

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

(a) to amend the *Central Coast Water Corporation Act 2006*:

(i) to facilitate the establishment of the Central Coast Water Corporation (the **Corporation**) as a water supply authority and to enhance the role of the current water supply authorities, Gosford City Council and Wyong Shire Council (the **constituent councils**), in the process for that establishment and the transfer to the Corporation of the water supply, sewerage and drainage functions of the councils, and

(ii) to make amendments in the nature of statute law revision, and

(b) to amend the *Energy and Utilities Administration Act 1987* to provide for the Corporation to become a contributor to the Climate Change Fund instead of the constituent councils after the Corporation becomes a water supply authority and the councils cease to be such authorities.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Explanatory note page 2

Central Coast Water Corporation Amendment Bill 2010

Explanatory note

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Central Coast Water Corporation Act 2006 No 105

Making of proclamations to establish Corporation and relating to its water supply, sewerage and drainage functions

Schedule 1 [1] amends section 2 of the *Central Coast Water Corporation Act 2006* (**the Act**) to provide that the Minister may not recommend the making of the following proclamations to commence provisions of the Act unless requested to do so by the constituent councils:

(a) a proclamation to commence section 4 of the Act so as to constitute the Corporation,

(b) a proclamation to commence Schedule 7.2 [2] to the Act so as to remove the constituent councils as water supply authorities under the *Water Management Act 2000*,

(c) a proclamation to commence Schedule 7.2 [4] so as to establish the Corporation as a water supply authority under the *Water Management Act 2000*.

Schedule 1 [3] makes a consequential amendment to section 10 of the Act.

Transfer of assets, rights and liabilities of constituent councils to Corporation

Schedule 1 [5] amends section 32 of the Act to provide for the constituent councils (rather than the Minister) to transfer their assets, rights and liabilities in connection with their water supply, sewerage and drainage functions to the Corporation.

Schedule 1 [7], [14] and [15] make consequential amendments to section 32 and Schedule 5 to the Act.

Schedule 1 [6] amends section 32 of the Act to provide that an order making such a transfer may not be made by a constituent council without the consent of the other constituent council.

Schedule 1 [8] amends section 32 of the Act to provide that any consideration for a transfer of any asset, right or liability of a constituent council to the Corporation is to be determined by agreement (based on a fair value) between the Corporation and both constituent councils or, failing such agreement, by an independent arbitrator.

Schedule 1 [13] amends clause 9 of Schedule 5 to the Act to provide that the making or operation of a transfer order does not give rise to civil liability.

Water supply, sewerage and drainage functions of Corporation

Schedule 1 [4] inserts proposed section 28A in the Act to confirm that the Corporation is the owner of all water management works that it installs or that are

Explanatory note page 3
Central Coast Water Corporation Amendment Bill 2010

Explanatory note

transferred to it under the Act from the constituent councils regardless of whether or not it owns the land on or in which the works are situated. The proposed section also confirms that the Corporation has power to replace, repair, maintain and remove those works.

Schedule 1 [9] amends section 33 of the Act to provide that the Corporation will not be required to have an operating licence granted under the Act to carry out its functions until it becomes a water supply authority under the *Water Management Act 2000*.

Schedule 1 [10] amends section 34 of the Act to enable the Governor to make regulations for or with respect to when certain mandatory conditions will, or will not, be required to be included in an operating licence granted to the Corporation.

Directions of Minister to constituent councils

Section 293 of the *Water Management Act 2000* provides that water supply authorities (such as the constituent councils) are subject to the control and direction of the Minister in the exercise of their functions, except in relation to the contents of reports or recommendations made by them.

Schedule 1 [11] inserts proposed section 59A in the Act to limit the Minister's powers of control and direction over the constituent councils in connection with the exercise by the councils of any of the following functions:

- (a) the making of transfer orders to transfer any of the staff, assets, rights or liabilities of a council to the Corporation,
- (b) the making of a request by a council for the Minister to recommend the making of a proclamation to commence a provision to remove the constituent councils as water supply authorities under the *Water Management Act 2000* or to establish the Corporation as a water supply authority under that Act,
- (c) the granting of consent by a council for the making of a transfer order by the other constituent council,
- (d) the determination of the consideration (if any) for any assets, rights or liabilities of a council that are, or are proposed to be, transferred to the Corporation under the Act.

However, the constituent councils will remain subject to the control and direction of the Minister in relation to the exercise of these functions so as to enable the Minister to ensure that the councils comply with their undertakings under the Memorandum of Understanding entered into by the Minister and the councils on 9 August 2010.

Amendments in the nature of statute law revision

Schedule 1 [2] amends the definitions of *assets*, *liabilities* and *rights* in section 3 of the Act to reflect current drafting conventions concerning the defining of these terms in connection with transfers of assets, rights and liabilities. **Schedule 1 [12]** makes a related amendment to clause 9 of Schedule 5 to the Act.

Explanatory note page 4

Central Coast Water Corporation Amendment Bill 2010

Explanatory note

Schedule 1 [17] amends clause 1 of Schedule 8 to the Act to replace a reference to the publication of regulations in the Gazette (which was formerly the practice) with a reference to the publication of regulations on the NSW legislation website (which is the current practice).

Savings and transitional provisions

Schedule 1 [16] amends clause 1 of Schedule 8 to the Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Energy and Utilities

Administration Act 1987 No 103

Schedule 2 [1] amends the definition of **State water agency** in section 3 of the *Energy and Utilities Administration Act 1987* to enable the Corporation to be prescribed by the regulations under that Act as a State water agency for the purpose of making contributions to the Climate Change Fund once the Corporation acquires clients in its capacity as a water supply authority.

Schedule 2 [2] amends Schedule 2 to the *Energy and Utilities Administration Act 1987* to make it clear that:

- (a) the Corporation cannot be prescribed to be a State water agency until the Corporation becomes a water supply authority under the *Water Management Act 2000* and the constituent councils cease to be water supply authorities, and
- (b) the constituent councils cease to be liable to make future contributions to Climate Change Fund once the Corporation becomes liable to make them.