence or approval was, at a specified time, revoked or suspended for a specified period or was revoked or suspended subject to specified conditions, or

(c) a specified condition of an access licence or approval was, at a specified time, imposed or revoked, or

(d) specified land was, or was not, the subject of a specified approval, or

(e) specified land was, or was not, within a specified water management area, or

(f) a specified part of a water source was, or was not, within a specified water management area, or

(g) a specified water management work was, or was not, at a specified location within a specified parcel of land, or

(h) a specified water management work was, or was not, the subject of a specified water management work approval, or

(i) the conditions of a specified access licence or approval were, or were not, as so specified, or

(j) the terms of a specified available water determination were, or were not, as so specified, or

(k) a specified person was, or was not, an authorised officer in relation to a specified provision of this Act, or

(l) a specified person was, or was not, an authorised analyst, or

(m) a specified person was, or was not, a member of staff of the Department, or

(n) a specified delegation under this Act was, or was not, in force, or

(o) a specified access licence or approval was, or was not, in force, or

(p) specified matters were, or were not, recorded in the Access Register or were, or were not, recorded in specified terms, or

(q) the water allocations credited to, or debited or otherwise withdrawn from, the water allocation account for a specified access licence were, or were not, as so specified, or

(r) a specified number of water allocations were, or were not, credited to, or debited or otherwise withdrawn from, the water allocation account for a specified access licence, or

(s) a specified quantity of water was, or was not, ordered in relation to a specified access licence, or

(s1) a specified quantity of water that was taken was, or was not, taken from a specified water source or part of a specified water source, or

(s2) Part 2 or 3 of Chapter 3 of this Act does, or does not, apply to a specified water source or part of a specified water source, or

(t) information required to be furnished to the Minister or an authorised officer pursuant to this Act was, or was not, received, or

(u) an approved river gauge had, or had not, been maintained in accordance with the requirements (if any) prescribed by the regulations, or

(v) the readings on an approved river gauge were, or were not, as so specified,

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

(3) In any legal proceedings, evidence is not required—

(a) as to the accuracy or reliability of an approved river gauge, or

(b) as to the manner in which an approved river gauge was operated,

unless evidence is adduced that the gauge was not accurate, was not reliable or was not properly operated.

(4) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, to be taken to be such a certificate.

(5) In this section, ***approved river gauge*** means a gauge of a type or design approved by the Minister, by order published in the Gazette, for the purpose of measuring the level or flow of water in a river or lake.

(6) In this section—

(a) a reference to a water management work includes a reference to a corresponding kind of work to which Part 2, 5 or 8 of the *Water Act 1912* extends, and

(b) a reference to an approval or access licence includes a reference to an entitlement (within the meaning of clause 2 of Schedule 10) that confers a corresponding authority.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

367A Evidence of analysts

(1) A certificate of an authorised analyst stating the result of an analysis or examination is admissible in evidence in any legal proceedings as evidence of the facts stated in the certificate and the correctness of the result of the analysis or examination.

(2) A certificate of an authorised analyst that, on receipt of a container containing a sample submitted to the analyst by an authorised officer or any other person, the container was sealed and the seal securing the container was unbroken is admissible in evidence in any legal proceedings as evidence—

(a) of the facts stated in the certificate, and

(b) that the sample was the same sample as the one obtained by the authorised officer or other person, and

(c) that the sample had not been tampered with before it was received by the analyst.

(3) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, to be taken to be such a certificate.

367B Rebuttable presumptions

(1) In any proceedings for an offence against this Act or the regulations being taken against a landholder—

(a) the fact that a water management work is or has been located—

(i) on the landholder’s land, or

(ii) in a river or lake within the landholder’s land,

gives rise to a rebuttable presumption that the work was constructed by the landholder, and

(b) the fact that a water management work is being or has been used—

(i) on the landholder’s land, or

(ii) in a river or lake within the landholder’s land,

gives rise to a rebuttable presumption that the work is being or has been used by the landholder, and

(c) the fact that water is being or has been taken from a water source by means of a water supply work situated—

(i) on the landholder’s land, or

(ii) in a river or lake within the landholder’s land,

gives rise to a rebuttable presumption that the water is being or has been taken by the landholder, and

(d) the fact that water is being or has been discharged into a water source by means of a drainage work situated on the landholder’s land gives rise to a rebuttable presumption that the water is being or has been discharged by the landholder, and

(e) the fact that water is being or has been used on the landholder’s land gives rise to

a rebuttable presumption that the water is being or has been used by the landholder, and

(f) the fact that a controlled activity is being or has been carried out on waterfront land within the landholder's land gives rise to a rebuttable presumption that the activity is being or has been carried out by the landholder, and

(g) the fact that an aquifer interference activity is being or has been carried out on the landholder's land gives rise to a rebuttable presumption that the activity is being or has been carried out by the landholder.

(2) In any proceedings for an offence against this Act or the regulations being taken against the holder of an approval for a water supply work, the fact that water is being or has been taken from a water source—

(a) by means of the work, or

(b) through metering equipment installed in connection with the work,

gives rise to a rebuttable presumption that the holder of the approval is or has been using the work to take water from that water source.

(3) In any proceedings for an offence against this Act or the regulations, the fact that a work of the kind referred to in—

(a) the definition of ***drainage work*** in the Dictionary, or

(b) paragraph (a), (b) or (c) of the definition of ***water supply work*** in the Dictionary,

is capable of being used for the purpose referred to in that provision gives rise to a rebuttable presumption that the work has been constructed or used for that purpose.

(4) This section does not limit the operation of section 60E or 91L.

Division 2 Appeals

368 Appeals to Land and Environment Court

(1) An appeal lies to the Land and Environment Court against any of the following decisions made by the Minister—

(a) a decision refusing to grant an access licence,

(b) a decision granting a designated access licence, if the appellant was an objector to the granting of the licence,

(c) a decision imposing a discretionary condition on an access licence,

(d) a decision fixing the term of an access licence,

(e) a decision refusing consent to a dealing in an access licence,

(f) a decision suspending or cancelling an access licence,

(fa) a decision—

(i) in relation to the recording of any matter in the Access Register, or

(ii) in relation to the issue of any access licence certificate,

(g) a decision refusing to grant an approval, other than a decision refusing to accept an application for an approval,

(h) a decision granting a designated approval, if the appellant was an objector to the granting of the approval,

(i) a decision imposing a discretionary condition on an approval,

(j) a decision fixing the term of an approval,

(k) a decision refusing to amend an approval in accordance with an application made by its holder,

(k1) a decision to amend an approval otherwise than on the basis of an application made by the holder of the approval,

(l) a decision suspending or cancelling an approval or part of an approval,

(la) a decision ordering an irrigation corporation to pay a civil penalty to the Minister,

(m) a decision ordering a major utility or local water utility to pay a civil penalty to the Minister,

(m1) a decision under section 68A (1C),

(m2) a decision to require a compliance audit or audits,

(ma) a decision under section 60G,

(n) a decision to give a direction to a person under Part 1,

(n1) a decision in relation to a bore driller’s licence, being a decision prescribed by the regulations for the purposes of this paragraph,

Examples—

The following kinds of decisions may be prescribed—

(a) decisions to refuse to grant a bore driller's licence,

(b) decisions to grant a bore driller's licence subject to a condition,

(c) decisions to vary a condition of a bore driller's licence,

(d) decisions to suspend or cancel a bore driller's licence.

(o) a decision as to a person's entitlement to compensation for damage arising from the exercise of a power of entry under Part 2,

(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.

(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.

(2) Despite subsection (1)—

(a) no appeal lies against any decision made by the Minister on an application to which an objection has been made if—

(i) in the case of the applicant, the Minister has dismissed the application as a consequence of the applicant having failed to participate in mediation or neutral evaluation proceedings, or

(ii) in the case of the objector, the Minister has dismissed the objection as a consequence of the objector having failed to participate in mediation or neutral evaluation proceedings, and

(b) no appeal lies against any decision made by the Minister pursuant to a report from a Commission of Inquiry under section 119 of the *Environmental Planning and Assessment Act 1979*, and

(c) no appeal lies against a decision of the Minister to grant a licence under section 63A or 63B or to impose a discretionary condition on such a licence, and

(d) no appeal lies against a decision of the Minister to impose a discretionary condition on a licence amended under section 68B.

(3) An appeal is to be made in accordance with rules of court, but may not be made more

than 28 days after the date on which the decision was made.

(4) In addition to the appellant and the Minister—

(a) the parties to an appeal made by an applicant for a designated access licence or designated approval against a decision refusing to grant the licence or approval include any objector to the granting of the licence or approval who, in accordance with rules of court, gives notice to the Land and Environment Court of the objector's wish to become a party to the appeal, and

(b) the parties to an appeal made by an objector to the granting of a designated access licence or designated approval against a decision granting the licence or approval include the applicant for the licence or approval.

(5) The lodging of an appeal does not operate to stay action on the decision appealed against, except to the extent that the Land and Environment Court otherwise directs.

(5A) If the Land and Environment Court directs that a decision under appeal is stayed, the decision does not operate until the stay ceases to have effect or the Land and Environment Court confirms the decision or the appeal is withdrawn, whichever first occurs.

(6) In this section—

designated access licence means an access licence to which a person has a right of objection under section 62.

designated approval means an approval to which a person has a right of objection under section 93.

Chapter 8 Administration

Part 1

369, 370 (Repealed)

Part 2 Water Administration Ministerial Corporation

371 Constitution of Water Administration Ministerial Corporation

(1) There is constituted by this Act a corporation with the corporate name "Water Administration Ministerial Corporation".

(2) The affairs of the Ministerial Corporation are to be managed by the Minister.

(3) Any act, matter or thing done in the name of, or on behalf of, the Ministerial Corporation by the Minister, or with the authority of the Minister, is taken to have been done by the Ministerial Corporation.

(4) The Ministerial Corporation is, for the purposes of any Act, a statutory body representing the Crown.

372 Functions of Ministerial Corporation

(1) The Ministerial Corporation has the following functions—

(a) to construct, maintain and operate water management works,

(a1) to construct, maintain and operate gauging stations and other monitoring equipment,

(b) to conduct research, collect information and develop technology in relation to water management,

(c) to acquire rights to water, whether within or beyond New South Wales,

(d) to do anything for the purpose of enabling the objects of this Act to be attained.

(1A) The Ministerial Corporation has such other functions as are conferred or imposed on it by or under this or any other Act or law.

(2) The Ministerial Corporation may exercise its functions within and beyond New South Wales.

(3) The Ministerial Corporation may exercise any of its functions, and may otherwise act, in the name of the Department.

(4) It is the duty of the Ministerial Corporation to exercise its functions consistently with the principles of ecologically sustainable development.

(5) It is the duty of the Ministerial Corporation to exercise its function of issuing a Snowy water licence under Part 5 of the *Snowy Hydro Corporatisation Act 1997* consistently with the terms of the *Snowy Water Inquiry Outcomes Implementation Deed*.

(6) In subsection (5), ***Snowy Water Inquiry Outcomes Implementation Deed*** means the deed under that title that was entered into on behalf of the Commonwealth, New South Wales and Victoria on 3 June 2002, as that deed is amended from time to time in accordance with its terms.

372A Metering equipment functions

(1) **Conferral of metering equipment functions** The Ministerial Corporation may install, test and remove metering equipment.

(2) If the regulations so provide, the Ministerial Corporation has the following functions—

(a) to maintain, repair, modify and replace metering equipment (whether or not that equipment was installed by the Corporation),

(b) to operate metering equipment.

(3) Regulations under subsection (2) may provide that the Ministerial Corporation is, or is not, to exercise such functions to the exclusion of any other person and may limit the exercise of the functions to—

(a) specified water sources or classes of water sources, or

(b) a specified area, or

(c) specified access licences or approvals or classes of access licences or approvals in specified areas, or

(d) specified works or classes of works.

(4) **Operation of section** The functions conferred by this section are in addition to any functions conferred on the Ministerial Corporation under this Act or the *Water Act 1912* in relation to water management works or other works.

(5) This section and any regulations made under this section have effect despite any other provision of this Act or the *Water Act 1912*.

(6) A direction under section 326, or a condition of an access licence or approval, ceases to have effect during any period that the exercise of a function is conferred exclusively on the Ministerial Corporation by or under this section, if the direction or condition requires the exercise of, or relates to the exercise of, that function.

(7) Subsection (6) does not affect the operation of, or enforcement of, a direction under section 326 or a condition of an access licence or approval in relation to any period before the direction or condition ceased to have effect.

(8) In this section, a reference to an access licence or approval includes a reference to an entitlement (within the meaning of clause 2 of Schedule 10) that confers a corresponding authority.

372B Interests and rights in metering equipment

(1) Metering equipment installed or replaced by the Ministerial Corporation is not the property of the Ministerial Corporation, except as otherwise provided by this Act or the *Water Act 1912* or regulations under this Act or that Act.

(2) No compensation is payable by or on behalf of the Crown to any person who suffers loss or damage because of the removal by the Ministerial Corporation of metering equipment installed by the Ministerial Corporation.

(3) If a provision of the regulations provides that the Ministerial Corporation is the owner of specified metering equipment that it installs or replaces, the provision has effect despite anything contained in section 42 of the *Real Property Act 1900*.

373 Commercial operations

(1) With the approval of the Governor, the Ministerial Corporation may enter into commercial operations with respect to—

(a) any services developed in connection with the exercise of its functions, and

(b) any products or by-products (including intellectual property) resulting from the exercise of its functions, and

(c) such other matters as may be prescribed by the regulations.

(2) With the approval of the Governor, the Ministerial Corporation may form, or join in forming, a company, partnership or trust for the purpose of exercising its functions under this Act.

374 Application of Public Works Act 1912

(1) For the purposes of the *Public Works Act 1912*, any works carried out by the Ministerial Corporation under this Act are taken to be authorised works and the Ministerial Corporation is taken to be the Constructing Authority for those works.

(2) Part 3 of the *Public Works Act 1912* does not apply to or in respect of any works constructed by the Ministerial Corporation under this Act.

375 Acquisition of land

(1) The Ministerial Corporation may acquire land for the purposes of this Act by agreement, or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

(2) The acquisition of land by the Ministerial Corporation for the purpose of its transfer to an irrigation corporation or private water corporation is taken to be for the purposes of this Act if the purpose of the transfer is to enable the irrigation corporation or private water corporation to exercise its functions under this Act.

(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.

(3) For the purposes of the *Public Works Act 1912*, any such acquisition is taken to be for an authorised work, and the Ministerial Corporation is, in relation to that work, taken to be the Constructing Authority.

376 Staff of Ministerial Corporation

The Ministerial Corporation may arrange for the use of the services of any staff or facilities of any Public Service agency or public authority.

377 Delegation of functions

The Ministerial Corporation may delegate to any person the exercise of any of its functions, other than this power of delegation.

Part 3 Water investment trust

378 Definitions

In this Part—

Board of Trustees means the Board of Trustees referred to in section 379 (4).

Fund means the Water Investment Trust Fund established by section 384.

Trust means the Water Investment Trust constituted by section 379.

379 Constitution of Trust

(1) There is constituted by this Act a body corporate with the corporate name of the Water Investment Trust.

(2) The Trust has such functions as are conferred or imposed on it by or under this or any other Act or law.

(3) The Trust is, for the purposes of any Act, a statutory body representing the Crown.

(4) The affairs of the Trust are to be managed by a Board of Trustees.

(5) Subject to this section, the constitution and procedure of the Board of Trustees are to be as prescribed by the regulations.

380 Objects of Trust

The objects of the Trust are to promote, organise, carry out and fund projects, in both the public and private sectors, for—

(a) the restoration and rehabilitation of water sources and their dependant ecosystems, and

(b) the construction of works for the more efficient delivery, use and recycling of water, and

(c) the conduct of water industry adjustment, business restructuring and industry training, and

(d) the conduct of research, and the development of technology, in relation to the matters referred to in paragraphs (a), (b) and (c),

in order to maximise the environmental, social and economic benefits of the State’s water

sources for present and future generations.

381 Functions of Trust

The Trust may, for the purpose of promoting its objects—

(a) make grants or loans (either conditionally or subject to conditions) for projects of the kind described in section 380, and

(b) supervise the expenditure of money so granted, and

(c) establish works programs, and associated budgets, for projects to be carried out or funded by the Trust, and

(d) engage in such other activities relating to its objects as the Minister may approve.

382 Staff of Trust

(1) The Trust may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a Public Service agency or public authority.

(2) For the purposes of this Act, a person whose services are made use of under this section is an officer of the Trust.

383 Delegation

The Trust may delegate to a member of the Board of Trustees, or to an officer of the Trust, the exercise of any of its functions, other than this power of delegation.

384 Water Investment Trust Fund

(1) There is to be established in the Special Deposits Account a Water Investment Trust Fund into which are to be paid—

(a) such money as may be raised by way of water investment contributions pursuant to this Part, and

(b) such money as may be appropriated by Parliament for payment into the Fund, and

(c) the proceeds of investment of money in the Fund, and

(d) any gift or bequest of money to the Trust, and

(e) such other money as is required or permitted to be paid into the Fund.

(2) Money in the Trust Fund may be used—

(a) for the purpose of enabling the Trust to exercise its functions, and

(b) to cover the costs incurred by the Trust in administering this Part.

385 Investments

The Trust is to invest money in the Trust Fund—

(a) if the Trust is a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way that the Trust is permitted to invest money under that Part, or

(b) if the Trust is not a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way approved by the Treasurer.

386 Investment levies on water users

(1) The regulations may make provision for or with respect to the fixing, assessing and levying of water investment contributions from persons who hold access licences.

(2) Water investment contributions are to be fixed in relation to specified works programs established by the Trust, and so as to yield receipts no greater in total than the amounts budgeted by the Trust in relation to the works program so specified.

(3) For the purposes of section 78 (1) (c), a water investment contribution payable by the holder of a licence is taken to be a charge payable in respect of the licence.

(4) Part 4 of Chapter 7 applies to and in respect of a water investment contribution levied under this section in the same way as it applies to and in respect of a rate or charge referred to in that Part and, for that purpose, the Trust is taken to be a charging authority.

Part 3A Murray-Darling Basin

386A Definitions

In this Part—

Agreement means the Murray-Darling Basin Agreement set out in Schedule 1 to the *Water Act 2007* of the Commonwealth.

Basin Officials Committee means the committee of that name established under the Agreement.

386B Appointments to Basin Officials Committee

(1) The Minister is authorised to appoint, under and in accordance with the terms of the Agreement—

(a) a person as a member of the Basin Officials Committee representing the State, and

(b) a person to act as the member of the Basin Officials Committee in place of the

member appointed under paragraph (a).

(2) The Minister may, at any time, terminate the appointment of any such person.

(3) The regulations may make provision for or with respect to the appointment of, or the holding of office by, any such person.

386C Minister may act for Government of NSW

The Minister is authorised to act on behalf of the State as a Contracting Government under the Agreement.

386D Authorisation of works, operations and measures under the Agreement

Subject to the law of this State and the Agreement—

(a) the construction, maintenance, operation and control in the State of any works under the Agreement, and

(b) the carrying out of any of the operations referred to in the Agreement, and

(c) the implementation of any measures referred to in the Agreement,

are authorised.

386E Constructing Authority for NSW

(1) The Ministerial Corporation, Water NSW and any other public authority authorised by the Minister by notice published in the Gazette are each Constructing Authorities for the purposes of the Agreement and authorised to carry out the functions of a Constructing Authority under the Agreement.

(2) The Minister may determine any dispute as to which authority should act as the Constructing Authority for a particular work, operation or measure.

386F Certain documents to be tabled in Parliament

The Minister is to table or cause to be tabled in each House of Parliament—

(a) a copy of each annual report of the Murray-Darling Basin Authority received by the Minister under the *Water Act 2007* of the Commonwealth, and

(b) a copy of each amendment of the Agreement that takes effect under the terms of the Agreement,

within 15 sitting days of that House after the report is received or the amendment takes effect (as the case requires).

Part 4 General administration

387 Expert advisory panels

(1) The Minister may appoint expert advisory panels for the purpose of this Act.

(2) An expert advisory panel is to consist of such persons as, in the opinion of the Minister, have the qualifications and expertise appropriate to the matters proposed to be referred to it.

(3) An expert advisory panel has the function of investigating, and reporting to the Minister on, such of the following matters as are referred to it for investigation and report—

(a) any State Water Management Outcomes Plan to be established under section 6,

(b) the terms of reference to be set by the Minister under section 15 for the preparation of a draft management plan,

(c) the adequacy and appropriateness of the provisions of a draft management plan submitted to the Minister under section 37 or 40,

(d) the effectiveness, in relation to the furthering of the water sharing principles, of any bulk access regime established by a management plan to be made by the Minister under section 41,

(e) any management plan in respect of which a review is being carried out under section 43,

(f) any implementation program to be established under section 51.

387A Water Innovation Council

(1) The Minister may establish a Water Innovation Council for the purposes of this Act.

(2) The Water Innovation Council is to consist of such persons as, in the opinion of the Minister, have the qualifications and expertise appropriate to the function of the Council.

(3) The function of the Water Innovation Council is to advise the Minister and Local Land Services on the identification and pursuit of measures for water conservation, including measures for—

(a) the recovery of water (that is, preventing the loss of water from uncapped bores, porous irrigation channels, evaporation and the like), and

(b) the re-use of water, and

(c) the efficient use of water.

The Council is also to advise the Minister on any other matter that is referred by the Minister for advice.

(4) Provisions with respect to the members and procedure of the Water Innovation Council or any other advisory body established under this section are, subject to any requirements of the regulations, to be determined by the Minister.

388 Committees

The Minister may establish advisory and other committees for the purposes of this Act.

389 Delegation

(1) The Minister may delegate to any person any functions conferred or imposed on the Minister by or under this Act, other than this power of delegation.

(1A) The Minister may delegate to any person any functions conferred or imposed on the Minister under any other Act, if those functions arise because of the Minister's capacity as the Minister administering this Act or are related to that role.

(2) Despite subsections (1) and (1A), the Secretary may sub-delegate to any person any function that has been delegated to the Secretary under this section, but only if the terms of the delegation authorise the Secretary to sub-delegate that function.

389A Conferral of water management functions on public authorities

(1) The Minister may authorise a public authority to exercise the following functions—

(a) assisting the Minister or a management committee in the development of, in consultations about or in the implementation of management plans,

(b) managing licensed environmental water (within the meaning of section 8) under access licences,

(c) monitoring water quality and other environmental health objectives of management plans (including in connection with a review or audit of any such plan).

(2) A public authority may, with the approval of the Minister, acquire, hold and deal with access licences.

(3) This section does not limit section 389.

389B Gas and other petroleum activities—enforcement by EPA

Schedule 2A to the *Protection of the Environment Operations Act 1997* (Enforcement of gas and other petroleum legislation) applies to this Act, and the operation of this Act is subject to that Schedule.

390 Authorised officers and analysts

(1) The Minister may appoint authorised officers, either for the purposes of this Act generally or for the purposes of any specified provisions of this Act.

(2) The Minister may appoint authorised analysts for the purposes of this Act.

Note—

See also section 11 (1) (e) of the *Natural Resources Access Regulator Act 2017* and Schedule 2 to that Act.

391 Resolution of disputes between public authorities

(1) Any dispute arising between two or more public authorities as to the exercise of their functions under this Act is to be resolved—

(a) by agreement between the Ministers responsible for them, or

(b) if the dispute is between Ministers, by the Premier.

(2) Each public authority must comply with any directions arising out of the resolution of the dispute under this section.

391A Interstate arrangements in relation to access licences and approvals

(1) The Minister may enter into arrangements with a Minister of any other State or Territory with respect to the carrying out of administrative functions in relation to access licences or approvals, and their equivalents in the other State or Territory, pursuant to section 71W or 89.

(2) Without limiting subsection (1), such arrangements may be made with respect to the following—

(a) the collection of fees, charges and civil penalties,

(b) the keeping of water allocation accounts.

Chapter 9 Miscellaneous

392 State’s water rights

(1) For the purposes of this Act, the rights to the control, use and flow of—

(a) all water in rivers, lakes and aquifers, and

(b) all water conserved by any works that are under the control or management of the Minister, and

(c) all water occurring on or below the surface of the ground (including overland flow water flowing over or lying there for the time being) other than water referred to in subsection (1A),

are the ***State's water rights***.

(1A) Subsection (1) (c) does not include any of the following—

(a) water that is collected from a roof (including water collected from a roof using a rainwater tank),

(b) water occurring on or below the surface of the ground in such other circumstances as may be prescribed by the regulations.

(2) The State's water rights are vested in the Crown, except to the extent to which they are divested from the Crown by or under this or any other Act.

(3) The State's water rights prevail over any authority conferred by or under any other Act or law, except to the extent to which this or any other Act expressly so provides.

(4) The State's water rights are not to be exercised in contravention of—

(a) the powers conferred by section 15 of the *Fire and Rescue NSW Act 1989* and section 26 of the *Rural Fires Act 1997* on an officer in charge at a fire or hazardous material incident, or

(b) the rights and obligations of the Snowy Hydro Company under a Snowy water licence within the meaning of the *Snowy Hydro Corporatisation Act 1997*, or

(c) the rights conferred by the *Local Land Services Act 2013* with respect to the watering of stock at stock watering places within the meaning of that Act.

393 Abolition of common law riparian rights

Any right that the owner of riparian land would, but for this section, have at common law with respect to the flow of any river, estuary or lake through or past the land, or to the taking or using of water from any such river, estuary or lake, is hereby abolished.

394 Service of documents

(1) A document may be served on a person—

(a) personally, or

(b) by leaving it at, or by sending it by post to, the person's residential address or, in the case of a corporation, the address of the corporation's registered office, or

(b1) by email to an email address specified by the person for the service of documents of that kind, or

(c) if it is impracticable for the document to be served on a landholder of land in the manner referred to in paragraph (a), (b) or (b1) (or that manner is unavailable), by affixing the document in a conspicuous position on the land, or

(d) in any manner provided for by the regulations.

(2) In the case of land that is owned or occupied by more than one person or of an approval that is held by more than one person, service of a document on any one of them, or on any person duly appointed by them for the purpose of accepting service of documents, is taken to be service on all of them.

(3) This section does not limit any other manner in which a document may be served.

395 Publication of notices, orders and proclamations in authorised manner

(1) A requirement of this Act that a notice be published in the authorised manner is a requirement that the notice be published in a manner that the Minister is satisfied is likely to bring the notice to the attention of members of the public in the area that is affected by the notice or its subject matter.

(2) In this section, ***notice*** includes an order or proclamation.

395A Continuing effect of directions and conditions

(1) A direction given, or a condition of a licence or approval imposed, under this Act or the regulations that specifies a time by which, or period within which, the direction or condition must be complied with continues to have effect until the direction or condition is complied with even though the time has passed or the period has expired.

(2) A direction that does not specify a time by which, or period within which, the direction must be complied with continues to have effect until the direction is complied with.

(3) This section does not apply to the extent that any requirement under a direction or a condition of a licence or approval is revoked.

(4) Nothing in this section affects the powers of the Minister with respect to the enforcement of a direction or a condition of a licence or approval.

396 Act binds Crown

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

397 Exclusion of personal liability

(1) An act or omission of—

(a) the Minister or the Secretary, or

(b) a prescribed authority, or a member or trustee of a prescribed authority, or

(c) a member of staff of the Department or of a prescribed authority, or

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

(c),

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

(2) In this section, ***prescribed authority*** means—

(a) the Ministerial Corporation, or

(b) (Repealed)

(c) the Water Investment Trust, or the Board of Trustees of the Water Investment Trust, or

(d) a management committee, or

(e) a water supply authority, or

(f) a private water corporation, or

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

(h) a private water trust, or

(i) an irrigation corporation.

398 Exclusion of Crown liability

(1) Neither the Crown nor any other person is subject to any action, liability, claim or demand arising—

(a) from the unavailability of water, or

(b) from any failure in the quantity or quality of water,

as a consequence of anything done or omitted to be done in good faith by the Minister, by a prescribed authority or by any person acting on behalf of the Minister or a prescribed authority, in the exercise of any functions under this Act or the *Water NSW Act 2014*.

(2) Neither the Crown nor any other person is subject to any action, liability, claim or demand arising as a consequence of—

(a) the use in good faith of any water management work, or

(b) the release in good faith of water from any water management work,

by the Minister, by a prescribed authority or by any person acting on behalf of the Minister or a prescribed authority, in the exercise of any functions under this Act or the

Water NSW Act 2014.

(3) In this section, ***prescribed authority*** means—

(a) the Ministerial Corporation, or

(b) a water supply authority, or

(c) Water NSW.

399 Annual reporting information for Department

The annual reporting information prepared for the Department under the *Government Sector Finance Act 2018* is to include a report on the Minister's work and activities under this Act for the annual reporting period to which that information relates, and may also include the annual reporting information prepared for the Ministerial Corporation.

400 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

(a) the forms to be used in connection with the administration of this Act, and

(b) the fees and charges to be imposed in connection with the administration of this Act, and the circumstances under which fees and charges may be waived, reduced and remitted, and

(c) the requirement for security deposits, the circumstances in which security deposits are to be forfeited and the application of money arising from the forfeiture of security deposits, and

(d) the regulation and control of bore drilling and the licensing of bore drillers, and

(e) the information to be provided to the Minister by the holder of any approval under this Act, including the circumstances in which any such information must be verified by statutory declaration, and

(f) the regulation of vessels and works on or along the Murray River, including the following—

(i) the regulation and control of vessels at or near locks, weirs and other works,

(ii) the management and control of works.

(2) A regulation may make provision for or with respect to the exemption of any person, matter or thing from the operation of this Act or any specified provision of this Act,

either unconditionally or subject to conditions.

(3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

(4) A regulation may apply, adopt or incorporate any publication as in force from time to time.

400A Excluded matters

(1) The regulations may declare a matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 250C of the *Water Act 2007* of the Commonwealth in relation to—

(a) the whole of the Commonwealth water legislation, or

(b) a specified provision of that legislation, or

(c) that legislation other than a specified provision, or

(d) that legislation otherwise than to a specified extent.

Note—

Section 250C of the *Water Act 2007* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Commonwealth water legislation, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(2) In this section—

Commonwealth water legislation has the same meaning as it has in the *Water Act 2007* of the Commonwealth.

matter includes act, omission, body, person or thing.

400B Displacement of Commonwealth water legislation

The regulations may declare any provision of this Act to be a Commonwealth water legislation displacement provision for the purposes of section 250D of the *Water Act 2007* of the Commonwealth (either generally or specifically in relation to a provision of that Commonwealth Act).

Note—

Section 250D of the *Water Act 2007* of the Commonwealth enables a State to displace the operation of provisions of that Act that are declared under a State law to be Commonwealth water legislation displacement provisions for the purposes of that section.

401 Repeals

The Acts listed in Schedule 7 are repealed.

402 Amendment of other Acts

Each Act listed in Schedule 8 is amended as set out in that Schedule.

403 Savings, transitional and other provisions

Schedules 9, 10 and 11 have effect.

404 Review of Act

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

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

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

Schedule 1A Access Register

(Section 71C)

Part 1 Registration of access licences, security interests and caveats over access licences and other matters

1 Registration of Ministerial actions

(1) The Minister registers an access licence granted by the Minister under section 63, 63A or 63B by recording in the Access Register in such form as the Minister considers appropriate the following—

(a) the name of each holder or co-holder of the access licence,

(b) details of entitlements conferred on the holder or co-holders by the licence,

(c) if the licence is co-held, details of the arrangements under which the licence is held by the co-holders (the ***co-holder's tenancy arrangement***),

(d) any water supply work, or group of water supply works, nominated as a work or group of works by means of which water allocations under the licence may be taken,

(e) any adaptive environmental water condition to which the licence, or a part of the licence, is subject.

(2) The Minister registers any Ministerial action (other than the grant of an access licence under section 63, 63A or 63B) by recording in the Access Register the details of the

action in such form as the Minister considers appropriate.

(3) The Minister must not register an access licence or any Ministerial action until—

(a) the end of the time permitted by section 368 (3) for making an appeal with respect to the decision to grant the licence, or

(b) if an appeal is made against the decision within that time, at or after the time the appeal is finally disposed of.

(4) The Minister may include in the Access Register such other information about the holder of an access licence and the conditions of, and other matters relating to, the licence as the Minister considers appropriate.

2 Registration of dealings in access licences and holdings in access licences

(1) A party to a dealing in an access licence or holding in an access licence may make an application to the Minister in the approved form for the dealing to be registered in the Access Register.

(2) The application must be accompanied—

(a) by an instrument evidencing the dealing, and

(b) by such other documents (if any) as the Minister may require, and

(c) by such fee (if any) as approved by the Minister.

Note—

This clause has a similar effect in relation to registration of dealings in access licences and holdings in access licences to the effect section 41 of the *Real Property Act 1900* has in relation to registration of dealings in estates or interests in land.

(3) The Minister must (unless anything recorded in the Access Register prevents the registration of the dealing)—

(a) register the dealing by recording in the Access Register the particulars of the names of the parties to the dealing, a description of the dealing and the time and date of the recording.

(b) (Repealed)

3 Registration of security interests over access licences and holdings in access licences

(1) A security holder may apply to the Minister in the approved form for the security interest to be recorded in the Access Register as a registered security interest.

(2) The application must be accompanied—

(a) by an instrument or instruments evidencing the security interest, and

(b) by such other documents (if any) as the Minister may require, and

(c) by such fee (if any) as is approved by the Minister.

Note—

This clause has a similar effect in relation to registration of security interests in access licences and holdings in access licences to the effect section 41 of the *Real Property Act 1900* has in relation to registration of dealings in estates or interests in land.

(3) The Minister must (unless any thing recorded in the Access Register prevents the registration of the security interest)—

(a) register the security interest by recording in the Access Register the particulars of the name of the holder of the interest and a description of the interest, and

(b) endorse on the instrument evidencing the security interest the fact of the entry having been made, together with the date and time of the making of the entry.

(4) The Minister is to register the security interest without inquiring into, or being concerned with, the legal effect of the instrument evidencing it.

(5) The Minister may, on application in the approved form by the holder of a registered security interest, remove the security interest from the Access Register or amend details recorded in relation to it.

(6) The Minister may include in the Access Register such other information about a registered security interest as the Minister considers appropriate.

4 Priority of registered security interests in access licences and holdings in access licences

(1) Except as provided by clause 19 of Schedule 10, an earlier registered security interest has priority, for all purposes, over a later registered security interest.

(2) Subclause (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapters 2K and 5 of that Act.

Note—

Subclause (2) ensures that the priorities established by subclause (1) are not over-ridden by the provisions of the *Corporations Act 2001* with respect to the distribution of assets of a corporation that is being wound up under that Act.

(3) For the purposes of this Act, a person is not taken to hold an interest in an access licence or a holding in an access licence held by a corporation merely because the person is a shareholder in the corporation.

Part 2 Caveats

5 Withdrawal of caveat

(1) A caveat may be withdrawn at any time by—

(a) the caveator, or

(b) a person with legal authority under a law of this State or any other place to act on behalf of the caveator, or

(c) by any other person, or person belonging to a class of persons, prescribed by the regulations.

(2) The withdrawal is to be in the approved form.

6 Duration of caveat

(1) A caveat is taken to have had effect from the time at which it is lodged with the Minister.

(2) A caveat ceases to have effect if—

(a) the Land and Environment Court makes an order for its removal on an appeal under section 368, or

(b) the caveat is withdrawn, or

(c) the caveator is given notice under clause 7 and 21 days have passed since the notice was given.

(3) Subclause (2) (c) does not apply if, before the end of the 21 days the caveator—

(a) obtains an order from the Land and Environment Court extending the caveat for such further period as is specified in the order or until the further order of the Court, and

(b) lodges a copy of the order certified by a proper officer of the Court with the Minister.

7 Notice to caveator

(1) If a general dealing, dealing on default, security interest or change in co-holder’s tenancy arrangements in relation to an access licence or holding in an access licence that is the subject of a caveat is lodged with the Minister, or the holder of an access licence or holding in an access licence so requests, the Minister must notify the caveator that it has been lodged.

(2) The Minister is not required to give notice if—

(a) the caveator is a party to the dealing, or

(b) the caveator has specified the class of matters the caveator wants to receive notice of and the matter falls outside that class, or

(c) if the caveator has changed address since lodging the caveat and has not notified the Minister of the change.

8 Powers of Land and Environment Court in relation to caveats

The Land and Environment Court may—

(a) order the withdrawal of a caveat from an access licence or holding in an access licence, or

(b) order the Minister to register a general dealing, dealing on default, security interest or change in co-holder's tenancy arrangements in relation to an access licence or holding despite the caveat, or

(c) extend the period provided for by clause 6, or

(d) make such further or other orders as it thinks fit.

9 Compensation payable in certain cases

(1) Any person who, without reasonable cause—

(a) lodges a caveat with the Minister under this Schedule, or

(b) procures the lapsing of a registered caveat, or

(c) being the caveator, refuses or fails to withdraw a caveat after being requested to do so,

is liable to pay to any person who sustains pecuniary loss that is attributable to that act, refusal or failure compensation with respect to that loss.

(2) The compensation is recoverable in proceedings in a court of competent jurisdiction by the person who claims to have sustained the loss.

(3) A caveator is not entitled to bring proceedings under subclause (1) (b) if the caveator, having had an opportunity to do so, has failed to take all reasonable steps to prevent the caveat from lapsing.

Part 3 Miscellaneous

10 Powers of Minister with respect to production and retention of certain instruments

(1) The Minister may require any person who may have possession or control of an instrument relating to an access licence or holding in an access licence that is the

subject of any matter that may be recorded in the Access Register to produce the instrument.

(2) The Minister may retain an instrument relating to an access licence that is the subject of any matter that may be recorded in the Access Register (whether or not produced under subclause (1)) until it is no longer required for action in connection with an application for registration of the matter in the Access Register.

11 Lodgment and registration of documents

The Minister may refuse to accept, or record in the Access Register, a dealing, an application for consent to a dealing or a security interest, caveat, devolution or change in co-holder's tenancy arrangements in relation to an access licence or holding in an access licence if—

(a) it is not in the approved form or does not comply with any requirement made by or under this or any other Act with respect to the making or execution of such a matter, or

(b) the Minister requests the production of the access licence certificate for the access licence for the purpose of recording the matter in the Access Register and it is not produced, or

(c) the application concerned is not accompanied by the approved fee (if any) for the matter concerned.

12 Wrongful retention of certain instruments

(1) The Minister may, by notice in writing served on a person at the person's last known address, require the person to deliver up an access licence certificate or an instrument evidencing any matter that may be recorded in the Access Register for the purpose of the certificate or instrument being cancelled or corrected if the Minister is satisfied that—

(a) the certificate has been issued to the person in error or contains any misdescription of an access licence or holding in an access licence, or

(b) a recording has been made in error in the Access Register, or

(c) the certificate or recording in the Access Register has been fraudulently or wrongfully obtained by the person, or

(d) the certificate or instrument is fraudulently or wrongfully retained by the person.

(2) If the person—

(a) cannot be found for the giving of such notice of requirement, or

(b) having been given such notice does not comply with the requirement,

the Minister may, if the Minister thinks fit, commence proceedings against the person in the Land and Environment Court for an order that the person (the ***defendant***) deliver up the access licence certificate or instrument for the purpose of it being cancelled or corrected.

(3) The Court may order that service on the defendant of the originating process and of all other documents in the proceedings be dispensed with.

(4) Subject to the *Land and Environment Court Act 1979*, the Court must not order that service on the defendant be dispensed with unless the Court is satisfied that—

(a) the defendant cannot be found in New South Wales, or

(b) it is uncertain whether the defendant is living.

(5) The Court may order the personal attendance before it of the defendant.

(6) On the personal appearance of the defendant before the Court, the Court may examine the defendant on oath.

(7) The Court may order the defendant to deliver up to the Minister, within such time as the Court may fix, the access licence certificate or instrument evidencing the matter.

Schedule 1B Provisions relating to exit from co-held access licence

(Section 74 (7))

1 Definitions

In this Schedule—

extinguished holdings means the holdings in an access licence extinguished by the Minister under section 74.

new access licence means an access licence granted by the Minister under section 74 (1).

original access licence has the meaning given by section 74 (1).

2 Share component of new access licence

The share component of the new access licence—

(a) in a case where all the co-holders consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in accordance with the directions in the application, or

(b) in a case where co-holders who hold a majority share of the holdings under the original access licence consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in the same

proportions as the extinguished holdings bear to the whole of the holdings in the original access licence, or

(c) in a case where co-holders holding a majority of the water entitlements under the original access licence did not consent to the application under section 74 (1)—the share component for the original access licence is to be distributed between the original access licence and the new access licence in accordance with the order of the Supreme Court under section 74.

3 Extraction component of new access licence

(1) If the extraction component of the original access licence did not specify a volume limit or some other kind of restriction on the amount of water to be extracted, the new access licence is to have the same extraction component as applied to the original access licence.

(2) If the extraction component of the original access licence specified a volume limit or some other kind of restriction on the amount of water to be extracted, the extraction component of the new access licence—

(a) in a case where all the co-holders consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in accordance with the directions in the application, or

(b) in a case where co-holders who hold a majority share of the holdings under the original access licence consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in the same proportions as the extinguished holdings bear to the whole of the holdings in the original access licence, or

(c) in a case where co-holders holding a majority of the water entitlements under the original access licence did not consent to the application under section 74 (1)—the extraction component for the original access licence is to be distributed between the original access licence and the new access licence in accordance with the order of the Supreme Court under section 74.

(3) If an individual daily extraction component was imposed on the original licence, the water allocation accounts for the original access licence and the new access licence are to be adjusted to reflect the provisions made by this clause.

4 Water allocation account for new access licence

The water allocations for a water allocation account for an original access licence and new access licence are to be adjusted as follows—

(a) in a case where all the co-holders consented to the application under section 74 (1)—the water standing to the credit of the water allocation account for the original

access licence is to be distributed between the water allocation accounts for the original access licence and the new access licence in accordance with the directions in the application,

(b) in a case where co-holders who hold a majority share of the holdings under the original access licence consented to the application under section 74 (1)—the water standing to the credit of the water allocation account for the original access licence is to be distributed between the water allocation accounts for the original access licence and the new access licence in the same proportions as the extinguished holdings bear to the whole of the holdings in the original access licence,

(c) in a case where co-holders holding a majority of the water entitlements under the original access licence did not consent to the application under section 74 (1)—the water standing to the credit of the water allocation account for the original access licence is to be distributed between the water allocation accounts for the original access licence and the new access licence in accordance with an order of the Supreme Court under section 74 (4).

5 Conditions of new licence

A new access licence, at the time at which it is granted, is subject to the same mandatory conditions to which the original access licence was subject at that time.

6 Nominated water supply work for new access licence

A water supply work nominated in relation to an original access licence is taken to be nominated in relation to the new access licence unless—

(a) the nomination of the water supply work is withdrawn in accordance with this Act, or

(b) a different water supply work is nominated in accordance with this Act, or

(c) an order of the Supreme Court made under section 74 provides otherwise.

7 Security interests relating to new access licences

(1) A dealing under section 74 is not to be recorded in the Access Register unless the consent of any holder of a security interest in the extinguished holdings of the original access licence has been obtained.

(2) Any security interests that subsisted in the extinguished holdings, as in force immediately before they were extinguished, become equivalent interests in the new access licence.

Schedule 1 Irrigation corporations

(Section 117)

Coleambally Irrigation Co-operative Limited, in respect of the former Coleambally Irrigation Area.

Jemalong Irrigation Limited, in respect of—

(a) the former Jemalong Domestic and Stock Water Supply and Irrigation District, and

(b) the former Wyldes Plains Domestic and Stock Water Supply and Irrigation District.

Western Murray Irrigation Limited, in respect of—

(a) the former Buronga Irrigation Area, and

(b) the former Coomealla Irrigation Area, and

(c) the former Curlwaa Irrigation Area.

Murray Irrigation Limited, in respect of—

(a) the former Tullakool Irrigation Area, and

(b) the former Berriquin Provisional Domestic and Stock Water Supply and Irrigation District, and

(c) the former Denimein Provisional Domestic and Stock Water Supply and Irrigation District, and

(d) the former Deniboota Provisional Domestic and Stock Water Supply and Irrigation District, and

(e) the former Wakool Domestic and Stock Water Supply and Irrigation District.

Murrumbidgee Irrigation Limited, in respect of—

(a) the former Yanco No 1 Irrigation Area, and

(b) the former Mirrool No 1 Irrigation Area, and

(c) the former Benerembah Domestic and Stock Water Supply and Irrigation District, and

(d) the former Tabbita Domestic and Stock Water Supply and Irrigation District, and

(e) the former Wah Wah Domestic and Stock Water Supply and Irrigation District.

Schedule 2 Major utilities

(Section 281)

AGL Macquarie Pty Limited
Delta Electricity
EnergyAustralia NSW Pty Ltd
Eraring Energy
Hunter Water Corporation
Sydney Water Corporation
Water NSW

Schedule 3 Water supply authorities

(Section 285)

Part 1 Bodies established by this Act

Cobar Water Board

Part 2 Statutory bodies established by other Acts

Gosford City Council
Sydney Olympic Park Authority
Wyong Council

Part 3 State owned corporations

Essential Energy
Water NSW (but only in relation to the Fish River water supply scheme within the meaning of the *Water NSW Act 2014*)

Schedule 4 Land exempt from water supply authority service charges

(Section 312)

(1) Land that is vested in the Crown, or in a public body, or in trustees, and is used for a public cemetery.

(2) Land that is vested in the Crown, or in a public body, or in trustees, and is used for a common.

(3) Land that is vested in the Crown, or in a public body, or in trustees, and is used for a public reserve or park.

(4) Land that belongs to any public hospital, public benevolent institution or public charity, and is used or occupied by the hospital, institution or charity for its purposes.

(5) Land that is used or occupied solely for the purposes of, or connected with, a baby health centre, day nursery, kindergarten or amenities for the aged not conducted for private gain.

(6) Land that is vested in a local health district constituted under the *Health Services Act 1997* and is used or occupied by the local health district for its purposes.

(7) Land that is vested in the Crown, or in a public body, or in trustees, and is used solely for the purposes of a free public library.

(8) Land owned by the Crown that (except in the case of land leased to a caretaker at a nominal rental) is not leased by the Crown to any person for private purposes.

(9) Land that belongs to a religious body and that is occupied and used in connection with—

(a) any church or other building used or occupied for public worship, or

(b) any building used or occupied solely as the residence of a minister of religion in connection with any such church or building, or

(c) any building used or occupied for the purposes of religious teaching or training, or

(d) any building used or occupied solely as the residence of the official head or the assistant official head, or both, of any religious body in the State or in any diocese in the State.

(10) Land that is a public place within the meaning of the *Local Government Act 1993*.

(11) Land that—

(a) is unoccupied, and

(b) is not supplied with water from any water-pipe of a water supply authority and is not connected to any sewer of a water supply authority, and

(c) has been determined, by the council of the local government area in which the land is situated, to be unsuitable for the erection of a building because of flooding or landslip.

(12) Land that is unoccupied and that is below highwater mark of any tidal water.

(13) Land that belongs to and that is occupied and used in connection with any registered non-government school under the *Education Act 1990*, including—

(a) any playground that belongs to and is used in connection with any such school, and

(b) any building that is occupied as a residence by any caretaker, employee or teacher of any such school and that belongs to and is used in connection with the school.

(14) Land that comprises any sports ground, garden or children's playground provided by a council under the *Local Government Act 1993*.

(15) Land that is vested in the University of Newcastle, or in a college of the University, and is used or occupied by the University or college solely for its purposes.

(16) Land that is vested in—

(a) the New South Wales Aboriginal Land Council, or

(b) a Regional Aboriginal Land Council, or

(c) a Local Aboriginal Land Council,

constituted under the *Aboriginal Land Rights Act 1983*, being land that is declared under Division 5 of Part 2 of that Act to be exempt from the payment of rates under this Schedule.

(17) Land that—

(a) is vested in the mines rescue company, within the meaning of the *Coal Industry Act 2001*, and

(b) is used for the purposes of a mine rescue station controlled by that company.

Schedule 5 Constitution and procedure of water supply authorities

(Section 288)

Part 1 Provisions relating to the members of a water supply authority

1 (Repealed)

2 Elected member

(1) In this clause—

elected member, in the case of a water supply authority of which one or more of the members is appointed after being elected by employees of the water supply authority, means a member so elected.

(2) Regulations may be made for or with respect to the election of a person to hold office as an elected member.

(3) The Electoral Commissioner for New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner, is to be the returning officer for an election, and has and may exercise the functions conferred or imposed on the returning officer by the regulations made under this clause in relation to the election.

(4) Employees of a water supply authority are entitled to vote at an election in accordance with the regulations made under this clause.

(5) A person's nomination as a candidate for election as elected member is invalid if—

(a) the nomination is not made by at least 2 persons who are employees of the water supply authority, or

(b) the person is not, at the time of nomination, an employee of the water supply authority, or

(c) the person is not, at the time of nomination, a member of an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996* or an association of employees registered as an organisation under the *Workplace Relations Act 1996* of the Commonwealth, being such an organisation or association that is prescribed by the regulations for the purposes of this paragraph as being an organisation or association representing employees of the water supply authority, or

(d) the instrument of nomination is not accompanied by a statutory declaration to the effect that the person is, at the time of nomination, such a member, and the returning officer is entitled to rely on the information contained in the statutory declaration.

(6) A person may be, at the same time, both the elected member and an employee of the

water supply authority.

(7) Nothing in any law, rule, direction or other requirement that—

(a) is applicable to the elected member in his or her capacity as an employee of the water supply authority, and

(b) would not be so applicable if the elected member were not such an employee,

operates so as to prevent or restrict the exercise by the elected member of any of the functions of an elected member.

(8) If no person is nominated at an election, or if for any other reason an election fails, the Governor may appoint a person eligible for election to be a part-time member, and the person, on being appointed, is taken to be a person elected in the manner prescribed by the regulations made under this clause.

(9) If a vacancy occurs in the office of elected member otherwise than by reason of the expiration of the period for which an elected member was appointed—

(a) the Governor may appoint a person eligible for election to hold, subject to this Schedule, the office of elected member for a term commencing on the date of appointment or a later date specified in the relevant instrument of appointment and ending on the commencement of the term of office of the next elected member, and

(b) any such person, on being so appointed, is taken to be a person elected in the manner prescribed by the regulations made under this clause.

3 Chairperson of a water supply authority

(1) One of the members, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, is to be appointed as chairperson of a water supply authority.

(2) The Governor may remove a member from the office of chairperson.

(3) A person who is a member and chairperson is taken to have vacated office as chairperson if the person—

(a) is removed from that office by the Governor under subclause (2), or

(b) resigns that office by instrument in writing addressed to the Minister, or

(c) ceases to be a member.

(4) The Minister may appoint a member to act in the office of chairperson during a vacancy in the office or during the illness or absence of the chairperson and the person, while so acting, has and may exercise all the functions of the chairperson and

is taken to be the chairperson.

(5) This clause does not apply to the Broken Hill Water Board or the Cobar Water Board constituted as provided by Parts 2 and 3 of this Schedule.

4 Acting members

(1) The Minister may, from time to time, appoint a person to act in the office of a member during a vacancy in the office or during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.

(2) The Minister may remove any person from any office to which the person was appointed under this clause.

(3) A person while acting in the office of a part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

5 Terms of office

Subject to this Part, a member is to hold office—

(a) in the case of a part-time member other than an elected member—for such period not exceeding 5 years, or

(b) in the case of an elected member—for such period not exceeding 5 years but not less than 3 years,

as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

6 Remuneration

A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

7 Casual vacancies

(1) A member (other than a full-time member) is taken to have vacated office if the member—

(a) dies, resigns or is removed from office, or

(b) absents himself or herself from 4 consecutive meetings of the water supply authority of which reasonable notice has been given to the member personally or in the ordinary course of post, unless—

(i) the water supply authority has granted the member leave to be absent from

those meetings, or

(ii) within 4 weeks after the last of those meetings, the member is excused by the water supply authority for having been absent from those meetings, or

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(d) becomes a mentally incapacitated person, or

(e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

(f) being an elected member, ceases to be an employee of the water supply authority for which he or she is an elected member.

(2) The Governor may remove a part-time member from office.

(3) If the office of any member becomes vacant, a person is, subject to this Part, to be appointed to fill the vacancy.

8 Disclosure of pecuniary interests

(1) A member who has a direct or indirect pecuniary interest—

(a) in a matter that is being considered, or is about to be considered, at a meeting of the water supply authority, or

(b) in a thing being done or about to be done by the water supply authority,

must, as soon as possible after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a meeting of the water supply authority.

(2) A disclosure by a member at a meeting of the water supply authority that the member—

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or a specified person,

is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person that may arise after the date

of the disclosure.

(3) The water supply authority must cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book must be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the water supply authority from time to time.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subclause (1) or (2), the member must not, unless the Minister otherwise determines—

(a) be present during any deliberation of the water supply authority, or take part in any decision of the water supply authority, with respect to that matter, or

(b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) A contravention of this clause does not invalidate any decision of the water supply authority or the exercise of any function under this Act.

(6) A reference in this clause to a meeting of the water supply authority includes a reference to a meeting of a committee of the water supply authority.

9 Effect of certain other Acts

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member and the office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

(2) If by or under any other Act provision is made—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Part as a part-time member.

Part 2 Broken Hill Water Board

10–12 (Repealed)

13 Definitions

(1) In this Part—

Corporation means Australian Inland Energy Water Infrastructure.

council means the Council of the City of Broken Hill.

financial year means the financial year for the Corporation.

mining company means a company for the time being prescribed as a mining company for the purposes of this Part.

(2) Until the regulations otherwise provide, the following companies are mining companies for those purposes—

Pasminco Australia Limited

Minerals Mining and Metallurgy Limited

(3) If a company ceases to be a mining company for the purposes of this Part, it remains responsible for any undischarged liability to which it was subject under this Part while it was a mining company.

14 Exemption from service charges

(1) Land at Broken Hill that is held by a mining company under a lease from the Crown, and is used for mining or incidental purposes, is not subject to a water service charge.

(2) Land referred to in subclause (1) is not subject to a sewerage service charge because of the construction of any sewerage works.

15 Supply of water to mining companies

(1) The Corporation must supply each mining company, at places as near as possible to the mines or works of the company, with the water required by the company to carry on its business.

(2) Subclause (1) has effect only in so far as is permitted by—

(a) the capacity of the works of the Corporation, and

(b) the requirements of the landholders of land and of other persons using water for domestic purposes.

16 Mining companies to take water

(1) A mining company is to draw from the Corporation all the water that it requires for the purposes of its business and that the Corporation is able to supply.

(2) Subclause (1) does not prevent a mining company from drawing water from—

(a) supplies conserved in its own tanks and dams, or

(b) sources other than Stephens Creek, by means lawfully used by it on and after 21 December 1915 and before 1 January 1939.

17 Water charges

(1) The charge for water supplied by the Corporation to a mining company is to be—

(a) 11 cents per kilolitre unless it is water referred to in paragraph (b), or

(b) 5.5 cents per kilolitre if it is used only for a dwelling or plantation or any other purpose determined by the Corporation to be a social purpose.

(2) A determination by the Corporation of the proportion of water supplied by it to a mining company that is water referred to in subclause (1) (b) is binding on the company.

(3) The charge imposed by subclause (1) is taken to be a charge imposed by the Corporation for water supplied to the land referred to in clause 14.

(4) No liability for a service charge arises in relation to land that—

(a) adjoins the rising main between Menindee and the pumping station at Stephens Creek, and

(b) a holding in the Western Division (within the meaning of the *Crown Land Management Act 2016*) or a part of land held under freehold title,

unless the whole of the holding or freehold land of which it forms part is within the area of operations of the Corporation.

18 Additional payments to Water Fund

(1) If, after excluding income received from the mining companies for water supplied to them during a financial year, there is a deficiency for that year in the Water Fund of the Corporation—

(a) the Treasurer, out of money to be provided by Parliament, may pay to the Corporation towards the deficiency thirteen fifty-ninths of its amount, and

(b) each mining company must, on demand, pay to the Corporation the prescribed contribution for the company.

(2) The prescribed contribution for a mining company towards the deficiency for a financial year is the amount ascertained by—

(a) calculating the amount that bears to forty-six fifty-ninths of the deficiency the same proportion as is borne by the amount payable by the company under clause 17 in that year to the total amount so payable by all the mining companies, and

(b) deducting from the amount so calculated the amount paid by the company under clause 17 in that year.

(3) The amount payable by a mining company under this clause is taken to be a charge imposed by the Corporation for water supplied by the Corporation.

19 Estimated deficit and advance payments

(1) If estimates prepared by the Corporation before the commencement of a financial year disclose the possibility of a deficit for that year in the Water Fund of the Corporation—

(a) the Corporation is to provide the Treasurer and each mining company with particulars of the estimates and the possible deficit, and

(b) the Treasurer and each mining company must, in that year, make payments to the Corporation as required by subclause (2).

(2) Towards discharging the respective liabilities of the Treasurer and each mining company for a financial year—

(a) the Treasurer must pay to the Corporation out of money to be provided by Parliament the amount estimated by the Treasurer to be sufficient to discharge the liability of the Treasurer, and

(b) each mining company must pay to the Corporation the amount estimated by the Corporation to be sufficient to discharge the liability of the mining company,

by equal instalments on 1 January, 1 April, 1 July and 1 October in that year.

(3) On the auditing of the Corporation’s accounts for a financial year, the Corporation must pay to, or receive from, the Treasurer and each mining company an amount in adjustment of any difference between the estimated and actual liabilities under clause 18 for that financial year.

20 Sewerage charges

(1) Each mining company must, in respect of each financial year of the Corporation, pay to the Corporation an amount that bears to $6,400 the same proportion as the amount payable by the company to the council for ordinary rates bears to the total amount payable by all the mining companies to the council for ordinary rates for that year.

(2) The amount payable by a mining company under subclause (1) is taken to be a charge imposed by the Corporation for sewerage services for that year in respect of the land referred to in clause 14.

(3) If, in a financial year of the Corporation, there is a deficiency in its Sewerage Fund, the Treasurer, out of money to be provided by Parliament, may pay to the Corporation for application towards the deficiency—

(a) the amount of the deficiency, or

(b) $6,000,

whichever is the lesser amount.

(4) Money at credit in the Australian Inland Energy Water Infrastructure Administration Account in the Special Deposits Account at the Treasury is, at the request of the Corporation, to be paid to the Corporation for the renewal or replacement of capital assets.

21 Default by mining company

If the Corporation—

(a) has obtained judgment against a mining company for an amount payable under this Part, and

(b) the judgment remains unsatisfied even though the Corporation has taken all reasonable steps to enforce it,

the Corporation may recover the unpaid amount from each company not in default rateably in proportion to each amount paid by it under this Part.

Part 3 Cobar Water Board

22 Members of the Cobar Water Board

(1) The Cobar Water Board is to consist of 7 part-time members appointed by the Governor.

(2) Of the members—

(a) one is to be selected by the Minister and is, in and by the instrument by which the person is appointed, to be appointed as President of the Board, and

(b) one is to be nominated by—

(i) Goldcorp Asia Pacific Pty Ltd, or

(ii) if another mining company is prescribed by the regulations for the purposes of this subparagraph, that company, and

(c) one is to be nominated by—

(i) CBH Resources Limited, or

(ii) if another mining company is prescribed by the regulations for the purposes of this subparagraph, that company, and

(d) one is to be nominated by—

(i) Cobar Management Pty Ltd, or

(ii) if another mining company is prescribed by the regulations for the purposes of this subparagraph, that company, and

(e) 3 are to be nominated by the Cobar Shire Council.

(3) If a nomination under subclause (2) (b), (c), (d) or (e) is not made within a time notified by the Minister, a person nominated by the Minister is to be appointed.

(4) A person who, immediately before the substitution of this clause by Schedule 1 to the *Statute Law (Miscellaneous Provisions) Act 2006*, held office as a member of the Cobar Water Board ceases to hold office on that substitution.

(5) A person who ceases to hold office because of subclause (4) is not entitled to any remuneration or compensation because of so ceasing to hold office.

23 (Repealed)

24 Meetings of the Board

(1) The President, if present, is to preside at a meeting of the Cobar Water Board.

(2) In the absence of the President from a meeting of the Board, a member elected from those present is to preside at the meeting.

Schedule 6 Management committees

(Section 13)

Part 1 Constitution

1 Application of Schedule

This Schedule applies to all management committees.

2 Acting chairperson

(1) The Minister may, from time to time, appoint a person to act in the office of chairperson during the illness or absence of a chairperson, and the person, while so acting, has all the functions of the chairperson and is taken to be the chairperson.

(2) The Minister may, at any time, remove a person from an office to which the person has been appointed under this clause.

(3) For the purposes of this clause, a vacancy in the office of chairperson is taken to be an absence from office of the chairperson.

3 Term of office

Subject to this Schedule—

(a) (Repealed)

(b) a member of a management committee holds office during the term for which the committee is established.

4 Remuneration

A member of a management committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Vacancy in office of appointed member

(1) The office of a member of a management committee becomes vacant if the member—

(a) dies, resigns or is removed from office, or

(b) absents himself or herself from 4 consecutive meetings of the committee of which reasonable notice has been given to the member personally or in the ordinary course of post, unless—

(i) the committee has granted the member leave to be absent from those meetings, or

(ii) within 4 weeks after the last of those meetings, the member is excused by the committee for having been absent from those meetings, or

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(d) becomes a mentally incapacitated person, or

(e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member of a management committee from office at any time.

6 Filling of vacancy in office of member

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

7 Disclosure of pecuniary interests

(1) A member of a management committee who has a direct or indirect pecuniary interest—

(a) in a matter that is being considered, or is about to be considered, at a meeting of the committee, or

(b) in a thing being done or about to be done by the committee,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.

(2) A disclosure at such a meeting that the member—

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or a specified person,

is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person that may arise after the date of the disclosure.

(3) The management committee must cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book must be open at all reasonable hours to the inspection, free of charge, of any person.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subclause (1) or (2), the member must not, unless the Minister otherwise determines—

(a) be present during any deliberation, or take part in any decision, of the management committee with respect to that matter, or

(b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) Subclause (4) does not apply to a member whose interest consists merely of the fact that the member is the holder of an access licence or approval.

(6) A contravention of this clause does not invalidate any decision of the management

committee or the exercise of any function under this Act.

(7) A reference in this clause to a meeting of a management committee includes a reference to a meeting of any of its committees.

8 Effect of certain other Acts

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member of a management committee and the office of such a member is not, for the purposes of any Act, an office or place of profit under the Crown.

(2) If by or under any other Act provision is made—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member of a management committee, or from accepting and retaining any remuneration payable to the person under this Part as such a member.

Part 2 Procedure

9 General procedure

Except as otherwise provided by this Act or the regulations—

(a) meetings of a management committee are to be held at such times and places as are fixed by the chairperson, and

(b) the procedure for the convening of meetings and for the conduct of business at those meetings is to be as determined by the chairperson.

10 Quorum

A majority of the members of a management committee constitute a quorum.

11 Presiding members

The chairperson (or, in the absence of the chairperson, a member appointed by the members then present) is to preside at a meeting of a management committee.

12 Decisions

(1) At any meeting of a management committee, all members present are to strive for consensus in reaching decisions.

(2) However, a decision by a management committee has effect if it is supported by a majority of the votes cast at a meeting at which a quorum is present.

(3) Despite subclause (2), any of the following decisions of a management committee, that is—

(a) any decision to submit a draft management plan to the Minister under section 37 or 40, and

(b) any decision that is required to be unanimous by the terms of the order by which the committee is established,

does not have effect unless it is unanimous, that is, unless it is supported by all of the votes cast at a meeting at which a quorum is present.

13 Record of proceedings

(1) The presiding member at a meeting of a management committee must cause a record of the proceedings at the meeting to be made.

(2) Records made for the purposes of this clause may be destroyed after the expiry of the period prescribed by the regulations.

14 Authentication of documents

Any document requiring authentication by a management committee is sufficiently authenticated if it is signed by—

(a) the member who presided at the meeting that dealt with the proceedings with respect to which the document was prepared, or

(b) in the absence of that member, any other member who was present at that meeting.

15 First meeting

The first meeting of a management committee is to be called by the Minister in such manner as the Minister considers appropriate.

Schedule 7 Repeals

(Section 401)

Balranald Irrigation Act 1902 No 78
Crown Lands Amendment Act 1932 No 69
Drainage Act 1939 No 29
Fish River Water Supply Administration Act 1945 No 16
Glennies Creek Dam Act 1979 No 126
Hunter Valley Flood Mitigation Act 1956 No 10
Irrigation Act 1912 No 73
Irrigation (Amendment) Act 1916 No 22
Irrigation (Amendment) Act 1941 No 54

Irrigation (Amendment) Act 1973 No 3
Irrigation (Amendment) Act 1979 No 160
Irrigation and Water (Amendment) Act 1943 No 2
Irrigation Corporations Act 1994 No 41
Irrigation, Water and Rivers and Foreshores Improvement (Amendment) Act 1955 No 12
Miscellaneous Acts (Water Administration) Amendment Act 1986 No 205
Private Irrigation Districts Act 1973 No 47
Rivers and Foreshores Improvement Act 1948 No 20
Water Act 1912 No 44
Water (Amendment) Act 1936 No 31
Water (Amendment) Act 1940 No 57
Water (Amendment) Act 1976 No 33
Water (Amendment) Act 1979 No 159
Water (Soil Conservation) Amendment Act 1986 No 143
Water Administration Act 1986 No 195
Water Administration (Transfer of Functions) Act 1986 No 204
Water Supply Authorities Act 1987 No 140

Schedule 8 Amendment of other Acts

(Section 402)

8.1–8.26

(Repealed)

8.27 Sydney Water Act 1994 No 88

[1]–[4] (Repealed)

[5] Section 12 Grant of operating licences

Omit section 12 (3)–(6).

[6] (Repealed)

[7] Section 90 Activities outside area of operations

Omit the section.

[8] Section 91 Contracting out

Omit section 91 (2)–(6).

8.28, 8.29

(Repealed)

8.30 Water Management Act 2000

[1] (Repealed)

[2] Chapter 5, Part 2 Hunter Valley flood mitigation works

Omit the Part.

[3]–[5] (Repealed)

Schedule 9 Savings, transitional and other provisions

(Section 403)

Part 1 Preliminary

1 Savings and transitional regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—

this Act

Water Management Amendment Act 2002

Water Management Amendment Act 2004

State Water Corporation Act 2004 (but only in relation to the amendments made to this Act)

Water Management Amendment Act 2005

Water Management Amendment Act 2008

Water Management Amendment Act 2009

Water Management Amendment Act 2010

Statute Law (Miscellaneous Provisions) Act (No 2) 2011, to the extent that it amends this Act or the regulations made under this Act

any other Act that amends this Act

(2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

(3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that

publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

(4) If the regulations so provide, such a provision has effect despite any other provision of this Schedule, Schedule 10 or Schedule 11.

Part 2 Provisions consequent on enactment of this Act

Division 1 General

2 Definitions

In this Part—

amended legislation means any Act amended by Schedule 8, as so amended.

appointed day, in its application to any act, matter, thing or circumstance arising under this Part, means—

(a) in relation to a provision of the old legislation that has been repealed or amended by this Act, the day on which the repeal or amendment commences, or

(b) in relation to a new provision inserted into the amended legislation by this Act, the day on which the new provision commences.

old legislation means—

(a) any Act repealed by Schedule 7, as in force immediately before its repeal, and

(b) any Act amended by Schedule 8, as in force immediately before its amendment.

3 (Repealed)

4 Delegations

Any delegation that was in force immediately before the appointed day under a provision of the old legislation for which there is a corresponding provision in the amended legislation is taken to be a delegation in force under the corresponding provision of the amended legislation.

5 Construction of references to Water Administration Ministerial Corporation

Subject to this Schedule and the regulations, in any Act or instrument, a reference to the Water Administration Ministerial Corporation (however described), in relation to a function that under the old legislation was exercisable by the Ministerial Corporation but under this Act is exercisable by the Minister, extends to the Minister.

6 Construction of other references

Subject to this Schedule and the regulations, in any Act or instrument—

(a) a reference to a provision of the old legislation for which there is a corresponding provision in the amended legislation extends to the corresponding provision of the amended legislation, and

(b) a reference to any act, matter or thing referred to in a provision of the old legislation for which there is a corresponding provision in the amended legislation extends to the corresponding act, matter or thing referred to in the corresponding provision of the amended legislation.

7 General saving

Subject to this Schedule and the regulations—

(a) anything begun before the appointed day under a provision of the old legislation for which there is a corresponding provision in the amended legislation may be continued and completed under the old legislation as if this Act had not been enacted, and

(b) subject to paragraph (a), anything done under a provision of the old legislation for which there is a corresponding provision in the amended legislation (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of the amended legislation.

Division 2 Water Act 1912

8 Definition

In this Division, ***the 1912 Act*** means the *Water Act 1912*, as in force immediately before the appointed day.

9–10 (Repealed)

11 Rates and charges

Any rates and charges fixed under Part 3 or 7 of the 1912 Act are taken to have been fixed under Part 3 of Chapter 5 of this Act.

12 Floodplains

Subject to the regulations, any land that, immediately before the appointed day, was designated as a floodplain under Part 8 of the 1912 Act is taken to be a floodplain for the purposes of this Act.

13 Floodplain management plans

(1) A floodplain management plan adopted under section 166A of the 1912 Act is taken to be a Minister’s plan made under this Act in relation to floodplain management.

(2) Section 43 (Duration of management plans) is taken to apply to a floodplain management plan that becomes a Minister's plan by operation of subclause (1) as if it had commenced on the day on which it became a Minister's plan.

13A Regulations

Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the following regulations—

(a) the *Water (Part 2—General) Regulation 1997*,

(b) the *Water (Part 5—Bore Licences) Regulation 1995*,

(c) the *Water (Part 5—Drillers' Licences) Regulation 1995*,

(d) the *Water (Part 8—General) Regulation 1995*.

Division 3

14, 15 (Repealed)

Division 4 Water Administration Act 1986

16 Definition

In this Division, ***the 1986 Act*** means the *Water Administration Act 1986*, as in force immediately before the appointed day.

17 Continuation of Ministerial Corporation

The Water Administration Ministerial Corporation constituted by Part 2 of Chapter 8 of this Act is a continuation of, and the same legal entity as, the Water Administration Ministerial Corporation constituted by the 1986 Act.

18 Continued operation of section 19

Section 19 of the 1986 Act continues to apply to acts, matters and things that arose before the appointed day.

Division 5 Water Supply Authorities Act 1987

19 Definition

In this Division, ***the 1987 Act*** means the *Water Supply Authorities Act 1987*, as in force immediately before the appointed day.

20 Continuation of water supply authorities

(1) Each water supply authority constituted by Part 2 of Chapter 6 of this Act is a continuation of, and the same legal entity as, the water supply authority of the same

name constituted by the 1987 Act.

(2) Subject to the regulations, the area of operations of a water supply authority constituted by Part 2 of Chapter 6 of this Act is the same as the area of operations for the corresponding water supply authority constituted by the 1987 Act.

(3) Subject to this Act, the members of a water supply authority constituted by the 1987 Act continue to hold office as members of the corresponding water supply authority constituted by Part 2 of Chapter 6 of this Act for the residue of their respective terms of office under the 1987 Act.

21 Special areas

A special area for a water supply authority constituted by the 1987 Act is taken to be a special area for the corresponding water supply authority constituted by Part 2 of Chapter 6 of this Act.

22 Certificates of compliance

A certificate of compliance granted by a water supply authority under the 1987 Act is taken to be a certificate of compliance issued by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.

23 Service charges

(1) An order declaring a development area, charging year, drainage area, floodplain, river management area or special industry under section 28 of the 1987 Act is taken to be the corresponding order under Part 2 of Chapter 6 of this Act.

(2) Service charges levied by a water supply authority under the 1987 Act are taken to be service charges levied by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.

(3) Determinations made by a water supply authority under section 34 of the 1987 Act are taken to be determinations made by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.

(4) Assessments made by a water supply authority under section 35 or 36 of the 1987 Act are taken to be assessments made by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.

(5) A certificate issued by a water supply authority under section 41 of the 1987 Act is taken to be a certificate issued by the corresponding water supply authority under Part 2 of Chapter 6 of this Act.

24 Penalty notices

A penalty notice issued by an authorised employee of a water supply authority under

section 51 of the 1987 Act is taken to have been issued by an authorised employee or agent of the corresponding water supply authority under Part 2 of Chapter 6 of this Act, and may be enforced accordingly.

25 Regulations

Any regulations in force under the 1987 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

Division 6 Fish River Water Supply Administration Act 1945

26 Definition

In this Division, ***the 1945 Act*** means the *Fish River Water Supply Administration Act 1945*, as in force immediately before the appointed day.

27 Contributions by councils

Any amount payable by a council under Part 4 of the 1945 Act is taken to be payable under Part 1 of Chapter 5 of this Act.

28 Regulations

Any regulations in force under the 1945 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

Division 7 Hunter Valley Flood Mitigation Act 1956

29 Definition

In this Division, ***the 1956 Act*** means the *Hunter Valley Flood Mitigation Act 1956*, as in force immediately before the appointed day.

30 Permissions

Any permission in force under section 12 of the 1956 Act immediately before the appointed day, and any approval in force under section 16 of the 1956 Act immediately before the appointed day, are taken to be consents in force under Part 2 of Chapter 5 of this Act.

31 Control and management of works

Any work that, immediately before the appointed day, was under the control and management of the Ministerial Corporation under the 1956 Act is taken to be under the control and management of the Ministerial Corporation under Part 2 of Chapter 5 of this Act.

32 Finance

Any amount for which the Hunter Catchment Management Trust or a local council was

liable under the 1956 Act immediately before the appointed day is taken to be an amount for which the Trust or council is liable under Part 2 of Chapter 5 of this Act.

33 Regulations

Any regulations in force under the 1956 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

Division 8 Irrigation Corporations Act 1994

34 Definition

In this Division, ***the 1994 Act*** means the *Irrigation Corporations Act 1994*, as in force immediately before the appointed day.

35 Operating licences

Any operating licence granted to an irrigation corporation under the 1994 Act is taken to be an operating licence under Part 1 of Chapter 4 of this Act.

36 Continuation of indemnity

Section 75 of the 1994 Act continues to apply to matters arising under that Act before the appointed day as if this Act had not been enacted.

37 Regulations

Any regulations in force under the 1994 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

Division 9 Private Irrigation Districts Act 1973

38 Definition

In this Division, ***the 1973 Act*** means the *Private Irrigation Districts Act 1973*, as in force immediately before the appointed day.

39 Private districts

(1) A provisional private domestic and stock water supply district constituted under the 1973 Act is taken to be a private domestic and stock water supply district constituted under Part 2 of Chapter 4 of this Act.

(2) A private domestic and stock water supply district constituted under the 1973 Act is taken to be a private domestic and stock water supply district constituted under Part 2 of Chapter 4 of this Act.

(3) A provisional private domestic and stock water supply and irrigation district constituted under the 1973 Act is taken to be a private domestic and stock water

supply and irrigation district constituted under Part 2 of Chapter 4 of this Act.

(4) A private domestic and stock water supply and irrigation district constituted under the 1973 Act is taken to be a private domestic and stock water supply and irrigation district constituted under Part 2 of Chapter 4 of this Act.

40 Boards of management

(1) The Board of management of a provisional private district or private district under the 1973 Act is taken to be a private irrigation board under Part 2 of Chapter 4 of this Act.

(2) Subject to this Act, the members of a Board of management of a provisional private district or private district constituted under the 1973 Act continue to hold office as members of the corresponding private irrigation board under this Act for the residue of their respective terms of office under the 1973 Act.

41 Control and management of works

Any work that, immediately before the appointed day, was under the control and management of the Board of management of a provisional private district or private district under the 1973 Act is taken to be under the control and management of the corresponding private irrigation board under Part 2 of Chapter 4 of this Act.

42 Rates and charges

(1) Any rates and charges fixed by the Board of management of a provisional private district or private district under the 1973 Act before the appointed day are taken to have been fixed by the corresponding private irrigation board under Part 2 of Chapter 4 of this Act.

(2) A certificate issued by the Board of management of a provisional private district or private district under the 1973 Act before the appointed day is taken to be a certificate issued by the corresponding private irrigation board under Part 2 of Chapter 4 of this Act.

43 Water allocations

Any determination made by the Board of management of a provisional private district or private district under the 1973 Act before the appointed day is taken to be a determination made by the corresponding private irrigation board under Part 2 of Chapter 4 of this Act.

44 By-laws

Any by-laws made the Board of management of a provisional private district or private district under the 1973 Act before the appointed day are taken to be by-laws made by the corresponding private irrigation board under Part 2 of Chapter 4 of this Act, and may be amended and repealed accordingly.

45 Regulations

Any regulations in force under the 1973 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

Division 10 Drainage Act 1939

46 Definition

In this Division, ***the 1939 Act*** means the *Drainage Act 1939*, as in force immediately before the appointed day.

47 Rates

Any rate levied under Division 2 of Part 5 of the 1939 Act before the appointed day is taken to be a rate levied under Division 3 of Part 3 of Chapter 4 of this Act.

48 Regulations

Any regulations in force under the 1939 Act immediately before the appointed day are taken to be regulations under this Act, and may be amended and repealed accordingly.

Division 11

49, 50 (Repealed)

Division 12 Transfer of assets, rights and liabilities

51 Definitions

In this Part—

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

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

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

transfer order means an order made by the Minister under clause 52.

transferee means the person to whom any staff, assets, rights or liabilities are transferred by a transfer order.

transferor means the person from whom any staff, assets, rights or liabilities are transferred by a transfer order.

52 Transfer orders

(1) The Minister may, by order in writing, transfer to any public authority (including any water supply authority) any assets, rights or liabilities (but not any staff) of the Minister or the Ministerial Corporation with respect to the Fish River water supply scheme referred to in Part 1 of Chapter 5.

(2) The Minister may, by order in writing, transfer to any public authority any staff, assets, rights or liabilities of the Minister or the Ministerial Corporation with respect to the Hunter Valley flood mitigation works referred to in Part 2 of Chapter 5.

(3) The Minister may, by order in writing, transfer to any private irrigation board any assets, rights or liabilities (but not any staff) of the Minister or the Ministerial Corporation with respect to the Lowbidgee flood control and irrigation works referred to in Part 3 of Chapter 5.

(4) The Minister may, by order in writing, transfer to any public authority, irrigation corporation or private irrigation board any assets, rights or liabilities (but not any staff) of the Benerembah Irrigation District Environment Protection Trust referred to in Part 1 of Schedule 3.

(5) The Minister may, by order in writing, transfer to any public authority any assets, rights or liabilities (but not any staff) of the Upper Parramatta River Catchment Trust referred to in Part 1 of Schedule 3.

53 Transfer of staff

Any person who, by virtue of a transfer order, becomes a member of staff of a transferee is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person not become a member of staff of the transferee but remained a member of staff of the transferor.

54 Transfer of assets, rights and liabilities

(1) When any assets, rights or liabilities are transferred by a transfer order, the following provisions have effect—

(a) the assets of the transferor are, by operation of this clause, vested in the transferee,

(b) the rights and liabilities of the transferor become, by operation of this clause, the rights and liabilities of the transferee,

(c) all proceedings relating to the assets, rights and liabilities of the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending against the transferee,

(d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities of the transferor before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which it has any effect) taken to have been done or omitted by, to or in respect of the transferee,

(e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to the assets, rights or liabilities) taken to include a reference to the transferee.

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

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

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

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

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

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

(4) A transfer is subject to the terms and conditions of the transfer order by which it is effected.

(5) No compensation is payable to any person in connection with a transfer under this Division except to the extent (if any) to which the transfer order giving rise to the transfer so provides.

(6) Subclause (5) does not affect the rights of any member of staff referred to in clause 53.

55 Date of vesting

A transfer takes effect on the date specified in the transfer order by which it is effected.

56 Consideration for vesting

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

57 Payment of duty

Duty under the *Duties Act 1997* is not chargeable for or in respect of anything certified by the Minister as having been done in consequence of the operation of this clause (for example, the transfer or conveyance of an interest in land).

58 Confirmation of vesting

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

(2) A notice under this clause is conclusive evidence of the transfer to which it relates.

Part 3 Provisions consequent on enactment of Water Management Amendment Act 2002

59 Definitions

In this Part—

the 2002 amending Act means the *Water Management Amendment Act 2002*.

60 Guidelines under section 306 (3) (c)

Any guidelines in force under section 306 (3) (c) immediately before its amendment by the 2002 amending Act are taken to be guidelines issued by the Minister for the purposes of that paragraph as amended by that Act.

Part 4 Provisions consequent on enactment of Water Management Amendment Act 2004

61 Definition

In this Part, ***the 2004 amending Act*** means the *Water Management Amendment Act 2004*.

62 References in management plans to environmental health water and supplementary environmental water

In any management plan made before the commencement of this clause—

(a) a reference to environmental health water or supplementary environmental water is taken to be a reference to planned environmental water, and

(b) any environmental water rules established by the plan in relation to environmental health water or supplementary environmental water are taken to have been established in relation to planned environmental water.

63 Duration of management plans

(1) Subject to section 43, any management plan for a water source whose nominal commencement date occurs before the date on which the water source is declared, by proclamation under section 55A, to be a water source to which Part 2 of Chapter 3 applies commences on, and has effect for 10 years from 1 July next after, the date so declared.

(2) In any management plan whose actual commencement date is later than its nominal commencement date—

(a) any date or period of time that is required to be calculated by reference to the nominal commencement date is instead to be calculated by reference to the actual commencement date, and

(b) any date specified in the plan is taken instead to be the date occurring after the date so specified by the number of days by which the actual commencement date succeeds the nominal commencement date.

(3) In this clause—

actual commencement date, in relation to a management plan referred to in subclause (1), means the date on which that plan commences pursuant to that subclause.

nominal commencement date, in relation to a management plan, means the date specified in the plan as the date on which the plan is to commence.

64 Validity of management plans and exercise of plan-making functions

(1) Section 47, as substituted by the 2004 amending Act, applies to a management plan made before the substitution in the same way as it applies to a management plan made after the substitution.

(2) Subclause (1) does not apply to any management plan made before the substitution of section 47 if proceedings under section 47, as in force before the substitution, were commenced in the Land and Environment Court within 3 months after the date of its publication in the Gazette.

65 Minister’s plans

Section 50, as amended by the 2004 amending Act, applies to—

(a) any management plan that was in course of preparation before the commencement of this clause, and

(b) any management plan that was made before the commencement of this clause,

in the same way as it applies to any management plan that is prepared or made after that commencement.

66 Applications for access licences

Despite section 61, a person may apply for an access licence in accordance with this Act if—

(a) the application is for a specific purpose access licence and the relevant management

plan contains provisions to the effect that access licences of the type concerned should be exempt from any embargo under this Act (even though the provisions of this Act relating to the declaration of embargoes may have been repealed), or

(b) the application is for a supplementary water access licence and is made by the owner or occupier of land on which is situated a work referred to in—

(i) the Schedule to the order under the *Water Act 1912* published in Gazette No 119 of 19 July 2002 at page 5,493, or

(ii) the Schedule to the order under the *Water Act 1912* published in Gazette No 210 of 8 November 2002 at page 9,491.

67 References to former sections 71A and 71B–71J, 71K and 71L

(1) In any instrument that was in force under this Act immediately before the commencement of Schedule 3 [6] to the 2004 amending Act, a reference to section 71A extends to section 71M, as inserted by Schedule 3 [6].

(2) In any instrument that was in force under this Act immediately before the commencement of Schedule 3 [25] to the 2004 amending Act, a reference to section 71B–71J, 71K or 71L extends to section 71O–71W, 71Y or 71Z, respectively, as renumbered by Schedule 3 [25].

(3) The renumbering of section 71K as section 71Y does not affect the operation or validity of any access licence dealing principles or access licence dealing rules that were in force immediately before the section was renumbered.

68 Directions under section 323

Any direction in force under section 323 immediately before the amendment of that section by the 2004 amending Act continues to have effect as if that section had not been amended by that Act.

69 Directions under section 325

Any direction in force under section 325 immediately before the substitution of that section by the 2004 amending Act continues to have effect as if that section had not been substituted by that Act.

Part 5 Provisions consequent on enactment of Water Management Amendment Act 2005

70 Definition

In this Part, ***amending Act*** means the *Water Management Amendment Act 2005*.

71 Management plans

(1) Any management plan (and any amendment of a management plan) that was published in the Gazette before the commencement of this clause is taken to have been validly made and to be valid on and from the date that it was so published.

(2) Anything done or omitted to be done before the commencement of this clause pursuant to a management plan or amendment of a management plan referred to in subclause (1) (or done or omitted purportedly in pursuance of such a plan or amendment) is taken on and from the time at which it was done or omitted to be done to have been validly done or validly omitted to be done.

(3) In this clause, a reference to a management plan, or an amendment of a management plan, includes a reference to a purported management plan or a purported amendment of a management plan.

Part 6 Provisions consequent on enactment of Water Management Amendment Act 2008

72 Definition

In this Part, ***the 2008 amending Act*** means the *Water Management Amendment Act 2008*.

73 Orders under section 60 (2) of the unamended Act

(1) Any order that, immediately before the commencement of this clause, was in force under section 60 (2) is taken to have been made under section 49A, as inserted by the 2008 amending Act.

(2) Section 49A (4), as inserted by the 2008 amending Act, does not apply to an order referred to in subclause (1).

73A Application of metering offences

(1) A reference in sections 91H and 91I to a condition of an access licence or approval includes a reference to a condition of an entitlement as referred to in clause 2 of Schedule 10.

(2) This clause does not apply in respect of any proceedings for an offence under those sections commenced before the date of assent to the *Water Management Amendment Act 2010*.

(3) Subclause (1) is taken to have commenced on the commencement of section 91H.

74 Bore drillers' licences under the 1912 Act

(1) A bore driller's licence under the *Water Act 1912* is taken to be a bore driller's licence

under this Act, and may be varied or revoked accordingly.

(2) Unless sooner revoked, a bore driller's licence referred to in subclause (1) expires at the end of 3 years from the date on which it was issued under the *Water Act 1912*.

(3) Until they are repealed, the *Water Act 1912* and the *Water (Part 5—Drillers' Licences) Regulation 1995* continue to apply to a bore driller's licence referred to in subclause (1).

Part 7 Provisions consequent on enactment of Water Management Amendment Act 2010

75 Definitions

In this Part—

new corporation means a private water corporation constituted under this Part.

the 2010 amending Act means the *Water Management Amendment Act 2010*.

76 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.

77 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.

78 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.

79 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.

80 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.

81 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.

82 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.

83 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.

84 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.

85 References to adaptive environmental water conditions

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

86 Application of new defences

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

Part 8 Provision consequent on enactment of Statute Law (Miscellaneous Provisions) Act (No 2) 2011

87 Application of amendments to Schedule 10

(1) The amendments made to Schedule 10 by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2011* apply in relation to the conversion of entitlements where the appointed day (within the meaning of Schedule 10) concerned is specified in a proclamation made under section 55A or 88A on or after the commencement of the amendments.

(2) Any regulations modifying the application of Schedule 10 in relation to a specified part of the State or water source before the commencement of the amendments to that Schedule continue to have effect as if the Schedule had not been amended.

Part 9 Provision consequent on Local Land Services Act 2013

88 Members of management committees

A person who held office as a member of a management committee under section 13 (1) (d) as in force immediately before it was substituted by the *Local Land Services Act 2013* is taken to have been appointed under section 13 (1) (d) as substituted by that Act.

Part 10 Provisions consequent on enactment of Water Management Amendment Act 2014

89 Definition

In this Part—

amending Act means the *Water Management Amendment Act 2014*.

90 Amendments concerning supplementary water access licences

(1) An order that was in force under section 70 immediately before the day on which that section was substituted by Schedule 1.2 to the amending Act continues to have effect for the purposes of the substituted section as if the provisions of the order were contained in a relevant management plan.

(2) An order to which subclause (1) applies ceases to have effect on the day on which a relevant management plan makes provision for the matter concerned or the day on which the order is revoked, whichever is earlier.

(3) Sections 87 and 87AA, as amended by Schedule 1.2 to the amending Act, extend to regulated river supplementary water access licences that were in force immediately before their amendment.

91 Amendments concerning harvestable rights

(1) Sections 53 and 54, as substituted by Schedule 1.3 to the amending Act, extend to existing dams.

(2) An ***existing dam*** is a dam that was in existence immediately before sections 53 and 54 were substituted by Schedule 1.3 to the amending Act.

(3) However, nothing in this clause permits the capturing and storage of water in, or the taking and use of water from, an existing dam in accordance with substituted sections 53 and 54 if the dam was not lawfully constructed and continues to be unlawful.

92 Amendments concerning the controlled allocation of access licences

Section 65, as amended by Schedule 1.4 to the amending Act, extends to orders under that section that were in force immediately before the commencement of that Schedule.

93 Amendments concerning water allocation accounts and the taking of water

(1) An order that was in force under section 85A immediately before the day on which that section was amended by Schedule 1.8 to the amending Act continues to have effect for the purposes of the amended section as if the provisions of the order were contained in a relevant management plan.

(2) An order to which subclause (1) applies ceases to have effect on the day on which a relevant management plan makes provision for the matter concerned or the day on which the order is revoked, whichever is earlier.

94 Amendments concerning nominated water supply works and water tagging zones

Section 71W, as in force immediately before the day on which it was substituted by Schedule 1.9 to the amending Act, continues to apply to applications that were made (but not determined) before that day.

95 Amendments concerning the streamlining of licensing and trading processes

(1) Each of the following provisions, as amended, inserted or substituted by Schedule 1.10 to the amending Act, extends to applications made (but not determined) before the amendment, insertion or substitution of the provision concerned—

(a) sections 61 and 92,

(b) sections 63 (1A) and 95 (1A),

(c) sections 66A, 67 and 100A,

(d) section 95 (5).

(2) Section 107, as amended by Schedule 1.10 to the amending Act, extends to approvals that were in force immediately before the commencement of the amendment concerned.

(3) Clause 1 (3) of Schedule 1A, as substituted by Schedule 1.10 to the amending Act, extends to access licences granted (but not recorded in the Access Register) before the substitution of that subclause.

96 Amendments concerning management plans

Sections 43A, 45A and 87AC, as amended, substituted or inserted by Schedule 1.11 to the amending Act, extend to management plans that were in force immediately before the amendment, substitution or insertion of the provision concerned.

97 Amendments concerning combined approvals

Sections 95 and 99A, as amended or inserted by Schedule 1.12 to the amending Act, extend to—

(a) applications for approvals that were made (but not determined) before the amendment or insertion of the provision concerned, and

(b) approvals that were in force immediately before the amendment or insertion of the provision concerned.

98 Amendments concerning floodplain harvesting access licences

(1) Part 2 of Chapter 3 is taken not to have commenced to apply to any category of floodplain harvesting access licences in connection with a place or water source regardless of whether or not that category was expressly excluded from a previous application proclamation for the place or source.

(2) A ***previous application proclamation*** for a place or water source is a proclamation under section 55A made with respect to the place or water source that was published before the day on which section 57A was inserted by the amending Act.

Note—

A proclamation under section 55A operates to apply Part 2 of Chapter 3 to parts of the State or water sources specified by the proclamation.

(3) This clause applies despite section 55A (or a proclamation made under that section) or Schedule 10.

(4) However, nothing in this clause limits the application of section 57A (as inserted by Schedule 1.13 to the amending Act), or any regulations made for the purposes of that section, to the conversion of actual or proposed floodplain water usage by landholders into floodplain harvesting access licences in connection with a water source to which subclause (1) applies.

99 Amendment of water sharing plans

(1) The amendments made to a water sharing plan by Schedule 2 to the amending Act are not to be construed as altering the meaning of any provision of the plan (a ***native title provision***) dealing with the management of a water source with respect to which there may be native rights.

(2) Accordingly, a native title provision is to continue to be construed to have the same meaning as it had before the amendment of the plan until it is amended by some other means.

Part 11 Provisions consequent on enactment of Water Management Amendment Act 2018

100 Definition

In this Part—

amending Act means the *Water Management Amendment Act 2018*.

101 Existing audits and audit panels

An audit panel appointed under section 44 (2) before the substitution of that subsection by the amending Act may continue in office for the purpose of completing an audit commenced before that substitution.

102 Existing registers

(1) A register kept under this Act immediately before the commencement of section 391B, as inserted by the amending Act, is taken to be in a form and manner determined by the Minister under that section.

(2) This clause does not prevent the Minister from making a further determination under that section about any such register.

103 Defence

Section 91I (3), as inserted by the amending Act, does not apply to proceedings for offences commenced before the commencement of that subsection.

Part 12 Provision consequent on enactment of Dams Safety Act 2015

104 Existing approvals relating to dams and flood works constructed by local councils

An approval under section 60 of the *Local Government Act 1993* relating to the construction or extension of a dam or flood work and in force immediately before the amendment of that section by the *Dams Safety Act 2015* is taken to be a water supply work approval or flood work approval (as the case requires) in force under Part 3 of Chapter 3 of this Act for the construction or use of that dam or flood work (unless any such water supply or flood work approval is already in force in respect of that dam or flood work or the dam or flood work is otherwise exempt from the requirement for such approval).

Schedule 9A Transferred provisions

1 River Murray (Diversion) Act 1933

(1) Upon completion of the works authorised by the *River Murray (Diversion) Act 1933* (as in force immediately before its repeal) they shall be handed over to the Ministerial Corporation which shall thereupon be charged with the maintenance thereof.

(2) Subclause (1) re-enacts (with minor modifications) section 2 (4) of the *River Murray (Diversion) Act 1933* and is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

Schedule 10 Conversion of former entitlements to access licences and approvals

(Section 403)

Part 1 Preliminary

1 Application of Schedule

This Schedule applies—

(a) to each category or subcategory of access licence that relates to a part of the State or water source to which Part 2 of Chapter 3 applies by operation of a proclamation under section 55A, and

(b) to each type or kind of approval that relates to a part of the State or water source to which Part 3 of Chapter 3 applies by operation of a proclamation under section 88A.

2 Definitions

In this Schedule and Schedule 11—

appointed day means—

(a) in relation to a category or subcategory of access licence to which Part 2 of Chapter 3 applies or an entitlement from which such an access licence arises, the day appointed under section 55A in relation to that category or subcategory of access licence, or

(b) in relation to a type or kind of approval to which Part 3 of Chapter 3 applies or an entitlement from which such an approval arises, the day appointed under section 88A in relation to that type or kind of approval.

Note—

Clause 9 provides that, in certain circumstances, the operation of those Parts is deferred in relation to particular entitlements.

entitlement means—

(a) a licence, permit, authority, irrigation corporation licence or group licence referred to in Part 2 of the 1912 Act, or

(b) a right to take and use water referred to in section 38B of the 1912 Act, or

(c) a licence referred to in Part 5 of the 1912 Act, or

(d) an approval referred to in Part 8 of the 1912 Act, or

(e) a water management licence under Part 9 of the 1912 Act, or

(f) a permit under Part 3A of the 1948 Act, or

(g) an irrigation corporation licence under the 1994 Act, or

(h) any power under section 12 of the *Water Administration Act 1986* or section 8 of the 1912 Act that, immediately before the appointed day, was exercisable by any person pursuant to an agreement between that person and the Ministerial Corporation, or

(i) any right to take water from an unlicensed water bore (being a water bore constructed as referred to in section 112 (1) (b) of the 1912 Act) that was in force immediately before the appointed day, or

(j) any arrangement that, immediately before the commencement of this Schedule, was in force between the Inverell Shire Council and the Ministerial Corporation, or

(k) any other right, interest, privilege, permission or authority that is declared by the regulations to be an entitlement for the purposes of this clause.

former entitlement, in relation to an access licence or approval, means the entitlement

from which the access licence or approval arises because of the operation of this Schedule.

replacement access licence, in relation to an entitlement, means an access licence (including any supplementary water access licence) that, by operation of this Schedule, arises from the entitlement or from a direction under section 20AA of the 1912 Act in relation to the entitlement.

replacement approval, in relation to an entitlement, means an approval that, by operation of this Schedule, arises from the entitlement.

specified water source means a water source specified in a management plan.

the 1912 Act means the *Water Act 1912*.

the 1948 Act means the *Rivers and Foreshores Improvement Act 1948*.

the 1994 Act means Division 3 of Part 4 of the *Irrigation Corporations Act 1994*, as continued in force by the regulations.

Part 2 Conversion of former entitlements

Division 1 Entitlements generally

3 Access licences and approvals arising from former entitlements

(1) Subject to this Schedule, an entitlement that, immediately before the appointed day, was in force under the 1912 Act, the 1948 Act or the 1994 Act is taken to have been replaced—

(a) to the extent to which it entitles any person or body to take a specified quantity of water, by an access licence held by that person or body (subject to such of the conditions of the entitlement as are applicable to an access licence)—

(i) for the quantity of water so specified, or

(ii) if the relevant management plan, and regulations made for the purposes of this paragraph, indicate that a different quantity of water calculated in accordance with a specified methodology may be taken under an access licence issued in relation to the water management area or water source to which the management plan applies—for a different quantity of water calculated in accordance with that methodology, and

(b) to the extent to which it entitles any person or body to use a specified water management work, by a water management work approval held by that person or body in respect of that work (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and

(c) to the extent to which it entitles any person or body to use water on any land, by a water use approval held by that person or body in respect of that land (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and

(d) to the extent to which it entitles any person or body to carry out a specified activity, by an activity approval held by that person or body in respect of that activity (subject to such of the conditions of the entitlement as are applicable to an approval of that kind).

(2) Subclause (1) does not apply to an entitlement that, immediately before the appointed day, was held by a local water utility for the purposes of town water supply.

(3) An access licence that replaces an entitlement may provide for a specified reduction over a specified period of the quantity of water that the holder of the licence is entitled to take or of the share component of the licence if the relevant management plan and any regulations made for the purposes of this subclause allow the licence to provide for those matters.

4 Categories and subcategories of access licence

(1) Without limiting clause 3, an entitlement of the kind referred to in Column 1 of Schedule 11 that, immediately before the appointed day, was held for a purpose specified in Column 2 of that Schedule, or subject to conditions limiting the entitlement to such a purpose, is taken to be—

(a) an access licence of the category referred to in Column 3 of that Schedule, in the case of an entitlement with respect to a regulated river, or

(b) an access licence of the category referred to in Column 4 of that Schedule, in the case of an entitlement with respect to an unregulated river, estuary, lake or aquifer.

(2) A description appearing between square brackets in Column 3 or 4 of Schedule 11 indicates that the access licence concerned is of the subcategory indicated by that description.

(3) The regulations may amend Schedule 11 so as to insert, amend or omit matter in Column 1, 2, 3 or 4 of that Schedule to make provision for categories and subcategories of access licence prescribed by the regulations (as referred to in section 57 (l) and (2)).

(4) Despite subclause (3), if an entitlement has been replaced in accordance with this Act before the commencement of an amendment to Schedule 11 made pursuant to that subclause, Schedule 11 as in force at the time the entitlement was replaced continues to apply in relation to that entitlement.

5 More than one licence or approval may replace a single entitlement

(1) An entitlement that, immediately before the appointed day, was held for or limited to 2 or more purposes specified in Column 2 of Schedule 11 is, to the extent to which it entitles any person or body to take a specified quantity of water, taken to have been replaced by a separate access licence held by that person or body—

(a) for each of those purposes for which a separate category or subcategory of licence is specified in Schedule 11, and

(b) for the quantity of water applicable under the entitlement for the relevant purpose.

(2) An entitlement that, immediately before the appointed day, was held in relation to 2 or more water sources to which Part 2 of Chapter 3 applies is, to the extent to which it entitles any person or body to take a specified quantity of water, taken to have been replaced by separate access licences held by that person or body—

(a) for each of the specified water sources, and

(b) for the quantity of water applicable under the entitlement to the relevant specified water source.

(3) An entitlement with respect to a water management work that, immediately before the appointed day, allocated water not only to the land on which the work is situated but also to other land (being land held otherwise than by the landholder of the land on which the work is situated) is taken to have been replaced—

(a) to the extent to which it allocates water to the land on which the work is situated—

(i) by an access licence held by the landholder of that land for the quantity of water so allocated (subject to such of the conditions of the entitlement as are applicable to an access licence), and

(ii) by a water management work approval held in respect of that work by the landholder of that land (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and

(iii) by a water use approval held by the landholder of that land for the use of water on that land (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and

(b) to the extent to which it allocates water to other land (being land held otherwise than by the landholder of the land on which the work is situated)—

(i) by an access licence held by the landholder of that other land for the quantity of water so allocated (subject to such of the conditions of the entitlement as

are applicable to an access licence), and

(ii) by a water use approval held by the landholder of that other land for the use of water on that land (subject to such of the conditions of the entitlement as are applicable to an approval of that kind).

(4) Subclause (3) does not apply to an entitlement held by an irrigation corporation or a private irrigation board.

6 Access licences and approvals not to arise from certain entitlements

(1) An entitlement that, immediately before the appointed day, entitled any person or body—

(a) to take water, or

(b) to construct or use a water management work, or

(c) to use water, or

(d) to carry out an activity,

for a specified purpose for which an access licence or approval is not required to be obtained under this Act or the regulations is, to the extent to which it relates to any such purpose, not replaced by an access licence or approval.

Note—

For example, an owner or occupier of a landholding may take water and construct and use works for domestic and stock purposes, or within a harvestable rights area, without being required to hold an access licence.

(2) A document purporting to be an access licence or approval that is inadvertently issued in replacement of an entitlement referred to in subclause (1) is of no effect.

(3) However, subclauses (1) and (2) do not apply in relation to an entitlement to take or use water for domestic and stock purposes if the entitlement arises from Part 2 of the 1912 Act.

(4) Any access licence issued before the commencement of subclause (3) as a replacement for an entitlement of the kind referred to in that subclause that would have been validly issued if that subclause had been in force at the time it was issued is taken to have been (and always to have been) validly issued.

7 Manner in which access licences to be expressed

(1) The Minister, by order in writing, may at any time convert the manner in which the share component of an access licence (other than a local water utility access licence) is expressed from a specified quantity of water to any other manner in which the share component of an access licence may be expressed under section 56.

(2) The Minister, by order in writing, may at any time apply uniform extraction components to replacement access licences, but having regard to any relevant management plan.

(3) An order under this clause—

(a) may apply to access licences generally, or to access licences of a specified category or subcategory, and

(b) may apply with respect to one or more parts of the State or water sources.

(4) No compensation is payable as a consequence of the making of an order under this clause.

8 Supplementary water access licences

On the appointed day, and if the regulations so provide, supplementary water access licences, additional to those arising under this Part, are taken to have arisen in accordance with the regulations.

9 Entitlements with no specified quantity of water to continue under former Acts

(1) Despite any other provision of this Schedule—

(a) neither an access licence nor an approval arise in relation to an entitlement if, immediately before the appointed day, the entitlement was for an unspecified quantity of water or for a quantity of water yet to be specified, and

(b) in any such case, the 1912 Act, the 1948 Act or the 1994 Act, as the case requires, is taken to continue to apply to the entitlement until such time as a quantity of water is specified under that Act in relation to the entitlement, or until the entitlement ceases to be in force under that Act, whichever occurs first.

(2) Parts 2 and 3 of Chapter 3, and this Schedule (apart from this clause) apply to the entitlement from the day the quantity is specified in relation to the entitlement—

(a) as if that day were the appointed day, and

(b) as if the entitlement entitled the person or body to take the specified quantity of water.

9A Conditions relating to food safety and essential dairy care

(1) If an entitlement authorised water to be extracted for the purposes of food safety or essential dairy care at times of low flows when extraction of the water would not otherwise be allowed, an access licence that replaces that entitlement is taken to contain the same authorisation.

(2) An access licence referred to in subclause (1) is also subject to a mandatory condition

that the authorisation ceases to have effect if the activity for which the extraction of water is permitted ceases to be conducted at the same location or is not carried out in the same manner as it was carried out immediately before the entitlement concerned was replaced by the access licence.

10 Owners to hold new access licences if occupier or predecessor did not obtain entitlement

(1) This clause applies to an entitlement if, on the appointed day, the owner of the land to which the entitlement relates (the ***landowner***) is not the same person as the person who is in occupation of the land (the ***current occupier***).

(2) The entitlement is taken to have been replaced by an access licence held by the landowner, and not by the current occupier, to the extent to which the entitlement was originally granted otherwise than to the current occupier or a predecessor in title of the current occupier.

(3) The access licence referred to in subclause (2) is taken to be the subject of a term transfer (within the meaning of section 71N) to the current occupier.

(4) Despite section 71N, the term transfer referred to in subclause (3) continues in force until the current occupier ceases to be entitled to occupy the land.

11 Mortgagors of old system land to hold new access licences

(1) This clause applies to an entitlement with respect to land (other than land under the provisions of the *Real Property Act 1900*) that, on the appointed day, is subject to a mortgage that is registered in the General Register of Deeds (the ***original mortgage***).

(2) The entitlement is taken to have been replaced by an access licence held by the person holding the right to redeem the original mortgage.

12 Partial application of Act to existing entitlement

(1) This clause applies if—

(a) immediately before the appointed day, an entitlement applied to more than one water source, work or activity, and

(b) on or after that day, the entitlement continues to apply to a water source, work or activity but is partially replaced by an access licence or approval in respect of some other water source, work or activity.

(2) Subject to this Schedule, the entitlement and replacement access licence or approval are each taken to be subject to a condition that limits the total quantity of water that may be taken and used under both of them to not more than the total quantity of water authorised to be taken and used under the entitlement immediately before the

replacement access licence or approval first came into effect.

(3) Subclause (2) does not apply to a local water utility access licence.

13 Local water utilities

(1) On, or as soon as practicable after, the appointed day, the Minister must issue to a local water utility that, immediately before the appointed day, held one or more entitlements for town water supply purposes—

(a) for each specified water source to which Part 2 of Chapter 3 applies—

(i) one access licence, or

(ii) if the entitlements relate to more than one water supply scheme, one access licence for each such scheme, and

(b) one or more water supply work approvals to cover all water supply schemes situated on land to which Part 3 of Chapter 3 applies, and

(c) one water use approval to cover each water supply scheme situated on land to which Part 3 of Chapter 3 applies, being land supplied with water by the local water utility.

(2) The share component of an access licence referred to in subclause (1) (a) is to be expressed as a specified volume per year.

(3) Subject to subclauses (4) and (5), the specified volume in relation to the access licence may be any of the following—

(a) the quantity of water specified in the former entitlements immediately before the appointed day,

(b) a quantity of water calculated by reference to the nature and extent of the area to which all the former entitlements related—

(i) having regard to population levels, geographical location and current water usages, and

(ii) assuming that reasonable demand management strategies are implemented in that area,

(c) a quantity of water calculated on the basis of the current yield of the water management works controlled or managed under all the former entitlements by the local water utility by which the licence is taken to be held.

(4) The yield referred to in subclause (3) (c) is to be determined with regard to historical stream flow data, and with regard to drought management strategies and demand management practices established by the local water utility concerned.

(5) In the case of an access licence whose specified volume is greater than the quantity of water currently taken and used under the former entitlements, the Minister may at any time impose a condition on the access licence to the effect that water in excess of that quantity, or in excess of such greater quantity as the Minister may determine, is not to be taken, used or assigned except with the consent of the Minister.

(6) Such a condition is not to be imposed unless the Minister is satisfied that the imposition of such a condition is necessary in the public interest.

(7) The Minister has absolute discretion as to whether or not to grant consent to the assignment of excess water, as referred to in subclause (5), and, in particular, is not subject to any limitation under section 71Y as to the manner in which an application for such consent is dealt with.

(8) If a former entitlement relates partly to a water source to which Part 2 of Chapter 3 applies and partly to some other water source, the share components for the replacement access licences arising under this clause are not to include any quantity of water covered by an entitlement remaining under the 1912 Act.

(9) If more than one access licence is issued to a local water utility under this clause, the Minister may impose on each access licence a condition limiting the total quantity of water that may be taken and used under those licences.

(10) In this clause, ***water supply scheme*** means an aggregation of water supply works used by a local water utility for the purposes of exercising its water supply functions.

14 Water use approvals for town water supply

(1) To the extent to which, immediately before the appointed day, an entitlement allowed water taken by a person or body to be used for town water supply and one or more other purposes, the entitlement is taken to have been replaced by the following water use approvals—

(a) an approval entitling the appropriate local water utility (or such other person or body as is responsible for town water supply in that area) to use water for town water supply,

(b) an approval entitling the firstmentioned person or body to use water for the other purposes (but only on the land to which the entitlement relates).

(2) An approval referred to in subclause (1) is subject to such of the conditions of the entitlement as are applicable to an approval of that kind.

15 Private water trusts

(1) This clause applies to a private water trust’s right, pursuant to Part 3 of the 1912 Act, to take and use water conserved or obtained by a work administered and managed by the private trust (being a right saved by clause 16 of the *Water Management (Private*

Water Trusts—General) Savings and Transitional Regulation 1995, as in force immediately before 1 September 2002, whether or not the right is in force immediately before the appointed day) referred to in this clause as a ***Part 3 right***.

(2) On the appointed day, a private water trust's Part 3 right in relation to a water source is taken to have been replaced—

(a) to the extent to which it entitled any private water trust to take a specified quantity of water, by an access licence held by the private water trust for the quantity of water provided for in the relevant volumetric water allocation scheme under section 20W of the 1912 Act, as in force immediately before 1 September 2002, and

(b) to the extent to which it entitled the private water trust to use a specified water supply work, by a water supply work approval held by the private water trust in respect of that work, and

(c) by a water use approval entitling the private water trust to use water on the land to which the right related.

(3) An access licence or approval referred to in subclause (2) is subject to such of the conditions of the Part 3 right as are applicable to an access licence or approval of that kind.

16 Entitlements relating to water bores

(1) The location to be specified in an approval for a water bore that replaces a licence under Part 5 of the 1912 Act may differ from the location specified in the licence if the water bore to which the licence relates is situated elsewhere than at the location so specified.

(2) If the holder of a licence under Part 5 of the 1912 Act has been taking water from a different water source to that authorised by the licence because of erroneous location data, an access licence that is taken to replace that licence may be issued with a share component or extraction component (or both) that refers to the different water source rather than to the water source referred to in the replaced licence.

(3) A licence under Part 5 of the 1912 Act which, immediately before the appointed day, related to a water bore that intersects two water sources that vertically abut each other is taken to have been replaced by—

(a) an access licence that specifies in its share component the water source that is the main source of extraction of water, and

(b) a water supply work approval.

17 Multiple bore licences

(1) This clause applies to any group of licences under Part 5 of the 1912 Act that, immediately before the appointed day, were linked by a condition specifying a maximum quantity of water that may be taken under all of the licences, referred to in this clause as ***linked Part 5 licences***.

(2) On the appointed day, any linked Part 5 licences are taken to have been replaced—

(a) to the extent to which they entitled any person or body to take a specified quantity of water, by a single aquifer access licence held by all the persons or bodies who held the licences for the quantity of water specified by the linking condition, and

(b) to the extent to which they entitled any person or body to use a specified water supply work, by one water supply work approval held by all the persons or bodies who held the licences in respect of works to which the linking condition related, and

(c) by one water use approval entitling all the persons or bodies who held the licences to use water on the land to which the linking condition related.

(3) An access licence or approval referred to in subclause (2) is subject to such of the conditions of the linked Part 5 licences as are applicable to an access licence or approval of that kind.

(4) In any group of linked Part 5 licences, the Part 5 licence last granted is taken to be the entitlement from which the replacement access licence and approvals arise for the purposes of clause 21.

18 Water use approvals for joint schemes

(1) An entitlement that, immediately before the appointed day, was in force under Division 4 of Part 2 of the 1912 Act is taken to have expired on that day and been replaced, to the extent to which it entitles a person or body to use water on the land to which it relates, by separate water use approvals for each person or body who is entitled to take water under the replacement access licence.

(2) An approval referred to in subclause (1) is subject to such of the conditions of the entitlement as are applicable to an approval of that kind.

Division 2 Continuation of security interests

19 Registration of security interests in replacement access licences

(1) Subject to this clause, a person who, immediately before the appointed day, had an interest in an entitlement (being an interest in the nature of a security interest) is taken to have an equivalent security interest in the replacement access licence.

(2) If the interest in the entitlement arose from a mortgage over land, the equivalent security interest in the access licence is taken to be a mortgage over the replacement access licence.

(3) If a document in the approved form with respect to a security interest in a replacement access licence is lodged for registration in the Access Register within the prescribed period, or is subsequently lodged for registration pursuant to an order of a court in proceedings that have been commenced within that period and of which notice has been given to the Minister within that period, then on registration—

(a) it ranks, with respect to any other security interest, in the same priority as it previously ranked under section 184G of the *Conveyancing Act 1919* or section 36 of the *Real Property Act 1900*, or under Part 2K.3 of the *Corporations Act 2001* of the Commonwealth, as the case may be, and

(b) it ranks before any other security interest in the licence that arises after the appointed day, regardless of when that other security interest is registered.

(4) A security interest in a replacement access licence in respect of which a document in the approved form is not lodged for registration in the Access Register within the time allowed by subclause (3) is taken to have been extinguished.

(5) As soon as practicable after the appointed day, the Director-General is to cause a notice containing the following matters to be published in an appropriate newspaper, and in any other manner the Director-General thinks fit—

(a) that security interests in replacement access licences may be registered in the Access Register,

(b) that security interests registered in the Access Register will retain their current priority relative to other security interests,

(c) that the Director-General will act for any person claiming a security interest, at no cost to the person, in relation to the registration of the interest in the Access Register,

(d) that, before the Director-General will take action under this clause with respect to a person’s security interest, the person claiming the interest must lodge with the Director-General a written notice stating that the person has, at least 90 days before lodging the notice, advised the holder of the licence, in the form approved by the Director-General, as to the existence of the security interest claimed.

(6) As soon as practicable after receiving written notice of a claimed security interest, the Director-General must forward the claim to the Minister for registration in the Access Register.

(7) If an objection is received in relation to the claimed security interest, the Director-

General may nevertheless forward the claim to the Minister but, in that event—

(a) the Director-General must indicate to the Minister that the claim is disputed, and

(b) the Minister must ensure that, when the interest is registered, a note to the effect that the claim is disputed is included in the Access Register in relation to the interest.

(8) Subclause (7) (b) does not prevent the Minister from including in the Access Register such other notes as he or she considers appropriate in relation to a claimed security interest.

(9) Duty is not chargeable under Chapter 7 of the *Duties Act 1997* on any security interest arising under this clause.

(10) Despite subclause (9), duty may become chargeable on a security interest under section 210 (2) of the *Duties Act 1997* in relation to any advance or further advance referred to in that subsection that occurs after the security interest is registered in the Access Register.

(10A) Subclause (10B) applies only to an access licence arising from an entitlement with respect to land in respect of which an interest was, immediately before the appointed day, registered under the *Real Property Act 1900* or under the *Corporations Act 2001* of the Commonwealth.

(10B) No dealing that requires the consent of the holder of a security interest may be registered in relation to an access licence until the expiry of the prescribed period unless, before the expiry of that period, the holder of the interest—

(a) has lodged with the Director-General a notice of the kind referred to in subclause (5) (d), or

(b) has notified the Director-General that the holder does not propose to seek registration of the interest in the Access Register.

(11) In this clause, ***prescribed period***, in relation to an interest in a replacement access licence, means the period of 36 months beginning on the appointed day for that licence.

Division 3 General

20 Notification of licences

(1) The Minister must cause written notice of the terms of each access licence or approval arising by operation of this Schedule to be given to the holder of each such access licence or approval.

(2) A replacement access licence or approval—

(a) is to include any mandatory conditions that are required to be imposed on the licence or approval, and

(b) may include such other conditions (***discretionary conditions***) as the Minister thinks fit, including (but not limited to) conditions relating to the protection of the environment.

(2A) Notice of any mandatory or discretionary conditions of a replacement access licence or approval may be given in the written notice given under subclause (1) or by one or more subsequent written notices.

(2B) Discretionary conditions imposed on a replacement access licence or approval before the commencement of this subclause are taken to have been validly imposed (and always to have been validly imposed) to the extent that the conditions would have been validly imposed had subclauses (2) and (2A) (as substituted or inserted by the *Water Management Amendment Act 2014*) been in force at the time that they were imposed.

(3) A replacement access licence or approval is to be in such form as the Minister may determine.

21 Duration of new access licence or approval

(1) A replacement access licence continues in force until it is cancelled.

(2) Unless it is sooner cancelled, a replacement approval has effect for—

(a) except as provided by paragraph (b)—

(i) 2 years from the appointed day, or

(ii) for the balance of the period for which its former entitlement would (but for this Schedule) have remained in force,

whichever is the longer, or

(b) if its former entitlement would (but for this Schedule) have remained in force for an indefinite period, 10 years.

(3) Any suspension of an entitlement under the 1912 Act, the 1948 Act or the 1994 Act that was in force immediately before the appointed day continues in force under this Act, and may accordingly be revoked at any time.

(4) This clause does not limit the operation of section 105.

22 Water management work approvals arising from certain permits

A water supply work approval or water use approval replacing a permit granted under section 18H of the 1912 Act or Part 3A of the 1948 Act has effect for the balance of the

period for which the permit would (but for the this Schedule) have remained in force.

23 Entitlements held by 2 or more co-holders

Two or more co-holders of a replacement access licence are taken to hold the access licence—

(a) if the Minister has a record of the shares in which the former entitlement was held immediately before the appointed day, in the same shares as the former entitlement was so held, or

(b) if the Minister has no such record, but within 2 months after sending a written request to the co-holders seeking information as to their shareholding the Director-General receives—

(i) a notice, signed by or on behalf of each of them, by which they agree as to the shares in which they hold the access licence, or

(ii) a notice, signed by any one of them, to the effect that legal proceedings have been commenced for the purpose of obtaining a declaration as to the shares in which they hold the access licence,

in the agreed shares referred to in the notice under subparagraph (i), or in the shares determined pursuant to the legal proceedings referred to in the notice under subparagraph (ii), as the case may be, or

(c) in any other case, as tenants in common with the entitlements conferred by the licence under section 56 apportioned equally between them.

24 Right of access continued temporarily

In the case of a licence under section 13A or an authority under section 20CA of the 1912 Act, the holder of the replacement water management work approval may continue to exercise the rights conferred by section 13A (7) or 20CA (8) of that Act, as the case requires, but only until the approval ceases to have effect, or until the date of the first extension of the approval, as the case requires.

Note—

After that time, the continued exercise of those rights will need to be supported by an easement or other arrangement, whether negotiated by agreement between the respective landholders or imposed by means of an order under section 88K of the *Conveyancing Act 1919*.

25 Water allocations

(1) On the appointed day, the balance of the water allocation account for an access licence is taken to be the balance of the water account for the former entitlement.

(2) If more than one access licence arises from a former entitlement, the balance of the water account for the former entitlement is to be apportioned between the water

allocation accounts for the access licences in accordance with the accounting practices that applied to water accounts immediately before the appointed day.

(3) As soon as practicable after the appointed day, the Director-General must reduce the water allocation for a replacement access licence by an amount not exceeding the amount by which the water allocation for the entitlement from which the licence arises would have been reduced under section 17A, 20H, 20S, 20XA, 20XC, 117A, 117G or 189 of the 1912 Act, or under section 53, 54 or 60 of the 1994 Act, had that entitlement continued in force under the 1912 Act or the 1994 Act, as the case may be.

(4) If the appointed day is not 1 July in any year, the Minister may, at any time before the next 1 July, make such adjustments to the water allocations standing to the credit of a replacement access licence as could have been made, in accordance with the accounting practices that applied to water accounts immediately before the appointed day, to the water allocations standing to the credit of the water account for the former entitlement.

(5) In this clause, ***water account***, in relation to an entitlement, means the water account that, in accordance with the administrative practices followed by the Director-General before the appointed day, was kept in relation to the entitlement.

26 Nominated works

(1) Each work specified in a replacement water supply work approval is taken to have been nominated under section 71W in relation to each replacement access licence arising from the same entitlement, including any supplementary water access licence arising from or in relation to that entitlement.

(2) Such a nomination may be withdrawn under section 71W in the same way as any other nomination under that section.

27 Replacement licences under former Acts

A document that is issued for the purposes of the 1912 Act, the 1948 Act or the 1994 Act to replace an entitlement that has been partially superseded by an access licence or approval is not a new entitlement but merely a restatement of the remaining entitlement.

Part 3 Modified application of this and other Acts

Division 1 Modified application of this Act

28–31 (Repealed)

32 Construction of certain references

A reference in section 118, 141, 199, 216 (3), 222 or 284 to an access licence or approval includes, in the case of any act, matter or thing to which the 1912 Act, the 1948 Act or the

1994 Act applies, a reference to the applicable entitlement under the 1912 Act, the 1948 Act or the 1994 Act.

Division 2 Modification of amendments to other Acts made by this Act

33 Effect of amendments and repeals of other statutory provisions

(1) This clause applies to the following statutory provisions referred to in Schedule 8—

(a) item 25 of Table 1 in Schedule 1 to the *Criminal Procedure Act 1986*,

(b) sections 91 and 120A of the *Environmental Planning and Assessment Act 1979*,

(c) sections 16 and 16A (5) of the *Farm Water Supplies Act 1946*,

(d) sections 17, 18, 19, 20 and 21 of the *Land and Environment Court Act 1979*,

(e) section 124 of the *Local Government Act 1993*,

(f) sections 5 and 47J of the *National Parks and Wildlife Act 1974*,

(g) section 12 of the *Native Vegetation Conservation Act 1997*,

(h) sections 19 and 52 of the *Plantations and Reafforestation Act 1999*,

(i) section 32 of the *Snowy Hydro Corporatisation Act 1997*,

(j) section 14 of the *Soil Conservation Act 1938*.

(2) The statutory provisions referred to in subclause (1) operate in relation to—

(a) an entitlement under the 1912 Act, or

(b) a permit under Part 3A of the 1948 Act, or

(c) a licence under Division 3 of Part 4 of the 1994 Act,

as if those provisions had not been amended or repealed by Schedule 8.

(3) This clause does not limit or otherwise affect the operation of a statutory provision referred to in subclause (1), as amended by Schedule 8, in relation to—

(a) an access licence to which Part 2 of Chapter 3 applies, or

(b) an approval to which Part 3 of Chapter 3 applies.

Division 3 Modification of other Acts

34 Application of 1912 Act

(1) Part 2 of the 1912 Act does not apply to or in respect of any water source, work, use

of water or activity to the extent to which Part 2 or 3 of Chapter 3 applies to or in respect of that water source, work, use or activity.

(2) Part 5 of the 1912 Act does not apply to or in respect of any water source, work, use of water or activity to the extent to which Part 2 or 3 of Chapter 3 applies to or in respect of that water source, work, use or activity.

(3) Part 8 of the 1912 Act does not apply to or in respect of any flood work, use of water or activity to the extent to which Part 3 of Chapter 3 applies to or in respect of that work, use or activity.

(4) Part 9 of the 1912 Act does not apply to or in respect of any water source, work, use of water or activity to the extent to which Part 2 or 3 of Chapter 3 applies to or in respect of that water source, work, use or activity.

Note—

Proclamations under sections 55A and 88A apply the provisions of Parts 2 and 3 of Chapter 3 to particular matters formerly dealt with under the 1912 Act. Matters to which those provisions do not apply continue to be dealt with under the 1912 Act.

35 Application of 1948 Act

Part 3A of the 1948 Act does not apply to or in respect of any activity to the extent to which Part 3 of Chapter 3 applies to or in respect of that activity.

Note—

Proclamations under section 88A apply the provisions of Part 3 of Chapter 3 to particular matters formerly dealt with under the 1948 Act. Matters to which those provisions do not apply will continue to be dealt with under the 1948 Act.

36 Application of 1994 Act

The 1994 Act does not apply to or in respect of any water source, work, use of water or activity to the extent to which Part 2 or 3 of Chapter 3 applies to or in respect of that water source, work, use or activity.

Note—

Proclamations under sections 55A and 88A apply the provisions of Parts 2 and 3 of Chapter 3 to particular matters formerly dealt with under the 1994 Act. Matters to which those provisions do not apply will continue to be dealt with under the 1994 Act.

Part 4 General

37 Enforcement of debts

(1) On and from the appointed day, sections 78 and 109, and Part 4 of Chapter 7, have effect with respect to any debt under the 1912 Act, the 1948 Act or the 1994 Act in the same way as they have effect with respect to any debt under this Act.

(2) Enforcement action that has been commenced in relation to an entitlement under the 1912 Act, the 1948 Act or the 1994 Act before the day on which that entitlement is replaced under this Act may be completed under the 1912 Act, the 1948 Act or the 1994 Act, as the case requires.

38 Pending applications

(1) Any application for or in relation to an entitlement that was made under the provisions of the 1912 Act, the 1948 Act or the 1994 Act before the appointed day is to be dealt with under those provisions as if this Act had not been enacted.

(2) Any decision in relation to any such application with respect to an entitlement, including any decision in relation to an application for the renewal of an entitlement, is to be implemented in relation to the relevant access licence or approval that has arisen from the entitlement with respect to which the application was made.

(3) In relation to each entitlement arising from an application dealt with under this clause, the provisions of this Schedule apply to the entitlement, as from the date on which it arises, in the same way as they apply to an entitlement that was in force immediately before the appointed day.

39 Replacement of recently-expired entitlements

(1) For the purposes of section 61, the holder of an entitlement that expired not more than 2 years before the appointed day is entitled to apply for an access licence to replace that entitlement.

(2) An embargo under section 112 does not apply to an application for an approval to replace an entitlement that expired not more than 2 years before the appointed day.

(3) An application referred to in subclause (1) or (2) is to be dealt with as if it had been made when the entitlement expired, and (subject to due payment of any fees payable under section 14 (1A) of the 1912 Act) the entitlement is taken to continue in force until the application is determined.

(4) This clause does not apply to an application made more than 2 years after the appointed day.

40 Access licences arising from management plans

(1) On the appointed day, there are taken to have been granted to the Minister such access licences in relation to adaptive environmental water as any management plan, as in force on that day, requires to be granted to the Minister.

(2) Any such access licence is subject to such conditions as the management plan concerned requires to be imposed on the licence.

Schedule 11 Categories of access licence

(Section 403)

Column 1	Column 2	Column 3	Column 4
Entitlement	**Purpose**	**Regulated river**	**Unregulated river, estuary, lake or aquifer**
Water Act 1912			
Section 12 or section 13 licence	Town water supply (held otherwise than by local water utility)	Regulated river (high security) [Town water supply]	Domestic and stock [Town water supply]
	Recreation (high security)	Regulated river (high security)	Unregulated river
	Recreation (low security)	Regulated river (general security)	Unregulated river
	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
	Stock and domestic	Domestic and stock	Domestic and stock
	Railway	Regulated river (high security)	Unregulated river
	Industrial	Regulated river (high security)	Unregulated river
	Industrial (low security)	Regulated river (general security)	Unregulated river
	Industrial (sand and gravel)	Regulated river (high security)	Unregulated river
	Power generation	Regulated river (high security)	Unregulated river
	Mining	Regulated river (high security)	Unregulated river
	Mining (low security)	Regulated river (general security)	Unregulated river
	Irrigation	Regulated river (general security)	Unregulated river
	A component irrigation	Regulated river (general security—A class)	Nil
	B component irrigation	Regulated river (general security—B class)	Nil

	Farming	Regulated river (high security)	Unregulated river
	Feedlot	Regulated river (high security)	Unregulated river
	Horticulture (including citrus, grapes, pecans)	Regulated river (high security)	Unregulated river
	Pisciculture	Regulated river (high security)	Unregulated river
	Aquaculture	Regulated river (high security)	Unregulated river
	Experimental/research	Regulated river (high security) [Research]	Unregulated river [Research]
	Teaching	Regulated river (general security)	Unregulated river
	Commercial	Regulated river (general security)	Unregulated river
Section 13A licence	Irrigation	Regulated river (general security)	Unregulated river
	Stock and domestic	Domestic and stock	Domestic and stock
	Horticulture (including citrus, grapes, pecans)	Regulated river (high security)	Unregulated river
Section 20B authority (not high flow)	Town water supply (other than local water utility)	Regulated river (high security) [Town water supply]	Domestic and stock [Town water supply]
	Recreation (high security)	Regulated river (high security)	Unregulated river
	Recreation (low security)	Regulated river (general security)	Unregulated river
	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
	Stock and domestic	Domestic and stock	Domestic and stock
	Industrial	Regulated river (high security)	Unregulated river
	Industrial (low security)	Regulated river (general security)	Unregulated river
	Mining	Regulated river (high security)	Unregulated river

	Irrigation	Regulated river (general security)	Unregulated river
	A component irrigation	Regulated river (general security—A class)	Nil
	B component irrigation	Regulated river (general security—B class)	Nil
	Farming	Regulated river (high security)	Unregulated river
	Horticulture (including citrus, grapes, pecans)	Regulated river (high security)	Unregulated river
	Pisciculture	Regulated river (high security)	Unregulated river
	Aquaculture	Regulated river (high security)	Unregulated river
	Experimental/research	Regulated river (high security) [Research]	Unregulated river [Research]
	Teaching	Regulated river (general security)	Unregulated river
	Commercial	Regulated river (general security)	Unregulated river
Section 20CA authority	Stock	Domestic and stock [Stock]	Nil
Section 20L licence	Town water supply (other than local water utility)	Regulated river (high security) [Town water supply]	Domestic and stock [Town water supply]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Stock and domestic	Domestic and stock	Domestic and stock
	Industrial	Regulated river (high security)	Unregulated river
	Industrial (low security)	Regulated river (general security)	Unregulated river
	Mining	Regulated river (high security)	Unregulated river
	Irrigation	Regulated river (general security)	Unregulated river

	Horticulture	Regulated river (high security)	Unregulated river
	Citrus	Regulated river (high security)	Unregulated river
Section 38B authority	Stock	Domestic and stock [Stock]	Nil
	Domestic	Domestic and stock [Domestic]	Nil
	Stock and domestic	Domestic and stock	Nil
	Irrigation	Regulated river (general security)	Nil
	Horticulture (including citrus and grapes)	Regulated river (high security)	Nil
	Town water supply	Regulated river (high security) [Town water supply]	Nil
	Industrial	Regulated river (high security)	Nil
Section 112 (1) (a) licence	Domestic	Not applicable	Domestic and stock [Domestic]
	Stock	Not applicable	Domestic and stock [Stock]
	Stock and domestic	Not applicable	Domestic and stock
	Town water supply (held otherwise than by local water utility)	Not applicable	Aquifer [Town water supply]
	Experimental/research	Not applicable	Aquifer [Research]
	Any other purpose	Not applicable	Aquifer
Section 112 (1) (b) right	Any purpose other than stock or domestic	Nil	Aquifer
Section 188 licence	Urban water	Major utility [Urban water]	Major utility [Urban water]
	Power generation	Major utility [Power generation]	Major utility [Power generation]
Water supply works pursuant to a written agreement or approval under section 8	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]

	Stock and domestic	Domestic and stock	Domestic and stock
	Any other purpose	Regulated river (general security)	Unregulated river
Irrigation Corporations Act 1994			
Irrigation corporation licence	Recreation (high security)	Regulated river (high security)	Nil
	Recreation (low security)	Regulated river (general security)	Nil
	Stock and domestic	Domestic and stock	Nil
	Town water supply (other than local water utility)	Regulated river (high security) [Town water supply]	Nil
	Conveyance	Murrumbidgee Irrigation (conveyance), Coleambally Irrigation (conveyance), Regulated river (conveyance)	Nil
	Industrial	Regulated river (high security)	Nil
	Irrigation	Regulated river (general security)	Nil
	Horticulture	Regulated river (high security)	Nil
Water Administration Act 1986			
Water supply works pursuant to a written agreement or approval under section 12	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
	Stock and domestic	Domestic and stock	Domestic and stock
	Any other purpose	Regulated river (general security)	Unregulated river

Schedule 12 Amendment of management plans or orders

(Section 42 (3))

Part 1 Amendment relating to adaptive environmental water

1 Management plans to be amended

The management plans to which this Part applies are all management plans made before the commencement of this Part.

2 Amendment of management plans relating to adaptive environmental water

Each management plan to which this Part applies is amended by omitting subclause (2) of the clause titled “Adaptive environmental water” and by inserting instead the following subclauses—

(2) The Minister may grant an access licence in a water source to which this Plan applies if the licence is subject to an adaptive environmental water condition and arises through water savings in the system made in that water source as referred to in section 8C (1) of the Act.

(2A) The Minister may change the category or subcategory of an access licence in a water source to which this Plan applies if the licence is subject to an adaptive environmental water condition that arises through water savings as referred to in section 8D of the Act.

Part 2 Amendment relating to planned environmental water

3 Management plans to be amended

The management plans to which this Part applies are all management plans made before the commencement of this Part.

4 Amendment of management plans relating to planned environmental water

Each management plan to which this Part applies (other than the *Water Sharing Plan for the Toorumbee Creek Water Source 2003*) is amended by inserting after the last clause (with appropriate numbering) in the Part titled “Amendment of this Plan” the following clause—

Amendment relating to planned environmental water

(1) The Minister may amend this Plan to provide for the recovery of planned environmental water as follows—

(a) the recovery is only to apply where the Minister has cancelled an access licence held by the Minister in accordance with section 8A of the Act,

(b) the amount of additional water to be provided as planned environmental water is to be equivalent to the annual average extraction of water under

the cancelled licence over the long-term,

(c) the average annual long-term availability of water for the remaining access licences that relate to the water source concerned is to be reduced by the average annual long-term extraction of water under the cancelled licence.

(2) The Minister may amend this Plan to specify the purposes for which planned environmental water committed under section 8A of the Act is to be used.

5 Amendment of Water Sharing Plan for the Toorumbee Creek Water Source 2003

The *Water Sharing Plan for the Toorumbee Creek Water Source 2003* is amended by inserting as the final Part (with appropriate Part and clause numbering) the following Part—

Part Amendment of this Plan

Amendment relating to planned environmental water

(1) The Minister may amend this Plan to provide for the recovery of planned environmental water as follows—

(a) the recovery is only to apply where the Minister has cancelled an access licence held by the Minister in accordance with section 8A of the Act,

(b) the amount of additional water to be provided as planned environmental water is to be equivalent to the annual average extraction of water under the cancelled licence over the long-term,

(c) the average annual long-term availability of water for the remaining access licences that relate to the water source concerned is to be reduced by the average annual long-term extraction of water under the cancelled licence.

(2) The Minister may amend this Plan to specify the purposes for which planned environmental water committed under section 8A of the Act is to be used.

Part 3 Amendment of management plans relating to floodplain harvesting

6 Management plans to be amended

The management plans to which this Part applies are the following—

(a) *Water Sharing Plan for the Adelong Creek Water Source 2003*,

(b) *Water Sharing Plan for the Apsley River Water Source 2003*,

(c) *Water Sharing Plan for the Castlereagh River above Binnaway Water Source 2003*,

(d) *Water Sharing Plan for the Commissioners Waters Water Source 2003*,

(e) *Water Sharing Plan for the Coopers Creek Water Source 2003*,

(f) *Water Sharing Plan for the Dorrigo Plateau Surface Water Source and Dorrigo Basalt Groundwater Source 2003*,

(g) *Water Sharing Plan for the Gwydir Regulated River Water Source 2002*,

(h) *Water Sharing Plan for the Hunter Regulated River Water Source 2003*,

(i) *Water Sharing Plan for the Jilliby Jilliby Creek Water Source 2003*,

(j) *Water Sharing Plan for the Kangaroo River Water Source 2003*,

(k) *Water Sharing Plan for the Karuah River Water Source 2003*,

(l) *Water Sharing Plan for the Lachlan Regulated River Water Source 2003*,

(m) *Water Sharing Plan for the Macquarie and Cudgegong Regulated Rivers Water Source 2003*,

(n) *Water Sharing Plan for the Mandagery Creek Water Source 2003*,

(o) *Water Sharing Plan for the Murrumbidgee Regulated River Water Source 2003*,

(p) *Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2003*,

(q) *Water Sharing Plan for the Ourimbah Creek Water Source 2003*,

(r) *Water Sharing Plan for the Phillips Creek, Mooki River, Quirindi Creek and Warrah Creek Water Sources 2003*,

(s) *Water Sharing Plan for the Rocky Creek, Cobbadah, Upper Horton and Lower Horton Water Source 2003*,

(t) *Water Sharing Plan for the Tarcutta Creek Water Source 2003*,

(u) *Water Sharing Plan for the Tenterfield Creek Water Source 2003*,

(v) *Water Sharing Plan for the Toorumbee Creek Water Source 2003*,

(w) *Water Sharing Plan for the Upper Billabong Water Source 2003*,

(x) *Water Sharing Plan for the Upper Brunswick River Water Source 2003*,

(y) *Water Sharing Plan for the Upper Namoi and Lower Namoi Regulated River Water Sources 2003*,

(z) *Water Sharing Plan for the Wandella Creek Water Source 2003*,

(aa) *Water Sharing Plan for the Wybong Creek Water Source 2003*.

7 Amendment of management plans relating to floodplain harvesting

Each management plan to which this Part applies (other than the Plan referred to in clause 6 (v)) is amended by inserting as the final clause (with appropriate numbering) in the Part titled "Amendment of this Plan" the following clause—

Amendment of Plan relating to floodplain harvesting

The Minister may amend this Plan so as to provide for the floodplain harvesting of water by amending the waters or water sources to which this Plan applies and by consequential amendments so long as the amendments—

(a) if the Plan has already taken into consideration floodplain harvesting extractions, do not affect the outcomes of the long-term extraction limit specified in the Plan, or

(b) if the Plan has not already taken into consideration floodplain harvesting extractions, do not allow more water being taken pursuant to access licences for floodplain harvesting than permitted under Schedule F to the Agreement within the meaning of the *Murray–Darling Basin Act 1992*.

8 Amendment of Water Sharing Plan for the Toorumbee Creek Water Source 2003

The *Water Sharing Plan for the Toorumbee Creek Water Source 2003* is amended by inserting as the final clause (with appropriate numbering) the following clause—

Amendment of Plan relating to floodplain harvesting

The Minister may amend this Plan so as to provide for the floodplain harvesting of water by amending the waters or water sources to which this Plan applies and by consequential amendments so long as the amendments—

(a) if the Plan has already taken into consideration floodplain harvesting extractions, do not affect the outcomes of the long-term extraction limit specified in the plan, or

(b) if the Plan has not already taken into consideration floodplain harvesting extractions, do not allow more water being taken pursuant to access licences for floodplain harvesting than permitted under Schedule F to the Agreement within the meaning of the *Murray–Darling Basin Act 1992*.

Part 4 Amendment of Water Sharing Plan for the Barwon-Darling

Unregulated and Alluvial Water Sources 2012

9 Clause 42 Individual access licence account management rules for the Barwon-Darling Unregulated River Water Source

Insert “, and assigned under section 71T of the Act from,” after “taken under” wherever occurring in clause 42 (2), (3) and (4).

10 Clause 42 (2) (b), (3) (b) and (4) (d)

Omit “or from” wherever occurring.

11 Clause 51 Total daily extraction limits

Omit the note to the clause. Insert instead—

Note—

Options for imposing TDELs are proposed to be reviewed on or before 1 July 2019.

12 Clause 52

Omit the clause. Insert instead—

52 Individual daily extraction limits

At the commencement of this Plan, there were no individual daily extraction limits (referred to in this Plan as ***IDELs***) established for access licences in these water sources.

Note 1—

Individual daily extraction limit is defined in the Dictionary.

Note 2—

IDELS are to be reviewed on or before 1 July 2019.

13 Clause 62 General

Omit notes 3 and 4 to the clause.

14 Clause 78 Part 8

Insert after clause 78 (g)—

(g1) include rules for the establishment, amendment, assignment and removal of IDELs,

15 Clause 80 Part 10

Insert “, 71QA” after “71Q” in clause 80 (b).

16 Clause 80, note

Omit the note.

Part 5 Amendments relating to upper limit locations

Division 1 Amendments to regulated river orders

17 Regulated river orders to be amended

This Division amends the following regulated river orders—

(a) *Central West Water Management Area Regulated River Order* (Government Gazette No 110 of 1 July 2004),

(b) *Gwydir Water Management Area Regulated River Order* (Government Gazette No 110 of 1 July 2004),

(c) *Hunter Water Management Area Regulated River Order No. 2* (Government Gazette No 82B of 26 June 2007),

(d) *Murrumbidgee Water Management Area Regulated River Order* (Government Gazette No 110 of 1 July 2004),

(e) *Murray Water Management Area Regulated River Order (Lower Darling)* (Government Gazette No 110 of 1 July 2004),

(f) *NSW Border Rivers Regulated River Water Source Order* (Government Gazette No 79 of 29 May 2009),

(g) *Namoi Water Management Area Regulated River Order* (Government Gazette No 110 of 1 July 2004),

(h) *Regulated River Order for the Belubula Regulated River 2012* (Government Gazette No 92 of 14 September 2012),

(i) *Regulated River Order for the Lachlan Regulated River 2012* (Government Gazette No 92 of 14 September 2012),

(j) *Regulated River Order for the NSW Hunter Water Management Area Regulated Rivers 2016* (Government Gazette No 56 of 1 July 2016),

(k) *Regulated River Order for the NSW Murray Regulated Rivers 2012* (Government Gazette No 19 of 15 February 2012),

(l) *Richmond Regulated River Order 2010* (Government Gazette No 135 of 17 December

2010).

18 Central West Water Management Area Regulated River Order

(1) **Order** Omit “downstream of the upper limit of Windamere Dam water storage or the upper limit of Burrendong Dam water storage and”.

(2) **Schedule** Omit “Cudgegong River from the upper limit of Windamere Dam water storage downstream to its confluence with the upper limit of Burrendong Dam water storage.”.

Insert instead—

Cudgegong River from Windamere Dam wall, being the point at latitude -32.727325 and longitude 149.771999 in decimal degrees GDA94, downstream to Burrendong Dam water storage.

Windamere Dam water storage (including all the water downstream of the following coordinates, in decimal degrees GDA94, to Windamere Dam wall)—

Latitude	Longitude
-32.811391	149.870681
-32.818051	149.854227
-32.824058	149.836131
-32.810121	149.841439
-32.814185	149.825263
-32.819009	149.846077
-32.810587	149.811243
-32.779267	149.838340
-32.782333	149.794320
-32.760703	149.805519
-32.776092	149.775742
-32.770453	149.759286
-32.761776	149.756808
-32.752008	149.767732
-32.745962	149.793078
-32.740353	149.761119

-32.728140	149.760693

(3) **Schedule** Omit “Macquarie River from the upstream limit of Burrendong Dam water storage, downstream to the Monkeygar Creek offtake.”.

Insert instead—

Macquarie River from Burrendong Dam wall, being the point at latitude -32.66674 and longitude 149.10902 in decimal degrees GDA94, downstream to the Monkeygar Creek offtake.

Burrendong Dam water storage (including all the water downstream of the following coordinates, in decimal degrees GDA94, to Burrendong Dam wall)—

Latitude	**Longitude**
-32.871744	149.213174
-32.834042	149.207933
-32.814764	149.219303
-32.833629	149.250251
-32.782423	149.184678
-32.771026	149.151583
-32.736556	149.213184
-32.731542	149.235164
-32.716252	149.196807
-32.687090	149.175187
-32.714061	149.117249
-32.696985	149.085635
-32.610695	149.135805
-32.647185	149.224616
-32.636815	149.257351
-32.620199	149.247056
-32.624635	149.273776
-32.671702	149.084504
-32.717326	149.130410

-32.668750	149.158276
-32.660058	149.155925
-32.901336	149.228041

19 Gwydir Water Management Area Regulated River Order

(1) **Order** Omit “downstream of the upper limit of Copeton Dam water storage and”.

(2) **Schedule** Omit “Gwydir River from Copeton Dam downstream to northwestern boundary of portion 27, Parish of Gin, County of Benarba.”.

Insert instead—

Gwydir River from Copeton Dam wall, being the point at latitude -29.906596 and longitude 150.927266 in decimal degrees GDA94, downstream to the northwestern boundary of portion 27, Parish of Gin, County of Benarba.

Copeton Dam water storage (including all the water downstream of the following coordinates, in decimal degrees GDA94, to Copeton Dam wall)—

Latitude	**Longitude**
-30.003197	150.982829
-30.001384	150.973391
-29.977928	150.991369
-29.957905	150.972530
-29.948338	150.961377
-29.933781	151.011764
-29.924970	151.019530
-29.910007	151.017738
-29.898243	151.028021
-29.887985	151.018875
-29.873349	150.995589
-29.882027	150.968586
-29.881021	150.953199
-29.880425	150.931838
-29.890985	150.910140

20 Hunter Water Management Area Regulated River Order No. 2

(1) **Order** Omit “downstream of the upper limit of Lostock Dam water storage and”.

(2) **Schedule 1** Omit the Schedule. Insert instead—

Schedule 1

Paterson River from Lostock Dam wall, being the point at latitude -32.328844 and longitude 151.450099 in decimal degrees GDA94, downstream to the determined tidal limit, which is 410 metres downstream from a point adjacent to where the north-eastern corner of Lot 115, DP 848634, Parish of Barford, County of Durham, fronts the eastern bank of the Paterson River.

Lostock Dam water storage (including all water downstream of the following coordinates, in decimal degrees GDA94, to Lostock Dam wall)—

Latitude	Longitude
-32.322211	151.425521
-32.325743	151.439159
-32.339434	151.424865
-32.344165	151.437603
-32.339274	151.445692
-32.337965	151.450254
-32.335117	151.457577

21 Murrumbidgee Water Management Area Regulated River Order

(1) **Order** Omit “downstream of the upper limit of Burrinjuck Dam water storage or Blowering Dam and”.

(2) **Schedule** Omit “Murrumbidgee River from Taemas Bridge within the storage of Burrinjuck Dam, downstream to the Murray River.”.

Insert instead—

Murrumbidgee River from Burrinjuck Dam wall, being the point at latitude -35.00284 and longitude 148.583817, downstream to the Murray River.

Burrinjuck Dam water storage (including all water downstream of the following coordinates, in decimal degrees GDA94, to Burrinjuck Dam wall)—

Latitude	Longitude

-35.003371	148.849389
-35.005853	148.830107
-34.949024	148.832598
-34.922416	148.823510
-34.904668	148.796551
-34.964027	148.774932
-34.920111	148.724999
-34.892967	148.737287
-34.876506	148.768171
-34.876913	148.782918
-34.879415	148.782675
-34.965045	148.755451
-34.984244	148.697525
-34.995874	148.683923
-34.969135	148.632485
-35.018053	148.661473
-35.044238	148.669648
-35.092597	148.682148
-35.105789	148.679919
-35.073652	148.672281
-35.062604	148.665532
-35.050545	148.676945
-34.990525	148.610208
-34.989634	148.595715
-35.023671	148.599408

(3) **Schedule** Omit “Tumut River from the upper limit of the storage of Blowering Dam downstream to the Murrumbidgee River”.

Insert instead—

Tumut River from Blowering Dam wall, being the point at latitude -35.40047 and longitude 148.244146, downstream to the Murrumbidgee River.

Blowering Dam water storage (including all water downstream of the following coordinates, in decimal degrees GDA94, to Blowering Dam wall)—

Latitude	Longitude
-35.561163	148.306432
-35.545218	148.301639
-35.531393	148.293032
-35.561765	148.238722
-35.548750	148.228634
-35.504216	148.271602
-35.491235	148.233281
-35.488285	148.270351
-35.474806	148.241747
-35.472170	148.278026
-35.462686	148.280791
-35.450776	148.240958
-35.435572	148.285557
-35.434480	148.243201
-35.415237	148.272950
-35.419780	148.235559
-35.404595	148.270365

22 Murray Water Management Area Regulated River Order (Lower Darling)

Order Omit “downstream of the upper limit of Lake Wetherell water storage and”.

23 NSW Border Rivers Regulated River Water Source Order

Schedule 1 Omit “Severn River, from Pindari Dam downstream to its junction with the Macintyre River.”.

Insert instead—

Severn River from Pindari Dam wall, being the point at latitude -29.387689 and

longitude 151.245184 in decimal degrees GDA94, downstream to its junction with the Macintyre River.

Pindari Dam water storage (including all water downstream of the following coordinates, in decimal degrees GDA94, to Pindari Dam wall)—

Latitude	**Longitude**
-29.410713	151.333721
-29.394919	151.326964
-29.383454	151.318099
-29.397437	151.300012
-29.376505	151.291200
-29.366651	151.270775
-29.370563	151.255536
-29.365349	151.233787
-29.401966	151.293014

24 Namoi Water Management Area Regulated River Order

(1) **Order** Omit “downstream of the upper limit of Split Rock Dam water storage or Keepit Dam water storage and”.

(2) **Schedule** Omit the following—

Manilla River from Split Rock Dam, downstream to its junction with the Namoi River.

Namoi River, from its junction with the Manilla River to Keepit Dam, including all tributaries (named and unnamed) to the storage of Keepit Dam, and up to the high water mark of the storage.

Namoi River, from Keepit Dam downstream to the offtake of Narrabri Creek.

Insert instead—

Manilla River from Split Rock Dam wall, being the point at latitude -30.575872 and longitude 150.697240 in decimal degrees GDA94, downstream to its junction with the Namoi River.

Split Rock Dam water storage (including all water downstream of the following coordinates, in decimal degrees GDA94, to Split Rock Dam wall)—

Latitude	Longitude
-30.432084	150.700594
-30.430054	150.678370
-30.451556	150.688350
-30.456521	150.704523
-30.479991	150.697527
-30.488379	150.693033
-30.472202	150.716278
-30.489548	150.725471
-30.513168	150.698369
-30.519752	150.715638
-30.534438	150.716575
-30.523353	150.676778
-30.522879	150.664067
-30.534635	150.706668
-30.583463	150.709977

Namoi River, from its junction with the Manilla River downstream to Keepit Dam water storage.

Keepit Dam water storage (including all water downstream of the following coordinates, in decimal degrees GDA94, to Keepit Dam wall)—

Latitude	Longitude
-30.788642	150.570964
-30.778018	150.567687
-30.769567	150.553783
-30.809162	150.566018
-30.820146	150.551936
-30.778773	150.531650
-30.784563	150.521501
-30.791914	150.517708

-30.798574	150.509822
-30.814782	150.496955
-30.841291	150.552179
-30.829995	150.491038
-30.834460	150.479529
-30.837882	150.478756
-30.862795	150.478484

Namoi River from Keepit Dam wall, being the point at latitude -30.878622 and longitude 150.491625 in decimal degrees 5DA94, downstream to the offtake of Narrabri Creek.

25 Regulated River Order for the Belubula Regulated River 2012

Schedule 1 Omit the Schedule. Insert instead—

Schedule 1

Belubula River from Carcoar Dam wall, being the point at latitude -33.619085 and longitude 149.18005 in decimal degrees GDA94, downstream to its junction with the Regulated Lachlan River.

Carcoar Dam water storage (including all water downstream of the following coordinates, in decimal degrees GDA94, to Carcoar Dam wall)—

Latitude	Longitude
-33.576020	149.242979
-33.598026	149.222586
-33.611107	149.198919
-33.575159	149.224422

26 Regulated River Order for the Lachlan Regulated River 2012

Schedule 1 Omit items 7–9. Insert instead—

7. Lachlan River from Wyangala Dam wall, being the point at latitude -33.969787 and longitude 148.951823 in decimal degrees GDA94, downstream to the Murrumbidgee River.

8. Wyangala Dam water storage (including all water downstream of the following

coordinates, in decimal degrees GDA94, to Wyangala Dam wall)—

Latitude	Longitude
-34.052206	149.036233
-34.049494	149.045616
-34.002150	149.080865
-33.994397	149.083129
-33.994273	149.081477
-33.987058	149.054747
-33.980610	149.047093
-33.957108	149.028854
-33.904295	148.981630
-33.909158	148.970521
-33.948079	148.965834
-34.000431	148.974679
-33.902762	149.138943
-33.919014	149.039291
-33.915237	149.059200
-33.905190	149.071142
-33.922213	149.096824
-33.892613	149.104912
-33.886798	149.119798
-33.887198	149.065994
-33.885542	149.059389

27 Regulated River Order for the NSW Hunter Water Management Area Regulated Rivers 2016

Schedule 1 Omit items 3–6. Insert instead—

3. Glennies Creek from Glennies Creek Dam wall, being the point at latitude -32.361941 and longitude 151.249747, downstream to the confluence of

Glennies Creek with Hunter River.

4. Glennies Creek Dam water storage (including all water downstream of the following coordinates, in decimal degrees GDA94, to Glennies Creek Dam wall)—

Latitude	Longitude
-32.287472	151.266599
-32.300972	151.256985
-32.306524	151.252396
-32.297512	151.299214
-32.309309	151.301546
-32.331923	151.310492
-32.349234	150.296217
-32.375406	151.279140
-32.350293	151.249333

5. Hunter River from Glenbawn Dam wall, being the point at latitude -32.107697 and longitude 151.000344 in decimal degrees GDA94, downstream to the point at latitude -32.686680 and longitude 151.561340 in decimal degrees GDA94, Parish of Maitland, County of Northumberland.

6. Glenbawn Dam water storage (including all water downstream of the following coordinates, in decimal degrees GDA94, to Glenbawn Dam wall)—

Latitude	Longitude
-32.015506	151.087500
-32.018712	151.087910
-32.019961	151.070256
-32.034656	151.073531
-32.045671	151.061744
-32.023105	151.051791
-32.043603	151.055119
-32.052615	151.035640
-32.066942	151.007051
-32.097867	151.020588

-32.116285	151.006530

28 Regulated River Order for the NSW Murray Regulated Rivers 2012

Clause 4 Regulated rivers Omit item 38. Insert instead—

38. Murray River from Hume Dam wall, being the point at latitude -36.107878 and longitude 147.03172 in decimal degrees GDA94, downstream to the South Australian border,

38A. Hume Dam water storage (including all water downstream of the following coordinates, in decimal degrees GDA94, to Hume Dam wall)—

Latitude	Longitude
-36.006354	147.354450
-36.027898	147.278647
-35.988915	147.150799
-35.965408	147.091362
-35.942829	147.057470
-35.937462	147.032817
-35.968634	147.037428
-36.002457	147.053119

38B. That part of the Murray River adjacent to the southern boundary of Lot 51, DP 753357, Parish of Vautier, County Goulburn,

29 Richmond Regulated River Order 2010

Schedule 1 Omit “Iron Pot Creek from the high water mark of Toonumbar Dam to its confluence with Eden Creek.”.

Insert instead—

Iron Pot Creek from Toonumbar Dam wall, being the point at latitude -28.620195 and longitude 152.791892 in decimal degrees GDA94, to its confluence with Eden Creek.

Toonumbar Dam water storage (including all water downstream of the following coordinates, in decimal degrees GDA94, to Toonumbar Dam wall)—

Latitude	Longitude

-28.587983	152.752535
-28.590374	152.752713
-28.594637	152.756531
-28.595934	152.754548
-28.603582	152.755797
-28.605508	152.757218
-28.600453	152.762434
-28.604217	152.760220
-28.601712	152.769144
-28.605501	152.770471
-28.604215	152.776476
-28.605782	152.782041
-28.612889	152.780112
-28.512744	152.786820

Division 2 Amendments to water sharing plans

30 Water Sharing Plan for the Bega and Brogo Rivers Area Regulated, Unregulated and Alluvial Water Sources 2011

Clause 4 Application of this Plan Omit “the upper limit of” wherever occurring in clause 4 (3) (a) and (c).

31 Water Sharing Plan for the Belubula Regulated River Water Source 2012

Clause 4 Application of this Plan Omit “upper limit of” from clause 4 (3) (a).

32 Water Sharing Plan for the Gwydir Regulated River Water Source 2016

Clause 4 Water source and waters to which this Plan applies Insert “water storage” after “Copeton Dam” in clause 4 (1).

33 Water Sharing Plan for the Hunter Regulated River Water Source 2016

(1) **Clause 4 Application of Plan** Omit clause 4 (2) (a). Insert instead—

(a) all water between the bed and banks of all rivers, from the Glenbawn Dam water storage downstream to the Hunter River, and from Glennies Creek Dam water storage downstream to the junction with the Hunter River, which have

been declared by the Minister to be regulated rivers, and

(2) **Schedule 1 Management zones, flow reference points and trading zones** Omit the matter relating to Management Zone 1A and Management Zone 3A from Columns 1 and 2 of the table to clause 1.

Insert instead in appropriate order—

Management Zone 1A (Glenbawn Dam water storage and Hunter River to Goulburn River junction)	From Glenbawn Dam water storage down to, and including, the Goulburn River junction
Management Zone 3A (Glennies Creek Dam water storage and Glennies Creek)	From Glennies Creek Dam water storage downstream to the Hunter River junction

(3) **Schedule 1, clause 2, table** Omit the matter relating to trading zones 1 and 3 from Columns 1 and 2 of the table.

Insert instead in appropriate order—

1	All of the Hunter Regulated River Water Source from Glenbawn Dam water storage down to, and including, the junction of the Hunter River and Glennies Creek
3	All of the Hunter Regulated River Water Source from Glennies Creek Dam water storage down to the junction of the Hunter River and Glennies Creek

(4) **Appendix 1 Rivers and lakes in the Hunter Regulated River Water Source** Omit paragraphs (c)–(f). Insert instead—

(c) Glennies Creek from Glennies Creek Dam wall downstream to the confluence of Glennies Creek with Hunter River,

(d) Glennies Creek Dam water storage,

(e) Hunter River from Glenbawn Dam wall downstream to the point at latitude -32.686680 and longitude 151.561340 in decimal degrees GDA94, Parish of Maitland, County of Northumberland,

(f) Glenbawn Dam water storage,

34 Water Sharing Plan for the Lachlan Regulated River Water Source 2016

(1) **Clause 4 Application of Plan** Omit “upper limits of” from clause 4 (2) (a).

(2) **Appendix 1 Rivers and lakes in the regulated river order** Omit paragraphs (g)–(i). Insert

instead—

(g) Lachlan River from Wyangala Dam wall, being the point at latitude -33.969787 and longitude 148.951823 in decimal degrees GDA94, downstream to the Murrumbidgee River,

(h) Wyangala Dam water storage,

35 Water Sharing Plan for the Macquarie and Cudgegong Regulated Rivers Water Source 2016

(1) **Clause 4 Water source and waters to which this Plan applies** Omit “the upstream limit of” from clause 4 (1).

(2) **Clause 14 Planned environmental water** Insert “water storage” after “Windamere Dam” wherever occurring in clause 14 (2) and (8).

(3) **Clause 14 (2)** Omit “the Dam”. Insert instead “the water storage”.

(4) **Clauses 14 (8) and (12) (h) (ii) and 44 (2) (a)** Omit “the upper limit of” wherever occurring.

(5) **Clause 47 Extraction of water under supplementary water access licences** Omit “downstream of the upper limit of” from clause 47 (5).

Insert instead “from, and downstream of,”.

(6) **Appendix 1 Rivers and lakes in the Macquarie and Cudgegong Regulated Rivers Water Source** Omit paragraph (i) where firstly occurring. Insert instead—

(i) Macquarie River from Burrendong Dam wall, being the point at latitude -32.66674 and longitude 149.10902 in decimal degrees GDA94, downstream to the Monkeygar Creek offtake,

(7) **Appendix 1, paragraph (vi)** Omit the paragraph. Insert instead—

(vi) Cudgegong River from Windamere Dam wall, being the point at latitude -32.727325 and longitude 149.771999 in decimal degrees GDA94, downstream to Burrendong Dam water storage,

(8) **Appendix 1, paragraph (xia)** Insert after paragraph (xi)—

(xia) Burrendong Dam water storage,

36 Water Sharing Plan for the Murrumbidgee Regulated River Water Source 2016

(1) **Clause 4 (2) (a) (including note 2) and Appendix 1** Omit “the upper limit of”, wherever occurring.

(2) **Appendix 1, paragraphs (r) and (r1)** Omit paragraph (r). Insert instead—

(r) Murrumbidgee River from Burrinjuck Dam wall, being the point at latitude -35.00284 and longitude 148.583817 in decimal degrees GDA94, downstream to the Murray River,

(r1) Burrinjuck Dam water storage,

(3) **Appendix 1, paragraphs (w) and (w1)** Omit paragraph (w). Insert instead—

(w) Tumut River from Blowering Dam wall, being the point at latitude -35.40047 and longitude 148.244146 in decimal degrees GDA94, downstream to the Murrumbidgee River,

(w1) Blowering Dam water storage,

37 Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2016

(1) **Clause 4 Application of Plan** Omit “the upper limit of” wherever occurring in clause 4 (2) (a) and (3) (a).

(2) **Appendix 1 Rivers and lakes in the regulated river orders** Omit paragraph (al) from clause (1). Insert instead—

(al) Murray River from Hume Dam wall, being the point at latitude -36.107878 and longitude 147.03172 in decimal degrees GDA94, downstream to the South Australian border,

(aal) Hume Dam water storage,

(aaal) that part of the Murray River adjacent to the southern boundary of Lot 51, DP 753357, Parish of Vautier, County Goulburn,

38 Water Sharing Plan for the NSW Border Rivers Regulated River Water Source 2009

Clause 4 Water source and waters to which this Plan applies Omit clause 4 (1) (a) and (b). Insert instead—

(a) the Pindari Dam water storage downstream to the Pindari Dam wall,

(b) the Severn River from Pindari Dam wall downstream to its junction with the Macintyre River,

39 Water Sharing Plan for the Paterson Regulated River Water Source 2007

(1) **Clause 4 Area and waters to which this Plan applies** Omit “the upper limit of” from clause 4 (3) (a).

(2) **Appendix 1** Omit the Appendix. Insert instead—

Appendix 1 Rivers in the Paterson Regulated River Water Source

Paterson River from Lostock Dam wall, being the point at latitude -32.328844 and longitude 151.450099 in decimal degrees GDA94, downstream to the determined tidal limit, which is 410 metres downstream from a point adjacent to where the north-eastern corner of Lot 115, DP 848634, Parish of Barford, County of Durham, fronts the eastern bank of Paterson River.

Lostock Dam water storage.

40 Water Sharing Plan for the Peel Valley Regulated, Unregulated, Alluvium and Fractured Rock Water Sources 2010

Clause 4 Application of this Plan Omit “the upper limit of” from clause 4 (3).

41 Water Sharing Plan for the Richmond River Area Unregulated, Regulated and Alluvial Water Sources 2010

Clause 4 Application of Plan Omit “upper limit of” from clause 4 (4).

42 Water Sharing Plan for the Upper Namoi and Lower Namoi Regulated River Water Sources 2016

(1) **Clause 4 Water sources and waters to which this Plan applies** Omit “Split Rock Dam downstream to Keepit Dam” from clause 4 (2).

Insert instead “Split Rock Dam water storage downstream to Keepit Dam water storage”.

(2) **Clause 4 (3)** Insert “water storage” after “Keepit Dam”.

(3) **Appendix 1 Rivers and lakes within this water source** Omit subclauses (1) and (2) from the matter relating to ***Upper Namoi Regulated River Water Source***.

Insert instead—

(1) Manilla River from Split Rock Dam wall, being the point at latitude -30.575872

and longitude 150.669724 in decimal degrees GDA94, downstream to its junction with the Namoi River,

(2) Split Rock Dam water storage,

(3) Namoi River, from its junction with the Manilla River downstream to Keepit Dam water storage,

(4) Keepit Dam water storage.

(4) **Appendix 1, Lower Namoi Regulated River Water Source, subclause (5)** Omit the subclause. Insert instead—

(5) Namoi River from Keepit Dam wall, being the point at latitude -30.900503 and longitude 150.513171 in decimal degrees GDA94, downstream to the offtake of Narrabri Creek,

Division 3 References to upper limit in repealed orders

43 References in orders preceding the 2016 Hunter Order

(1) A reference to “Glennies Creek from the upper limit of the Glennies Creek Dam water storage, including all tributaries to the storage (named and unnamed) up to high water mark of the storage, downstream to the confluence of Glennies Creek with the Hunter River” in the First Hunter Order and the Second Hunter Order is taken to be a reference to items 3 and 4 of Schedule 1 to the 2016 Hunter Order, as amended by this Part.

(2) A reference to “Hunter River from the upper limit of Glenbawn Dam water storage, including all tributaries to the storage (named and unnamed) up to high water mark of the storage, downstream to the Oakhampton Rail Bridge at Maitland” in the First Hunter Order is taken to be a reference to items 5 and 6 of Schedule 1 to the 2016 Hunter Order, as amended by this Part.

(3) A reference to “Hunter River from the upper limit of Glenbawn Dam water storage, including all tributaries to the storage (named and unnamed) up to high water mark of the storage, downstream to a point adjacent to the eastern boundary of Lot 2, DP 1012258, Parish of Maitland, County of Northumberland on the southern bank of the River and adjacent to a point 150m downstream of the western boundary of Lot 1, DP 856702, Parish of Middelhope, County of Durham on the northern bank of the River, 1400m upstream of Oakhampton rail bridge” in the Second Hunter Order is taken to be a reference to items 5 and 6 of Schedule 1 to the 2016 Hunter Order, as amended by this Part.

(4) In this clause—

First Hunter Order means the *Hunter Water Management Area Regulated River Order* (Government Gazette No 110 of 1 July 2004).

Second Hunter Order means the *Hunter Water Management Area Regulated River Order No. 1* (Government Gazette No 179 of 12 November 2004).

2016 Hunter Order means the *Regulated River Order for the NSW Hunter Water Management Area Regulated Rivers 2016* (Government Gazette No 56 of 1 July 2016).

44 References in orders preceding the 2012 Lachlan Order

(1) A reference to the "upper limit of Wyangala Dam storage" in the 2004 Lachlan Order is taken to be a reference to Wyangala Dam water storage as described in item 8 of Schedule 1 to the 2012 Lachlan Order, as amended by this Part.

(2) In this clause—

2004 Lachlan Order means the *Lachlan Water Management Area Regulated River Order* (Government Gazette No 110 of 1 July 2004).

2012 Lachlan Order means the *Regulated River Order for the Lachlan Regulated River 2012* (Government Gazette No 92 of 14 September 2012).

45 References in orders preceding the 2012 Murray Order

(1) A reference to the "upper limit of Hume Dam water storage" in the 2004 Murray Order is taken to be a reference to Hume Dam water storage as described in item 38A of clause 4 of the 2012 Murray Order, as amended by this Part.

(2) In this clause—

2004 Murray Order means the *Murray Water Management Area Regulated River Order (Murray)* (Government Gazette No 110 of 1 July 2004).

2012 Murray Order means the *Regulated River Order for the NSW Murray Regulated Rivers 2012* (Government Gazette No 19 of 15 February 2012).

Division 4 Additional provisions

46 Commencement of amendments

(1) Clauses 18, 19, 21, 22 and 24 are taken to have commenced on 1 July 2004.

(2) Clause 20 is taken to have commenced on 26 June 2007.

(3) Clauses 23 and 38 are taken to have commenced on 1 July 2009.

(4) Clauses 25 and 26 are taken to have commenced on 14 September 2012.

(5) Clauses 27, 32–37 and 42 are taken to have commenced on 1 July 2016.

(6) Clause 28 is taken to have commenced on 15 February 2012.

(7) Clauses 29 and 41 are taken to have commenced on 17 December 2010.

(8) Clause 30 is taken to have commenced on 1 April 2011.

(9) Clause 31 is taken to have commenced on 4 October 2012.

(10) Clause 39 is taken to have commenced on 1 July 2007.

(11) Clause 40 is taken to have commenced on 1 July 2010.

47 Regulated river orders to be amended

The regulations may further amend the regulated river orders amended by Division 1 of this Part and made by Part 7 for the purpose of specifying the location of the limits of certain rivers referred to in those orders.

48 Management plans to be amended

The regulations may further amend the management plans amended by Division 2 of this Part for the purpose of specifying the location of the limits of certain rivers referred to in those plans.

49 Commencement of amendments and validation

Any amendments made by a regulation under this Part may take effect from 1 July 2004 or such other date (being an earlier or later date) as is specified by the regulations.

50 Savings, transitional and other provisions

(1) The regulations may contain provisions of a savings or transitional nature consequent on the amendments made under this Part.

(2) Any act, matter or thing done or omitted to be done before the amendment of an order or a management plan by this Part that would have been valid if that order or management plan, as so amended, had been in force when the thing was done or omitted to be done is validated.

(3) No compensation is payable to any person as a consequence of the operation of this Part.

(4) The regulations may deem references in a predecessor order (including an order that preceded the immediately preceding order) of an order amended by or under this Part to the location of the limits of certain rivers to be taken to be references as specified in the regulations.

(5) Any such regulation may deem that reference to have taken effect on and from the date of commencement of the predecessor order or a later date.

(6) In this clause, ***compensation*** includes damages or any other form of monetary compensation.

Part 6 Amendment relating to the active sharing of flows

51 Management plans to be amended

This Part applies to the following management plans—

(a) *Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*,

(b) *Water Sharing Plan for the Gwydir Unregulated and Alluvial Water Sources 2012*,

(c) *Water Sharing Plan for the Macquarie Bogan Unregulated and Alluvial Water Sources 2012*.

52 Amendment of management plans relating to the management of active sharing of flows

Each management plan to which this Part applies is amended by inserting as the final paragraph (with appropriate numbering) in the clause titled “Part 8” in Part 12 the following paragraph—

> include rules to facilitate active management to share flows, including requiring the taking of water to be carried out in accordance with Ministerial notices or announcements or to require licence holders to express interest in accessing their entitlement during an event.

Part 7 Bega and Brogo and Peel Valley Orders

53 Making of Bega and Brogo Order

(1) The *Regulated River Order for the Bega and Brogo Regulated Rivers 2018* (***the Bega and Brogo Order***) containing the clauses set out below is taken to have been made by the Minister in accordance with this Act—

> **1 Name of Order**
>
> This Order is the *Regulated River Order for the Bega and Brogo Regulated Rivers 2018*.
>
> **2 Declaration of regulated rivers**
>
> The following rivers are declared to be regulated rivers for the purposes of the *Water Management Act 2000* under this Order—

(a) Bega River, from 500 metres upstream of its junction with the Brogo River, downstream to its junction with Jellat Jellat Creek,

(b) Brogo River, from Brogo Dam wall, which is the point of latitude -36.488680 and longitude 149.740350, in decimal degrees GDA94, down stream to its junction with the Bega River,

(c) Coopers Creek, from its junction with the Brogo River up to and including the lagoon section within Portion 97, Parish of Bega,

(d) Brogo Dam water storage (including all water downstream of the following coordinates, in decimal degrees GDA94, to Brogo Dam wall)—

Latitude	Longitude
-36.469614	149.698707
-36.468510	149.705187
-36.464538	149.716953
-36.473023	149.721948
-36.477831	149.719258
-36.479591	149.726371
-36.482022	149.720763
-36.484526	149.729929
-36.491189	149.718921
-36.494395	149.731010
-36.484761	149.735077
-36.490772	149.742066
-36.492307	149.739054
-36.494696	149.741781

(2) The Bega and Brogo Order is taken to have effect on and from 1 July 2011.

54 Making of Peel Valley Order

(1) The *Regulated River Order for the Peel Valley Regulated Rivers 2018* (***the Peel Valley Order***) containing the clauses set out below is taken to have been made by the Minister in accordance with this Act—

1 Name of Order

This Order is the *Regulated River Order for the Peel Valley Regulated Rivers 2018*.

2 Declaration of regulated rivers

The following rivers are declared to be regulated rivers for the purposes of the *Water Management Act 2000* under the Peel Valley Order—

(a) Peel River from Chaffey Dam wall, being the point at latitude -31.346746 and longitude 151.138965 in decimal degrees GDA94, downstream to its junction with the Namoi River,

(b) Peel River from the offtake of Calala anabranch, within Portion 24, Parish of Nemingha, County of Parry, downstream to its point of re-entry within Portion 1, Parish of Nemingha, County of Parry,

(c) anabranch of the Peel River, which offtakes from within Portion 33, Parish of Nemingha, County of Parry, to its point of re-entry within Portion 69, Parish of Nemingha, County of Parry,

(d) anabranch of the Peel River, which offtakes from and re-enters the Peel River within Lot 11, Australian Agricultural Company’s grant, Parish of Tangarratta, County of Parry,

(e) anabranch of the Peel River, which offtakes from within Portion 2, Parish of Baldwin, County of Darling to its point of re-entry within Portion 55, Parish of Keepit, County of Darling.

(2) The Peel Valley Order is taken to have effect on and from 1 July 2010.

55 Savings and transitional provisions

(1) Any act, matter or thing done or omitted to be done before the commencement of this Part that would have been valid if the Bega and Brogo Order or the Peel Valley Order had been in force when the act, matter or thing was done or omitted to be done is validated.

(2) No compensation is payable to any person as a consequence of the operation of this clause.

(3) In this clause, ***compensation*** includes damages or any other form of monetary compensation.

Schedule 13 Private water corporations

(Sections 139 and 179)

Alipou Swamp Drainage Union

Alnwick Drainage Union

Anabranch Water

Anderson’s Drainage Union

Anna Bay Drainage Union

Austral Eden Drainage Union

Belmore Drainage Union

Belongil Swamp Drainage Union

Berry Park-Brisbanefield Drainage Union

Black’s Drain Swamp Drainage Union

Bolwarra Drainage Union

Broke Fordwich Private Irrigation District Board of Management

Brundee Swamp Drainage Union

Chindera Drainage Union

Condong Drainage Union

Cooroobongatti Swamp Drainage Union

Cudgen Drainage Union

Cudgera Drainage Union

Cundle Plains Drainage Union

Darkwater Drainage Union No. 1

Duck Creek Drainage Union

Duck Pond Drainage Union

Dulguigan Drainage Union

Duranbah Drainage Union

Frogmore Drainage Union

Gladstone Drainage Union

Glenrock and Tennessee Drainage Union

Grahamstown Drainage Union

Gumly Gumly Private Irrigation District Board of Management

Gunbar Private Water Supply Board

Hay Private Irrigation District Board of Management

Hexham Drainage Union

Hinton Swamp Drainage Union

Hunter Wine Country Private Irrigation District Board of Management

Keith Hall Drainage Union

Kiss’ Lagoon Drainage Union

Kundle Kundle Drainage Union

Kynnumboon Plain Drainage Union

Lavender Swamp Drainage Union

Long Bight and Williamtown Drainage Union

Louth Park Drainage Union

Lower Gingham PID No 1 Board

Lower Gwydir PID Board

Lower Southgate Drainage Union

Lumley Lane Drainage Union

Marriott Drainage Union

Moira Board of Management

Mooball and Crabbes Creek Swamp Drainage Union

Moto Drainage Union

Murwillumbah Swamp Drainage Union

Narromine Irrigation Board of Management

Nelson’s Plains Drainage Union

North Oxley Island Drainage Union

Oakhampton Drainage Union

Oxley Island Private Drainage Board and Landcare Group

Phoenix Park Drainage Union

Round Swamp Drainage Union

Seven Oaks Drainage Union

Southgate Drainage Union

Sportsman’s Creek Drainage Union

Swampy Creek Drainage Union

Swan Bay Drainage Union

Swanpool Drainage Union

Taree Estate Drainage Union

Terragong Drainage Union

Terranora Drainage Union

Terrara Drainage Union

The Dumaresque Island Drainage Union

The Miller’s Forest Drainage Union

The Miller’s Swamp Drainage Union

The Rafferty Drainage Union

The Repton-Raleigh Drainage Union

The Saltwater Lagoon Drainage Union

Tibooburra Private Water Supply Board

Tuckombil Plains Drainage Union

Tyagarah Swamp Drainage Union

Tygalgah Drainage Union

West Corurgan Board of Management

Whalen Drainage Union

Woodberry Drainage Union

Woodville Drainage Union

Dictionary

(Section 4)

Note—

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

access licence means an access licence referred to in section 56.

access licence certificate means a certificate issued under section 87B.

access licence dealing principles means principles established under section 71Z.

access licence dealing rules means the rules established by the water sharing provisions of a management plan, as referred to in section 20 (1) (d).

Access Register means the Water Access Licence Register required to be kept under section 71.

activity approval means a controlled activity approval or an aquifer interference approval.

adaptive environmental water condition means a condition imposed on an access licence of a type referred to in section 8 (1) (b) (i).

approval means a water use approval, a water management work approval or an activity approval.

approved form means form approved by the Minister.

aquifer means a geological structure or formation, or an artificial landfill, that is permeated with water or is capable of being permeated with water.

aquifer interference activity means an activity involving any of the following—

(a) the penetration of an aquifer,

(b) the interference with water in an aquifer,

(c) the obstruction of the flow of water in an aquifer,

(d) the taking of water from an aquifer in the course of carrying out mining, or any other activity prescribed by the regulations,

(e) the disposal of water taken from an aquifer as referred to in paragraph (d).

aquifer interference approval means an approval referred to in section 91 (3).

assignment dealing means the following—

(a) an assignment of water allocations to or from the water allocation account for an access licence as referred to in section 71T,

(b) the crediting or debiting of water allocations to or from the water allocation account for an access licence to give effect to an interstate assignment of water allocations as referred to in section 71V,

(c) an assignment of the whole or part of one or more individual daily extraction components as

referred to in section 71QA.

authorised analyst means a person appointed by the Minister under section 390 to exercise the functions conferred on an authorised analyst by this Act.

authorised manner—see section 395.

authorised officer, in relation to a provision of this Act, means a person authorised by the Minister under section 390 to exercise the functions conferred on an authorised officer by that provision, whether generally or in a particular case.

available water, in relation to a water management area or water source, means the water that is available in that area or water source in accordance with an available water determination that is in force in respect of that area or water source.

available water determination means a determination referred to in section 59.

basic landholder rights means domestic and stock rights, harvestable rights or native title rights.

Basin management area means a water management area that is part of a water resource plan area under the *Water Act 2007* of the Commonwealth.

Basin management plan means a management plan that applies to a Basin management area or to part of the Basin water resources.

Basin water resources has the same meaning as it has in the *Water Act 2007* of the Commonwealth.

bulk access regime means a bulk access regime established by a management plan, as referred to in section 20 (1) (e), or by a Minister's plan, and includes a bulk access regime as varied by the Minister under section 45.

caveat on an access licence or holding in an access licence means a caveat in respect of the licence or holding recorded in the Access Register.

coastal waters of the State has the same meaning as it has in Part 10 of the *Interpretation Act 1987*.

co-holder's tenancy arrangement means the joint tenancy, tenancy in common or other arrangement under which the entitlements conferred by an access licence are held by co-holders of the licence.

construct a work includes install, maintain, repair, alter or extend the work.

controlled activity means—

(a) the erection of a building or the carrying out of a work (within the meaning of the *Environmental Planning and Assessment Act 1979*), or

(b) the removal of material (whether or not extractive material) or vegetation from land, whether by way of excavation or otherwise, or

(c) the deposition of material (whether or not extractive material) on land, whether by way of landfill operations or otherwise, or

(d) the carrying out of any other activity that affects the quantity or flow of water in a water source.

controlled activity approval means an approval referred to in section 91 (2).

Crown land has the same meaning as it has in the *Crown Land Management Act 2016*.

dealing in an access licence or holding in an access licence means a general dealing, a dealing on default or an assignment dealing in the licence or holding.

dealing on default in an access licence or holding in an access licence means the transfer of the licence or holding as referred to in section 71X.

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

development and ***carry out development*** have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

development consent has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

domestic and stock rights means the rights conferred on a landholder by section 52.

drainage work means a work (such as a pump, pipe or channel) for the purpose of draining water from land, including a reticulated system of such works, and includes all associated pipes, sluices, sluicegates, valves, metering equipment and other equipment, but does not include—

(a) any sewage work (within the meaning of Part 2 of Chapter 6), or

(b) any work declared by the regulations not to be a drainage work.

drainage work approval means an approval referred to in section 90 (3).

duly qualified person means a person who has the qualifications, skills and experience to carry out work in connection with metering equipment that are prescribed by the regulations.

environment includes all aspects of the surroundings of human beings, whether affecting them as individuals or in their social groupings.

environmental water rules means environmental water rules referred to in section 8 (2).

estuary means—

(a) any part of a river whose level is periodically or intermittently affected by coastal tides, or

(b) any lake or other partially enclosed body of water that is periodically or intermittently open to the sea, or

(c) anything declared by the regulations to be an estuary,

but does not include anything declared by the regulations not to be an estuary.

exercise a function includes perform a duty.

extractive material means earth, sand, gravel, rock, mud, clay or any other such substance.

extreme event means any of the following events—

(a) an extreme dry period,

(b) a water quality event of an intensity, magnitude and duration that is sufficient to render water acutely toxic or unusable for established local uses and values,

(c) any other type of event that has resulted in the suspension of a water management plan under this Act or in the last 50 years of a plan that deals with water allocation and is made under any other Act.

flood work means a work (such as a barrage, causeway, cutting or embankment)—

(a) that is situated—

(i) in or in the vicinity of a river, estuary or lake, or

(ii) within a floodplain, and

(b) that is of such a size or configuration that, regardless of the purpose for which it is constructed or used, it is likely to have an effect on—

(i) the flow of water to or from a river, estuary or lake, or

(ii) the distribution or flow of floodwater in times of flood,

and includes all associated pipes, valves, metering equipment and other equipment, but does not include any work declared by the regulations not to be a flood work.

flood work approval means an approval referred to in section 90 (4).

floodplain means land declared by the regulations to be a floodplain.

function includes a power, authority and duty.

general dealing in an access licence or holding in an access licence means the following—

(a) the transfer of the licence or holding from one person to another, as referred to in section 71M,

(b) the term transfer of the water entitlements conferred by the licence or holding from one person to another, as referred to in section 71N,

(c) the grant of a new access licence of a different category or subcategory, as referred to in section 71O,

(d) the grant of an access licence arising from a subdivision or consolidation, as referred to in section 71P,

(da) the grant of an access licence on an application under section 74,

(e) the assignment of rights in the licence, as referred to in section 71Q,

(f) the grant of a new access licence after amendment of the share component of the licence, as referred to in section 71R,

(g) the amendment of the extraction component of an access licence, as referred to in section 71S,

(h) the grant or cancellation of an access licence to give effect to the interstate transfer of an access licence, as referred to in section 71U,

(i) the amendment of the licence to nominate a specified water supply work, or group of water supply works, as a means by which water allocations under the licence may be taken, as referred to in section 71W,

(j) such other dealings as are prescribed by the regulations.

General Register of Deeds means the General Register of Deeds maintained under Part 23 of the *Conveyancing Act 1919*.

harvestable rights mean the rights conferred on a landholder by a harvestable rights order.

harvestable rights area means an area of land that is constituted as a harvestable rights area by a harvestable rights order.

harvestable rights order means an order in force under section 54.

holding in an access licence means the share of the entitlements conferred by the access licence held by a particular co-holder of the licence.

implementation program means a program referred to in section 51.

individual daily extraction component—see section 71QA (1).

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

irrigation corporation means an irrigation corporation referred to in Part 1 of Chapter 4.

lake includes—

(a) a wetland, a lagoon, a saltmarsh and any collection of still water, whether perennial or intermittent and whether natural or artificial, and

(b) any water declared by the regulations to be a lake,

whether or not it also forms part of a river or estuary, but does not include any water declared by the regulations not to be a lake.

land includes any water source, and also includes the land on or in which any water source is situated.

landholder, in relation to land, means—

(a) the owner of the land or (if the owner is not in occupation of the land) the lawful occupier of the land, or

(b) the local council, in the case of land that comprises—

(i) a public road vested in, or under the control or management of, the local council, or

(ii) the site of a work that is, or is proposed to be, constructed for the local council.

landholding means a holding that is owned by a person, or occupied by a person (either alone or together with some other person with whom he or she has an association of a kind prescribed by the regulations), being a holding that comprises—

(a) a parcel of land that is separately valued under the *Valuation of Land Act 1916*, or

(b) two or more such parcels that together form a single area of land (ignoring any division that arises merely because the land is transected by a road or river).

local council means the council of a local government area.

Local Land Services means the body corporate with that name established under the *Local Land Services Act 2013*.

local water utility means—

(a) a water supply authority, or

(b) a council or county council exercising water supply functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*, or

(c) a registered operator within the meaning of the *Water Industry Competition Act 2006*.

major utility means a person or body referred to in Schedule 2.

management committee means a committee referred to in section 12.

management plan means a plan referred to in section 15 and, in relation to any land that is not within a water management area, or is within a water management area for which there is no relevant management plan, includes a Minister's plan.

metering equipment includes any device used for or in connection with measuring the flow of water and any ancillary wiring, pipework, telemetry equipment or apparatus and any supporting structure.

Ministerial action, in relation to an access licence or holding in an access licence means the following—

(a) the grant of an access licence under section 63, 63A or 63B,

(b) the issue of a replacement access licence (within the meaning of Schedule 10) arising from the operation of that Schedule,

(c) the amendment or revocation of the conditions of an access licence under sections 66–68,

(ca) the grant of an access licence under section 8C or the imposition, revocation or amendment of an adaptive environmental water condition under section 8B, 8C or 8D,

(d) the amendment of the share or extraction component of an access licence under section 68A or 68B,

(d1) the amendment of the share component of a specific purpose access licence or the withdrawal of

the nomination of a work under section 68A,

(e) the surrender of an access licence under section 77,

(f) the cancellation of an access licence under section 77A,

(g) the suspension or cancellation of an access licence under section 78,

(h) the compulsory acquisition of an access licence under section 79,

(i) any other action in relation to an access licence or holding in an access licence prescribed by the regulations.

Ministerial Corporation means the Water Administration Ministerial Corporation constituted by section 371.

Minister's plan means a plan referred to in section 50.

native title holder, in relation to any waters, means a person who holds native title rights in relation to those waters pursuant to a determination under the *Native Title Act 1993* of the Commonwealth.

native title rights means non-exclusive rights to take and use water for personal, domestic and non-commercial communal purposes (including the purposes of drinking, food preparation, washing, manufacturing traditional artefacts, watering domestic gardens, hunting, fishing and gathering and recreation, cultural and ceremonial purposes).

Natural Resources Commission means the Natural Resources Commission established under the *Natural Resources Commission Act 2003*.

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

overland flow water—see section 4A.

owner of land means the only person who, or each person who jointly or severally, at law or in equity—

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

(b) is a person to whom the Crown has contracted to sell the land under the *Crown Land Management Act 2016*, or

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

and, in relation to land of the Crown other than land for which there is an owner under paragraph (b) or (c), means the Crown.

principles of ecologically sustainable development means the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

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

private water trust means a private water trust referred to in Part 4 of Chapter 4.

public authority means—

(a) a Minister of the Crown, or

(b) a Public Service agency, or

(c) a statutory body representing the Crown, or

(d) a statutory State owned corporation (or any of its subsidiaries) within the meaning of the *State Owned Corporations Act 1989*, or

(e) a council or county council within the meaning of the *Local Government Act 1993*,

but does not include any person or body declared by the regulations not to be a public authority.

record, in relation to the Access Register, includes amend, cancel or omit.

registered means registered in the Access Register.

regulated river means a river that is declared by the Minister, by order published in the Gazette, to be a regulated river.

Editorial note—

For orders pursuant to this definition see Gazettes No 264 of 27.12.2002, p 11119, No 45 of 14.2.2003, p 1664, No 49 of 21.2.2003, pp 2504, 2506, 2508; No 52 of 26.2.2003, pp 3135, 3140; No 110 of 1.7.2004, pp 5482, 5484, 5486, 5488, 5490, 5494, 5500, 5502; No 179 of 12.11.2004, p 8461; No 82B of 26.6.2007, p 3913; No 79 of 29.5.2009, p 2491; No 135 of 17.12.2010, p 5902; No 19 of 15.2.2012, p 417; No 92 of 14.9.2012, p 3955 and No 56 of 1.7.2016, p 1918. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

regulated river supplementary water access licence means a supplementary water access licence (including a subcategory of such a licence) that entitles its holder to shares of water from a water source that is a regulated river.

river includes—

(a) any watercourse, whether perennial or intermittent and whether comprising a natural channel or a natural channel artificially improved, and

(b) any tributary, branch or other watercourse into or from which a watercourse referred to in paragraph (a) flows, and

(c) anything declared by the regulations to be a river,

whether or not it also forms part of a lake or estuary, but does not include anything declared by the regulations not to be a river.

Secretary means the Secretary of the Department.

security holder, in relation to an access licence or holding in an access licence, means the holder of a registered security interest over the licence or holding.

security interest over an access licence or holding in an access licence means a mortgage or charge over, or other arrangement of a kind prescribed by the regulations in respect of, the licence or holding, that secures the payment of a debt or performance of some other obligation under a contract or other legally enforceable arrangement.

specific purpose access licence means—

(a) a major utility access licence, or

(b) a local water utility access licence, or

(c) a domestic and stock access licence, or

(d) an access licence of a subcategory of access licence, or

(e) an access licence of a type that is declared by the regulations to be a specific purpose access licence.

State government policy means policy of the Government of New South Wales.

State's water rights means the rights referred to in section 392 (1).

statutory body means a corporation that is incorporated by or under an Act, other than—

(a) a company within the meaning of the *Corporations Act 2001* of the Commonwealth, and

(b) a society within the meaning of the *Co-operative Housing and Starr-Bowkett Societies Act 1998* or a co-operative within the meaning of the *Co-operatives National Law (NSW)*, or

(c) an incorporated association within the meaning of the *Associations Incorporation Act 2009*.

Tier 1, 2 or 3 offence means an offence that is punishable by a Tier 1, 2 or 3 penalty, as the case may be.

Tier 1, 2 or 3 penalty—see section 363B.

unregulated river means a river that is not a regulated river.

use a water management work means—

(a) in relation to a water supply work—

(i) to operate the work for any purpose referred to in paragraph (a), (b) or (c) of the definition of ***water supply work***, or

(ii) to allow the work to operate for that purpose, or

(b) in relation to a drainage work—

(i) to operate the work for the purpose of draining water from land, or

(ii) to allow the work to operate for that purpose, or

(c) in relation to a flood work—

(i) to operate the work for the purpose of influencing the flow of floodwater in the vicinity of the land on which the work is situated, or

(ii) to allow the work to operate for that purpose.

water allocation means the water to which the holder of an access licence is entitled from time to time under the licence, as recorded in the water allocation account for the licence.

water allocation account for an access licence means the account for the licence referred to in section 85 (1).

water bore means a bore—

(a) for the purpose of finding an aquifer, or

(b) for the purpose of testing the production capacity or water quality of an aquifer, or

(c) for the purpose of taking water from, or discharging anything into, an aquifer, or

(d) for any other purpose prescribed by the regulations,

being a bore that has been artificially created, widened, lengthened or modified by means of drilling, boring, augering, digging or jetting.

water management area means an area of land that is constituted as a water management area by an order in force under section 11.

water management principles means water management principles referred to in section 5.

water management work means a water supply work, a drainage work or a flood work, and includes any part of such a work.

water management work approval means a water supply work approval, a drainage work approval or a flood work approval.

water return flow rules means rules established under section 75 for the regaining of water allocations under an access licence.

water source means the whole or any part of—

(a) one or more rivers, lakes or estuaries, or

(b) one or more places where water occurs on or below the surface of the ground (including overland flow water flowing over or lying there for the time being),

and includes the coastal waters of the State.

water supply authority means a water supply authority referred to in Schedule 3.

water supply work means—

(a) without limiting paragraphs (b)–(g), a work (such as a water pump or water bore) for the purpose of taking water from a water source, or

(b) a work (such as a tank or dam) for the purpose of capturing or storing water, or

(c) a work (such as a water pipe or irrigation channel) for the purpose of conveying water to the point at which it is to be used, or

(d) any work (such as a bank or levee) that has, or could have, the effect of diverting water flowing to or from a water source, or

(e) any work (such as a weir) that has, or could have, the effect of impounding water in a water source,

including a reticulated system of such works, and includes all associated pipes, sluices, valves, metering equipment and other equipment, but does not include—

(f) any work (other than a water supply work under the control or management of the Sydney Water Corporation, the Hunter Water Corporation or a local water utility) that receives water from a water supply work under the control or management of the Sydney Water Corporation, the Hunter Water Corporation or a local water utility, or

(g) any work declared by the regulations not to be a water supply work.

water supply work approval means an approval referred to in section 90 (2).

water use approval means an approval referred to in section 89.

waterfront land means—

(a) the bed of any river, together with any land lying between the bed of the river and a line drawn parallel to, and the prescribed distance inland of, the highest bank of the river, or

(a1) the bed of any lake, together with any land lying between the bed of the lake and a line drawn parallel to, and the prescribed distance inland of, the shore of the lake, or

(a2) the bed of any estuary, together with any land lying between the bed of the estuary and a line drawn parallel to, and the prescribed distance inland of, the mean high water mark of the estuary, or

(b) if the regulations so provide, the bed of the coastal waters of the State, and any land lying between the shoreline of the coastal waters and a line drawn parallel to, and the prescribed distance inland of, the mean high water mark of the coastal waters,

where the prescribed distance is 40 metres or (if the regulations prescribe a lesser distance, either generally or in relation to a particular location or class of locations) that lesser distance. Land that falls into 2 or more of the categories referred to in paragraphs (a), (a1) and (a2) may be waterfront land by virtue of any of the paragraphs relevant to that land.