

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Water Management Act 2000* (the **Principal Act**) as follows:

- (a) to facilitate the granting by the Minister of licences for environmental purposes for the purpose of State or Commonwealth agreements,
- (b) to enable the transformation of irrigation entitlements of landholders in private irrigation districts of private irrigation boards or water supply districts of private water trusts to rights that can be traded under Commonwealth legislation,
- (c) to clarify matters relating to accounting for environmental water,
- (d) to remove restrictions relating to dealings in specific purpose access licences for water and to provide for other matters relating to dealings in access licences, including mandatory conditions of consent and the removal or variation of conditions of licences and approvals,
- (e) to provide for the removal of domestic and stock rights as a consequence of a condition of consent to a dealing in a domestic and stock access licence,
- (f) to re-enact offences relating to the taking of water,

Explanatory note page 2

Water Management Amendment Bill 2010

Explanatory note

- (g) to make it clear that certain mining activities will require an access licence,
- (h) to make each holder of a licence or approval liable for an offence if a licence or approval is contravened,
- (i) to provide for offences relating to taking water when metering equipment is not working,
- (j) to confer on irrigation corporations powers to appoint authorised officers for enforcement purposes and to impose penalty charges for taking corporation water illegally and damaging corporation works and to make other amendments consistent with the functions to be conferred on private water corporations,
- (k) to make it an offence for an irrigation corporation to contravene the operating licence of the corporation,
- (l) to repeal provisions establishing private irrigation boards, private irrigation districts and private drainage boards,
- (m) to establish private water corporations and provide for the conversion of existing private water boards, private drainage boards and private water trusts to private water corporations,
- (n) to make provisions applying to private water trusts consistent with those that will apply to private water corporations, including abolishing water supply districts of trusts,
- (o) to make it clear that enforcement action may be taken outside the State, so long as the matter affects a matter under the Principal Act,
- (p) to provide for appeals to the Land and Environment Court (the **Court**) against decisions by irrigation and private water corporations imposing penalties and decisions by private water corporations and private water trusts about members' water entitlements,
- (q) to enable the compulsory acquisition of land provisions to be used for acquisitions by the Ministerial Corporation on behalf of private water corporations and private water trusts,
- (r) to make other minor and consequential amendments to the Principal Act and other Acts,
- (s) to make provision of a savings and transitional nature consequent on the

enactment of the proposed Act.

Outline of provisions

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.

Explanatory note page 3

Water Management Amendment Bill 2010

Explanatory note

**Schedule 1 Amendments to Water Management Act
2000 No 92 relating to Commonwealth
requirements**

Discretionary licences

Schedule 1 [1] inserts proposed sections 63A and 63B. Proposed section 63A enables the Minister to grant an access licence to the Commonwealth, or a person nominated by the Commonwealth, in order to give effect to an agreement entered into by or on behalf of the State, where the licence is to form part of the Commonwealth environmental water holdings. Proposed section 63B enables the Minister to grant an access licence to the State, or a public authority prescribed by the regulations, in order to give effect to an agreement entered into by or on behalf of the State, where the licence is to be used for certain environmental purposes.

Schedule 1 [7] and [9] make consequential amendments.

Schedule 1 [6] removes the right to appeal to the Court against a decision of the Minister to grant a licence under proposed section 63A or 63B, or to impose a discretionary condition on such a licence.

**Transformation of water entitlements of landholders in private
irrigation schemes**

Schedule 1 [2] defines a *landholder's water entitlement* as the part of the share component of a private irrigation board's access licence that is available to the landholder of an irrigated holding within a private irrigation district.

Schedule 1 [3] inserts proposed Division 10A (proposed sections 190A and 190B) into Part 2 of Chapter 4. Proposed section 190A requires a private irrigation board to determine a landholder's water entitlement if requested to do so by the landholder and specifies matters to be taken into account. Proposed section 190B enables a board to make an application for approval of a dealing in its access licence for the purpose of wholly or partly transforming a landholder's water entitlement to an access licence held by the landholder. The proposed section also removes the landholder's voting rights as a landholder in the private irrigation district, and the board's right to levy rates and charges, if the water entitlement is wholly transformed and there is no right to have water delivered by the board. It also provides for termination charges and other charges to be charged on and after transformation.

Schedule 1 [4] defines a *landholder's water entitlement* as the part of the share component of a private water trust's access licence that is available to the landholder of an irrigated holding within a water supply district of the trust.

Schedule 1 [5] inserts proposed Division 5A (proposed sections 237A and 237B) into Part 4 of Chapter 4. Proposed section 237A requires the members of a private water trust to determine a landholder's water entitlement if requested to do so by a landholder and specifies matters to be taken into account. Proposed section 237B enables the relevant access licence holders to make an application for approval of a dealing in the licence for the purpose of wholly or partly transforming the

Explanatory note page 4

Water Management Amendment Bill 2010

Explanatory note

landholder's water entitlement to an access licence held by the landholder. The proposed section also removes the landholder's voting rights as a landholder in the

water supply district of the trust, and the trust's right to levy rates and charges, if the water entitlement is wholly transformed and there is no right to have water delivered by the trust. It also provides for termination charges and other charges to be charged on and after transformation.

Savings and transitional regulations

Schedule 1 [8] enables regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 2 Other amendments to Water

Management Act 2000 No 92

Environmental water

Schedule 2 [1] defines *licensed environmental water*. **Schedule 2 [97] and [105]** make consequential amendments.

Schedule 2 [2] removes the requirement for management plans for water management areas (*management plans*) to contain provisions relating to adaptive environmental water. **Schedule 2 [10]** makes a consequential amendment.

Schedule 2 [3] removes the requirement for a management plan to authorise the cancellation of a licence and subsequent committing of water as environmental water before those actions may be taken by the Minister.

Schedule 2 [4] removes the requirement for a management plan to authorise the imposition of adaptive environmental water conditions before such a condition may be sought. **Schedule 2 [5]** enables regulations to be made to limit the circumstances in which the Minister must act at the request of the licence holder.

Schedule 2 [6] removes the requirement for a management plan to authorise the granting of licences without an application where system improvements result in water savings before such a licence may be granted.

Schedule 2 [7] substitutes section 8D. The effect of this is to remove the requirement for a management plan to authorise the transfer of a surrendered licence to a catchment authority or other public body if the share component of the licence is equivalent to that of the surrendered licence. The requirement that the surrendered licence must have been surrendered as a result of water savings before the transfer can occur is also removed. The amendment also enables the Minister to cancel a surrendered licence and to transfer the share component of the licence to another licence if an adaptive environmental water condition is imposed on the licence to which it is transferred.

Schedule 2 [8] omits provisions that specified which adaptive environmental water was to be accounted for as extraction in auditing compliance with the long-term extraction limit under the relevant management plan.

Explanatory note page 5

Water Management Amendment Bill 2010

Explanatory note

Schedule 2 [9] inserts proposed section 8F. The proposed section varies the long-term extraction limit under a management plan by the amount of water committed as licensed environmental water. Licensed environmental water is water committed under an adaptive environmental water condition imposed on an access licence or taken or permitted to be taken under an environmental subcategory of an access licence or a class of licence prescribed by the regulations. The amount of the variation is to be determined in accordance with a methodology approved by the Minister and published in the Gazette.

Domestic and stock rights

Schedule 2 [11] makes it clear that a landholder who exercises domestic and stock rights over land or water cannot, for that purpose, carry out a controlled activity (including building, carrying out a work, excavation or depositing of material on land) without a controlled activity approval.

Schedule 2 [12] inserts proposed section 52A. The proposed section removes the

domestic and stock rights over land or water of the owner or occupier of land if the Registrar-General makes a recording on the title to the land to the effect that it is not subject to domestic and stock rights (a ***domestic and stock rights removal recording***). Such a recording may only be removed on the application of the Minister. **Schedule 2 [40]** enables the regulations to require such a recording before a dealing in a domestic and stock access licence can be registered (and thereby take effect).

Offences

Schedule 2 [13] makes it an offence for a person who takes water under an access licence, but who is not a licence holder, to contravene a term or condition of the licence.

Schedule 2 [14] makes each holder of an access licence guilty of an offence if a term or condition of the access licence is contravened by any person. It will be a defence to an offence if the accused person establishes that the contravention was caused by another person, that the other person was not associated with the accused person and that the accused person took all reasonable steps to prevent the offence.

Schedule 2 [15] substitutes the current offences relating to taking water when there is no or not enough water credited to the water allocation account for an access licence. The new provision makes it an offence for a person to take water otherwise than in accordance with the water allocation for an access licence if the person intentionally or negligently fails to ascertain whether taking the water is in accordance with any water allocation or the person knows or has reasonable cause to believe that it is not in accordance with any water allocation. There will also be an offence of taking water otherwise than in accordance with the water allocation for an access licence for which no intent will be required to be proved. This replaces the existing offence for which no intent is required to be proved.

Schedule 2 [17] clarifies that water is taken for the purposes of the Principal Act (including for the requirement to obtain an access licence and liability for offences

Explanatory note page 6
Water Management Amendment Bill 2010

Explanatory note

resulting from the failure to obtain a licence) if water is diverted from one water source to another or re-located from one part of an aquifer to another part of an aquifer in the course of carrying out a mining activity.

Schedule 2 [51] makes it a defence to the offence of using water without a water use approval if the water was used pursuant to a basic landholder right under the Principal Act. It also makes it a defence to the offence of a water use approval holder using water otherwise than as authorised by the approval or an access licence if the accused person establishes that the contravention was caused by another person, that the other person was not associated with the accused person and that the accused person took all reasonable steps to prevent the offence.

Schedule 2 [52] makes it a defence to the offence of constructing or using a water supply work without, or otherwise than as authorised by, a water supply work approval if the water was used pursuant to a basic landholder right under the Principal Act.

Schedule 2 [53] makes it an offence for a person who uses water, constructs or uses a water management work, or carries out a controlled activity or aquifer interference activity, pursuant to an approval but who is not the approval holder, to contravene a term or condition of the approval. It also makes each holder of an approval guilty of an offence if a term or condition of the approval is contravened by any person. It will be a defence to an offence if a holder establishes that the contravention was caused by another person, that the other person was not associated with the holder and that the holder took all reasonable steps to prevent the offence.

Schedule 2 [54] makes it an offence for a person to take water from a water source

by means of a metered work while the metering equipment is not operating properly or is not operating if the person knows or has reasonable cause to believe that it is not operating properly or is not operating.

Schedule 2 [55] provides that the offences relating to taking water from a metered work while the metering equipment is not operating properly or is not operating do not apply if the person taking the water reports the problem (in accordance with the regulations) and complies with any requirements of the regulations. The exclusion does not apply to the offence of taking water in such circumstances and intentionally or negligently failing to ascertain whether metering equipment is working.

Schedule 2 [56] provides that offences relating to tampering with metering equipment of water supply works or drainage works do not apply if the conduct occurs for the purpose of complying with requirements of the regulations.

Schedule 2 [57] removes the general defence to offences relating to approvals where an accused person proves that the offence occurred because of causes over which the accused person had no control. This has been replaced by the new defences inserted by **Schedule 2 [51] and [53]**.

Access licences and approvals

Schedule 2 [18] makes it clear that the requirements that local water utility access licences may only be granted to local water utilities and that major utility access

Explanatory note page 7

Water Management Amendment Bill 2010

Explanatory note

licences may only be granted to major utilities do not prevent transfers to other persons permitted under the Principal Act.

Schedule 2 [20] enables regulations to be made for the purposes of prescribing conditions that must be imposed on an access licence. **Schedule 2 [19]** makes a consequential amendment.

Schedule 2 [21] removes the mandatory requirement for the Minister to vary each local utility water licence at the end of each 5-year period to reflect variations in population and commercial activities in its area and replaces it with a discretion to make such a variation.

Schedule 2 [22] enables the mandatory conditions of an access licence to be amended, revoked or suspended by the Minister whenever it is necessary to do so to enable compliance with or to give effect to the Principal Act, regulations under that Act or the relevant management plan. Currently the power for that purpose is limited to imposing conditions. **Schedule 2 [23] and [24]** make consequential amendments.

Schedule 2 [25] removes the prohibition on creating a registered security interest over all specific purpose access licences (including local water utility licences, major utility licences and domestic and stock access licences). The prohibition will now apply to specific purpose access licences of a kind prescribed by the regulations.

Schedule 2 [26] and [28] insert notes.

Schedule 2 [27] enables a local water utility licence to be permanently transferred to a major utility if the local water utility's water supply functions are to be carried out by the major utility. Currently the licence may only be transferred to another local water utility.

Schedule 2 [29] removes the prohibition on the short term transfer of local water utility access licences and supplementary water access licences.

Schedule 2 [30] enables the Minister to end a short term transfer of a local water utility access licence or major utility access licence, without the consent of the transferor and the transferee, if satisfied that there is a risk to the utility's water supply or in other circumstances prescribed by the regulations.

Schedule 2 [31] removes the prohibition on the cancellation and conversion of local water utility access licences.

Schedule 2 [32] removes the prohibition on assigning rights between local water

utility access licences in a way that reduces the share or extraction component of a local water utility access licence.

Schedule 2 [33] removes the prohibition on cancelling a local water utility access licence and granting a new access licence with a share component specifying a different water source or water management area.

Schedule 2 [38] enables regulations to be made in relation to applications for the Minister's consent to general dealings and dealings on default in access licences and assignments of water allocations.

Explanatory note page 8

Water Management Amendment Bill 2010

Explanatory note

Schedule 2 [39] enables the Minister to deal with 2 or more related dealings in access licences at the same time, and in the same application, as if they comprised one dealing.

Schedule 2 [40] inserts proposed section 71YA. The proposed section enables the Minister to consent to a dealing in an access licence subject to conditions. The regulations may make provision for or with respect to consent conditions that must be imposed by the Minister on all or any or classes of dealings. The regulations may provide for conditions requiring domestic and stock rights removal recordings to be obtained and may also provide that a dealing cannot be registered in the Access Register (and thus take effect) until a specified consent condition is complied with.

Schedule 2 [41] enables the access licence dealing principles to establish conversion factors for the share components of access licences where adaptive environmental water conditions are imposed, or water is committed for environmental purposes, in connection with a dealing in a licence.

Schedule 2 [43] makes it discretionary rather than mandatory for the Minister 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. **Schedule 2 [44]** makes it clear that the Minister may, but is not required to, consider the criteria prescribed by the regulations when determining whether the purpose for which the licence was granted no longer exists.

Schedule 2 [59] enables regulations to be made for or with respect to conditions that must be imposed on an approval or changed in connection with a dealing in a licence.

Schedule 2 [58] makes a consequential amendment.

Schedule 2 [63] enables the mandatory conditions of an approval to be amended, revoked or suspended by the Minister whenever it is necessary to do so to enable compliance with or to give effect to the Principal Act, regulations under that Act or the relevant management plan. Currently the power for that purpose is limited to imposing conditions. **Schedule 2 [60]–[62], [64] and [65]** make consequential amendments.

Schedule 2 [109] removes the ability to prescribe an access licence of a subcategory of access licence as a specific purpose access licence.

Irrigation corporations

Schedule 2 [68] inserts proposed section 120A. The proposed section enables an irrigation corporation to appoint authorised officers to investigate contraventions of irrigation, water supply or drainage agreements with the corporation and confers powers to enter land and make certain examinations. There is no power to enter any part of premises used only for residential purposes. The corporation must pay compensation for damage caused in exercising the power of entry, unless the occupier obstructed or hindered the authorised officer in the exercise of that power.

Schedule 2 [69] inserts proposed section 125A. The proposed section makes it an offence for an irrigation corporation to contravene its operating licence.

Explanatory note page 9

Water Management Amendment Bill 2010

Explanatory note

Schedule 2 [70] changes the process for including additional land in the area of operations of an irrigation corporation. The Minister is to determine the application for inclusion and may include the land by order published in the Gazette. Currently, the Minister determines the application and the Governor includes the land by proclamation published in the Gazette.

Schedule 2 [71] changes the process for excluding land from the area of operations of an irrigation corporation. The Minister is to determine the application for exclusion and may exclude the land by order published in the Gazette. Currently, the Minister determines the application and the Governor excludes the land by proclamation published in the Gazette.

Schedule 2 [72] inserts proposed section 136A. The proposed section enables an irrigation corporation to charge a person for water knowingly taken from a water management work of the corporation in contravention of the Principal Act, the regulations or an agreement with the corporation. The charge may include a penalty component and be up to 5 times the value of the water taken. The corporation may also impose a charge on a person who destroys, damages or interferes with a work of the corporation. Such a charge may also include a penalty component and be up to 5 times the reasonable cost of any repair or replacement. A person must be given a chance to make submissions and to have those submissions considered before a charge is imposed. A charge cannot be imposed unless the operating licence authorises such charges.

Schedule 2 [74] excludes an irrigation corporation, an officer or employee of a corporation or any person acting under their direction from actions, liabilities, claims or demands arising from water-related events caused by acts or omissions that are done or omitted in good faith for the purposes of executing the Principal Act or carrying out the functions of the corporation. The water-related events are water unavailability, the escape of water and failure to supply, distribute or drain water.

Schedule 2 [73] makes a consequential amendment.

Private water corporations

Schedule 2 [75] repeals the provisions relating to private irrigation boards and private irrigation districts and private drainage boards. The amendment inserts proposed Part 2 of Chapter 4. The proposed Part contains the provisions set out below.

Part 2 Private water corporations

Division 1 Preliminary

Proposed section 139 defines terms used in the proposed Part.

Proposed section 140 makes it clear that a private water corporation (a **PWC**) must have access licences or approvals for those things that require licences or approvals.

Division 2 Constitution and management of private water corporations

Proposed section 141 enables 2 or more landholders of landholdings to apply to the Minister to constitute a PWC for the landholdings.

Explanatory note page 10

Water Management Amendment Bill 2010

Explanatory note

Proposed section 142 enables the Minister to constitute a PWC as a body corporate by order published on the NSW legislation website if satisfied that its purpose is to provide, maintain or operate a water supply system, water distribution system or drainage system. The order will also establish the first board members and the rules and works plan of the PWC. A PWC will not be a NSW government agency, that is, it will not have the status, privileges and immunities of the Crown.

Proposed section 143 confers on the PWC functions of providing a water supply system, water distribution system or drainage system and enables it to supply water under an access licence or approval or for the purposes of a licence or approval held

by a person who has transformed their member's water entitlement.

Proposed section 144 provides for PWC boards and confers on them the function of directing, controlling and managing the affairs of the corporation.

Proposed section 145 provides for the matters for which the PWC rules may make provision and provides that the rules are binding on members of the PWC and landholders to whom it provides services.

Proposed section 146 requires a PWC to provide copies of its rules to the Minister and to members.

Proposed section 147 enables a PWC or a PWC board to delegate functions.

Division 3 Operational functions

Proposed section 148 confers on a PWC functions relating to its corporation works, including the construction, installation, maintenance, repair, operation and management of the works. The PWC may enter into arrangements to provide services for other works.

Proposed section 149 enables a PWC to require a member or landholder to whom it provides services to provide water delivery systems or water storage works on their land or to maintain water delivery systems or water storage works. A requirement can only be given if it is necessary to do so for the efficient or effective operation of corporation works or the carrying out of PWC functions.

Proposed section 150 sets out the powers of a PWC to suspend or restrict the supply of, or refuse to supply, water to a member or landholder in specified circumstances.

Proposed section 151 enables a PWC to enter into arrangements with landholders who are not members to supply water for irrigation or other purposes or to drain water.

Proposed section 152 enables the employees or agents of a PWC to enter land to carry out functions, including functions relating to corporation works, meter reading and investigations and inspections relating to proposed works. A PWC is to ensure that as little damage as possible is caused by the exercise of the powers.

Proposed section 153 sets out the requirements for the works plan of a PWC. The plan is to identify water management works that are to be corporation works (that is, works under the management and control of the PWC), specify the location of the works and specify the land to which the plan applies. Works that are on land of former members who have transformed water entitlements may be specified on a works plan.

Explanatory note page 11

Water Management Amendment Bill 2010

Explanatory note

Division 4 Sale and transformation of water entitlements

Proposed section 154 provides for the determination of a member's water entitlements (that is, the part of the share component of the PWC's access licence that is available to the member).

Proposed section 155 prohibits a PWC from selling or mortgaging all or part of its water entitlement under its access licence unless the dealing is permitted under, and is in accordance with, its rules.

Proposed section 156 enables a member of a PWC to sell or transfer all or part of the member's water entitlement to another member if it has been approved by the PWC in accordance with its rules and the regulations.

Proposed section 157 enables a PWC to make an application for the purpose of wholly or partly transforming a member's water entitlement into an access licence held by the member. A person ceases to be a member of a PWC if the person wholly transforms their water entitlement and does not have a right to the delivery of water by the PWC. The PWC's right to levy rates and charges for that water (other than termination charges) is also removed. Security may be required to be provided by a person who seeks to transform their member's water entitlement.

Division 5 Changes to private water corporations

Proposed section 158 requires any membership change that also involves a change to a PWC's works plan to be approved by at least two thirds of the members who are entitled to vote on the question.

Proposed section 159 enables 2 or more PWCs to apply to the Minister to constitute one PWC.

Proposed section 160 enables the Minister to amalgamate 2 or more PWCs as a single body corporate by order published on the NSW legislation website if satisfied that its purpose is to provide, maintain or operate any or all of a water supply system, water distribution system or drainage system. The order will also establish the first board members and the rules and works plan of the PWC.

Proposed section 161 confers on a purchaser of land from a member of a PWC membership of the PWC, with the same entitlements and obligations as a member in relation to the land as the vendor had. The vendor ceases to be a member in respect of that land and must notify the PWC of the sale.

Proposed section 162 provides that the subdivision of land by a member of a PWC does not of itself entitle any other person to be a member or to be supplied with water or other services by the PWC. The PWC will still have functions in relation to any relevant corporation works.

Division 6 Rates and charges

Proposed section 163 requires a PWC to fix rates and charges for each year commencing on 1 July in respect of landholdings owned or occupied by members.

The rates and charges must be sufficient to meet the costs of providing irrigation, water supply and drainage services and the liabilities of the PWC, in addition to other matters specified in the section. A PWC may also fix termination charges on

Explanatory note page 12

Water Management Amendment Bill 2010

Explanatory note

transformation of a member's water entitlement and delivery charges for water supplied after transformation.

Proposed section 164 requires the owners or occupiers of landholdings on which rates or charges are levied to pay them to the PWC.

Proposed section 165 enables a PWC to waive or reduce rates, charges and interest due. The auditor of the PWC must certify that any waiver is in accordance with the rules and has been approved by the board.

Division 7 Finance

Proposed section 166 sets out the requirements for PWC accounts, records and financial statements.

Proposed section 167 enables an auditor of a PWC to have access to the accounts and records of the PWC and requires a board member or employee to comply with the auditor's reasonable requests for information or documents.

Proposed section 168 requires a PWC, at the Minister's request, to furnish the Minister with audited financial statements.

Proposed section 169 confers borrowing and investment powers on PWCs and provides that the obligations of a PWC are not guaranteed by the State of New South Wales. The State is also excluded from liability in respect of any exercise by or on behalf of a PWC of a function under the Division.

Division 8 Enforcement powers

Proposed section 170 enables a PWC to charge a person for water knowingly taken from a water management work of the PWC in contravention of the Principal Act, the regulations, the rules or an agreement with the PWC. The charge may include a penalty component and be up to 5 times the value of the water taken. The PWC may also impose a charge on a person who destroys, damages or interferes with a work of the PWC. Such a charge may also include a penalty component and be up to 5 times

the reasonable cost of any repair or replacement. A person must be given a chance to make submissions and to have those submissions considered before a charge is imposed. A charge cannot be imposed unless the Minister approves the application of the proposed section to the PWC.

Proposed section 171 enables a PWC to appoint authorised officers to investigate contraventions of irrigation, water supply, water distribution or drainage agreements with the corporation and confers powers to enter land and make certain examinations. There is no power to enter any part of premises used only for residential purposes. The PWC must pay compensation for damage caused in exercising the power of entry, unless the occupier obstructed or hindered the authorised officer in the exercise of that power.

Proposed section 172 enables the Minister, by notice in writing, to direct a PWC to comply with, or cease to contravene, the rules of the PWC. It will be an offence to contravene a direction.

Explanatory note page 13

Water Management Amendment Bill 2010

Explanatory note

Division 9 Winding up of private water corporations

Proposed section 173 confers on the Minister power to remove the board members of a PWC from office and to appoint an administrator to conduct the affairs of the PWC. The action may be taken if the Minister is of the opinion that the board or PWC has failed or is unable to carry out its functions, has failed or is unable to provide or maintain water supply, water distribution or drainage services or corporation works, is not able to pay its debts, has regularly or materially contravened the Principal Act, regulations or PWC rules or that in all the circumstances of the case it is just and equitable to do so. The Minister must give notice of the action and consider submissions made in response, unless of the opinion that the special circumstances of the case require immediate action.

Proposed section 174 sets out the administrator's functions. The administrator must report to the Minister on the administration at the Minister's request and may recommend at any time that elections be held for a new board or that the PWC be wound up.

Proposed section 175 provides that a board member who is removed from office is not eligible for re-election at any subsequent election unless the Minister makes a declaration in writing that the person is eligible for election at the election.

Proposed section 176 terminates contracts of employment with the PWC on appointment of an administrator and enables the administrator to terminate any contract for the provision of services to or by the PWC.

Proposed section 177 provides for the winding up of a PWC at the request of 75% of the members or if the administrator recommends that it be wound up. The regulations may make provision for or with respect to the winding up of a PWC and the disposal of residual assets of a PWC.

Division 10 Miscellaneous

Proposed section 178 excludes a PWC, an officer or employee of a PWC or any person acting under their direction from actions, liabilities, claims or demands arising from particular causes of action arising from water-related events caused by acts or omissions that are done or omitted in good faith for the purposes of executing the Principal Act or carrying out the functions of the corporation. The water-related events are water unavailability, the escape of water and failure to supply, distribute or drain water.

Proposed section 179 enables the Minister to change listings of PWCs in proposed Schedule 13 to the Principal Act.

Schedule 2 [67] confers on PWCs the rights and obligations currently conferred on private irrigation boards and private drainage boards with respect to approvals.

Schedule 2 [83] makes it an offence to destroy, damage or interfere with a work that is owned by or is under the control and management of a PWC or to deposit anything in any such work.

Schedule 2 [84] and [85] make it an offence to take water from a water supply work that is owned by or is under the control and management of a PWC, except with the authority of the PWC.

Explanatory note page 14

Water Management Amendment Bill 2010

Explanatory note

Schedule 2 [89] applies provisions of the *Local Government Act 1993* relating to the sale of land by councils for unpaid rates to rates and charges fixed by PWCs.

Schedule 2 [95] applies acquisition of land provisions to PWCs instead of private irrigation boards.

Schedule 2 [99] extends the existing exclusion from personal liability given in respect of private irrigation boards and their staff to PWCs.

Schedule 2 [104] inserts proposed Schedule 13 which will contain the list of PWCs.

Schedule 2 [108] omits the definitions of *private drainage board* and *private irrigation board* and inserts a definition of *private water corporation*.

Private water trusts

Schedule 2 [76] and [77] omit and insert definitions relating to private water trusts (*PWTs*) consequent on the enactment of the proposed Act.

Schedule 2 [78] and [79] make it clear that the trustees of a PWT, and also a PWT, may hold an access licence for the trust activities.

Schedule 2 [80] repeals provisions relating to PWTs (apart from Division 1 of Part 4 of Chapter 4 of the Principal Act) and replaces those provisions with provisions that reflect the provisions that will apply to PWCs. The amendment inserts proposed Divisions 2–9 of Part 4 of Chapter 4. The proposed Divisions contain the provisions set out below.

Division 2 Management of private water trusts

Proposed section 223 provides for the trustees (formerly called members) of a PWT. The number of trustees for a PWT are to be the same number as when the PWT provisions were first commenced in the Principal Act. Trustees are to be elected and to have the function of directing, controlling and managing the affairs of the trust.

Trustees are to act for and on behalf of the trust. The proposed section also deems all the trustees to be the holders of any access licence or approval that is still held by a former trustee or member on behalf of the PWT.

Proposed section 224 confers on a PWT functions of providing a water supply system, water distribution system or drainage system and enables it to supply water under an access licence or approval or for the purposes of a licence or approval held by a person who has transformed their member's water entitlement.

Proposed section 225 provides for the matters for which the PWT rules may make provision and provides that the rules are binding on members of the PWT and landholders to whom it provides services.

Proposed section 226 requires a PWT to provide copies of its rules to the Minister and to members.

Proposed section 227 enables a PWT or the trustees of a PWT to delegate functions.

Division 3 Operational functions

Proposed section 228 confers on a PWT functions relating to corporation works, including the construction, installation, maintenance, repair, operation and

Explanatory note page 15

Water Management Amendment Bill 2010

Explanatory note

management of the works. The PWT may enter into arrangements to provide services for other works.

Proposed section 229 enables a PWT to require a member or landholder to whom it provides services to provide water delivery systems or water storage works on their land or to maintain water delivery systems or water storage works. A requirement can only be given if it is necessary to do so for the efficient or effective operation of trust works or the carrying out of PWT functions.

Proposed section 230 sets out the powers of a PWT to suspend or restrict the supply of, or refuse to supply, water to a member or landholder in specified circumstances.

Proposed section 231 enables a PWT to enter into arrangements with landholders who are not members to supply water for irrigation or other purposes or to drain water.

Proposed section 232 enables the employees or agents of a PWT to enter land to carry out functions, including functions relating to trust works, meter reading and investigations and inspections relating to proposed works. The PWT is to ensure that as little damage as possible is caused by the exercise of the powers.

Proposed section 233 sets out the requirements for the works plan of a PWT. The plan is to identify water management works that are to be trust works (that is, works under the management and control of the PWT), specify the location of the works and specify the land to which the plan applies. Works that are on land of former members who have transformed water entitlements may be specified on a works plan.

Division 4 Sale and transformation of water entitlements

Proposed section 234 provides for the determination of a member's water entitlements (that is, the part of the share component of the access licence held by or on behalf of a PWT that is available to the member).

Proposed section 235 prohibits a PWT from selling or mortgaging all or part of its water entitlement under its access licence unless the dealing is permitted under, and is in accordance with, its rules.

Proposed section 236 enables a member of a PWT to sell or transfer all or part of the member's water entitlement to another member if it has been approved in accordance with its rules and the regulations.

Proposed section 237 enables a PWT to make an application for the purpose of wholly or partly transforming a member's water entitlement into an access licence held by the member. A person ceases to be a member of a PWT if the person wholly transforms their water entitlement and does not have a right to the delivery of water by the PWT. Security may be required to be provided by a person who seeks to transform their member's water entitlement.

Division 5 Changes to private water trusts

Proposed section 238 requires any membership change that also involves a change to a PWT's works plan to be approved by at least two thirds of the members who are entitled to vote on the question.

Explanatory note page 16

Water Management Amendment Bill 2010

Explanatory note

Proposed section 239 enables 2 or more PWTs to apply to the Minister to constitute one PWC.

Proposed section 239A enables the Minister to amalgamate 2 or more PWTs as a single body by order published on the NSW legislation website if satisfied that its purpose is to provide, maintain or operate any or all of a water supply system, water distribution system or drainage system. The order will also establish the first trustees and the rules and works plan of the PWT.

Proposed section 239B confers on a purchaser of land from a member of a PWT membership of the PWT, with the same entitlements and obligations as a member in relation to the land as the vendor had. The vendor ceases to be a member in respect of that land.

Proposed section 239C provides that the subdivision of land by a member of a PWT

does not of itself entitle any other person to be a member or to be supplied with water or other services by the PWT. The PWT will still have functions in relation to any relevant trust works.

Proposed section 239D enables a PWT to apply to the Minister to convert the PWT to a PWC. The Minister may grant the application if satisfied that not less than two thirds of the members have approved of the application being made. For the purposes of the conversion, regulations may be made modifying the provisions of the Principal Act applying to the constitution of a PWC.

Division 6 Rates and charges

Proposed section 239E requires a PWT to fix rates and charges for each year commencing on 1 July in respect of landholdings owned or occupied by members. The rates and charges must be sufficient to meet the costs of providing irrigation, water supply, drainage and flood control services and the liabilities of the PWT, in addition to other matters specified in the section. A PWT may also fix termination charges on transformation of a member's water entitlement and delivery charges for water supplied after transformation.

Proposed section 239F requires the owners or occupiers of landholdings on which rates or charges are levied to pay them to the PWT.

Proposed section 239G enables a PWT to waive or reduce rates, charges and interest due. The auditor of a PWT must certify that any waiver is in accordance with the rules and has been approved by the trustees.

Division 7 Finance

Proposed section 239H sets out the requirements for PWT accounts, records and financial statements.

Proposed section 239I enables an auditor to have access to the accounts and records of a PWT and requires a trustee to comply with the auditor's reasonable requests for information or documents.

Proposed section 239J requires a PWT, at the Minister's request, to furnish the Minister with audited financial statements.

Explanatory note page 17

Water Management Amendment Bill 2010

Explanatory note

Proposed section 239K re-enacts the existing borrowing powers of PWTs and provides for a sinking fund and the obligations of a PWT under loans taken out by the PWT.

Division 8 Winding up of private water trusts

Proposed section 239L confers on the Minister power to remove the trustees of a PWT from office and to appoint an administrator to conduct the affairs of the PWT. The action may be taken if the Minister is of the opinion that the trustees or PWT have failed or are unable to carry out their functions, have failed or are unable to provide water supply, distribution or drainage services, are not able to pay their debts, have regularly or materially contravened the Principal Act, regulations or PWT rules or that in all the circumstances of the case it is just and equitable to do so. The Minister must give notice of the action and consider submissions made in response, unless of the opinion that the special circumstances require immediate action.

Proposed section 239M sets out the administrator's functions. The administrator must report to the Minister on the administration at the Minister's request and may recommend at any time that elections be held for new trustees or that the PWT be wound up.

Proposed section 239N provides that a trustee who is removed from office is not eligible for re-election at any subsequent election unless the Minister makes a declaration that the person is eligible for election at the election.

Proposed section 239O terminates contracts of employment by or on behalf of the

PWT on appointment of an administrator and enables the administrator to terminate any contract for the provision of services to or by the PWT.

Proposed section 239P provides for the winding up of a PWT at the request of 75% of the members or if the administrator recommends that it be wound up. The regulations may make provision for or with respect to the winding up of a PWT and the disposal of residual assets of a PWT.

Division 9 Miscellaneous

Proposed section 239Q excludes a PWT, the trustees of a PWT, an officer or employee of the trustees or a PWT or a person acting under their direction from actions, liabilities, claims or demands arising from water-related events caused by acts or omissions that are done or omitted in good faith for the purposes of executing the Principal Act or carrying out the functions of the PWT. The water-related events are water unavailability, the escape of water and failure to supply, distribute or drain water.

Proposed section 239R enables the Minister, by notice in writing, to direct a PWT or the trustees to comply with, or cease to contravene, the rules of the trust. It will be an offence to contravene a direction.

Proposed section 239S enables the Minister, by order published in the Gazette, to change the name of a PWT, if the change has been approved by the members in accordance with the rules of the PWT.

Proposed section 239T provides that a PWT is not a NSW government agency.

Explanatory note page 18

Water Management Amendment Bill 2010

Explanatory note

Schedule 2 [89] applies provisions of the *Local Government Act 1993* relating to the sale of land by councils for unpaid rates to rates and charges fixed by PWTs.

Schedule 2 [96] enables the Ministerial Corporation to compulsorily acquire land for the purpose of transferring the land to a PWT if the purpose of the acquisition is to enable the PWT or the trustees to exercise functions under the Principal Act.

Schedule 2 [98] updates a reference to members of the trust to a reference to trustees.

Appeals to Land and Environment Court

Schedule 2 [92] enables an appeal to be made to the Court against a decision of the Minister to give a direction to a PWC, PWT or the trustees of a PWT about compliance with the rules of the PWC or PWT.

Schedule 2 [93] enables an appeal to be made to the Court against a decision by an irrigation corporation or a PWC to impose a charge that includes a penalty and a decision by a PWC or a PWT or the trustees of a PWT as to a member's water entitlement.

Schedule 2 [94] provides that there is to be no right to appeal to the Court against a decision imposing a condition on consent to a dealing in an access licence, or a decision imposing, amending, revoking or suspending a mandatory condition of any consent or a mandatory condition of an access licence or approval, for purposes related to a dealing in an access licence.

Miscellaneous

Schedule 2 [16], [34]–[37], [42], [45]–[50], [90], [106] and [107] correct references to water allocation accounts and water credited to water allocation accounts.

Schedule 2 [66], [102] and [103] clarify references to water bores.

Schedule 2 [81] enables mandatory guidelines issued by the Minister for the taking and use of water for domestic consumption and stock watering under a domestic and stock right or a domestic and stock licence to apply to any person authorised to do so.

Schedule 2 [82] inserts proposed section 340D. The proposed section enables an order, direction or notice given for enforcement purposes under the Principal Act to be given to a person even if the person is outside the State or the matter concerned occurs or is located outside the State, so long as the matter affects a matter to which

the Principal Act relates.

Schedule 2 [86] and [87] make statute law revision amendments.

Schedule 2 [91] adds matters to the matters that may be the subject of a certificate that is admissible in court proceedings as evidence of the facts stated in it. The additional matters relate to whether a specified quantity of water was taken from a specified water source and whether or not the access licence and approval provisions of the Principal Act apply to a specified water source.

Explanatory note page 19

Water Management Amendment Bill 2010

Explanatory note

Savings and transitional provisions

Schedule 2 [100] makes it clear that offences inserted by the *Water Management Amendment Act 2008* extend to certain previously existing water entitlements.

Schedule 2 [101] inserts savings and transitional provisions consequent on the enactment of the proposed Act. Among other things, the provisions provide for the conversion of existing private irrigation boards and private drainage boards to PWCs on a single day and for regulations to be made for that purpose. The provisions also provide for the conversion of PWTs to PWCs and for regulations to be made for that purpose.

Schedule 3 Amendment of other Acts

3.1 Farm Water Supplies Act 1946 No 22

Schedule 3.1 enables the Rural Assistance Authority to make loans to a PWC in the same way as it can currently make loans to a private irrigation board.

3.2 Land and Environment Court Act 1979 No 204

Schedule 3.2 lists the new appeals that may be made to the Court as a consequence of the proposed Act as Class 1 appeals in the Court.

3.3 Roads Act 1993 No 33

Schedule 3.3 enables a roads authority under the *Roads Act 1993* to direct a PWC to repair or maintain any water supply work or drainage work situated in, on or over a public road that is controlled by the authority. A PWC may appeal to the Minister against any such direction.