

## Water Management Amendment Bill 2004

### 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**) to facilitate the commencement of the Act and published water sharing plans and to deal with aspects of the National Water Initiative.

Schedule 1 to the Bill contains amendments to the Principal Act relating to water management plans and other related matters:

- (a) to provide that the Minister for the Environment must concur in the making and amendment of plans by the Minister for Natural Resources (the **Minister**), and
- (b) to enable the Minister to extend water sharing plans on the recommendation of the Natural Resources Commission, and
- (c) to give catchment management authorities a role in water management and to provide a link with catchment action plans, and
- (d) to ensure that plans are not subject to challenge before or after a judicial review period of 3 months, and
- (e) to clarify the operation of Minister's plans.

Schedule 2 to the Bill contains amendments to the Principal Act relating to domestic and stock rights and water usage. The amendments limit those rights so as to protect existing such rights and other water rights, and environmental water.

Schedule 3 to the Bill contains amendments to the Principal Act:

- (a) to provide for the keeping of a Water Access Licence Register (the **Access Register**) in which is to be recorded the grant of water access licences and specified dealings and matters affecting the licences in an analogous way to the recording of various dealings and matters in relation to land in the Register kept under the *Real Property Act 1900*, and
- (b) to categorise the dealings that may be carried out in respect of access licences and to set out the way in which they take effect, and
- (c) to provide for the creation of security interests over water access licences and holdings in access licences by registration of such interests in the Access Register and to confer various rights on the holders of such security interests, and
- (d) to enable caveats to be lodged with respect to the recording of certain matters in the Access Register in an analogous way to the lodging of caveats in relation to various dealings in relation to land in the Register kept under the *Real Property Act 1900*, and
- (e) to enable the holder of an access licence to transfer the water entitlements conferred by the licence to another person for a specified period of not less than 6 months.

Schedule 4 to the Bill contains amendments to the Principal Act:

- (a) to make further provision in relation to the types of access licence, and
- (b) to modify the procedures relating to the granting, surrender, suspension and cancellation of access licences and the recovery of outstanding amounts in relation to access licences, and
- (c) to modify the procedures relating to the keeping of water allocation accounts for access licences and the crediting and debiting of water in relation to those accounts, and
- (d) to change the period for which approvals are granted under the Act and to

enable extensions of approvals to be granted, and  
(e) to modify the procedures relating to the granting, amendment, suspension and cancellation of approvals, and  
(f) to make further provision in relation to interstate agreements in respect of access licences and water allocations, and  
(g) to make other miscellaneous amendments in relation to access licences and approvals.

Schedule 5 to the Bill contains a number of miscellaneous amendments to the Principal Act.

Schedule 6 to the Bill contains amendments to the Principal Act:

(a) to make provision with respect to the conversion of former entitlements to access licences and approvals under the Principal Act, and  
(b) to make further provisions of a savings or transitional nature.

Schedule 7 makes consequential and other amendments to various Acts and an instrument. In particular, Schedule 7.1 amends the *Catchment Management Authorities Act 2003* to provide for:

(a) the establishment and operation of Environmental Water Trust Funds by catchment management authorities in connection with their environmental water functions, and  
(b) non-regulatory water management provisions to be included in catchment action plans.

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 *Water Management Act 2000* set out in Schedules 1–6.

**Clause 4** is a formal provision that gives effect to the amendments to the *Catchment Management Authorities Act 2003*, other Acts and an instrument set out in Schedule 7.

### **Schedule 1 Amendments relating to plans and other matters**

Schedule 1 amends the Principal Act in connection with water management plans and related matters.

**Schedule 1 [1] and [10]** clarify the classes of environmental water and requirements for environmental water rules. The amendments redefine the classes of environmental water to ***planned environmental water*** (committed by management plans for fundamental ecosystem health or other environmental purposes) and ***adaptive environmental water*** (committed by the conditions of access licences for specified environmental purposes). The amendments retain the obligation for water management plans to contain provision for planned environmental water and require them to provide for adaptive environmental water.

**Schedule 1 [2]–[8]** contain amendments by way of statute law revision.

**Schedule 1 [9]** requires management committees in preparing draft water management plans to have regard to the provisions of relevant catchment action plans.

**Schedule 1 [11] and [17]** clarify the power of the Minister to amend a water management plan. Provision is made to enable a plan to be amended for the purpose of enabling a catchment management authority (or the Minister or other public body) to obtain an access licence for adaptive environmental water resulting from the recovery of water by public expenditure or works. The amendments ensure that any amendment requires the concurrence of the Minister for the Environment.

**Schedule 1 [13]** clarifies the date from which the 10 year period of a management plan commences.

**Schedule 1 [15]** deals with replacement plans.

**Schedule 1 [16]** enables the Minister to extend a water management plan (for a period not exceeding 10 years at any one time). An extension requires:

- (a) a recommendation of the Natural Resources Commission, and
- (b) a public report by the Commission on the performance of the existing plan against State-wide and regional targets.

**Schedule 1 [12] and [14]** make consequential amendments.

**Schedule 1 [18]** ensures that water management plans are not subject to challenge before or after the 3 months' judicial review period before the Land and Environment Court.

**Schedule 1 [19] and [21]** clarify the provisions relating to the making of Minister's plans in areas where there are no plans made following the development and submission of draft plans by management committees. The amendments apply provisions relating to plans prepared by committees but make the various provisions for preparation and exhibition of draft plans and other matters discretionary.

**Schedule 1 [20]** ensures that any Minister's plan requires the concurrence of the Minister for the Environment.

**Schedule 1 [22]–[24]** clarify the circumstances in which compensation is payable by the State for reductions in water allocations arising from the Minister's amendment of a plan. The amendments make it clear that compensation does not arise for reduction resulting from the making of a replacement management plan after the expiry of the 10-year period of an earlier plan.

**Schedule 1 [25]** establishes the Water Innovation Council to advise the Minister and catchment management authorities on the identification and pursuit of measures for water conservation.

**Schedule 1 [26]** confers water management functions on catchment management authorities. In particular, functions are conferred relating to assisting the Minister in the development or implementation of management plans, managing adaptive environmental water and monitoring water quality and other environmental health objectives.

**Schedule 1 [27]** provides definitions of *catchment management authority* and *Natural Resources Commission*.

#### **Schedule 2 Amendments relating to domestic and stock rights and water usage**

**Schedule 2 [2]** amends section 52 of the Principal Act to place restrictions on the authority conferred by that section on the owners or occupiers of land to take and use water for domestic consumption or stock watering without the need for an access licence or approval. **Schedule 2 [1]** makes a consequential amendment to section 52.

**Schedule 2 [3]** amends section 52 to clarify the meaning of intensive animal husbandry as used in the definition of *stock watering*. Currently, that term is not defined.

**Schedule 2 [4] and [5]** amend section 323 of the Principal Act:

- (a) to provide that an order made under the section does not expire after 7 days, but has effect until it is repealed or until the expiry of any period specified in the order for its expiry (whichever occurs first), and
- (b) to make it clear that an order under the section prevails against another provision of the Act relating to the distribution, sharing or taking of water to the extent of any inconsistency.

**Schedule 2 [6]** re-enacts section 325 of the Principal Act. The new section

provides that the Minister may, by order in writing served on a landholder, direct the landholder to take specified measures to ensure that water taken or used under the authority of a domestic and stock right or domestic and stock access licence is not wasted. In particular, the new section provides that the Minister may direct a landholder to take specified measures to ensure that such water is used in accordance with guidelines issued by the Minister under the new section. **Schedule 2 [7]** amends section 345 of the Principal Act to make it clear that it is an offence for a person to take water in contravention of a direction in force under section 323 of the Act.

### **Schedule 3 Amendments relating to dealings and other matters**

#### **Water Access Licence Register**

**Schedule 3 [5]** inserts a new Division 3A (proposed sections 71–71K) into Part 2 of Chapter 3 of the Principal Act to achieve the object described in paragraph (a) in the matter relating to Schedule 3 of the above Overview. The Division requires the Minister to keep a Water Access Licence Register (the **Access Register**) for the purposes of the Act in a form and manner determined by the Minister (proposed section 71). The Minister is directed to record various matters relating to an access licence in the Access Register (proposed section 71A). These include various Ministerial actions taken in respect of licences, certain dealings in licences, caveats lodged in relation to licences, security interests held over the licences and matters such as devolutions of, and changes in co-holder's tenancy arrangements under, licences. Proposed Schedule 1A (**Schedule 3 [34]**) sets out in detail requirements for registration of these matters and contains various other provisions (Part 3 of proposed Schedule 1A) conferring powers on the Minister in relation to the Minister's functions with respect to the recording of matters in the Access Register. Matters (other than assignment dealings) required to be recorded in the Access Register have no effect until they are so recorded (proposed section 71B).

**Schedule 3 [28]** inserts proposed section 87B to enable the Minister to issue access licence certificates for water access licences (similar to certificates of title under the *Real Property Act 1900*). Proposed section 71G (**Schedule 3 [5]**) provides that the Minister may require production of the access licence certificate for an access licence before recording certain matters in the Access Register.

The proposed Division also provides for the creation of security interests in licences (proposed section 71D) and the registration of caveats to prohibit the recording of certain matters in relation to a licence (proposed sections 71E and 71F).

The Minister may cause the Access Register to be searched for information recorded in it (proposed section 71H) and for persons to inspect the Access Register on payment of the approved fee (proposed section 71J). **Schedule 7.4** amends the *Privacy and Personal Information Protection Regulation 2000* to exempt the Minister from the provisions of Part 6 of the *Privacy and Personal Information Protection Act 1998* for the purposes of providing such information. Provision is also made to enable the Access Register to be corrected and amended (proposed section 71I) and to require the Minister to supply reasons for certain decisions in relation to the Access Register (proposed section 71K).

**Schedule 3 [33]** amends section 368 of the Principal Act to provide for the making of appeals to the Land and Environment Court against decisions of the Minister with respect to the recording of matters in the Access Register.

The Minister will be able to delegate the Minister's functions in respect of the Access Register (see section 389 of the Principal Act). It is envisaged that some functions will be delegated to the Registrar-General as recording of various

dealings and matters in relation to access licences in the Access Register will be done in a way that is analogous to the way dealings and other matters relating to land are recorded in the Register kept under the *Real Property Act 1900*.

Accordingly, **Schedule 3 [1] and [30]** amend sections 4 and 88, respectively, to provide for certain terms and expressions to have the same meaning in the Principal Act in relation to access licences as they have in relation to land in the *Real Property Act 1900* and to enable the regulations to apply, adopt or incorporate, whether with or without modification, provisions of that Act or the regulations under it.

Proposed section 88 (e) (**Schedule 3 [29]**) will enable regulations to be made generally with respect to the recording of matters in the Access Register.

Schedule 3 contains a number of consequential amendments, including amendments to sections 63 (6) (b) and (10), 64 (2), 71B (1) and (6), 71C (1) and (6), 71D (1)–(4), 71E (1) and (5), 71F (1), 71G (5), 71H (2) and (3) (b).

These omit provisions superseded by the new provisions that provide for dealings and other matters to take effect on being recorded in the Access Register and provisions requiring notice of dealings to be given to the Registrar-General so that they can be recorded in the General Register of Deeds under section 184C (2) (h1) of the *Conveyancing Act 1919* (as this paragraph is to be repealed by **Schedule 7.2 [2]**.)

Proposed section 347A (**Schedule 3 [32]**) creates certain offences in relation to fraudulently obtaining any access licence certificate or recording in the Access Register and makes any recording in the Access Register obtained in contravention of the proposed section void against the parties to the fraud.

#### **Dealings in access licences**

**Schedule 3 [6]** inserts a new section 71L into the Principal Act which sets out how dealings in access licences and holdings in access licences (that is, the shares of the entitlements conferred by access licences held by particular coholders of the licences) take effect. For this purpose dealings are categorised as general dealings, dealings on default and assignment dealings, and further differentiated according to whether or not the consent of the Minister is required to the dealing concerned. Consequential amendments are made by

**Schedule 3 [7]**.

**Schedule 3 [35]** inserts new definitions of *dealing* in an access licence or holding in an access licence, *general dealing*, *dealing on default* and *assignment dealing*. General dealings are essentially the dealings described in existing sections 71B–71F, 71H and 71J (which are renumbered by

**Schedule 3 [25]** as sections 71O–71S, 71U and 71W) and include a new form of dealing, the term transfer (proposed section 71N—**Schedule 3 [6]**). A term transfer of a water licence is similar to a lease of land. Assignment dealings are essentially the dealings described in existing sections 71G and 71I (which are renumbered by **Schedule 3 [25]** as sections 71T and 71V). Dealings on default are a new form of dealing (proposed section 71X—**Schedule 3 [21]**) that enables a security holder (or receiver referred to in section 115A of the *Conveyancing Act 1919*) to take action to transfer a licence or holding in a licence over which a registered security interest is held when the holder of the licence or holding defaults in payment of any debt or obligation secured by the security interest.

The section specifies certain action that must be taken before such a transfer can take place, including giving notice to the defaulter and an opportunity to rectify the default and attempting to obtain the highest possible amount for the licence or holding by sale. Failure to take the action as specified can lead to proceedings in the Land and Environment Court to prohibit registration of the transfer or to obtain compensation for resultant loss.

#### **Security interests over access licences and holdings in access licences**

**Schedule 3 [5]** inserts proposed section 71D to provide for the creation of registered security interests over access licences and holdings in access licences that are held as tenants in common. A registered security interest is created by execution of an instrument in the approved form evidencing the existence of a security interest over the licence or holding and registration of the security interest by recording it in the Access Register. The security interest is only effective once recorded in the Access Register. Proposed section 71D (3) provides for registration of the security interest to be dutiable under Chapter 7 of the *Duties Act 1997*. Proposed section 71D does not apply to a security interest arising from an existing mortgage over land referred to in clause 19 of Schedule 10. (Clause 19 sets out a separate scheme for registration of interests in the nature of security interests in certain entitlements held under the *Water Act 1912* and other Acts to be repealed by the Principal Act.) Consequential amendments are made by **Schedule 3 [36]** to insert definitions of **security holder** and **security interest**.

Proposed Schedule 1A (**Schedule 3 [34]**) sets out in detail requirements for registration of security interests (proposed clause 3) and provides for an earlier registered security interest to have priority, for all purposes, over a later registered security interest (proposed clause 4).

A new form of dealing, a dealing on default (proposed section 71X—**Schedule 3 [21]**), enables a security holder (or receiver referred to in section 115A of the *Conveyancing Act 1919*) to take action to transfer a licence or holding in a licence over which a registered security interest is held when the holder of the licence or interest defaults in payment of any debt or obligation secured by the security interest (see above under the heading “Dealings in access licences”). Provision is also made to enable security holders to protect their interests over a licence or holding by lodgment of caveats (see below).

#### **Caveats**

Proposed sections 71E and 71F (**Schedule 3 [5]**) provide for the recording of caveats on access licences and holdings in access licence on the application of holders and co-holders of the licences and holdings, security holders, parties to dealings and prospective dealings in licences and holdings and persons who claim entitlements to the licence or holding by a devolution under proposed section 72. While a caveat remains in force the Minister is prohibited from recording any general dealing, security interest or change in co-holder’s tenancy arrangements in the licence or holding that interferes with the entitlements or rights in respect of the licence or holding claimed by the caveator. Part 2 of proposed Schedule 1A (**Schedule 3 [34]**) contains more detailed provisions about caveats, including provision for the withdrawal of caveats, duration of caveats, notifying the caveator when certain dealings, security interests and other matters are lodged with the Minister for recording in the Access Register and the compensation payable by a caveator in certain circumstances where loss is caused because of the caveat.

#### **Devolution of, and tenancy arrangements and other matters relating to, access licences**

**Schedule 3 [26]** inserts proposed sections 72 and 73.

Proposed section 72 enables a person to whom an access licence or holding in an access licence has devolved by operation of law (for example, a person entitled to a licence or holding through a will or on intestacy, as survivor of a licence or holding held by joint tenants or by court order) to apply to be recorded in the Access Register as the holder or co-holder of the licence or holding. An access licence may be co-held as joint tenants, tenants in common or under other arrangements recorded in the Access Register when a licence that is granted is recorded in the Register. Proposed section 73 enables the co-holder of

an access licence to apply to the Minister to record in the Access Register any alteration in the way in which the licence is held by co-holders.

#### **Duties Act 1997**

Proposed section 88 (3) (**Schedule 3 [30]**) enables regulations to be made excluding a specified class of licence granted under the Principal Act from the operation of section 11 (1) (h) of the *Duties Act 1997*.

#### **Schedule 4 Amendments relating to access licences and approvals**

##### **Categories and grant of access licences**

**Schedule 4 [3]** enables the share component of an access licence to be expressed as a specified number of units.

**Schedule 4 [4]** substitutes section 57 of the Principal Act, which sets out the categories of access licence, to include a further category of a regulated river (conveyance) access licence and to make it clear that the regulations may prescribe subcategories of access licence. A new concept of a **specific purpose access licence** is introduced (**Schedule 4 [51]**) which means a major utility access licence, a local water utility access licence, a domestic and stock access licence, an access licence of a subcategory of access licence or an access licence of a type that is declared by the regulations to be a specific purpose access licence. The Minister is to impose a condition when granting a specific purpose access licence that the licence is to be used only for the purpose for which it was granted (**Schedule 4 [11]**).

**Schedule 4 [6]** limits the circumstances in which an application may be made for an access licence. The existing provisions enable applications to be made for an access licence subject only to there being no embargo under Division 7 of Part 2 of Chapter 3 on the making of the application or no order of the Minister under section 65 declaring that certain access licences are to be allocated by auction, tender or other specified means. Proposed section 61 (1) provides that a person may only apply for certain types of access licence where the regulations enable, or a water management plan enables, an application to be made, or the application is for an access licence with a zero share component or the person has acquired a right to apply for the licence under section 65. Certain other applications are permitted under the savings and transitional provisions (see **Schedule 6**). **Schedule 4 [21]** omits the provisions relating to embargoes on access licences.

**Schedule 4 [9]** substitutes section 65 so as to enable the Minister to make an order declaring that the right to apply for certain access licences is to be acquired by auction, tender or other means specified in the order. The proposed section also enables the Minister to grant an access licence to the Minister, a catchment management authority or other public body in accordance with a water management plan with a condition attached that water credited to the licence is to be used for environmental purposes either generally or at specified times or in specified circumstances. **Schedule 4 [10]** makes a consequential amendment.

##### **Duration, surrender, suspension and cancellation of access licences**

**Schedule 4 [13]** provides that an access licence remains in force until it is cancelled. The existing provisions provide for access licences to remain in force for specified periods and provide for renewals. **Schedule 4 [5], [7], [8], [25] and [48]** remove references to renewals of access licences as there will no longer be renewals.

**Schedule 4 [15]** provides that if an access licence is surrendered the Minister is to be recorded as the holder of the licence and the Minister may subsequently deal with the licence.

**Schedule 4 [16]** inserts proposed section 77A which sets out circumstances in which particular types of access licences can be cancelled. For example, a

supplementary access licence is to be cancelled when the relevant water management plan ceases to make provision for the extraction of water under the licence and a specific purpose access licence can be cancelled if the Minister is of the opinion that the purpose for which it was granted no longer exists. The existing grounds of suspension and cancellation remain for failure to comply with conditions, commission of certain offences and failure to pay charges.

**Schedule 4 [17]** expands those existing grounds to include failure to pay fees and civil penalties in respect of the access licence. **Schedule 4 [19]** contains a consequential amendment.

**Schedule 4 [20]** requires notice to be given to the holder of an access licence and the holder of any registered security interest in the access licence of the Minister's intention to suspend or cancel the licence.

**Schedule 4 [18]** sets out the effect of a suspension of an access licence.

#### **Register of available water determinations and water allocation accounts**

**Schedule 4 [22]** inserts a new Division 8A into Part 2 of Chapter 3 of the Principal Act (proposed sections 84–85B) which replaces the existing provisions relating to the register of available water determinations and the keeping of water allocation accounts for access licences.

Proposed section 84 mirrors existing section 84 relating to the register of available water determinations.

Proposed section 85 requires an account to be kept in respect of each access licence to which water is credited or from which water is debited from time to time in accordance with the Principal Act. New provisions are included dealing with the crediting of water to new access licence accounts and the accounting for water acquired by the holder of an access licence as a result of the early release of water by Snowy Hydro Limited in accordance with arrangements entered into with the Minister.

Existing section 85 enables the Minister, if a water management plan provides, to withdraw water because of dam spillage or evaporation from amounts in a water allocation account carried over from one accounting period to another.

Proposed section 85 provides that the Minister can make withdrawals in accordance with a water management plan. **Schedule 4 [1]** enables a water management plan to include provisions relating to withdrawal of water from accounts because of dam spillage or evaporation or in any other circumstances prescribed by the regulations.

Proposed section 85A enables the Minister, by order, to make arrangements for the taking of water from uncontrolled flows, in accordance with water management plans, by the holders of certain types of access licences.

Proposed section 85B enables the Minister, if satisfied that the holder of an access licence has illegally taken water, to debit the holder's account with up to 5 times the amount of the water taken and to impose a civil penalty of up to 5 times the amount of the fees or charges for the water. **Schedule 4 [45]** provides for an appeal against such a decision to be made to the Land and Environment Court.

**Schedule 4 [52]** makes a consequential amendment.

#### **Liability for and recovery of fees, charges and civil penalties in respect of access licences**

**Schedule 4 [43]** inserts proposed Division 2 (sections 362A–362C) into Part 4 of Chapter 7 of the Principal Act relating to the liability for payment, and the recovery of, fees, charges and civil penalties in respect of access licences.

Proposed section 362A provides for the liability of joint owners of an access licence to pay fees, charges and civil penalties.

Proposed section 362B enables the Minister to give a certificate to an applicant

stating what amounts of fees, charges and civil penalties are outstanding in respect of an access licence.

Proposed section 362C enables the Minister to recover outstanding fees, charges and civil penalties from the holder of the access licence who incurred them or from the current holder of the access licence. The proposed section also provides that if a person surrenders an access licence the person remains liable for the outstanding fees, charges and civil penalties in respect of the access licence.

**Schedule 4 [40], [42] and [47]** make consequential amendments.

#### **Granting, duration, amendment, surrender, suspension and cancellation of approvals**

**Schedule 4 [30]** makes it clear that the Minister may grant combined approvals.

**Schedule 4 [31]** substitutes section 102 of the Principal Act to enable the Minister to vary a condition of an approval rather than having to substitute the condition.

**Schedule 4 [32]** changes the periods for which an approval remains in force.

Generally, approvals will be granted for periods not exceeding 10 years.

Approvals granted to major utilities or local water utilities have effect for a period of 20 years (proposed section 104).

Provisions relating to renewals are removed and instead provision is made for the granting of extensions of the periods for which approvals remain in force (proposed section 105). **Schedule 4 [29], [37], [38] and [49]** make consequential amendments.

The current provisions provide that a water use approval or water management work approval is taken to be held by each successive landholder of the land benefited by the approval. **Schedule 4 [33] and [34]** extend those provisions to all types of approvals and enable exemptions to be prescribed by the regulations.

**Schedule 4 [35]** substitutes section 107 which currently enables amendment of a water management work approval on application so as to enable all types of approval to be amended on application. Certain restrictions apply where an amendment would extend the operation of the approval to additional land.

**Schedule 4 [36]** includes additional grounds for cancellation of certain types of approvals.

#### **Aquifer interference approvals**

An aquifer interference approval may be granted to authorise the carrying out of aquifer interference activities. **Schedule 4 [50]** substitutes the definition of ***aquifer interference activity*** so as to include the taking of water from an aquifer in the course of carrying out mining or any other activity prescribed by the regulations and the disposal of such water. **Schedule 4 [28]** makes a consequential amendment.

#### **Interstate arrangements in relation to access licences and approvals**

**Schedule 4 [14]** enables a water supply work situated in another State or Territory to be nominated for an access licence in accordance with an interstate arrangement authorised by the Principal Act.

**Schedule 4 [27]** provides that a water use approval may authorise the use of water within New South Wales taken from a water source outside New South Wales.

**Schedule 4 [41]** provides that a person is not guilty of an offence of illegally taking water if the person is taking the water in accordance with an interstate agreement authorised under the Principal Act.

**Schedule 4 [46]** enables the Minister to enter into arrangements with the Minister of another State or Territory in relation to the carrying out of administrative functions in circumstances referred to in the previous two paragraphs.

#### **Miscellaneous amendments relating to access licences and approvals**

**Schedule 4 [2] and [26]** make amendments to enable greater flexibility in the declarations stating the parts of the State to which the provisions of the Principal Act relating to access licences and approvals apply.

**Schedule 4 [12]** enables the Minister to amend the share component or extraction component of an access licence in accordance with a water management plan.

**Schedule 4 [24]** provides that no compensation is payable by or on behalf of the Crown in relation to the suspension or cancellation of an access licence or certain recordings in the Access Register. **Schedule 4 [23]** makes a consequential amendment.

**Schedule 4 [39]** makes it clear that the Minister can waive or reduce any fee or charge imposed under the Principal Act.

**Schedule 4 [44]** provides for an appeal against a refusal of the Minister to grant consent to a dealing with respect to an access licence to be made to the Land and Environment Court.

#### **Schedule 5 Miscellaneous amendments**

**Schedule 5 [1]** enables the Minister to make available water determinations in relation to one or more individual access licences (rather than to classes of access licences) in cases of severe water shortage. **Schedule 5 [2] and [3]** make consequential amendments.

**Schedule 5 [4]** changes the rules of distribution applying to the making of an available water determination in times of severe water shortage. The rules of distribution set out the priority that the various classes of persons have in relation to the taking of available water.

**Schedule 5 [5] and [6]** omit provisions that provide that a recommendation for the inclusion of land in or exclusion of land from an irrigation corporation's area of operations cannot be made to the Governor by the Minister unless the inclusion or exclusion is agreed to by such number or proportion of the corporation's shareholders as may be prescribed by the regulations.

**Schedule 5 [7]** gives greater flexibility to the times at which an election of the members of a private irrigation board must be held.

**Schedule 5 [8]** enables the Governor to fill casual vacancies whenever arising in the membership of a private irrigation board. **Schedule 5 [9]** makes a consequential amendment.

**Schedule 5 [10] and [12]** make amendments by way of statute law revision to change outdated references.

**Schedule 5 [11] and [14]** update cross references as result of other amendments made by the proposed Act.

**Schedule 5 [13]** includes irrigation corporations in the protection from personal liability provisions.

**Schedule 5 [15]** substitutes Schedule 8.29 [10] to the Principal Act. The effect of the substitution is merely to update a reference to a provision which is being transferred from the existing Schedule 9 to the new Schedule 10.

#### **Schedule 6 Savings and transitional amendments**

##### **Introduction**

Savings and transitional provisions are currently contained in Schedule 9 to the Principal Act. That Schedule includes uncommenced provisions with respect to the conversion of former entitlements (that is, rights under the *Water Act 1912*, the *Rivers and Foreshores Improvement Act 1948* and the repealed *Irrigation Corporations Act 1994*) to access licences and approvals. The proposed Act repeals the uncommenced provisions and replaces them with new provisions. Because of their number and the fact that they are subject to a staged commencement (parallel to the staged commencement of Parts 2 and 3 of Chapter 3 of the Principal Act), the new provisions are contained in proposed

Schedules 10 and 11. Other savings and transitional provisions consequent on the enactment of the proposed Act, being provisions dealing with matters other than the conversion of former entitlements, are included in proposed Part 4 to Schedule 9.

**Schedule 6 [1]** amends clause 1 of Schedule 9 so as to enable the regulations under the Principal Act to make provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 6 [2]–[6]** repeal the uncommenced provisions of Schedule 9 that are being replaced by Schedules 10 and 11 and make consequential amendments to that Schedule.

**Schedule 6 [7]** inserts proposed Part 4 into Schedule 9.

**Schedule 6 [8]** inserts proposed Schedules 10 and 11 into the Principal Act. Schedule 10 contains the substantive provisions with respect to the conversion of former entitlements to access licences and approvals. Schedule 11 comprises a table that identifies the category and subcategory of access licence that arise from each former entitlement.

#### **Conversion of former entitlements to access licences and approvals**

As referred to above, the substantive provisions are contained in proposed Schedule 10, which comprises 4 Parts:

Part 1 contains clauses 1 and 2. Clause 1 applies the proposed Schedule to those access licences and approvals to which Parts 2 and 3 of Chapter 3 of the Principal Act apply by virtue of proclamations under sections 55A and 88A. Clause 2 is a definitions clause for the purposes of proposed Schedules 10 and 11.

Part 2 comprises 3 Divisions, dealing with:

- (a) the actual conversion of former entitlements (Division 1), and
- (b) the continuation in respect of new access licences of security interests held in respect of former entitlements (Division 2), and
- (c) other matters relevant to access licences and approvals that have arisen from former entitlements (Division 3).

Part 3 comprises 3 Divisions, dealing with:

- (a) the restricted application of certain offence provisions with respect to access licences and approvals (Division 1), and
- (b) the continued effect (in their unamended form) of certain provisions of other Acts that have been amended by Schedule 8 to the Principal Act (Division 2), and
- (c) the restricted application of provisions of the *Water Act 1912*, the *Rivers and Foreshores Improvement Act 1948* and the *Irrigation Corporations Act 1994* in relation to matters to which Part 2 or 3 of Chapter 3 of the Principal Act applies (Division 3).

Part 4 contains miscellaneous provisions with respect to the enforcement of debts and other matters relevant to access licences arising from former entitlements.

#### **Other savings and transitional provisions**

As referred to above, these are included in proposed Part 4 of Schedule 9. They include the following:

- (a) savings provisions with respect to existing management plans (proposed clauses 61–65),
- (b) a provision that enables applications for access licences to be made in certain circumstances which are additional to the circumstances set out in proposed section 61 (proposed clause 66),
- (c) a provision to translate references in existing instruments to sections of the Principal Act that are to be renumbered by the proposed Act (clause 67),
- (d) provisions to continue in force certain directions under sections of the Principal Act that are being amended or substituted by the proposed Act

(clauses 68 and 69).

**Schedule 7 Amendment of other Acts and instrument**

Schedule 7 amends other Acts and an instrument consequential on the amendments to the *Water Management Act 2000*.

**Schedule 7.1** contains amendments to the *Catchment Management Authorities Act 2003*. **Schedule 7.1 [1]** refers to the water management functions of catchment management authorities conferred under the *Water Management Act 2000*, as amended by the proposed Act.

**Schedule 7.1 [2]** enables catchment action plans of catchment management authorities to deal with water quality and the non-regulatory management issues.

**Schedule 7.1 [3] and [4]** provide for the establishment and operation of Environmental Water Trust Funds by catchment management authorities in connection with their environmental water functions. Under the proposed amendments:

- (a) **environmental water functions** are defined (including in particular the acquisition of adaptive environmental water), and
- (b) separate trust funds are established for money provided for environmental water functions and the proceeds of dealings in water access licences held by authorities, and
- (c) provisions relating to environmental water functions are to be included in catchment action plans.

**Schedule 7.2 and 7.4** make consequential and other amendments to the *Conveyancing Act 1919* and the *Privacy and Personal Information Protection Regulation 2000* as referred to in the Outline to Schedule 3. **Schedule 7.3** makes a consequential amendment to the *Land and Environment Court Act 1979*.