

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

This Bill is cognate with the Water Industry Competition Bill 2006.

Overview of Bill

The object of this Bill is to provide for the constitution and functions of the Central Coast Water Corporation and for its establishment as a water supply authority under the Water Management Act 2000.

Outline of provisions

Part 1 Preliminary

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

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

Clause 3 defines certain words and expressions used in the proposed Act. They include constituent council (meaning the Gosford City Council or the Wyong Shire Council), the Corporation (meaning the Central Coast Water Corporation), IPART (meaning the Independent Pricing and Regulatory Tribunal) and subsidiary (a body corporate that would be a subsidiary of the Corporation if the Corporation were a company registered under the Corporations Act 2001 of the Commonwealth).

Part 2 Central Coast Water Corporation

Division 1 Establishment of the Corporation

Clause 4 constitutes the Corporation.

Clause 5 sets out the principal objectives of the Corporation.

Clause 6 provides that neither the Corporation nor its subsidiaries represent the constituent councils or the State, are exempt from any taxes or expose the constituent councils or the State to any liability unless the proposed Act or some other Act expressly provides.

Clause 7 requires the Corporation to have share capital, to be held in equal shares by the constituent councils as voting shareholders.

Clause 8 requires the Corporation to have a constitution, and, together with proposed Schedule 1, sets out the matters for which the constitution must provide.

Clause 9 makes provision with respect to the constitutions of the Corporation's subsidiaries, and, together with proposed Schedule 2, sets out the matters for which those constitutions must provide.

Clause 10 requires the voting shareholders to enter into an agreement as to the manner in which their rights as voting shareholders are to be exercised and, in particular, as to how any disputes between them are to be resolved.

Clause 11 excludes the Corporation from the application of the Corporations Act 2001 of the Commonwealth, but enables regulations under the proposed Act to apply provisions of that Act (modified where appropriate) to the Corporation and to matters relating to the Corporation.

Division 2 Operation and management of the Corporation

Clause 12 establishes a board of directors for the Corporation (the Board). The Board is to consist of between 3 and 7 directors. One director may be appointed from the councillors or employees of the constituent councils, in which case the minimum number of directors is to be 5. Proposed Schedule 3 contains additional provisions with respect to the Board.

Clause 13 provides for the appointment of a chief executive officer for the Corporation. Proposed Schedule 4 contains additional provisions with respect to the chief executive officer.

Clause 14 provides that all decisions as to the operation of the Corporation are to be made by or under the authority of the Board, but that the chief executive officer is responsible for day-to-day management.

Clause 15 enables the Corporation to employ staff.

Clause 16 sets out a procedure to be followed if the voting shareholders wish the Corporation to perform non-commercial activities.

Clause 17 sets out a procedure to be followed if the voting shareholders wish the Corporation to apply a policy that has been adopted by the constituent councils.

Clause 18 sets out the procedure to be followed if the voting shareholders wish the Corporation to take certain action in the public interest.

Clause 19 requires the Corporation to have a share dividend scheme, with dividends able to be used by the voting shareholders to buy shares in the Corporation, or to make payments to the constituent councils.

Clause 20 requires the Corporation to pay to the constituent councils such amounts as are equivalent to any Commonwealth tax from which it is exempt because of its status but for which it would otherwise be liable.

Clause 21 provides that the Corporation's obligations are not guaranteed by the constituent councils unless the constituent councils agree in writing.

Clause 22 exempts from State taxation certain financial transaction that relate to the establishment of the Corporation.

Clause 23 enables the Corporation to establish and participate in the establishment of private corporations (depending on the level of participation, such corporations may become subsidiaries of the Corporation).

Clause 24 requires the prior written approval of the voting shareholders for the acquisition or disposal by the Corporation or its subsidiaries of any major asset, and enables the regulations to make further provision with respect to the acquisition and disposal of assets and liabilities.

Clause 25 requires the prior written approval of the voting shareholders for the acquisition or disposal by the Corporation or its subsidiaries of their main undertakings (as specified in the most recent statement of corporate intent of the Corporation).

Division 3 Legal capacity and powers of the Corporation

Clause 26 defines certain words and expressions for the purposes of the proposed Division.

Clause 27 sets out the objects of the proposed Division (being to exclude the doctrine of ultra vires but to give effect to any restrictions on the Corporation's objects or powers).

Clause 28 confers on the Corporation all of the powers of a natural person.

Clause 29 imposes certain restrictions on the Corporation's powers, but preserves the validity of anything that is done in contravention of any such restriction.

Clause 30 sets out a number of assumptions that may be made by a person having dealings with the Corporation, being assumptions as to procedural regularity in relation to the conduct of the Corporation's affairs.

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Clause 31 provides that such assumptions may not be made by a person who is acting fraudulently.

Division 4 Transfer of staff, assets, rights and liabilities

Clause 32 enables the staff, assets, rights and liabilities from the constituent councils to be transferred, with the concurrence of the voting shareholders, to the Corporation.

Proposed Schedule 5 contains additional provisions with respect to such transfers.

Part 3 Operating licences

Clause 33 enables the Minister to grant an operating licence to enable the Corporation to exercise its functions.

Clause 34 sets out what kinds of terms and conditions may be included in an operating licence.

Clause 35 enables the Minister to amend or substitute the Corporation's operating

licence, or to impose, amend or revoke licence conditions.

Clause 36 provides that the Corporation's initial operating licence is to have a maximum term of 2 years, and subsequent operating licences to have terms of 5 years.

Clause 37 enables the Minister to require the Corporation to pay annual licence fees.

Clause 38 provides that the Corporation's operating licence applies to the area comprising the local government areas of the constituent councils.

Clause 39 enables the Minister to require the Corporation to remedy any contravention of its operating licence.

Clause 40 enables IPART to take action against the Corporation in respect of any contravention of its operating licence.

Clause 41 enables the Minister to cancel the Corporation's operating licence and transfer its staff, assets, rights and liabilities back to the constituent councils.

Proposed Schedule 5 contains additional provisions with respect to such transfers.

Part 4 Accountability

Clause 42 requires the Board each year to prepare a statement of corporate intent for the voting shareholders.

Clause 43 sets out the matters with which a statement of corporate intent must deal.

Clause 44 requires the Board each 6 months to prepare an operational report for the voting shareholders.

Clause 45 applies to the Corporation certain provisions of the Local Government Act 1993 with respect to the preparation of annual reports and financial reports.

Clause 46 enables the Auditor-General to prepare special reports, for tabling in Parliament, in relation to matters arising from audit.

Clause 47 requires the Minister to table certain information in Parliament in relation to the Corporation's activities.

Clause 48 sets out the procedure to be followed in relation to the tabling of documents when Parliament is not in session.

Clause 49 requires the Board to supply the voting shareholders with such information as to the affairs of the Corporation as they request.

Clause 50 provides that a provision of the proposed Part that is expressed to apply to the Corporation and its subsidiaries applies also to the Corporation even if it has no subsidiaries.

Part 5 Independent Pricing and Regulatory Tribunal

Clause 51 sets out IPART's regulatory functions under the proposed Act.

Clause 52 requires IPART to prepare operational audits of the Corporation.

Part 6 Miscellaneous

Clause 53 provides that the proposed Act is to bind the Crown.

Clause 54 suspends the operation of any provisions of the proposed Act with respect to the constitution of companies that are inconsistent with Commonwealth law or, if the company is a subsidiary, with the law of the jurisdiction within which the company is or is to be incorporated.

Clause 55 provides that proposed Schedule 6 is to apply, in relation to the duties and liabilities of directors and other officers of the Corporation, and may be amended or substituted by regulations under the proposed Act.

Clause 56 excludes directors and officers of the Corporation from personal liability in relation to the supply of information to the Board under proposed section 49.

Clause 57 provides that proceedings for an offence against the proposed Act, or the regulations under the proposed Act, are to be dealt with by a Local Court or by the Supreme Court in its summary jurisdiction, and that the maximum penalty that may be imposed by a Local Court is 50 penalty units or 12 months imprisonment.

Clause 58 excludes the Corporation and its subsidiaries from the operation of the Public Finance and Audit Act 1983.

Clause 59 deems the Corporation and its subsidiaries to be public authorities, and its

directors, officers and employees to be public officials, for the purposes of the Independent Commission Against Corruption Act 1988.

Clause 60 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 61 is a formal provision that gives effect to the amendments to the Acts set out in proposed Schedule 7.

Clause 62 is a formal provision that gives effect to the savings, transitional and other provisions set out in proposed Schedule 8.

Clause 63 provides for the review of the proposed Act in 5 years.

Schedule 1 Provisions for inclusion in constitution of the Corporation

Proposed Schedule 1 sets out certain provisions that must be included in the Corporation's constitution.

Schedule 2 Provisions for inclusion in constitutions of subsidiaries

Proposed Schedule 2 sets out certain provisions that must be included in the constitution of the Corporation's subsidiaries.

Schedule 3 Constitution and procedure of the Board

Proposed Schedule 3 sets out provisions with respect to the constitution and procedure of the Board, including provisions for the appointment of a Chairperson and the appointment of deputies.

Schedule 4 Chief executive officer

Proposed Schedule 4 sets out conditions of employment for the chief executive officer, and provides for the appointment of an acting chief executive officer.

Schedule 5 Transfer of staff, assets, rights and liabilities

Proposed Schedule 5 sets out the effect of a transfer order made under proposed section 32 or 41.

Schedule 6 Duties and liabilities of directors and other officers

Proposed Schedule 6 sets out the duties and liabilities of directors and other officers of the Corporation.

Schedule 7 Amendment of other Acts

Proposed Schedule 7 amends the Acts specified in the proposed Schedule.

Schedule 8 Savings, transitional and other provisions

Proposed Schedule 8 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.