

## State Water Corporation Bill 2004

### Explanatory note

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

#### Overview of Bill

The objects of this Bill are:

- (a) to establish State Water Corporation (the **Corporation**) as a State owned corporation under the *State Owned Corporations Act 1989* and to set out its principal objectives and functions, and
- (b) to make provision for the transfer of assets, rights, liabilities and staff between the State and the Corporation, and
- (c) to provide the Corporation with certain powers, including powers of entry on land and the power to compulsorily acquire land, and
- (d) to provide the Independent Pricing and Regulatory Tribunal (the **Tribunal**) with certain functions in relation to the Corporation, including regulatory and auditing functions, and
- (e) to make consequential amendments to other Acts, and
- (f) to enact consequential savings and transitional provisions.

#### Outline of provisions

##### Part 1 Preliminary

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

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

**Clause 3** defines certain words and expressions used in the proposed Act.

##### Part 2 State Water Corporation

###### Division 1 Constitution of State Water Corporation as statutory SOC

**Clause 4** constitutes State Water Corporation as a State owned corporation under the *State Owned Corporations Act 1989*. That Act provides for certain matters relating to a State owned corporation.

###### Division 2 Objectives and functions of State Water Corporation

**Clause 5** provides a number of objectives for the Corporation. The principal objectives of the Corporation are to capture, store and release water in an efficient, effective, safe and financially responsible manner.

**Clause 6** provides for the principal functions of the Corporation, which include the capture, storage and release of water, the construction, maintenance and operation of water management works and any functions conferred or imposed on the Corporation by the operating licence or by or under the proposed Act or any other Act or law. The Corporation also has certain ancillary functions. The exercise by the Corporation of any of its functions is subject to the operating licence and any requirements under the *Water Management Act 2000* or the *Water Act 1912*.

###### Division 3 Management of State Water Corporation

**Clause 7** makes provision for the appointment of the board of directors of the Corporation.

**Clause 8** makes provision for the appointment of a person to be the chief executive officer of the Corporation.

**Clause 9** makes provision for the appointment of a person to act in the office of the chief executive officer of the Corporation during the illness or absence of the chief executive officer.

###### Division 4 Transfer of assets, rights and liabilities

**Clause 10** enables the Minister, with the concurrence of the voting shareholders

of the Corporation, to transfer specified assets, rights and liabilities of the Water Administration Ministerial Corporation (the **Ministerial Corporation**), the State or a public or local authority to the Corporation. The Minister may also direct, with the concurrence of the voting shareholders, that specified assets, rights and liabilities of the Corporation be transferred to the Ministerial Corporation or to another person or body on behalf of the State. The Minister is not to make an order under the proposed section unless the relevant person or body from whom, or to whom, the assets, rights or liabilities are to be transferred has consented to the transfer.

#### **Division 5 Operating licence**

**Clause 11** permits the Governor, on the recommendation of the portfolio Minister, to grant an operating licence to the Corporation to enable the Corporation to carry out its functions.

**Clause 12** provides that the operating licence is subject to the terms and conditions determined by the Governor, on the recommendation of the portfolio Minister, but must include certain terms or conditions. The terms and conditions of the operating licence may confer on the Corporation specified functions of the Minister administering the *Water Management Act 2000* under that Act or the *Water Act 1912* or of the Ministerial Corporation under any Act or law, but only if the Minister administering the *Water Management Act 2000* or the Premier provides his or her concurrence to the conferral of the functions.

**Clause 13** permits the Governor, on the recommendation of the portfolio Minister, to amend or substitute the operating licence or to impose, amend or revoke conditions of the operating licence.

**Clause 14** provides for the term of the operating licence and for the renewal of the operating licence by the Governor.

**Clause 15** sets out the area of operations of the Corporation, being the whole of the State other than certain specified areas. However, the operating licence may authorise the Corporation to carry out its functions outside the area of operations in certain circumstances.

**Clause 16** provides that if, in the opinion of the portfolio Minister, the Corporation contravenes the operating licence, the portfolio Minister may cause a notice to be served on the Corporation requiring it to rectify the contravention within a specified period and the Governor may direct that the Corporation pay a monetary penalty of an amount to be determined by the Governor whether or not a notice has been served or the contravention rectified.

**Clause 17** provides that the Tribunal may impose a monetary penalty on the Corporation if the Corporation contravenes the operating licence. The monetary penalty that the Tribunal may impose under the proposed section must not exceed \$10,000 for the first day on which the contravention concerned occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues. The Tribunal must not take action under the proposed section in respect of a contravention if any action has already been taken under proposed section 16 in respect of the contravention.

**Clause 18** permits the Corporation to apply to the Administrative Decisions Tribunal for a review of a decision of the Tribunal to take action under proposed section 17 in relation to the Corporation.

**Clause 19** provides for the cancellation by the Governor of the Corporation's operating licence in certain circumstances and the subsequent divesting of the assets, rights and liabilities of the Corporation.

#### **Division 6 General**

**Clause 20** provides that for the purposes of the *State Owned Corporations Act 1989*, the foundation charter of the Corporation is Part 2 of the proposed Act.

### **Part 3 Powers of State Water Corporation**

**Clause 21** provides that the Corporation is the owner of all works installed by the Corporation or vested in or transferred to the Corporation (whether or not the land on which the works are placed is owned by the Corporation). The Corporation may, for purposes consistent with its objectives build or install works and do other things that are necessary or appropriate to its works (including repairs and maintenance) and otherwise deal with works that it owns.

**Clause 22** provides that the Corporation may acquire land (or an interest in land) by agreement or compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* for the purposes of the proposed Act.

**Clause 23** provides that the Corporation has, for the purposes of the proposed Act, the powers of entry on land that a water supply authority has under sections 296 and 297 of the *Water Management Act 2000*.

**Clause 24** confers on the Corporation the power to open and break up public roads or reserves for the purpose of exercising its functions.

**Clause 25** confers on the Corporation a power to require a person to alter the position of a conduit if the Corporation needs such an alteration to exercise its functions and the alteration would not permanently damage the conduit or adversely affect its operation. The Corporation may make the alteration if it is not made as required.

**Clause 26** provides that the Corporation may authorise devices, for generating electricity from water released in the exercise of the Corporation's functions under the proposed Act, to be placed on or in any of its water management works.

**Clause 27** permits the Corporation to demolish or remove any structure or thing placed by a person so as to interfere with the Corporation's water management works and to recover the cost of doing so, and of repairs to the works, from that person.

**Clause 28** permits the Corporation to dig up the ground to try to find the source of pollution of water supplied by the Corporation.

**Clause 29** provides that the Corporation may impose fees and charges on any person to whom the Corporation provides a service in the exercise of its functions.

#### **Part 4 Independent Pricing and Regulatory Tribunal**

**Clause 30** sets out the regulatory functions of the Tribunal under the proposed Act.

**Clause 31** requires the Tribunal to prepare operational audits of the Corporation at the times directed by the Minister.

#### **Part 5 Miscellaneous**

**Clause 32** permits the Corporation to appoint authorised officers for the purpose of exercising such of its functions as are described in the officers' certificates of authority. An authorised officer may be appointed to issue penalty notices with respect to certain offences under the *Water Management Act 2000*.

**Clause 33** creates an offence (Maximum penalty: 50 penalty units in the case of a corporation and 20 penalty units in any other case) if a person obstructs or hinders an authorised officer in the exercise of the authorised officer's functions.

**Clause 34** provides for the exclusion of personal liability for certain persons acting in good faith for the purpose of executing the proposed Act or any other Act.

**Clause 35** provides for proceedings for offences under the proposed Act or regulations.

**Clause 36** is a formal provision giving effect to Schedule 2.

**Clause 37** empowers the Governor to make regulations for the purposes of the proposed Act. The regulations may create offences punishable by a penalty not exceeding 50 penalty units (in the case of an individual) or 100 penalty units (in

any other case).

**Clause 38** is a formal provision giving effect to Schedule 3.

**Clause 39** is a formal provision giving effect to Schedule 4.

**Clause 40** requires the proposed Act to be reviewed at the end of 5 years from its date of assent.

**Schedule 1 Transfer of assets, rights and liabilities**

**Schedule 1** sets out the provisions that are to apply to the transfer of assets, rights and liabilities under the proposed Act.

**Schedule 2 Transfer of staff**

**Schedule 2** sets out the provisions that are to apply to the transfer of staff under the proposed Act.

**Schedule 3 Amendment of Acts and regulations**

**Schedule 3** amends the following legislation consequent on the enactment of the proposed Act:

- (a) *Catchment Management Authorities Act 2003*,
- (b) *Conveyancing (General) Regulation 2003*,
- (c) *Dams Safety Act 1978*,
- (d) *Environmental Planning and Assessment Act 1979*,
- (e) *First State Superannuation Act 1992*,
- (f) *Heritage Act 1977*,
- (g) *Independent Pricing and Regulatory Tribunal Act 1992*,
- (h) *Local Government Act 1993*,
- (i) *Murray–Darling Basin Act 1992*,
- (j) *Pipelines Act 1967*,
- (k) *Public Finance and Audit Act 1983*,
- (l) *Public Health Act 1991*,
- (m) *Residential Parks Act 1998*,
- (n) *Roads (General) Regulation 2000*,
- (o) *State Authorities Non-contributory Superannuation Act 1987*,
- (p) *State Authorities Superannuation Act 1987*,
- (q) *Strata Schemes (Freehold Development) Act 1973*,
- (r) *Strata Schemes (Leasehold Development) Act 1986*,
- (s) *Superannuation Act 1916*,
- (t) *Water Act 1912*,
- (u) *Water Management Act 2000*.

**Schedule 4 Savings, transitional and other provisions**

**Schedule 4** contains savings, transitional and other provisions consequent on the enactment of the proposed Act, including a provision (clause 1) that allows the regulations under the proposed Act to make further provision of a savings or transitional nature.