



New South Wales

# Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998 No 145

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New South Wales

## **Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998 No 145**

Act No 145, 1998

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An Act to amend the *Public Health Act 1991* in relation to the powers of the Department of Health concerning the safety of drinking water; to amend the *State Owned Corporations Act 1989*, the *Water Board (Corporatisation) Act 1994* and the *Hunter Water Board (Corporatisation) Act 1991* in relation to the structure and control of the corporate bodies having responsibility for water supply and other matters in the Sydney and Hunter regions; to make consequential amendments to other Acts; and for other purposes. [Assented to 8 December 1998]

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998*.

**2 Commencement**

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

**3 Amendment of Public Health Act 1991 No 10**

The *Public Health Act 1991* is amended as set out in Schedule 1.

**4 Amendment of State Owned Corporations Act 1989 No 134**

The *State Owned Corporations Act 1989* is amended as set out in Schedule 2.

**5 Amendment of Water Board (Corporatisation) Act 1994 No 88**

The *Water Board (Corporatisation) Act 1994* is amended as set out in Schedule 3.

**6 Amendment of Hunter Water Board (Corporatisation) Act 1991 No 53**

The *Hunter Water Board (Corporatisation) Act 1991* is amended as set out in Schedule 4.

**7 Consequential amendments**

Each Act specified in Schedule 5 is amended as set out in that Schedule.

## **8 Transitional provision**

- (1) A reference in any Act as amended by this Act to Hunter Water Corporation before the commencement of Schedule 2 [1] is taken to include a reference to Hunter Water Corporation Limited.
- (2) A reference in any Act as amended by this Act to Sydney Water Corporation before the commencement of Schedule 2 [2] is taken to include a reference to Sydney Water Corporation Limited.

## **9 Notes**

Notes in this Act do not form part of this Act.

## Schedule 1 Amendment of Public Health Act 1991

(Section 3)

[1] **Part 2, heading**

Omit the heading.

Insert instead "**Part 2 Health risks generally**".

[2] **Section 7 Closure of water supply**

Omit the section.

[3] **Part 2A**

Insert after section 10:

### **Part 2A Safety of drinking water**

#### **Division 1 Preliminary**

##### **10A Definitions**

In this Part:

***boil water advice***, in relation to drinking water, means a statement to the effect that the water should not be used for human consumption (or for purposes connected with human consumption) until after it has been boiled or otherwise treated.

***Chief Health Officer*** means the Chief Health Officer of the Department of Health.

***drinking water*** means water that is intended, or likely, to be used:

- (a) for human consumption, or
- (b) for purposes connected with human consumption, such as the washing or cooling of food or the making of ice for consumption or for the preservation of unpackaged food,

whether or not the water is used for other purposes.

**record** means:

- (a) a documentary record, or
- (b) a record made by an electronic, electromagnetic, photographic or optical process, or
- (c) any other kind of record.

**supplier of drinking water** (or **supplier**) means:

- (a) Sydney Water Corporation,
- (b) Hunter Water Corporation,
- (c) a Water Supply Authority within the meaning of the *Water Supply Authorities Act 1987*,
- (d) a local council or a county council exercising water supply functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*,
- (e) the Lord Howe Island Board within the meaning of the *Lord Howe Island Act 1953*,
- (f) the Administrator of the Fish River Water Supply within the meaning of the *Fish River Water Supply Administration Act 1945*,
- (g) any person who treats or supplies water on behalf of a person referred to in any of the preceding paragraphs,
- (h) any person supplying drinking water in the course of a commercial undertaking (other than that of supplying bottled or packaged drinking water), being a person who has not received the water:
  - (i) from a person referred to in any of the preceding paragraphs, or
  - (ii) in the form of bottled or packaged water.

**treatment of water** means any process or technique used to improve the quality of water.

**Division 2 Functions of Chief Health Officer in relation to drinking water**

**10B Advice to public**

- (1) The Chief Health Officer may from time to time prepare advice, for the benefit of the public, concerning the safety of available drinking water (or drinking water available from a particular supplier) and any possible risks to health involved in the consumption of that water.
- (2) An advice under this section may include a boil water advice.
- (3) The Chief Health Officer is to provide any advice prepared under this section to the relevant supplier of drinking water.
- (4) A supplier of drinking water must issue the advice provided to it under this section to the public in such form and manner as the Director-General may from time to time direct by notice in writing to the supplier.

Maximum penalty: 10,000 penalty units (in the case of a corporation) or 2,500 penalty units (in any other case).

- (5) Nothing in subsection (3) or (4) prevents the Chief Health Officer from also issuing the advice to the public as the Chief Health Officer sees fit.

**10C Correction of misleading information**

- (1) The Chief Health Officer may, by notice in writing given to a supplier of drinking water, direct the supplier to retract or correct any information or advice issued, by or on behalf of the supplier, to the public in relation to the safety of the supplier's drinking water if the Chief Health Officer is of the opinion that the information or advice is inaccurate, incomplete or otherwise misleading.
- (2) The Chief Health Officer may specify any one or more of the form, content and manner of the retraction or correction and of its publication.



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- (3) A supplier of drinking water who is given a direction under this section must comply with the direction as and when required by the direction.

Maximum penalty: 10,000 penalty units (in the case of a corporation) or 2,500 penalty units (in any other case).

- (4) If the supplier of drinking water fails to comply with the direction within the time specified in the direction, the Chief Health Officer may issue the retraction or correction on behalf of the supplier.

#### **10D Chief Health Officer may delegate**

The Chief Health Officer may delegate to any officer of the Department of Health any of the Chief Health Officer's functions (including the function specified in section 10E (4), but excluding this power of delegation) under this Part.

### **Division 3 Functions of Director-General in relation to drinking water**

#### **10E Power to declare Chief Health Officer solely responsible for determining necessity for boil water advices**

- (1) The Director-General may, by order published in the Gazette, declare that, in relation to a supplier of drinking water specified in the order, the function specified in subsection (4) is to be exercised only by the Chief Health Officer.
- (2) A declaration under this section operates to confer the power to exercise the function on the Chief Health Officer.
- (3) The Director-General is taken to have published such orders in relation to Sydney Water Corporation and Hunter Water Corporation on the commencement of this section. The Director-General may, by further order published in the Gazette, amend or revoke an order so taken to have been published.

- (4) The function concerned is that of deciding from time to time:
- (a) whether a boil water advice is to be issued in respect of the drinking water supplied or available for supply by the supplier, and
  - (b) if a boil water advice is to be issued—the additional information (if any) that is to be provided to the public in connection with it, and
  - (c) whether a boil water advice that has been issued is to be withdrawn.

**10F Power to enter and inspect premises of supplier**

- (1) Any person authorised by the Director-General for the purposes of this section may enter any premises of a supplier of drinking water and do any one or more of the following on those premises:
- (a) examine and inspect any apparatus, equipment or works,
  - (b) take and remove samples of any water,
  - (c) take and remove samples of any substance used in, or produced by, the treatment of water on those premises,
  - (d) require samples referred to in paragraph (b) or (c) to be taken and given to the person or to another person or to the Director-General,
  - (e) take such photographs, films and audio, video and other recordings as the person considers necessary,
  - (f) require records to be produced for inspection,
  - (g) examine, inspect and copy any records,
  - (h) make such other examinations, inquiries and tests as the person considers necessary.
- (2) Despite section 74, the maximum penalty that may be imposed on a person who wilfully intimidates, obstructs or hinders a person authorised by the Director-General

for the purposes of this section who is exercising, or attempting to exercise, a function under this section is 2,500 penalty units (in the case of a corporation) or 400 penalty units (in any other case).

#### **10G Power to require testing of drinking water**

- (1) The Director-General may, by notice in writing given to a supplier of drinking water, direct the supplier to carry out such tests on water that it has available for supply, or on any substance used in or produced by the treatment of such water, as the Director-General considers appropriate.
- (2) A direction given under this section may specify that the test to be carried out on water is to be carried out in any one or more of the following ways:
  - (a) on the water in its raw state, or
  - (b) while the water is undergoing treatment, or
  - (c) after the water has been treated or partly treated.
- (3) A supplier of drinking water who is given a direction under this section must comply with the direction as and when required by the direction.

Maximum penalty: 2,500 penalty units (in the case of a corporation) or 400 penalty units (in any other case).

#### **10H Power to require production of information**

- (1) The Director-General may, by notice in writing given to a supplier of drinking water, direct the supplier to produce to the Director-General such information as the Director-General may specify concerning:
  - (a) the quality of the drinking water that the supplier has available for supply, and
  - (b) the methods by which the water has been treated.

- (2) The information required may include (but is not limited to) the following:
  - (a) copies of relevant records of the supplier,
  - (b) the results of any tests required under section 10G.
- (3) The information is to be provided in such form and manner as the Director-General may direct.
- (4) A supplier of drinking water who is given a direction under this section must comply with the direction as and when required by the direction.

Maximum penalty: 2,500 penalty units (in the case of a corporation) or 400 penalty units (in any other case).

#### **Division 4 General**

##### **10I Closure of water supply**

- (1) This section applies to water in, or flowing from, any source if:
  - (a) the water is drinking water and the Minister has reason to suspect that the water is not fit for human consumption, or
  - (b) the Minister suspects on reasonable grounds that the water constitutes (or is likely to constitute) a risk to public health.
- (2) The Minister may take such action, and give such directions by notice in writing to any person or class of persons, as the Minister considers necessary:
  - (a) to restrict or prevent the use of any water to which this section applies, and
  - (b) to bring the water to such a condition that it is no longer unfit for human consumption or a risk (or a likely risk) to public health.
- (3) Before giving a direction under this section to any of the suppliers of drinking water referred to in the following

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paragraphs (or to any person who treats or supplies water on behalf of the supplier), the Minister is to consult with the Minister specified in respect of the supplier:

- (a) Sydney Water Corporation—the Minister administering the *Water Board (Corporatisation) Act 1994*,
  - (b) Hunter Water Corporation—the Minister administering the *Hunter Water Board (Corporatisation) Act 1991*,
  - (c) a Water Supply Authority within the meaning of the *Water Supply Authorities Act 1987*—the Minister administering that Act,
  - (d) a local council or a county council that supplies water under the *Local Government Act 1993*—both the Minister administering that Act and the Minister administering the *Water Supply Authorities Act 1987*.
- (4) A person given a direction under this section must comply with it as and when required by the direction.

Maximum penalty: 10,000 penalty units (in the case of a corporation) or 2,500 penalty units (in any other case).

### **10J Protection from liability**

- (1) The provision of any information or advice concerning drinking water by the Chief Health Officer exercising any function under section 10B, 10C or 10E in good faith for the purpose of executing this Act does not subject any of the following to any action, liability, claim or demand:
- (a) the State,
  - (b) a Minister of the Crown in right of New South Wales,
  - (c) an officer of the Department of Health.

- (2) A reference in this section to the exercise by the Chief Health Officer of a function under this Part includes a reference to a decision by the Chief Health Officer not to exercise a power conferred by this Part.
- (3) To avoid doubt, it is declared that:
  - (a) the exercise of a function under section 10B (1) or 10E (4) (a) extends to deciding that a boil water advice is not to be issued in particular circumstances or at a particular time, and
  - (b) the exercise of a function under section 10C extends to deciding that a direction under section 10C (1) should not be given.

#### **10K Evidentiary provision**

A certificate signed by the Minister, the Director-General or the Chief Health Officer, being a certificate to the effect that the signatory gave a specified direction to a specified person on a specified day, is admissible in evidence and is prima facie evidence of the facts stated in it.

#### **10L Proceedings for offences under Part 2A**

- (1) Proceedings for an offence under this Part may be dealt with summarily before the Supreme Court in its summary jurisdiction.
- (2) Proceedings for an offence under this Part may be commenced at any time within, but not later than, 2 years after the date on which the offence is alleged to have been committed.

#### **10M Regulations for the purposes of Part 2A**

Without limiting the generality of section 82, the regulations may make provision for or with respect to any of the following:

- (a) requiring a supplier of drinking water to establish, and adhere to, a quality assurance program designed to ensure that the drinking water it supplies is consistently safe to drink,

- (b) the tests on water and other substances referred to in section 10G,
- (c) the records to be maintained by a supplier of drinking water.

**[4] Section 79 Proceedings for offences**

Insert "10L," before "50" in section 79 (2).

**[5] Schedule 4 Savings and transitional provisions**

Insert after clause 1 (2B):

- (2C) The regulations may also contain provisions of a savings or transitional nature consequent on the enactment of the *Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998*, but only in relation to the amendments made to this Act. Any such provision may, if the regulations so provide, take effect from the date of assent to that Act or a later date.

**[6] Schedule 4, clause 1 (3)**

Omit "subclause (1) or (2A)".

Insert instead "subclause (1), (2A) or (2C)".

## **Schedule 2 Amendment of State Owned Corporations Act 1989**

(Section 4)

### **Part 1 Amendments relating to status of water corporations**

#### **[1] Schedule 1 Company SOCs**

Omit "Hunter Water Corporation Limited".

#### **[2] Schedule 1**

Omit "Sydney Water Corporation Limited".

**Note.** Schedule 5 to the *State Owned Corporations Act 1989* is amended by provisions inserted by Schedules 3 and 4 to this Act.

### **Part 2 Other amendments**

#### **[3] Section 33AA**

Insert after section 33A:

#### **33AA Liability of directors and other officers in respect of particular obligations**

- (1) This section applies to the following obligations of the board of a State owned corporation:
  - (a) the obligation to ensure that a public sector policy notified to the board under section 20O is carried out,
  - (b) the obligation to ensure that a direction given to the board under section 20P is carried out,
  - (c) the obligation to supply information requested of the board under section 29.



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- (2) A director of the board of a State owned corporation does not, despite any other law, incur any personal liability for the compliance, or purported compliance, in good faith by the board with an obligation to which this section applies.
- (3) An officer of a State owned corporation does not, despite any other law, incur any personal liability for his or her compliance, or purported compliance, in good faith with a direction or decision given or made by or on behalf of the board of the corporation for the purpose of complying with an obligation to which this section applies.
- (4) This section does not affect any other protection that a director or other officer would have for compliance, or purported compliance, with such an obligation.
- (5) In this section:
- carry out* a direction includes comply with the direction.
- officer* of a State owned corporation means:
- (a) a director of the corporation, or
  - (b) the corporation's chief executive officer (however described), or
  - (c) another person who is concerned, or takes part, in the corporation's management.

**[4] Section 37B Establishment of Ministerial Holding Corporation**

Omit "under this Act" from section 37B (5) (a).  
Insert instead "by or under this or any other Act".

## **Schedule 3 Amendment of Water Board (Corporatisation) Act 1994**

(Section 5)

### **[1] Section 1 Name of Act**

Omit "*Water Board (Corporatisation) Act 1994*".  
Insert instead "*Sydney Water Act 1994*".

### **[2] Section 3 Definitions**

Omit "the Water Board" from the definition of *business undertaking* in section 3 (2).  
Insert instead "Sydney Water Corporation Limited".

### **[3] Section 3 (2), definition of "Corporation"**

Omit "Limited".

### **[4] Section 3 (2), definition of "excluded undertaking"**

Omit "the Water Board".  
Insert instead "Sydney Water Corporation Limited".

### **[5] Part 2**

Omit the Part. Insert instead:

#### **Part 2 Sydney Water Corporation**

##### **4 Establishment of Corporation as a statutory SOC**

- (1) There is constituted by this Act a corporation with the corporate name of the Sydney Water Corporation.

- (2) The *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, the words "Sydney Water Corporation".

### **5 Functions of Corporation**

- (1) The Corporation has the functions conferred or imposed on it by or under this or any other Act.
- (2) The principal functions of the Corporation are those that are referred to in section 12 and that are the subject of one or more operating licences.
- (3) Subject to the terms of any operating licence, the Corporation may:
- (a) provide facilities or services that are necessary, ancillary or incidental to its principal functions, and
  - (b) conduct any business or activity (whether or not related to its principal functions) that it considers will further its objectives.
- (4) This section does not limit the functions of the Corporation apart from this section, but is subject to the provisions of this Act, the *State Owned Corporations Act 1989* and any other Act or law.

### **5A Board of Corporation**

- (1) The board of the Corporation is to consist of the following:
- (a) a chairperson, appointed by the voting shareholders of the Corporation,
  - (b) 9 directors appointed by the voting shareholders, who are to have appropriate expertise, to the intent that the board includes directors with separate expertise in at least the following areas:
    - (i) business management,
    - (ii) protection of the environment,
    - (iii) public health.
- (2) The Minister is to advertise publicly for nominations for selection for the board.

- (3) Subsection (1) has effect despite the provisions of section 20J (2), (3) and (4) of, and clauses 2 (1) and 4 of Schedule 8 to, the *State Owned Corporations Act 1989*.

## 6 Role of certain Ministers

- (1) The Premier may not nominate:
- (a) the portfolio Minister of the Corporation, or
  - (b) a Minister administering the *Environmental Planning and Assessment Act 1979*, the *Water Administration Act 1986*, the *Protection of the Environment Administration Act 1991* or the *Public Health Act 1991*,
- as a voting shareholder of the Corporation.
- (2) However, the portfolio Minister of the Corporation is authorised to attend meetings of the shareholders of the Corporation.
- (3) If a Minister nominated by the Premier as a voting shareholder of the Corporation becomes the portfolio Minister of the Corporation or the Minister who is responsible for the administration of any of the Acts referred to in subsection (1) (b), the Premier must, as soon as practicable, revoke the nomination of the Minister as a voting shareholder and nominate another Minister in the Minister's place.
- (4) The portfolio Minister is to answer all questions directed to the Minister in Parliament in relation to the administration of this Act.

## [6] Sections 7-9

Omit "the Water Board" and "the Water Board's" wherever occurring.

Insert instead "Sydney Water Corporation Limited" and "Sydney Water Corporation Limited's" respectively.

**[7] Section 7 Direction to transfer business undertaking**

Omit "on the date and for the consideration specified in the order" from section 7 (1).

Insert instead "in exchange for the issue of shares or on any other basis".

**[8] Section 10 Area of operations**

Omit "the Water Board had immediately before its dissolution" from section 10 (1).

Insert instead "Sydney Water Corporation Limited had immediately before it ceased to be a company State owned corporation".

**[9] Section 10 (3) (b) and (4)**

Omit "Hunter Water Corporation Limited" wherever occurring.

Insert instead "Hunter Water Corporation".

**[10] Section 93A**

Insert after section 93:

**93A Ministerial directions in the public interest**

- (1) A direction may be given to the board of the Corporation under section 20P of the *State Owned Corporations Act 1989* without compliance with subsection (3) of that section if the portfolio Minister decides that this action is warranted on grounds involving urgency, public health or public safety.
- (2) The notice referred to in section 20P (5) of the *State Owned Corporations Act 1989* is to include a statement of the reasons for that decision.
- (3) The portfolio Minister is to publish in the Gazette (and is to make available on the Internet) any direction under section 20P of the *State Owned Corporations Act 1989*, and any notification under section 20O of that Act, given to the board of the Corporation as soon as practicable after it is given.
- (4) Any such notification or direction is of no effect to the extent that it is inconsistent with the terms and conditions of the Corporation's operating licence.

- (5) However, subsection (4) does not apply in respect of a direction given as referred to in subsection (1).

**[11] Section 94 Composition of board**

Omit the section.

**[12] Section 95 Provisions relating to subsidiaries**

Omit "Schedule 3". Insert instead "Schedule 7".

**[13] Section 101 Annual reports and consumer confidence reports**

Omit "and the *Corporations Law*" from section 101 (1).

**[14] Section 101 (3)–(7)**

Insert after section 101 (2):

- (3) In addition to producing an annual report, the Corporation must publish on the Internet at intervals of 3 months reports (*consumer confidence reports*) on the quality of the water it has available for supply to its customers.
- (4) The reports are also to be made available for inspection by the public free of charge at the Head Office of the Corporation during normal business hours.
- (5) A consumer confidence report must include, in summary form, the following:
- (a) details of the quality and quantity of water in the Corporation's catchment areas,
  - (b) an evaluation of the effectiveness of the Corporation's treatment of water from its catchment areas during the immediately preceding 3 months,
  - (c) a review of developments in the literature concerning issues relating to the quality of drinking water, being issues faced by authorities worldwide who are responsible for the quality of any drinking water,

- (d) an overview of issues relating to catchment management that were current during the immediately preceding 3 months,
- (e) such other matter as the regulations may prescribe.
- (6) Each account for the supply of water that the Corporation sends to its customers must contain a summary of the most recent consumer confidence report and must state that the full report is published on the Internet and is available for inspection by the public free of charge at the Head Office of the Corporation during normal business hours.
- (7) The first consumer confidence report must be published within 4 months after the commencement of this subsection.

**[15] Section 104 Application of Freedom of Information Act 1989**

Omit "Managing Director" from section 104 (2) (b).  
Insert instead "Chief Executive Officer".

**[16] Schedule 3 Board of Corporation**

Omit the Schedule.

**[17] Schedule 4**

Omit the Schedule. Insert instead:

**Schedule 4 Subsidiaries of Corporation**

(Section 95)

Part 2 of Schedule 7 to the *State Owned Corporations Act 1989* is, as regards Sydney Water Corporation, taken to be altered by omitting clause 1 (8) and by inserting instead the following subclause:

- (8) Shares may not be issued except with the prior written approval of the voting shareholders of the State owned corporation, and shares held by eligible Ministers or by or on behalf of the State owned corporation may not be transferred except with such prior written approval or by the Premier under subclause (4).

**[18] Schedule 9 Savings, transitional and other provisions**

Insert "**Part 1 General**" before clause 1.

**[19] Schedule 9, clause 1 Regulations**

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

*Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998*

including provisions for or with respect to the following:

- (a) the interpretation of references to the Water Board or to the *Water Board Act 1987*,
- (b) the interpretation of references to Sydney Water Corporation Limited or any of its subsidiaries.

**[20] Schedule 9, Part 2, heading**

Insert "**Part 2 Provisions consequent on enactment of this Act**" before clause 2.

**[21] Schedule 9, Part 3**

Insert after clause 18:

**Part 3 Provisions consequent on enactment of Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998**

**19 Definitions**

In this Part:

*amending Act* means the *Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998*.



***appointed day*** means the day on which the name of the Corporation is inserted in Schedule 5 to the *State Owned Corporations Act 1989* by the operation of section 4 of this Act (as substituted by the amending Act).

***Company*** means Sydney Water Corporation Limited.

## **20 Role of Company**

- (1) On and from the appointed day, the Company ceases to have any functions that are the subject of any operating licence.
- (2) Subject to any direction under clause 29, the Company, its directors and officers are responsible for complying with any reporting requirements and similar matters in respect of any period before the appointed day under the *Corporations Law* or any other law.

## **21 Transfer of assets, rights and liabilities of Company**

- (1) Part 3 of this Act, as amended by the amending Act, authorises the making of orders for the transfer of the assets, rights and liabilities of the Company and associated matters.
- (2) Without affecting the generality of subclause (1), that subclause extends to any shares held by or on behalf of the Company immediately before the appointed day.

## **22 Shares in Company or subsidiaries**

The constitution of the Company or any of its subsidiaries may provide for the transfer of any shares in the Company or such a subsidiary to the Ministerial Holding Corporation or any other person.

## **23 Board of directors of Company**

- (1) The person holding office as chairman of the board of the Company immediately before the commencement of this clause is taken to have been appointed as Chairperson of the board of the Corporation.

- (2) The persons holding office as directors of the board of the Company immediately before the commencement of this clause as selected by the voting shareholders for their relevant expertise are taken to have been appointed as directors under section 5A (1) (b).
- (3) The person holding office as a director of the board of the Company immediately before the commencement of this clause as selected by a selection committee is taken to have been appointed as a director under section 5A (1) (b).

#### **24 Managing Director of Company**

A reference in any Act, in any instrument made under any Act or any document of any kind to the Managing Director of the Company or of the board of the Company is, subject to regulations under clause 1, to be read as, or as including, a reference to the Chief Executive Officer of the Corporation.

#### **25 Staff of Company**

On the appointed day, the staff of the Company becomes the staff of the Corporation.

#### **26 Dissolution of Company**

- (1) The Governor may, by order published in the Gazette, wind up, deregister, dissolve or otherwise deal with the Company or make provision for or with respect to such winding up, deregistration, dissolution or other dealing.
- (2) The order may contain such ancillary, consequential, savings, transitional and other provisions as are relevant to those matters.
- (3) An order under this clause takes effect on the date of its publication in the Gazette or a later date specified in the order.
- (4) Nothing in this clause prevents the winding up, deregistration or dissolution of the Company, or other dealing with the Company, under any other law.

### **27 Corporation to be same legal entity as Company**

- (1) On the appointed day, the Corporation is taken, for all purposes, including the rules of private international law, to be a continuation of and the same legal entity as the Company.
- (2) Subclause (1) has effect whether or not the Company is dissolved.

### **28 Amendment of constitution of Company and subsidiaries**

Despite anything in this Act or the constitution of the Company or any of its subsidiaries, that constitution may be altered or added to in any way that is not inconsistent with this Act as amended by the amending Act.

### **29 Directions**

- (1) The Minister may, by order in writing, give such directions as the Minister considers appropriate, for or with respect to the manner in which any reporting requirements and similar matters under the *Corporations Law* or any other law are to be dealt with in respect of any period before, including or immediately after the appointed day.
- (2) Without limiting the generality of subclause (1), such an order may require the Company or its board of directors or officers to deal with matters relating to any period commencing on or after as well as before the appointed day or may require the Corporation or its board of directors or officers to deal with matters relating to any period commencing before as well as on or after the appointed day.

### **30 Operating licence**

An operating licence granted to the Company and in force immediately before the appointed day is taken to have been granted to the Corporation.

## **Schedule 4 Amendment of Hunter Water Board (Corporatisation) Act 1991**

(Section 6)

### **[1] Section 1 Name of Act**

Omit "*Hunter Water Board (Corporatisation) Act 1991*".  
Insert instead "*Hunter Water Act 1991*".

### **[2] Section 3 Definitions**

Omit "the Hunter Water Board" from the definition of *business undertaking* in section 3 (2).  
Insert instead "Hunter Water Corporation Limited".

### **[3] Section 3 (2), definition of "Corporation"**

Omit "Limited".

### **[4] Section 3 (2), definition of "excluded undertaking"**

Omit "the Hunter Water Board".  
Insert instead "Hunter Water Corporation Limited".

### **[5] Part 2**

Omit the Part. Insert instead:

## **Part 2 Hunter Water Corporation**

### **4 Establishment of Corporation as a statutory SOC**

- (1) There is constituted by this Act a corporation with the corporate name of the Hunter Water Corporation.

- (2) The *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, the words "Hunter Water Corporation".

#### **4A Functions of Corporation**

- (1) The Corporation has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of the Corporation are those that are referred to in section 12 and that are the subject of one or more operating licences.
- (3) Subject to the terms of any operating licence, the Corporation may:
- (a) provide facilities or services that are necessary, ancillary or incidental to its principal functions, and
  - (b) conduct any business or activity (whether or not related to its principal functions) that it considers will further its objectives.
- (4) This section does not limit the functions of the Corporation apart from this section, but is subject to the provisions of this Act, the *State Owned Corporations Act 1989* and any other Act or law.

#### **4B Board of Corporation**

- (1) The board of the Corporation is to consist of the following:
- (a) a chairperson, appointed by the voting shareholders of the Corporation,
  - (b) 6 directors, appointed for their relevant expertise by the voting shareholders of the Corporation,

- (c) one director, appointed under subsection (2),
  - (d) the Chief Executive Officer of the Corporation.
- (2) The director referred to in subsection (1) (c) is to be appointed by the voting shareholders of the Corporation on the recommendation of a selection committee comprising:
- (a) 2 persons nominated by the voting shareholders, and
  - (b) 2 persons nominated by the Labor Council of New South Wales,
- being a person selected by the committee from a panel of 3 persons nominated by the Labor Council.
- (3) The procedures for constituting a selection committee for the purposes of subsection (2), for making nominations and for determining other matters relating to the selection process are to be determined by the regulations or (subject to the regulations) by the voting shareholders of the Corporation.
- (4) Subsections (1)–(3) have effect despite the provisions of section 20J (2), (3) and (4) of, and clauses 2 (1) and 4 of Schedule 8 to, the *State Owned Corporations Act 1989*.

#### **4C Role of certain Ministers**

- (1) The Premier may not nominate:
- (a) the portfolio Minister of the Corporation, or
  - (b) a Minister administering the *Environmental Planning and Assessment Act 1979*, the *Water Administration Act 1986*, the *Protection of the Environment Administration Act 1991* or the *Public Health Act 1991*,

as a voting shareholder of the Corporation.

- (2) However, the portfolio Minister of the Corporation is authorised to attend meetings of the shareholders of the Corporation.
- (3) If a Minister nominated by the Premier as a voting shareholder of the Corporation becomes the portfolio Minister of the Corporation or the Minister who is responsible for the administration of any of the Acts referred to in subsection (1) (b), the Premier must, as soon as practicable, revoke the nomination of the Minister as a voting shareholder and nominate another Minister in the Minister's place.
- (4) The portfolio Minister is to answer all questions directed to the Minister in Parliament in relation to the administration of this Act.

**[6] Sections 5–7**

Omit “the Hunter Water Board” and “the Hunter Water Board’s” wherever occurring.

Insert instead “Hunter Water Corporation Limited” and “Hunter Water Corporation Limited’s” respectively.

**[7] Section 5 Direction to transfer business undertaking**

Omit “on the date and for the consideration specified in the order” from section 5 (1).

Insert instead “in exchange for the issue of shares or on any other basis”.

**[8] Section 16 Area covered by operating licence**

Omit “the Hunter Water Board immediately before the commencement of section 8 together with” from section 16 (1).

Insert instead “Hunter Water Corporation Limited immediately before it ceased to be a company State owned corporation including”.

**[9] Section 64A**

Insert after section 64:

**64A Ministerial directions in the public interest**

- (1) A direction may be given to the board of the Corporation under section 20P of the *State Owned Corporations Act 1989* without compliance with subsection (3) of that section if the portfolio Minister decides that this action is warranted on grounds involving urgency, public health or public safety.
- (2) The notice referred to in section 20P (5) of the *State Owned Corporations Act 1989* is to include a statement of the reasons for that decision.
- (3) The portfolio Minister is to publish in the Gazette (and is to make available on the Internet) any direction under section 20P of the *State Owned Corporations Act 1989*, and any notification under section 20O of that Act, given to the board of the Corporation as soon as practicable after it is given.
- (4) Any such notification or direction is of no effect to the extent that it is inconsistent with the terms and conditions of the Corporation's operating licence.
- (5) However, subsection (4) does not apply in respect of a direction given as referred to in subsection (1).

**[10] Section 66**

Omit the section. Insert instead:

**66 Provisions relating to subsidiaries**

Part 2 of Schedule 7 to the *State Owned Corporations Act 1989* is, as regards Hunter Water Corporation, taken to be altered by omitting clause 1 (8) and by inserting instead the following subclause:



- (8) Shares may not be issued except with the prior written approval of the voting shareholders of the State owned corporation, and shares held by eligible Ministers or by or on behalf of the State owned corporation may not be transferred except with such prior written approval or by the Premier under subclause (4).

**[11] Section 75**

Insert after section 74:

**75 Savings, transitional and other provisions**

Schedule 2 has effect.

**[12] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Savings, transitional and other provisions**

(Section 75)

**Part 1 General**

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
- Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998*
- (2) Any such provision may, without limitation, make provision for or with respect to the interpretation of references to Hunter Water Corporation Limited or any of its subsidiaries.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998**

### **2 Definitions**

In this Part:

*amending Act* means the *Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998*.

*appointed day* means the day on which the name of the Corporation is inserted in Schedule 5 to the *State Owned Corporations Act 1989* by the operation of section 4 of this Act (as substituted by the amending Act).

*Company* means Hunter Water Corporation Limited.

### **3 Role of Company**

- (1) On and from the appointed day, the Company ceases to have any functions that are the subject of any operating licence.
- (2) Subject to any direction under clause 12, the Company, its directors and officers are responsible for complying with any reporting requirements and similar matters in respect of any period before the appointed day under the *Corporations Law* or any other law.

#### **4 Transfer of assets, rights and liabilities of Company**

- (1) Part 3 of this Act, as amended by the amending Act, authorises the making of orders for the transfer of the assets, rights and liabilities of the Company and associated matters.
- (2) Without affecting the generality of subclause (1), that subclause extends to any shares held by or on behalf of the Company immediately before the appointed day.

#### **5 Shares in Company or subsidiaries**

The constitution of the Company or any of its subsidiaries may provide for the transfer of any shares in the Company or such a subsidiary to the Ministerial Corporation or any other person.

#### **6 Board of directors of Company**

- (1) The person holding office as chairman of the board of the Company immediately before the commencement of this clause is taken to have been appointed as Chairperson of the board of the Corporation.
- (2) The persons holding office as directors of the board of the Company immediately before the commencement of this clause (other than the chairman, Managing Director or staff director) are taken to have been appointed as directors under section 4B (1) (b), unless there are more than six of them (in which case they are eligible for appointment as directors under section 4B (1) (b)).
- (3) The person holding office as staff director of the board of the Company immediately before the commencement of this clause is taken to have been appointed as a director under section 4B (2).

#### **7 Managing Director of Company**

- (1) The person holding office as Managing Director of the Company immediately before the appointed day is taken to have been appointed as Chief Executive Officer of the Corporation for the balance of his or her term of office.

- (2) A reference in any Act, in any instrument made under any Act or any document of any kind to the Managing Director of the Company or of the board of the Company is, subject to regulations under clause 1, to be read as, or as including, a reference to the Chief Executive Officer of the Corporation.

### **8 Staff of Company**

On the appointed day, the staff of the Company becomes the staff of the Corporation.

### **9 Dissolution of Company**

- (1) The Governor may, by order published in the Gazette, wind up, deregister, dissolve or otherwise deal with the Company or make provision for or with respect to such winding up, deregistration, dissolution or other dealing.
- (2) The order may contain such ancillary, consequential, savings, transitional and other provisions as are relevant to those matters.
- (3) An order under this clause takes effect on the date of its publication in the Gazette or a later date specified in the order.
- (4) Nothing in this clause prevents the winding up, deregistration or dissolution of the Company, or other dealing with the Company, under any other law.

### **10 Corporation to be same legal entity as Company**

- (1) On the appointed day, the Corporation is taken, for all purposes, including the rules of private international law, to be a continuation of and the same legal entity as the Company.
- (2) Subclause (1) has effect whether or not the Company is dissolved.

## **11 Amendment of constitution of Company and subsidiaries**

Despite anything in this Act or the constitution of the Company or any of its subsidiaries, that constitution may be altered or added to in any way that is not inconsistent with this Act as amended by the amending Act.

## **12 Directions**

- (1) The Minister may, by order in writing, give such directions as the Minister considers appropriate, for or with respect to the manner in which any reporting requirements and similar matters under the *Corporations Law* or any other law are to be dealt with in respect of any period before, including or immediately after the appointed day.
- (2) Without limiting the generality of subclause (1), such an order may require the Company or its board of directors or officers to deal with matters relating to any period commencing on or after as well as before the appointed day or may require the Corporation or its board of directors or officers to deal with matters relating to any period commencing before as well as on or after the appointed day.

## **13 Operating licence**

An operating licence granted to the Company and in force immediately before the appointed day is taken to have been granted to the Corporation.

## **Schedule 5 Consequential amendments**

(Section 7)

### **5.1 Dams Safety Act 1978 No 96**

#### **[1] Section 8 Members**

Omit "Sydney Water Corporation Limited" from section 8 (2) (b).  
Insert instead "Sydney Water Corporation".

#### **[2] Section 8 (2) (d)**

Omit "Hunter Water Corporation Limited".  
Insert instead "Hunter Water Corporation".

### **5.2 Environmental Education Trust Act 1990 No 26**

#### **[1] Section 5 Membership and procedure of the Trust**

Omit "Managing Director of Sydney Water Corporation Limited"  
from section 5 (2) (d).  
Insert instead "Chief Executive Officer of Sydney Water  
Corporation".

#### **[2] Section 13 Environmental Education Trust Fund**

Insert "or Sydney Water Corporation" after "Sydney Water  
Corporation Limited" wherever occurring in section 13 (1) (a).

**5.3 Environmental Planning and Assessment Act 1979  
No 203**

**Section 109J Restriction on issue of subdivision certificates**

Omit "Sydney Water Corporation Limited, the Hunter Water Corporation Limited" from paragraph (a) of the definition of *water supply authority* in section 109J (4).

Insert instead "Sydney Water Corporation, the Hunter Water Corporation".

**5.4 Environmental Research Trust Act 1990 No 25**

**[1] Section 5 Membership and procedure of the Trust**

Omit "Managing Director of Sydney Water Corporation Limited" from section 5 (2) (d).

Insert instead "Chief Executive Officer of Sydney Water Corporation".

**[2] Section 13 Environmental Research Trust Fund**

Insert "or Sydney Water Corporation" after "Sydney Water Corporation Limited" wherever occurring in section 13 (1) (a).

**5.5 Environmental Restoration and Rehabilitation Trust Act  
1990 No 24**

**[1] Section 5 Membership and procedure of the Trust**

Omit "Managing Director of Sydney Water Corporation Limited" from section 5 (2) (d).

Insert instead "Chief Executive Officer of Sydney Water Corporation".

Schedule 5 Consequential amendments

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**[2] Section 16 Environmental Restoration and Rehabilitation Trust Fund**

Insert "or Sydney Water Corporation" after "Sydney Water Corporation Limited" wherever occurring in section 16 (1) (a).

**5.6 Environmental Trust Act 1998 No 82**

**Schedule 3 Savings, transitional and other provisions**

Insert "or Sydney Water Corporation" after "Sydney Water Corporation Limited" wherever occurring in clause 5 (3) and (4).

**5.7 First State Superannuation Act 1992 No 100**

**[1] Schedule 1 Employers**

Omit "Sydney Water Corporation Limited" from Part 1.  
Insert instead "Sydney Water Corporation".

**[2] Schedule 1, Part 1**

Omit "Hunter Water Corporation Limited".  
Insert instead "Hunter Water Corporation".

**5.8 Heritage Act 1977 No 136**

**[1] Section 123 Definitions**

Omit "Sydney Water Corporation Limited" from paragraph (c) of the definition of *rating or taxing authority*.  
Insert instead "Sydney Water Corporation".



**[2] Section 123, definition of “rating or taxing authority”**

Omit “Hunter Water Corporation Limited” from paragraph (d) of the definition.

Insert instead “Hunter Water Corporation”.

**5.9 Independent Pricing and Regulatory Tribunal Act 1992  
No 39**

**[1] Schedule 1 Government agencies for which Tribunal has  
standing reference**

Omit “Sydney Water Corporation Limited”.

Insert instead “Sydney Water Corporation”.

**[2] Schedule 1**

Omit “Hunter Water Corporation Limited”.

Insert instead “Hunter Water Corporation”.

**5.10 Local Government Act 1993 No 30**

**[1] Sections 555 (1) (c), 611 (6) (b) and 741 (2)**

Omit “Sydney Water Corporation Limited” wherever occurring.

Insert instead “Sydney Water Corporation”.

**[2] Sections 555 (1) (c1), 611 (6) (b) and 741 (2)**

Omit “Hunter Water Corporation Limited” wherever occurring.

Insert instead “Hunter Water Corporation”.

### **5.11 National Parks and Wildlife Act 1974 No 80**

**[1] Sections 74 (2) (b), (3) and (4) and 185 (4) (b) and (5)**

Omit "Hunter Water Corporation Limited" wherever occurring.  
Insert instead "Hunter Water Corporation".

**[2] Sections 74 (4) and 185 (4) (a) and (5)**

Omit "Sydney Water Corporation Limited" wherever occurring.  
Insert instead "Sydney Water Corporation".

### **5.12 Pipelines Act 1967 No 90**

**[1] Section 3 Definitions**

Omit "Sydney Water Corporation Limited" from the definition of *statutory body representing the Crown* in section 3 (1).  
Insert instead "Sydney Water Corporation".

**[2] Section 3 (1), definition of "statutory body representing the Crown"**

Omit "Hunter Water Corporation Limited".  
Insert instead "Hunter Water Corporation".

### **5.13 Public Authorities (Financial Arrangements) Act 1987 No 33**

**Schedule 1 Authorities**

Omit "Sydney Water Corporation Limited".  
Insert instead "Sydney Water Corporation".

**5.14 Public Sector Executives Superannuation Act 1989 No 106**

**[1] Schedule 1 Additional employers**

Omit "Hunter Water Corporation Limited".  
Insert instead "Hunter Water Corporation".

**[2] Schedule 1**

Omit "Sydney Water Corporation Limited".  
Insert instead "Sydney Water Corporation".

**5.15 State Authorities Non-contributory Superannuation Act 1987 No 212**

**[1] Schedule 1 Employers**

Omit "Sydney Water Corporation Limited" from Part 1.  
Insert instead "Sydney Water Corporation".

**[2] Schedule 1, Part 1**

Omit "Hunter Water Corporation Limited".  
Insert instead "Hunter Water Corporation".

**5.16 State Authorities Superannuation Act 1987 No 211**

**[1] Schedule 1 Employers**

Omit "Sydney Water Corporation Limited" from Part 1.  
Insert instead "Sydney Water Corporation".

**[2] Schedule 1, Part 1**

Omit "Hunter Water Corporation Limited".  
Insert instead "Hunter Water Corporation".

**5.17 Strata Schemes (Freehold Development) Act 1973 No 68**

**[1] Section 5 Definitions**

Omit "Sydney Water Corporation Limited, the Hunter Water Corporation Limited" from paragraph (a) of the definition of *water supply authority* in section 5 (1).

Insert instead "Sydney Water Corporation, the Hunter Water Corporation".

**[2] Section 89 Definitions**

Omit "Sydney Water Corporation Limited" wherever occurring in the definitions of *appropriate valuing Act* and *valuing authority*.  
Insert instead "Sydney Water Corporation".

**[3] Section 89, definitions of "appropriate valuing Act" and "valuing authority"**

Omit "Hunter Water Corporation Limited" wherever occurring.  
Insert instead "Hunter Water Corporation".

**5.18 Strata Schemes (Leasehold Development) Act 1986 No 219**

**[1] Sections 5 Definitions**

Omit "Sydney Water Corporation Limited, the Hunter Water Corporation Limited" from paragraph (a) of the definition of *water supply authority* in section 5 (1).

Insert instead "Sydney Water Corporation, the Hunter Water Corporation".

**[2] Section 121 Definitions**

Omit "Sydney Water Corporation Limited" wherever occurring in the definitions of *appropriate valuing Act* and *valuing authority*.  
Insert instead "Sydney Water Corporation".

**[3] Section 121, definitions of "appropriate valuing Act" and "valuing authority"**

Omit "Hunter Water Corporation Limited" wherever occurring.  
Insert instead "Hunter Water Corporation".

**5.19 Superannuation Act 1916 No 28**

**[1] Schedule 3 List of employers**

Omit "Sydney Water Corporation Limited" from Part 1 of the Schedule.  
Insert instead "Sydney Water Corporation".

**[2] Schedule 3, Part 1**

Omit "Hunter Water Corporation Limited".  
Insert instead "Hunter Water Corporation".

**5.20 Valuation of Land Act 1916 No 2**

**[1] Section 47 Rating or taxing authorities**

Omit "Sydney Water Corporation Limited" wherever occurring.  
Insert instead "Sydney Water Corporation".

**[2] Section 70H Application of Part**

Omit "Sydney Water Corporation Limited".  
Insert instead "Sydney Water Corporation".

[Minister's second reading speech made in—  
Legislative Assembly on 15 October 1998  
Legislative Council on 27 October 1998]

BY AUTHORITY