

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 *Sydney Water Catchment Management Act 1998* (**the Act**) as a result of the Ministerial review of the Act under section 75. The proposed amendments deal with the following matters:

- (a) the matters to be contained in the operating licence granted to the Sydney Catchment Authority (**the SCA**),
- (b) the functions of the SCA, including its reporting functions,
- (c) arrangements for drawing water,
- (d) the requirement for the SCA to enter into a memorandum of understanding with the Water Administration Ministerial Corporation,
- (e) the conduct of catchment audits and the use of the results of such audits,
- (f) the repeal of certain orders declaring lands to be special areas,
- (g) enforcement powers, including powers to direct persons to take corrective or preventive action, powers to require answers and information and powers of entry,
- (h) penalties for illegal diversion of water and discharge of substances into works and for offences under the regulations,
- (i) new offences and proceedings for offences,
- (j) evidentiary provisions.

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Sydney Water Catchment Management Act 1998* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts specified in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all of the amendments made by the proposed Act have commenced. Once the amendments have commenced, the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by the Act.

Schedule 1 Amendment of Sydney Water Catchment Management Act 1998

Functions of SCA: contents of operating licence

Section 15 (1) of the Act provides that the SCA has and may exercise the functions conferred or imposed on it by or under the Act or any other Act, to the extent to which the operating licence granted to the SCA by the Governor enables the SCA to exercise those functions.

Schedule 1 [8] removes the requirement for the operating licence granted to the SCA to define all of the SCA's functions.

Schedule 1 [15] omits redundant provisions concerning the right to the use and flow, and to the control, of certain water and transfers an uncommenced amendment concerning the operating licence.

Schedule 1 [16] omits a requirement that the terms and conditions of the operating licence must require the SCA to compile indicators on the ecological health of the catchment area and of the impact of the SCA's activities on the catchment area and to prepare an annual report on the SCA's performance. Those obligations are instead imposed on a public authority or other person appointed by the Minister under proposed sections 42 and 42A (see **Schedule 1 [18]**). The licence must instead impose a requirement that the SCA compile indicators on, and report on, the direct impact of the SCA's activities (for example, energy use and waste generated) on the

environment.

Functions of SCA: construction and installation

Section 25 (1) of the Act provides that the Governor may grant an operating licence to enable the SCA to provide, construct, operate, manage or maintain systems or services for the purpose of the exercise of any of its functions in accordance with the Act. Section 26 (1) (a) of the Act provides that the operating licence must include terms and conditions under which the SCA is required to provide, construct, operate, manage and maintain efficient and co-ordinated viable systems and services for supplying water. However, the specific functions of the SCA (listed in section 16 of the Act) do not include the provision or construction of systems or services for supplying water.

Section 54 (1) of the Act refers to works “installed by” the SCA. Section 54 (2) of the Act provides for the SCA to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that are necessary or appropriate to any of its works to ensure that the works are used in an efficient manner for the purposes for which they were “installed”. Again, section 16 does not include in the specific functions of the SCA the function of installing new works.

Schedule 1 [10] specifically includes in the functions of the SCA the functions of providing or constructing systems or services for supplying water and of installing new works.

Schedule 1 [9] makes a consequential amendment.

Powers of entry

The existing powers of entry of the SCA (in section 55 of the Act) provide for entry for certain specified purposes (asset management and maintenance, enforcement and the discovery of the source of water pollution) but do not extend to entry for the purposes of carrying out the SCA’s concurrence and notification roles (under sections 17 and 18 of the Act and under the *Drinking Water Catchments Regional Environmental Plan No 1*).

Schedule 1 [11] confers on the SCA and authorised officers the same powers of entry as councils and persons authorised by councils have under Division 1A of Part 6 of the *Environmental Planning and Assessment Act 1979*.

Arrangements for drawing water

Schedule 1 [13] confers on the SCA control over all water in its water storages or pipelines, subject to the operating licence. That water is available for supply by the SCA, which may enter into an arrangement with any person to permit the person to draw or take water from the SCA’s water storages or pipelines.

Memorandum of understanding with Water Administration Ministerial Corporation

Division 4 of Part 4 of the Act requires the SCA to enter into memoranda of understanding with **regulatory agencies** specified in paragraph (a) of the definition of that term in section 35 (the Director-General of the Department of Health, the Water Administration Ministerial Corporation and the Environment Protection Authority).

Schedule 1 [17] amends paragraph (a) of the definition so as to omit the Water Administration Ministerial Corporation. The SCA holds a water management licence granted by the Water Administration Ministerial Corporation under the *Water Act 1912*, which addresses regulatory matters associated with water resource management. The amendment to the definition also updates the names of two Departments.

Catchment audits

Schedule 1 [18] revises the requirements for catchment audits as follows:

Proposed section 42 provides for a public authority or other person appointed by the Minister to develop and approve catchment health indicators of the catchment health of the land constituting the area of operations of the SCA, against which catchment

audits (audits of the catchment health of the land constituting the area of operations of the SCA) are to be conducted.

Proposed section 42A provides for catchment audits to be conducted by a public authority or other person appointed by the Minister, rather than a nominee of the Minister (as at present). An audit must be conducted and reported on having regard to the extent to which the state of the land constituting the area of operations of the SCA conforms to the catchment health indicators of the catchment health of the land published by the public authority or other person appointed by the Minister under proposed section 42 of the Act. The audits are required to be conducted every 3 years, rather than the current 2 years, to better provide for trend analysis and to align with state of the environment reporting under the *Protection of the Environment Administration Act 1991*.

Proposed section 42B requires the SCA to evaluate the findings of a catchment audit and to incorporate those findings in its risk framework and its programs and other activities relating to catchment management. The SCA must comply with such a requirement.

Proposed section 42C requires the SCA to report to the Minister on progress against catchment audit findings.

Proposed section 42D makes it clear that nothing in the proposed amendments prevents the operating licence from including terms and conditions relating to the SCA's activities, or requiring reports on those activities, or prevents the Independent Pricing and Regulatory Tribunal from recommending to the Minister that the SCA's operating licence include terms and conditions relating to the SCA's catchment management functions or requiring reports on those functions.

Special areas

Section 44 of the Act provides that the Governor may, by order published in the Gazette, declare an area of land specified in the order to be a special area. Section 44 (4) provides that such an order must not be repealed unless authorised by an Act of Parliament.

Schedule 1 [20] provides for the Governor to make further orders repealing certain such orders, as the special areas that they proclaim are no longer required by the SCA for operational purposes.

Schedule 1 [43] lists the orders to be repealed (in proposed Schedule 7).

Enforcement powers: power to direct corrective or preventive action

At present, under clause 5 of the *Sydney Water Catchment Management (Environment Protection) Regulation 2001*, the SCA has the power to direct certain persons to take corrective action or preventive action under section 91 (Clean-up by occupiers or polluters) and 96 (Preventive action) of the *Protection of the Environment Operations Act 1997*. This power is limited to use for the purpose of protecting catchment areas or protecting and enhancing the quality of water in catchment areas. The Department of the Environment and Climate Change can also exercise that power in a modified manner.

Schedule 1 [24] inserts provisions similar to sections 91 and 96 into the Act, (proposed sections 62B and 62F, respectively), giving the SCA power to issue catchment correction notices and catchment protection notices in relation to all activities (called **targeted activities**) that have, or are likely to have, caused damage to, or detrimentally affected, the quality of any water, or the catchment health of any land, in a special area or controlled area. Those provisions are as follows:

Proposed section 62A defines terms used in the proposed provisions.

Proposed section 62B provides for the SCA to direct an occupier of land on or from which the SCA reasonably suspects that a targeted activity has been carried out or is being carried out, or a person who is reasonably suspected of carrying out or having carried out such an activity, to take the corrective action specified in the catchment correction notice.

Proposed section 62C provides for public authorities to take corrective action in certain circumstances.

Proposed section 62D provides for catchment correction notices to be given orally, but to be later confirmed in writing.

Proposed section 62E provides for the recovery of the administrative costs of preparing and giving a catchment correction notice.

Proposed section 62F provides that, if the SCA reasonably suspects that a targeted activity has been carried out, will be carried out or is being carried out on any land in a special area or a controlled area, the SCA may direct the occupier of the relevant land or the person carrying on the activity to take action to ensure either that the targeted activity is not commenced, is no longer carried on, or if the targeted activity is permitted to be carried on in future, that the activity is carried on in a manner that does not cause damage to, or detrimentally affect, the quality of any water, or the catchment health of any land, in a special area or controlled area.

Proposed section 62G provides that, if a person does not comply with a catchment protection notice, the SCA may take action to cause the notice to be complied with by itself or by its employees.

Proposed section 62H provides for the commencement of operation of a catchment protection notice or variation of a catchment protection notice.

Proposed section 62I provides for the recovery of the administrative costs of preparing and giving a catchment protection notice.

Proposed section 62J provides for appeals against catchment protection notices.

Proposed section 62K provides for the SCA, by notice in writing, to require a person to whom a catchment correction notice has been given to pay all or any reasonable costs and expenses incurred by the SCA in connection with monitoring action under the notice, ensuring that the notice is complied with and any other associated matters.

If a public authority has taken corrective action under proposed section 62C, the public authority may, by notice in writing, require the occupier of the land at or from which the authority reasonably suspects that the targeted activity was carried out, or the person who is reasonably suspected of having carried out the targeted activity, or both, to pay all or any reasonable costs and expenses incurred by it in connection with the corrective action. If the SCA has taken action under proposed section 62G because a catchment protection notice is not complied with, the SCA may, by notice in writing, require the person to whom the notice was given to pay all or any reasonable costs and expenses incurred by it in taking the action. These notices are called **compliance cost notices**.

Proposed section 62L provides for the recovery of unpaid amounts specified in a compliance cost notice.

Proposed section 62M provides for the registration of compliance cost notices in relation to land.

Proposed section 62N creates a charge on land if a compliance cost notice is registered.

Proposed section 62O provides that more than one catchment correction notice, catchment protection notice or compliance cost notice may be given to the same person.

Proposed section 62P provides for the revocation or variation of notices under the proposed Part.

Proposed section 62Q makes it an offence to wilfully delay or obstruct a person carrying out action in compliance with a catchment correction notice or catchment protection notice or taking corrective action.

Enforcement powers: power to require answers and information

Schedule 1 [24] also inserts provisions empowering the SCA or an authorised officer to require answers and information as follows:

Proposed section 62R empowers an authorised officer to require a person whom the

authorised officer reasonably suspects to have knowledge of matters in respect of which information is reasonably required for the purposes of the Act or the regulations to answer questions in relation to those matters. It is an offence to fail or refuse to comply with such a requirement or to give a false or misleading answer. Proposed section 62S provides for the SCA to require a person to furnish information or records (or both) in connection with any matter relating to its responsibilities and functions under the Act. It is an offence to fail to comply with such a requirement or to furnish false or misleading information.

Proposed section 62T makes it clear that a notice can require a person to furnish only records that are in the person's possession or that are within the person's power to obtain lawfully and makes other provisions relating to records.

Proposed section 62U provides for an authorised officer to require a person whom the authorised officer reasonably suspects to be offending against the Act or the regulations to state the person's name and residential address. A person may also be required to provide his or her driver licence. It is an offence to fail to comply with either such requirement or to provide a false name or address. (The current offence of failing to provide a name and address is found in clause 9 of the *Sydney Water Catchment Management (General) Regulation 2000*.)

Proposed section 62V provides for the SCA or an authorised officer to require the owner of a motor vehicle and others to give certain information.

Proposed section 62W makes provision in relation to requirements to furnish records or information or answer questions. In particular, a person is not guilty of an offence of failing to comply with a requirement under the proposed Part to furnish records or information or to answer a question unless the person was warned on the relevant occasion that a failure to comply is an offence.

Proposed section 62X provides for the revocation or variation of notices under the proposed provisions.

Offences and increases in maximum penalties for offences

Schedule 1 [25] increases the maximum penalty for an individual convicted of illegally diverting water from 100 penalty units (currently \$11,000) to \$120,000 and the maximum penalty for a corporation from 200 penalty units (currently \$22,000) to \$250,000 and provides for daily penalties.

Schedule 1 [26] increases the maximum penalty for an individual convicted of the offence of discharging any substance into a work owned by or under the control of the SCA from 100 penalty units (currently \$11,000) to \$120,000 and the maximum penalty for a corporation from 200 penalty units (currently \$22,000) to \$250,000 and provides for daily penalties.

Schedule 1 [27] creates an offence, and makes provision in relation to offences, as follows:

Proposed section 64A makes it an offence to obstruct, hinder or interfere with an authorised officer in the exercise of the officer's functions under the Act or the regulations or to impersonate an authorised officer.

Proposed section 64B deals with offences by corporations. This is consistent with the *Protection of the Environment Operations Act 1997* (see section 169).

Schedule 1 [33] and [34] increase the maximum penalty for an offence created by the regulations to 200 penalty units (for individuals) and 400 penalty units (for corporations). This is consistent with the maximum penalty under regulations under the *Protection of the Environment Operations Act 1997* (see section 323 (3)).

Proceedings for offences

Schedule 1 [28] provides for offences under the Act or the regulations to be dealt with by the Land and Environment Court (rather than the Supreme Court) as well as a Local Court. This is consistent with the *Protection of the Environment Operations Act 1997* (see section 215 (1)).

Schedule 1 [29] increases the maximum penalty that a Local Court can impose for

an offence. This is consistent with the *Protection of the Environment Operations Act 1997* (see section 215 (2)).

Evidentiary matters

Schedule 1 [31] inserts the following evidentiary provisions, which are consistent with the *Protection of the Environment Operations Act 1997* (see sections 256, 259, 260, 261 and 262, respectively):

Proposed section 69A provides that in any proceedings under the Act, the onus of proving that a person had a reasonable excuse or lawful excuse (as referred to in any provision of the Act or the regulations) lies with the defendant.

Proposed section 69B provides that proof of certain appointments is not required.

Proposed section 69C provides that any instrument purporting to be an instrument issued, made or given for the purposes of the Act and to have been signed by the person authorised to issue, make or give the instrument is admissible in any proceedings under the Act and (in the absence of evidence to the contrary) is to be taken to be such an instrument and to have been so signed.

Proposed section 69D provides for the evidentiary value of certificate evidence of certain matters.

Proposed section 69E provides for the evidentiary value of certificates by analysts.

Authorised officers

Schedule 1 [31] also inserts the following provisions dealing with authorised officers:

Proposed section 69F provides for the SCA to appoint any person as an authorised officer for the purposes of the Act.

Proposed section 69G provides for the scope of the authority of an authorised officer.

Proposed section 69H provides for the identification of authorised officers.

Schedule 1 [22] updates a reference to persons who may enter land.

Schedule 1 [23] omits the current provision concerning certificates of authority.

Other amendments

Schedule 1 [1], [2] and [6] change references in the Act to the Sydney Catchment Authority from “the Authority” to “the SCA”.

Schedule 1 [3] inserts certain definitions.

Schedule 1 [4] omits the definition of a term that is no longer used (**Authority**), the definition of a term that is defined in the *Interpretation Act 1987* (**local council**) and the definition of a position that has been abolished (**Managing Director**).

Schedule 1 [5], [35] and [39] omit references to the holder of the abolished office of Managing Director. **Schedule 1 [36]** replaces that reference with a reference to the Chief Executive in a provision relating to the appointment of a deputy.

Schedule 1 [7] updates a reference to “bulk water” to the more accurate “raw water”.

Schedule 1 [12] and [30] update references to persons employed in the Government Service.

Schedule 1 [14] and [19] update references to an office holder.

Schedule 1 [21] inserts a note about a regional environmental plan made pursuant to a power in the Act.

Schedule 1 [32] provides for the service of notices under the Act.

Schedule 1 [37] and [38] update references to a repealed Act and provisions of that Act.

Schedule 1 [40] repeals an uncommenced amendment transferred by Schedule 1 [15].

Schedule 1 [41] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [42] makes savings and transitional provisions consequent on the enactment of the proposed Act. It also validates certain things done before the enactment of the proposed Act that would have been valid if they had been done after that enactment.

Schedule 2 Amendment of other Acts

Amendment of Land and Environment Court Act 1979

Schedule 2.1 [1] amends the *Land and Environment Court Act 1979* to provide for appeals against catchment protection notices under proposed section 62J of the *Sydney Water Catchment Management Act 1998* to be within the jurisdiction of the Land and Environment Court.

Schedule 2.1 [2] amends the *Land and Environment Court Act 1979* as a consequence of Schedule 1 [28] to provide for proceedings for certain offences under the *Sydney Water Catchment Management Act 1998* to be within the summary jurisdiction of the Land and Environment Court.

Amendment of Water Management Act 2000

Schedule 2.2 omits an uncommenced amendment that duplicates an amendment made by Schedule 5.4 to the *Sydney Water Catchment Management Act 1998*.