

SECOND PRINT

WATER (AMENDMENT) BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Water Administration Bill 1986.

The objects of this Bill are—

- (a) to amend the Water Act 1912 as a consequence of the constitution, by the proposed Water Administration Act 1986, of the Water Administration Ministerial Corporation ("the Ministerial Corporation") to replace the Water Resources Commission;
- (b) to make further provision with respect to volumetric water allocation schemes;
- (c) to make further provision with respect to rates and charges imposed by or under the Water Act 1912;
- (d) to enable a person who is entitled to take a water allocation from a water source subject to a volumetric water allocation scheme to transfer all or part of the water allocation to another person so entitled; and
- (e) to enable the Ministerial Corporation to sell water allocations of additional water that has become available because, for example, a new dam has been constructed.

Clause 1 specifies the short title of the proposed Act.

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Clause 2 provides for the commencement of the provisions of the proposed Act. The majority of them (except those relating to the transfer or sale of water allocations which will commence on a proclaimed day) will commence at the same time as the proposed Water Administration Act 1986.

Clause 3 is a formal provision giving effect to the amendments to the Water Act 1912 that are specified in Schedules 1-10.

Clause 4 provides for the transition to the Ministerial Corporation of responsibility for past actions under the Water Act 1912 of its predecessors and the Minister, that still had effect immediately before the commencement of the proposed Act and it validates those prior actions except in relation to certain current litigation.

SCHEDULE 1—AMENDMENTS TO PART I OF THE WATER ACT 1912

Schedule 1 (1) omits the Table showing the division of the Water Act 1912 into Parts and Divisions.

Schedule 1 (2) inserts a definition of "Ministerial Corporation".

Schedule 1 (3)-(8) repeals sections 4A-4F of the Water Act 1912 dealing largely with the right to the use and flow, and the control, of the water in rivers and lakes. The substance of these sections will now appear in the proposed Water Administration Act 1986.

SCHEDULE 2—AMENDMENTS TO PART II OF THE WATER ACT 1912

Schedule 2 (1) clarifies and extends the definitions of "Occupier", "River" and "Work to which this Part extends".

Schedule 2 (2) amends the provisions conferring limited rights to take water from a river or lake without a licence. The amendments enable the maximum capacity of a pump or dam to which the provisions apply to be fixed by regulation and enables the regulations to prescribe a particular manner of taking or using water as being wasteful.

Schedule 2 (3) makes an amendment consequential upon the replacement of the Water Resources Commission by the Ministerial Corporation.

Schedule 2 (4) enables the Ministerial Corporation to consider an application for renewal of a licence after it has expired and, in such a case, retrospectively validates continuation of the licence during the intervening period.

Schedule 2 (5) makes provision for the renewal of a permit similar to the provision made by Schedule 2 (4) in relation to a licence.

Schedule 2 (6) makes an amendment consequential upon the replacement of the Water Resources Commission by the Ministerial Corporation.

Schedule 2 (7) makes provision for the renewal of an authority under section 20C similar to the provision made by Schedule 2 (4) in relation to a licence.

Schedule 2 (8) makes provision for the renewal of an authority under section 20CA similar to the provision made by Schedule 2 (4) in relation to a licence.

Schedule 2 (9) and (10) makes an amendment consequential upon the replacement of the Water Resources Commission by the Ministerial Corporation.

Schedule 2 (11) makes provision for the renewal of a group licence similar to the provision made by Schedule 2 (4) in relation to a licence.

Schedule 2 (12) clarifies certain definitions and, by amending the definition of "year" enables a year for the purposes of a water allocations scheme to be a year other than that commencing on 1 July.

Schedule 2 (13) enables the Governor to modify an existing water allocation scheme.

Schedule 2 (14) enables the Ministerial Corporation in preparing or modifying a water allocations scheme to take into account the quantity of water that should be reserved for future use or for use otherwise than by the authority of a licence, permit, authority or group licence ("an entitlement").

Schedule 2 (15) enables the Ministerial Corporation to increase the water allocation for an entitlement in one year and correspondingly decrease it in the following year, with power to waive the decrease.

Schedule 2 (16)—

- (a) enables the Ministerial Corporation, in deciding whether to place an embargo on further applications for entitlements to take water from a particular water source, to take into account not only the requirements under existing entitlements but also other possible requirements;
- (b) prevents an increase in water allocation that is sought to be achieved by amending after an embargo an application for an entitlement made, but not determined, before the embargo; and
- (c) invalidates (it is being argued that the present provision merely defers) an application for an entitlement made during an embargo.

Schedule 2 (17) amplifies the powers of the Ministerial Corporation to reduce water allocations during water shortages.

Schedule 2 (18) enables the Ministerial Corporation to authorise a disregard of water allocations in times when there is a surplus of water in the water source.

Schedule 2 (19) renders guilty of a fraud relating to a water meter a person who suffers commission of the fraud in addition to a person who permits or directs it.

Schedule 2 (20) amends section 20AD (which deals with water allocations following a subdivision of land) by extending its provisions to cover permits and group licences as well as licences and authorities.

Schedule 2 (21) amends section 20AE (which confers a power of entry) as a consequence of the replacement of the Water Resources Commission by the Ministerial Corporation and confers a further power to dismantle for inspection a water meter or other measuring device.

Schedule 2 (22) inserts a proposed section 20AF enabling the Ministerial Corporation to introduce more flexibility into the procedures for ordering water.

Schedule 2 (23) inserts a proposed section 22BA which enables the Ministerial Corporation to place an embargo on applications for entitlements to take water from a water source even though the water source is not the subject of a water allocations scheme.

Schedule 2 (24) clarifies the provisions relating to the periods in respect of which certain charges for water are to be paid, provides for daily interest on charges due and unpaid and creates a charge on the relevant land for the amount unpaid.

Schedule 2 (25)—

- (a) authorises the making of regulations for a scheme providing for the transfer of rights between the holders of entitlements to take water from a water source that is not the subject of a water allocation scheme; and
- (b) introduces greater flexibility in the making of regulations.

SCHEDULE 3—AMENDMENTS TO PART III OF THE WATER ACT 1912

Schedule 3 (1) makes an amendment consequential on the establishment by the proposed Water Administration Act 1986 of a Department of Water Resources.

Schedule 3 (2) authorises the withholding of water supplies upon failure to pay certain rates.

Schedule 3 (3) provides for the payment of interest on overdue rates and charges.

Schedule 3 (4) makes an amendment consequential upon the replacement of the Water Resources Commission by the Ministerial Corporation.

Schedule 3 (5) introduces greater flexibility in the making of regulations.

SCHEDULE 4—AMENDMENTS TO PART V OF THE WATER ACT 1912

Schedule 4 (1) amends the definition of sub-surface water to extend it to all water under the surface of the ground, whether or not it occurs naturally.

Schedule 4 (2) enables a year other than a year commencing on 1 July to be used in relation to certain charges and provides for the payment of daily interest on unpaid charges.

Schedule 4 (3) includes interest on unpaid charges in the amount charged on land.

Schedule 4 (4) inserts—

- (a) proposed section 121A which creates offences relating to interference with sub-surface water and the obstruction of its flow;
- (b) proposed section 121B which authorises the Ministerial Corporation to deal with obstructions to the flow of sub-surface water and unlicensed bores; and
- (c) proposed section 121C which provides for the sharing between the owner and occupier of land of the costs of dealing with an obstruction to the flow of sub-surface water.

Schedule 4 (5) introduces greater flexibility in the making of regulations.

SCHEDULE 5—AMENDMENTS TO PART VI OF THE WATER ACT 1912

Schedule 5 (1)–(3) makes an amendment consequential upon the replacement of the Water Resources Commission by the Ministerial Corporation.

Schedule 5 (4) provides for the payment of daily interest on rates and charges.

Schedule 5 (5) deals with the payment of charges for additional rates.

Schedule 5 (6) includes maintenance charges and interest on unpaid charges in the amount that is a charge on land.

Schedule 5 (7) removes the period of 6 months grace before there is a liability for disconnection of a water supply for unpaid charges and also makes amendments consequential upon the replacement of the Water Resources Commission by the Ministerial Corporation.

Schedule 5 (8) makes amendments consequential upon the replacement of the Water Resources Commission by the Ministerial Corporation.

Schedule 5 (9) makes amendments consequential upon the abolition of the Water Resources Commission.

Schedule 5 (10) introduces greater flexibility in the making of regulations.

SCHEDULE 6—AMENDMENTS TO PART VII OF THE WATER ACT 1912

Schedule 6 (1) repeats, for the purposes of Part VII, the new definition of “River” inserted in Part II by Schedule 2 (1).

Schedule 6 (2) and (3) authorises the Governor to revoke certain proclamations.

Schedule 6 (4) and (5) makes amendments consequential upon the replacement of the Water Resources Commission by the Ministerial Corporation.

Schedule 6 (6) makes amendments relating to the due date for payment of rates and providing for the payment of daily interest on unpaid rates.

Schedule 6 (7) introduces greater flexibility in the making of regulations.

SCHEDULE 7—AMENDMENTS TO PART VIII OF THE WATER ACT 1912

Schedule 7 (1) repeats, for the purposes of Part VIII, the new definition of “River” inserted in Part II by Schedule 2 (1).

Schedule 7 (2) makes an amendment consequential upon the replacement of the Water Resources Commission by the Ministerial Corporation.

SCHEDULE 8—AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE DURATION OF ENTITLEMENTS

This Schedule amends the provisions of the Act relating to the period for which the various entitlements to take and use water may be granted or renewed. In each case, this is at present a period not exceeding 10 years and the amendments will enable this to be varied by regulations.

SCHEDULE 9—AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE TRANSFER OF WATER ALLOCATIONS

This Schedule inserts a proposed Division 4C in Part II of the Water Act 1912 comprising proposed sections 20AG–20AM.

Proposed section 20AG provides for the new Division to be construed with, and as if it formed part of, Division 4B which deals with volumetric water allocation schemes.

Proposed section 20AH authorises the holder of an entitlement, with the consent of the Ministerial Corporation, to transfer all or part of the water allocation for the entitlement.

Proposed section 20AI provides for the procedures to be adopted in order to obtain approval to transfer a water allocation.

Proposed section 20AJ requires a form of transfer to be lodged with, and the prescribed fee paid to, the Ministerial Corporation in order to effect a transfer of a water allocation.

Proposed section 20AK provides for the cancellation of a superseded entitlement following transfer of a water allocation.

Proposed section 20AL enables the Ministerial Corporation to purchase, and obtain a surrender of, a water allocation.

Proposed section 20AM lifts, in relation to an application for an entitlement for the purpose of transferring a water allocation, any embargo in force under section 20Y in relation to applications for entitlements.

SCHEDULE 10—AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE SALE OF WATER ALLOCATIONS

Schedule 10 (1) inserts a proposed Division 4D in Part II comprising sections 20AN–20AR.

Proposed section 20AN defines “available water” for the purposes of proposed Division 4D and requires that Division to be construed with, and as if it formed part of, Division 4B which deals with volumetric water allocation schemes.

Proposed section 20AO enables the Ministerial Corporation to invite offers to purchase allocations of available water. An offer may be the subject of negotiation or may be by way of a tender or at auction, as may be specified by the Ministerial Corporation.

Proposed section 20AP provides that acceptance by the Ministerial Corporation of an offer to purchase a water allocation is conditional upon certain entitlements being applied for and granted.

Proposed section 20AQ provides for the cancellation of a superseded entitlement following purchase of a water allocation.

Proposed section 20AR lifts, in relation to an application for an entitlement for the purpose of purchasing a water allocation, any embargo in force under section 20Y in relation to applications for entitlements.

Schedule 10 (2) provides for the making of regulations to give effect to the provisions relating to the sale and purchase of water allocations.

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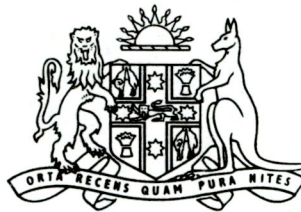
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SCHEDULE 10—AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
SALE OF WATER ALLOCATIONS

WATER (AMENDMENT) BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the Water Act 1912 as a consequence of the enactment of the Water Administration Act 1986; to make further provision under the Water Act 1912 with respect to volumetric water allocation schemes, rates and charges and other matters; to authorise the sale and transfer of water allocations; to validate certain matters; and for other purposes.

Water (Amendment) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Water (Amendment) Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- 10 (2) Schedules 9 and 10, and section 3 in its application to those Schedules, shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.
- (3) Except as provided by subsections (1) and (2), this Act shall commence on the commencement of the Water Administration Act 1986.

15 Amendment of Act No. 44, 1912

3. The Water Act 1912 is amended in the manner set forth in Schedules 1-10.

Saving and validation

- 20 4. (1) If anything done under the Water Act 1912 before the commencement of this Act by the Minister or a predecessor of the Water Administration Ministerial Corporation—

- (a) still had effect immediately before that commencement; and
- (b) could have been done by the Water Administration Ministerial Corporation if this Act and the Water Administration Act 1986 had
- 25 been in force when it was done,

it is validated and it has effect on and after that commencement as if it had been done by the Water Administration Ministerial Corporation.

- (2) Subsection (1) does not affect the proceedings (including proceedings on appeal) instituted in the Supreme Court as—
- 30 (a) No. 630 of 1984—Coulton and Others v Holcombe and Others; and
- (b) No. 678 of 1985—Coulton v McRae and Others.

Water (Amendment) 1986

- (3) A regulation made under section 149, 164 or 185 of the Water Act 1912 by a predecessor of the Water Administration Ministerial Corporation and in force immediately before the commencement of this Act has effect after that commencement as if it had been made by the Governor under that section of that Act, as amended by this Act.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO PART I OF THE WATER ACT 1912

(1) Section 1—

10 Omit the section, insert instead:

Short title

1. This Act may be cited as the “Water Act 1912”.

(2) Section 4 (**Interpretation**)—

(a) Definition of “Commission”—

15 Omit the definition.

(b) Definition of “Ministerial Corporation”—

After the definition of “Land district”, insert:

20 “Ministerial Corporation” means the Water Administration Ministerial Corporation constituted by the Water Administration Act 1986.

(3) Section 4A (**Right to flow of water**)—

Omit the section.

(4) Section 4B (**Right to flow of sub-surface water**)—

Omit the section.

25 (5) Section 4C (**Offences**)—

Omit the section.

(6) Section 4D (**Power to enter and remove obstructions**)—

Omit the section.

*Water (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO PART I OF THE WATER ACT 1912—*continued*(7) Section 4E (**Apportionment of expenses**)—

Omit the section.

(8) Section 4F (**Definition**)—

Omit the section.

 SCHEDULE 2

(Sec. 3)

AMENDMENTS TO PART II OF THE WATER ACT 1912

(1) Section 5 (**Interpretation**)—

(a) Section 5 (1), definition of “Occupier”—

10 Omit the definition, insert instead:

“Occupier”, in relation to land, means—

- (a) the holder of any tenure of the land or, if it is shown that some other person is in actual occupation of the land, that other person;
- 15 (b) where the land is a public road under the Local Government Act 1919—the council under that Act of the area in which the land is situated; or
- 20 (c) where the land is the site of a work to which this Part extends and the work is proposed to be, or is being, constructed on behalf of such a council or is under the care and management of such a council—that council.

SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(b) Section 5 (1), definition of “River”—

Omit the definition, insert instead:

“River” includes—

- 5 (a) a stream of water, whether perennial or intermittent,
flowing in a natural channel, or in a natural channel
artificially improved, or in an artificial channel which
has changed the course of the stream;
 - 10 (b) an affluent, confluent, branch or other stream of water
into or from which a stream referred to in paragraph (a)
flows; and
 - (c) anything prescribed as being a river,
- but does not include anything prescribed as not being a river
and, unless the regulations otherwise provide, does not
15 include those waters of a tidal river that at any time are not
capable of being used for irrigation or for watering stock.

(c) Section 5 (1), definition of “Work to which this Part extends”—

Omit paragraph (a), insert instead:

- (a) which is connected with, or which affects the quantity or
use of water in, a river or lake;
- 20 (a1) which impounds water and is within an area declared by
the Ministerial Corporation by order published in the
Gazette to be an area within which a work impounding
water is a work to which this Part extends, whether or not
it is a work referred to in paragraphs (a), (b) and (c);

25 (2) Section 7 (**Rights of occupiers of riparian land**)—

(a) Section 7 (1) (a) (iii), (iv)—

Omit “use of a” wherever occurring, insert instead “use of not
more than one”.

(b) Section 7 (1) (a) (iii)—

- 30 After “sold”, insert “, bartered or exchanged”.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(c) Section 7 (1) (a) (iii)—

After “sale”, insert “, barter or exchange”.

(d) Section 7 (1) (b), (c)—

5 Omit “construct and use” wherever occurring, insert instead
“construct or use”.

(e) Section 7 (1) (b)—

After “second”, insert “or, if a lesser capacity is prescribed in
relation to the river or lake, or to the part of it, from which the
water is taken, that lesser capacity”.

10 (f) Section 7 (1) (c) (i)—

After “megalitres”, insert “or, if a lesser capacity is prescribed in
relation to the river or lake, or to the part of it, in which the dam,
excavation or work is constructed, that lesser capacity”.

(g) Section 7 (1) (c) (ii)—

15 Omit “the occupiers of land which adjoins or derives benefit from
the river or lake”, insert instead “any person”.

(h) Section 7 (1A) (c)—

20 After “megalitres”, insert “or, if a lesser capacity is prescribed in
relation to the river or lake, or to the part of it, in which the dam,
excavation or work is constructed, that lesser capacity”.

(i) Section 7 (2)—

After “taken”, insert “or where the water is being taken or used
in a manner prescribed as being wasteful”.

(3) Section 8 (**Rights of Crown in respect of works**)—

25 Omit “on behalf of the Crown”.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*(4) Section 14 (**Renewal**)—

(a) Section 14 (1)—

5 Omit “expiration of the period for which the license was granted or last renewed, as the case may be”, insert instead “license expires but the Ministerial Corporation may deal with an application even if it is lodged later”.

(b) Section 14 (1)—

Omit “Pending”, insert instead “(1A) Pending”.

(c) Section 14 (1)—

10 Omit “No renewal”, insert instead “(1B) No renewal”.

(d) Section 14 (1A)—

Omit “(1A)”, insert instead “(1C)”.

(e) Section 14 (1D)—

Before section 14 (2), insert:

15 (1D) Where the Ministerial Corporation deals with an application for renewal lodged after the license expires, subsection (1A) has effect as if the application had been under consideration since before the expiration of the license.

(5) Section 18j (**Renewal of permits**)—

20 (a) Omit “An application for renewal of a permit shall be made before the expiration of the period for which it was granted or last renewed as the case may be.”.

SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(b) Section 18J (2), (3)—

At the end of section 18J, insert:

(2) An application for renewal of a permit shall be lodged before the permit expires but the Ministerial Corporation may deal with an application even if it is lodged later.

(3) Where the Ministerial Corporation deals with an application for renewal lodged after the permit expires, section 18K has effect as if the application had been under consideration since before the expiration of the permit.

(6) Section 20B (**Authority**)—

Section 20B (1)—

Omit “but the Commission shall not refuse the application unless the local land board or Magistrate, as the case may be, has recommended that the application be refused or the Minister has approved of the refusal of the application”.

(7) Section 20C (**Renewal of authority**)—

(a) Section 20C (1)—

Omit “expiration of the period for which the authority was granted or last renewed, as the case may be”, insert instead “authority expires but the Ministerial Corporation may deal with an application even if it is lodged later”.

(b) Section 20C (1)—

Omit “Pending”, insert instead “(1A) Pending”.

(c) Section 20C (1B)—

Before section 20C (2), insert:

(1B) Where the Ministerial Corporation deals with an application for renewal lodged after the authority expires, subsection (1A) has effect as if the application had been under consideration since before the expiration of the authority.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(d) Section 20C (4)—

Omit the subsection.

(8) Section 20CB (**Renewal of authorities under section 20CA**)—

(a) Section 20CB (1) (b)—

- 5 Omit “expiration of the period for which the authority was granted or last renewed, as the case may be”, insert instead “authority expires but the Ministerial Corporation may deal with an application even if it is lodged later”.

(b) Section 20CB (1) (e)—

- 10 After section 20CB (1) (d), insert:

(e) Where the Ministerial Corporation deals with an application for renewal lodged after the authority expires, paragraph (d) has effect as if the application had been under consideration since before the expiration of the authority.

15 (9) Section 20E (**Amended authorities**)—

Section 20E (2) (d)—

- 20 Omit “but the Commission shall not refuse the application unless the local land board or stipendiary magistrate, as the case may be, has recommended that the application be refused or the Minister has approved of the refusal of the application”.

(10) Section 20L (**Issue of group license**)—

Section 20L (1)—

- 25 Omit “, but where the local land board or stipendiary magistrate, as the case may be, has recommended that the application be refused the Commission shall not grant the application unless the Minister so approves”.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*(11) Section 20o (**Renewal of group license**)—

(a) Section 20o (1)—

5 Omit “before the expiration of the period for which it was granted or last renewed”, insert instead “to the Ministerial Corporation before the group license expires but the Ministerial Corporation may deal with an application even if it is lodged later”.

(b) Section 20o (2)—

Omit the subsection.

(c) Section 20o (3)—

10 Omit “Commission’s decision”, insert instead “decision of the Ministerial Corporation”.

(d) Section 20o (7)—

After section 20o (6), insert:

15 (7) Where the Ministerial Corporation deals with an application for renewal lodged after the group license expires, subsection (6) has effect as if the application had been under consideration since before the expiration of the group license.

(12) Section 20v (**Interpretation**)—

(a) Section 20v (1), definition of “scheme”—

20 Omit “(as may be modified from time to time under this Division) prepared”, insert instead “in force”.

(b) Section 20v (1), definition of “water source”—

Omit the definition, insert instead:

“water source” means—

25 (a) a river, lake or section of a river; or

(b) a combination of 2 or more of them;

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(c) Section 20v (1), definition of “year”—

Omit the definition, insert instead:

“year”, in relation to a scheme, means—

- (a) a year commencing on 1 July; or
- 5 (b) if the Ministerial Corporation by order published in the Gazette specifies a different year for the scheme—the specified year.

(d) Section 20v (1A)—

After section 20v (1), insert:

- 10 (1A) Where the year applicable to an existing scheme is changed, the order making the change may also make provision for the transitional arrangements leading to the change.

(13) Section 20w (**Power of Governor to declare water source to be subject to volumetric water allocations scheme**)—

- 15 After “20x”, insert “or may, by a like order, declare that a scheme already in force shall be subject to a modification so prepared”.

(14) Section 20x (**Determination of water allocations in respect of entitlements**)—

(a) Section 20x (1)—

- 20 After “scheme”, insert “, or a modification of such a scheme,”.

(b) Section 20x (2)—

After “preparing”, insert “or modifying”.

(c) Section 20x (2) (a)—

Omit the paragraph, insert instead:

- 25 (a) shall assess the total quantity of water—
 - (i) that is likely to be available in each year for apportionment among the holders of entitlements; and

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

- (ii) that, in the opinion of the Ministerial Corporation,
should be reserved for other uses or for future use;
and

(d) Section 20x (2) (b)—

5 Omit “such”.

(15) Section 20xc—

After section 20xB, insert:

Corresponding increase and decrease of water allocation

10 20xc. (1) The Ministerial Corporation may at any time, or
from time to time, during a year—

(a) increase the basic water allocation for an entitlement for
that year without exceeding any maximum quantity
determined under section 20x (3) (c); and

15 (b) decrease the basic water allocation for the entitlement for
the next succeeding year,

without altering the total basic water allocation for the entitlement
for those years.

20 (2) The condition of a water entitlement imposed under
section 20x or 20AB to control the quantity of water that may be
taken under the entitlement (with any modification effected under
section 20xA, 20Z or 20AA) is modified to the extent necessary to
permit any increase, and to require any decrease, effected under
subsection (1).

25 (3) The Ministerial Corporation may waive a decrease that has
been imposed under subsection (1) (b) and, where a decrease is
waived, the modification of a condition effected by subsection (2)
in relation to the decrease ceases to have effect.

SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(4) In this section—

“basic water allocation”, in relation to an entitlement for a year,
means the water allocation applicable to the entitlement for
that year under a condition imposed under section 20x or
20AB, with any modification effected under section 20xA, 20z
or 20AA.

(16) Section 20Y (**Invalidation of applications for entitlements**)—

(a) Section 20Y (1)—

Omit “the water allocations of holders of existing entitlements,
which authorise the taking of water from the water source, and
the requirements of all other users lawfully authorised to take
water from the water source”, insert instead “the requirements of
the persons already authorised by law to take water from the water
source and such other possible requirements for water from the
water source as are determined by the Ministerial Corporation”.

(b) Section 20Y (1A)—

Omit the subsection, insert instead:

(1A) A declaration under subsection (1) may relate—

- (a) to a specified application for an entitlement;
- (b) to all applications for entitlements;
- (c) to a specified class of applications for entitlements; or
- (d) to all applications for entitlements other than a specified
application for an entitlement or a specified class of
applications for entitlements.

(c) Section 20Y (2)—

Omit “a license or authority” wherever occurring, insert instead
“an entitlement”.

(d) Section 20Y (2)—

Omit “licenses or authorities” wherever occurring, insert instead
“entitlements”.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(e) Section 20Y (2)—

Omit “license or authority” where thirdly and fourthly occurring, insert instead “entitlement”.

(f) Section 20Y (2A)—

After section 20Y (2), insert:

(2A) Notwithstanding the provisions of sections 11 (2C) (d), 20A (1D) (d) and 20K (2), a notice in force under subsection (1) does not apply to an amended application referred to in those provisions if the original application was made before the date on which the notice took effect, but any amendment made on or after that date has no effect, and shall be disregarded, if the Ministerial Corporation is of the opinion that the granting of the application with the amendment could result in a larger water allocation than would be the case if the application were to be granted without the amendment.

(g) Section 20Y (3)—

Omit the subsection, insert instead:

(3) If an application to which a notice under subsection (1) applies is made while the notice is in force, it is invalid and shall be rejected by the Ministerial Corporation.

(h) Section 20Y (4)—

Omit “a license or authority” wherever occurring, insert instead “an entitlement”.

(i) Section 20Y (4)—

Omit “that license or authority”, insert instead “an existing entitlement”.

(17) Section 20Z (**Power of Ministerial Corporation to reduce water allocations in time of shortage**)—

(a) Section 20Z (1)—

Omit “with respect to any year”, insert instead “at any time, or from time to time, during a year”.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(b) Section 20z (1)—

5 Omit “the water allocations of holders of entitlements”, insert instead “the requirements during that year of the persons authorised by law to take water from that water source and such other possible requirements for water from that water source as are determined by the Ministerial Corporation”.

(c) Section 20z (1)—

Omit “those allocations”, insert instead “the water allocations under the scheme”.

10 (d) Section 20z (2)—

Omit “the year”, insert instead “any year”.

(18) Section 20AA—

Omit the section, insert instead:

Powers of Ministerial Corporation in years of surplus

15 20AA. (1) The Ministerial Corporation may, during a year or before its commencement, give a direction in such manner as it thinks fit as to the times at which, the manner in which, and the extent to which, water may, under an entitlement, be taken in
20 excess of the water allocation for the entitlement from a water source subject to a scheme, and may vary or revoke such a direction.

(2) To the extent to which the taking of water in accordance with a direction relating to an entitlement is inconsistent with a condition to which the entitlement is subject, the condition shall
25 be deemed to be suspended.

(3) Water taken under an entitlement in accordance with a direction under subsection (1) shall be disregarded in determining whether the water allocation for the entitlement has been exceeded.

*Water (Amendment) 1986***SCHEDULE 2—continued****AMENDMENTS TO PART II OF THE WATER ACT 1912—continued**

(4) Without limiting subsection (1), if the Ministerial Corporation is satisfied that a water source subject to a scheme is likely to have more water available during a year than is required to meet—

- 5 (a) the requirements during that year of the persons authorised by law to take water from that water source; and
- (b) such other possible requirements for water from that water source as it determines,

10 the Ministerial Corporation may, in such manner as it thinks fit, increase the water allocations under the scheme by a specified proportion.

(5) The condition of an entitlement for which the water allocation is increased under subsection (4) is modified to the extent necessary to give effect to the increase.

15 **(19) Section 20AC (Water meters)—**

Section 20AC (2) (b)—

After “permits”, insert “, suffers”.

(20) Section 20AD (Provisions applicable in cases of subdivision of land)—

- (a) Omit “a license or authority”, insert instead “an entitlement”.
- 20 (b) Omit “licenses or authorities” wherever occurring, insert instead “entitlements”.
- (c) Omit “license or authority” where secondly occurring, insert instead “entitlement”.

(21) Section 20AE (Power of entry)—

- 25 (a) Omit “The Commission may, by any of its officers, employees or agents”, insert instead “An officer under the Water Administration Act 1986, or an employee or agent of the Ministerial Corporation, may”.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(b) Section 20AE (2)—

At the end of section 20AE, insert:

- 5 (2) An officer under the Water Administration Act 1986 or an employee or agent of the Ministerial Corporation may enter on any land and dismantle for inspection a water meter or other measuring device that is on the land and is connected to a work referred to in subsection (1).

(22) Section 20AF—

After section 20AE, insert:

10 **Ordering of supply of water**

20AF. (1) The Ministerial Corporation may temporarily vary or waive a condition of an entitlement relating to the ordering of supplies under the water allocation of the holder of the entitlement.

- 15 (2) Where, in accordance with a condition to which an entitlement is subject, a supply of water is ordered before, but is taken after, the end of a year, the Ministerial Corporation may, at its discretion, debit the quantity of water taken under the order against either the water allocation for the year in which the supply
20 was ordered or the water allocation for the year in which it is taken.

- 25 (3) Where, in accordance with a condition to which an entitlement is subject, a quantity of water is ordered, the Ministerial Corporation may, at its discretion, treat the water ordered as part of the water allocation for the entitlement even if it is not taken.

SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(23) Section 22BA—

After section 22B, insert:

Invalidation of applications for entitlements

5 22BA. (1) This section applies to a water source that is not the subject of a volumetric water allocations scheme under Division 4B if the Ministerial Corporation is satisfied that the water source is unlikely to have more water available than is sufficient to meet—

10 (a) the requirements of the persons already authorised by law to take water from the water source; and

 (b) such other possible requirements for water from the water source as are determined by the Ministerial Corporation.

15 (2) The Ministerial Corporation may, by order published in the Gazette, declare that, until the order is revoked, an application for an entitlement to which the order applies may not be made after a specified date (being a date not earlier than the date of publication) if the entitlement would authorise the taking of water from a water source specified in the order that is a water source to which this section applies.

20 (3) An order may be made to apply—

 (a) to a specified application for an entitlement;

 (b) to all applications for entitlements;

 (c) to a specified class of applications for entitlements; or

25 (d) to all applications for entitlements other than a specified application for an entitlement or a specified class of applications for entitlements.

30 (4) An order does not apply to an entitlement that would merely replace an existing entitlement and, for the purposes of this subsection, where land to which an entitlement relates is subdivided into parts, an application for an entitlement relating to one of the parts shall be deemed to be an application for an entitlement to replace an existing entitlement.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(5) If an application for an entitlement to which an order applies is made while the order is in force, the application is invalid and shall be rejected by the Ministerial Corporation.

(6) In this section—

5 “entitlement” means a license, permit, authority or group license;

“water source” means—

(a) a river, lake or section of a river; or

(b) a combination of 2 or more of them.

10 (24) Section 22C (**Flow of water assured by a work of the Crown**)—

(a) Section 22C (4) (a1)—

Omit the paragraph, insert instead:

(a1) be paid—

15 (i) in respect of each complete year during which the license, group license, permit or authority is in force; and

(ii) if the license, group license, permit or authority is not in force for the whole of a year—in respect of the part of the year during which it is in force,

20 after the date of the proclamation referred to in subsection (2);

(b) Section 22C (4) (d), (e)—

Omit the paragraphs, insert instead:

25 (d) to the extent of a minimum annual amount fixed by the Ministerial Corporation in each case, be payable even if the license, group license, permit or authority is suspended or the work to which it relates is not used; and

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(e) be on the basis of a fixed charge and either—

(i) the quantity of water taken and used by means of the work during the relevant year, or part of a year, referred to in paragraph (a1); or

5 (ii) the area of land irrigated with water so taken and used,

even if the water is taken and used while the license, group license, permit or authority is suspended.

(c) Section 22C (4A)—

10 Omit “(being the immediately preceding 1st July or any subsequent 1st July)”.

(d) Section 22C (6A), (6B)—

After section 22C (6), insert:

(6A) Any amount due and unpaid under subsection (3)—

15 (a) bears interest on a daily basis at the prescribed rate until paid, even if judgment for the amount has been given by a court;

20 (b) is, together with any such interest, recoverable as a debt due and payable to the Ministerial Corporation by the holder, or jointly and severally by the holders, of the relevant license, group license, permit or authority; and

(c) is, together with any such interest, a charge on the land supplied with water under the license, group license, permit or authority.

25 (6B) A payment made in respect of a charge payable under subsection (3) shall be applied first in payment of any interest borne by the charge.

(e) Section 22C (10)—

30 Omit “Minister may, on the recommendation of the Commission,” insert instead “Ministerial Corporation may”.

SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(f) Section 22C (11), (12)—

After section 22C (10), insert:

5 (11) In this section, a reference to a year in relation to payment of a charge for the right to take and use water from a river, lake or section of a river, is a reference to—

(a) a year commencing on 1 July; or

(b) if the Ministerial Corporation by order published in the Gazette specifies a different year for the river, lake or section of a river—the specified year.

10 (12) Where a change of the year relating to payment of a charge affects an existing right to take and use water, the order making the change may also make provision for the transitional arrangements leading to the change.

(25) Section 27 (**Regulations**)—

15 (a) Section 27 (1) (c1)—

After section 27 (1) (c), insert:

20 (c1) a scheme for transfers between holders of licences, authorities and group licenses of rights to take and use water from a water source that is not the subject of a volumetric water allocations scheme under Division 4B; and

(b) Section 27 (1A)—

After section 27 (1), insert:

(1A) A provision of a regulation may—

25 (a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

5

SCHEDULE 3

(Sec. 3)

AMENDMENTS TO PART III OF THE WATER ACT 1912

- (1) Section 30 (**Constitution, power, etc., of Board**)—

Section 30 (2)—

10

Omit “Commission”, insert instead “Department of Water Resources”.

- (2) Section 54 (**Power of trustees to enter and inspect**)—

Section 54 (3) (f)—

Omit “and have been for a period of not less than six months”.

15

- (3) Section 55B (**Interest on overdue rates and charges**)—

- (a) Section 55B (2)—

Omit “at the expiration of three months”.

- (b) Section 55B (3)—

20

Omit “in respect only of as many complete months as have expired”, insert instead “on a daily basis”.

- (c) Section 55B (3)—

Omit “excluding any remaining portion of a month”.

*Water (Amendment) 1986***SCHEDULE 3—continued****AMENDMENTS TO PART III OF WATER ACT 1912—continued****(d) Section 55B (6)—**

After section 55B (5), insert:

- 5 (6) A payment made in respect of rates and charges payable to a trust shall be applied first in payment of any interest borne by the rates and charges.

(4) Section 73B (Reduction of liability)—

Omit “, on the recommendation of the Commission,”.

(5) Section 74 (Regulations)—

Section 74 (1A)—

10 After section 74 (1), insert:

(1A) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- 15 (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

20

SCHEDULE 4

(Sec. 3)

AMENDMENTS TO PART V OF THE WATER ACT 1912**(1) Section 105 (Interpretation)—**

Definition of “Sub-surface water”—

25

Omit “occurring naturally”.

*Water (Amendment) 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART V OF THE WATER ACT 1912—*continued*(2) Section 117B (**Charges**)—

(a) Section 117B (1), definition of “financial year”—

Omit the definition.

(b) Section 117B (1), definition of “year”—

5 After the definition of “sub-surface water basin”, insert:

“year”, in relation to a prescribed area, or part of a prescribed area, means—

(a) a year commencing on 1 July; or

10 (b) if the Ministerial Corporation by order published in the Gazette specifies a different year for the prescribed area or part of a prescribed area—the specified year.

(c) Section 117B (1A)—

After section 117B (1), insert:

15 (1A) Where the year relating to an existing prescribed area, or part of an existing prescribed area, is changed, the order making the change may also make provision for the transitional arrangements leading to the change.

(d) Section 117B (4)—

After “section”, insert “and even if the license is suspended”.

20 (e) Section 117B (5) (b), (9)—

Omit “financial” wherever occurring.

(f) Section 117B (5) (f)—

Omit the paragraph, insert instead:

25 (f) to the extent of a minimum annual amount fixed by the Ministerial Corporation, be payable even if the bore to which the license relates is not used or the license is suspended.

*Water (Amendment) 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART V OF THE WATER ACT 1912—*continued*

(g) Section 117B (7)—

Omit “(being the immediately preceding 1st July or any subsequent 1st July)”.

(h) Section 117B (8A), (8B)—

5 After section 117B (8), insert:

(8A) Any amount due and unpaid under subsection (4)—

(a) bears interest on a daily basis at the prescribed rate until paid, even if judgment for the amount has been given by a court; and

10 (b) is, together with any such interest, recoverable as a debt due and payable to the Ministerial Corporation by the lawful occupier of the land on which the bore is situated.

15 (8B) A payment made in respect of a charge payable under subsection (4) shall be applied first in payment of any interest borne by the charge.

(i) Section 117B (9)—

Omit “Minister may, on the recommendation of the Commission,” insert instead “Ministerial Corporation may”.

(3) Section 119 (**Charge on land**)—

20 Section 119 (2)—

At the end of section 119, insert:

(2) In subsection (1), a reference to charges includes a reference to interest on the charges.

(4) Sections 121A–121C—

25 After section 121, insert:

Unlawful obstruction of sub-surface water

121A. (1) A person shall not, except in accordance with this Act or the written permission of the Ministerial Corporation, interfere with sub-surface water or obstruct its flow.

*Water (Amendment) 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART V OF THE WATER ACT 1912—*continued*

(2) A person shall not fail to comply to the satisfaction of the Ministerial Corporation with a direction by the Ministerial Corporation—

5 (a) to remove wholly or in part from land owned or occupied by the person an unlawful artificial obstruction that is on or under the surface of the land and obstructs the flow of sub-surface water;

10 (b) to carry out such work as the Ministerial Corporation considers to be necessary to permit the flow of sub-surface water through or past an unlawful artificial obstruction that is on or under the surface of land owned or occupied by the person; or

(c) to render ineffective an unlicensed bore.

15 Penalty: (a) in the case of an offence by a corporation—\$20,000 and \$2,000 for each day during which the offence continues; or

(b) in any other case—\$10,000 and \$1,000 for each day during which the offence continues.

Removal of obstructions

20 121B. The Ministerial Corporation may remove or render ineffective an unlawful artificial obstruction to the flow of sub-surface water or render ineffective an unlicensed bore and may recover the costs and expenses of so doing as a debt due to it from the occupier of the land on which the obstruction or bore was
25 situated.

Apportionment of expenses

121C. An owner of land is liable to pay to an occupier of the land such proportion of—

30 (a) any costs and expenses incurred by the occupier in complying with a direction of the Ministerial Corporation under section 121A; or

*Water (Amendment) 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART V OF THE WATER ACT 1912—*continued*

- (b) any costs and expenses recovered under section 121B by the Ministerial Corporation,

5 as is, on the application of the occupier, determined by the local land board for the district in which the land or any part of it is situated.

(5) Section 129 (**Regulations**)—

Section 129 (1A)—

After section 129 (1), insert:

(1A) A provision of a regulation may—

- 10 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- 15 (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

SCHEDULE 5

(Sec. 3)

20 AMENDMENTS TO PART VI OF THE WATER ACT 1912

(1) Section 133 (**Constitution of districts**)—

Section 133 (3)—

Omit “such of them as the Commission may recommend”, insert instead “part of them”.

*Water (Amendment) 1986***SCHEDULE 5—continued****AMENDMENT TO PART VI OF THE WATER ACT 1912—continued****(2) Section 134 (Alteration of boundaries of districts)—**

Section 134 (4)—

Omit “as the Commission may recommend”.

(3) Section 136 (Lands within trust districts)—

5 Section 136 (6)—

Omit “Minister of the Crown for the time being charged with the administration of this Part”, insert instead “Ministerial Corporation”.

(4) Section 139 (Assessment of rates and charges)—

10 (a) Section 139 (1)—

Omit “during or as soon as practicable and in any case within 2 months after the end of that year”.

(b) Section 139 (2) (a)—

15 After “139A”, insert “, maintenance charges referred to in section 143 (1)”.

(c) Section 139 (2) (b)—

Omit “at the expiration of three months”.

(d) Section 139 (2) (c)—

20 Omit “in respect only of as many complete months as have expired”, insert instead “on a daily basis”.

(e) Section 139 (2) (c)—

Omit “excluding any remaining portion of a month”.

(f) Section 139 (2) (f)—

After section 139 (2) (e), insert:

25 (f) A payment made in respect of rates and charges assessed under this Part shall be applied first in payment of any interest borne by the rates and charges.

*Water (Amendment) 1986*SCHEDULE 5—*continued*AMENDMENT TO PART VI OF THE WATER ACT 1912—*continued*(5) Section 142 (**Charges for additional water**)—

Section 142 (1), (2)—

5 Omit “on or before the thirty-first day of July next following or within one month after the date of notification of assessment, whichever is the later” wherever occurring, insert instead “at the prescribed times and in the prescribed manner”.

(6) Section 143 (**Liability for rates and charges for water**)—

Section 143 (2)—

10 After “additional water”, insert “, maintenance charges arising in relation to the supply of water and any accrued interest”.

(7) Section 147 (**Supply of water**)—

(a) Section 147 (2A)—

Omit “and have been for a period of not less than six months”.

(b) Section 147 (7)—

15 Omit “and on the recommendation of the Commission”.

(c) Section 147 (7), (9B)—

Omit “, on the recommendation of the Commission,” wherever occurring.

(d) Section 147 (8)—

20 Omit “on the recommendation of the Commission and”.

(e) Section 147 (8A)—

Omit “on the recommendation of the Commission, and”.

(f) Section 147 (9)—

25 Omit “on the recommendation of the Commission” wherever occurring.

*Water (Amendment) 1986*SCHEDULE 5—*continued*AMENDMENT TO PART VI OF THE WATER ACT 1912—*continued*(8) Section 147A (**Amalgamation of holdings**)—

(a) Section 147A (1)—

Omit “the Commission may, if it thinks fit, recommend to the Governor that such holdings be amalgamated into one holding and thereupon”.

(b) Section 147A (1)—

Omit “be one”, insert instead “be amalgamated as one”.

(9) Section 148B (**Exclusion from claims for damage, etc.**)—

(a) Omit “, the Chief Commissioner or a commissioner” wherever occurring.

(b) Omit “a Minister,” where secondly occurring, insert instead “a Minister or”.

(10) Section 149 (**Regulations**)—

(a) Section 149 (1)—

Omit “Commission may, with the approval of the Governor,”, insert instead “Governor may”.

(b) Section 149 (2A)—

After section 149 (2), insert:

(2A) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

SCHEDULE 6

(Sec. 3)

AMENDMENTS TO PART VII OF THE WATER ACT 1912

(1) Section 150 (**Interpretation**)—

5 Definition of “River”—

Omit the definition, insert instead:

“River” includes—

- 10 (a) a stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream;
- (b) an affluent, confluent, branch or other stream of water into or from which a stream referred to in paragraph (a) flows; and
- 15 (c) anything prescribed as being a river,

but does not include anything prescribed as not being a river.

(2) Section 153 (**Constitution of provisional districts**)—

(a) Section 153 (1)—

20 Omit “such amendments (if any) of the proposal as the Commission may recommend”, insert instead “or without amendment”.

(b) Section 153 (4), (5)—

After section 153 (3), insert:

25 (4) The Governor may, by proclamation in the Gazette, revoke a proclamation referred to in subsection (1).

(5) Upon the revocation of a proclamation referred to in subsection (1), the lands to which the proclamation related cease to be constituted as a provisional flood control district or a provisional flood control and irrigation district.

*Water (Amendment) 1986*SCHEDULE 6—*continued*AMENDMENTS TO PART VII OF THE WATER ACT 1912—*continued*(3) Section 154 (**Constitution of districts**)—

(a) Section 154 (3)—

Omit “such of them as the Commission may recommend”, insert instead “any of them”.

5 (b) Section 154 (4), (5)—

After section 154 (3), insert:

(4) The Governor may, by proclamation in the Gazette, revoke a proclamation referred to in subsection (3).

10 (5) Upon the revocation of a proclamation referred to in subsection (3), the lands to which the proclamation related cease to be constituted as a district.

(4) Section 155 (**Alteration of boundaries**)—

Section 155 (4)—

Omit “, as the Commission may recommend”.

15 (5) Section 157 (**Lands within trust districts**)—

(a) Section 157 (6)—

Omit “Minister for the time being charged with the administration of this Part”, insert instead “Ministerial Corporation”.

(b) Section 157 (6)—

20 Omit “said Minister”, insert instead “Ministerial Corporation”.

(6) Section 159 (**Rates**)—

(a) Section 159 (1) (b)—

25 Omit “the first day of July next following”, insert instead “a date determined by the Ministerial Corporation that is not earlier than”.

(b) Section 159 (2) (b)—

Omit “at the expiration of three months”.

*Water (Amendment) 1986*SCHEDULE 6—*continued*AMENDMENTS TO PART VII OF THE WATER ACT 1912—*continued*

(c) Section 159 (2) (c)—

Omit “in respect only of as many complete months as have expired”, insert instead “on a daily basis”.

(d) Section 159 (2) (c)—

5 Omit “excluding any remaining portion of a month”.

(e) Section 159 (2) (f)—

After section 159 (2) (e), insert:

10 (f) A payment made in respect of rates assessed and levied under this Part shall be applied first in payment of any interest borne by the rates.

(7) Section 164 (**Regulations**)—

(a) Section 164 (1)—

Omit “Commission may, with the approval of the Governor,”, insert instead “Governor may”.

15 (b) Section 164 (3A)—

After section 164 (3), insert:

(3A) A provision of a regulation may—

- 20 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

25 or may do any combination of those things.

Water (Amendment) 1986

SCHEDULE 7

(Sec. 3)

AMENDMENTS TO PART VIII OF THE WATER ACT 1912

(1) Section 165 (**Interpretation**)—

5 Section 165 (1), definition of “river”—

Omit the definition, insert instead:

“river” includes—

10 (a) a stream of water, whether perennial or intermittent,
flowing in a natural channel, or in a natural channel
artificially improved, or in an artificial channel which
has changed the course of the stream;(b) an affluent, confluent, branch or other stream of water
into or from which a stream referred to in paragraph (a)
flows; and

15 (c) anything prescribed as being a river,

but does not include anything prescribed as not being a river;

(2) Section 185 (**Regulations**)—

Section 185 (1)—

20 Omit “Commission may, with the approval of the Governor,”,
insert instead “Governor may”.

SCHEDULE 8

(Sec. 3)

AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
DURATION OF ENTITLEMENTS25 (1) Section 12 (**License**)—

Section 12 (3)—

Omit “exceeding ten”, insert instead “that, except in such
circumstances as may be prescribed, exceeds 10”.

SCHEDULE 8—*continued*AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
DURATION OF ENTITLEMENTS—*continued*(2) Section 14 (**Renewal**)—

Section 14 (1)—

5 Omit “longer period than ten years”, insert instead “period that, except in such circumstances as may be prescribed, exceeds 10 years”.

(3) Section 20B (**Authority**)—

Section 20B (2)—

Omit “not exceeding ten”, insert instead “that, except in such circumstances as may be prescribed, exceeds 10”.

10 (4) Section 20C (**Renewal of authority**)—

Section 20C (1)—

Omit “longer period than ten years”, insert instead “period that, except in such circumstances as may be prescribed, exceeds 10 years at any one time”.

15 (5) Section 20CA (**Application for authority by persons who do not occupy land on which works are to be constructed**)—

Section 20CA (6) (b)—

Omit “exceeding ten years”, insert instead “that, except in such circumstances as may be prescribed, exceeds 10 years”.

20 (6) Section 20CB (**Renewal of authorities under section 20CA**)—

Section 20CB (1) (c)—

Omit “longer period than ten years”, insert instead “period that, except in such circumstances as may be prescribed, exceeds 10 years at any one time”.

25 (7) Section 20L (**Issue of group license**)—

Section 20L (4)—

Omit “exceeding ten years”, insert instead “that, except in such circumstances as may be prescribed, exceeds 10 years”.

SCHEDULE 8—*continued*AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
DURATION OF ENTITLEMENTS—*continued*(8) Section 20o (**Renewal of group license**)—

Section 20o (5)—

Omit “exceeding”, insert instead “that, except in such circumstances as may be prescribed, exceeds”.

5

SCHEDULE 9

(Sec. 3)

AMENDMENT TO THE WATER ACT 1912 RELATING TO THE
TRANSFER OF WATER ALLOCATIONS

Part II, Division 4C—

10

After Division 4B, insert:

DIVISION 4C—*Transfer of Water Allocations***Interpretation**

20AG. This Division shall be construed with, and as if it formed part of, Division 4B.

15

Water allocation may be transferred

20

20AH. (1) The holder of an entitlement (in this Division referred to as the “transferor”) may, with the approval of the Ministerial Corporation, transfer the whole, or part, of the water allocation for the entitlement to the holder of another entitlement (in this Division referred to as the “transferee”).

(2) A transfer may be a temporary transfer for a limited period before the transferred water allocation reverts to the transferor or may be a transfer without limitation as to duration.

25

(3) A transfer may be effected between different schemes only if the Ministerial Corporation is satisfied—

(a) that the transfer would not result in the transferee’s scheme being subjected to an unacceptable commitment; and

SCHEDULE 9—continued**AMENDMENT TO THE WATER ACT 1912 RELATING TO THE
TRANSFER OF WATER ALLOCATIONS—continued**

- (b) that such other conditions as may be prescribed have been complied with.

Application for transfer

5 20A1. (1) Except where an application may be made under subsection (2), application for a transfer shall be made by the transferee applying for a new entitlement (or, if the holder so desires in the case of an authority or a group license, for an amended entitlement) and a water allocation for the entitlement that—

10 (a) if the transferee is not already the holder of an entitlement—comprises or includes the water allocation proposed to be transferred; or

15 (b) if the transferee is already the holder of an entitlement—comprises the water allocation for the existing entitlement together with the water allocation proposed to be transferred.

20 (2) If the Ministerial Corporation agrees and subsection (3) is complied with, the Ministerial Corporation may accept and consider an application by a transferor or transferee for the transfer of a water allocation by way of an appropriate modification under section 20XA of the conditions to which the entitlements of the transferor and transferee are subject.

(3) This subsection is complied with in relation to an application referred to in subsection (2) if—

25 (a) the application is for a temporary transfer for a period of not more than 3 years or, if some other period is prescribed for the purposes of this paragraph, the period so prescribed;

(b) the transfer will be to the holder of an existing entitlement;

SCHEDULE 9—*continued*AMENDMENT TO THE WATER ACT 1912 RELATING TO THE
TRANSFER OF WATER ALLOCATIONS—*continued*

(c) the period for which the transfer is to be effected does not, when aggregated with the period or periods for which any other transfer or transfers obtained by the transferee under subsection (2), exceed 3 years or any other period prescribed for the purposes of paragraph (a); and

(d) the application is made in a form approved by the Ministerial Corporation.

(4) The Ministerial Corporation may, in relation to an application for a transfer—

(a) require the transferor to provide such information and consents; and

(b) require the transferee to provide such information and evidence,

as are specified by the Ministerial Corporation.

(5) A requirement under subsection (4) may be complied with in any manner acceptable to the Ministerial Corporation but the Ministerial Corporation may decline to proceed with consideration of the application until the requirement is complied with.

(6) In determining whether or not to approve a transfer, the Ministerial Corporation may take into consideration such matters as it thinks fit including (without limiting the matters that may be considered) its opinion as to the social and economic effect that the transfer would have if approved.

Form of transfer to be lodged and fee paid

20AJ. An approved application for a transfer shall not be given effect by the issue of an entitlement, or by the modification of a condition of an entitlement, before—

(a) there has been lodged with the Ministerial Corporation a written record of the particulars of the transfer that is in a form approved by the Ministerial Corporation and is executed by the transferor and the transferee; and

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SCHEDULE 9—continued**AMENDMENT TO THE WATER ACT 1912 RELATING TO THE
TRANSFER OF WATER ALLOCATIONS—continued**

(b) the Ministerial Corporation has received payment of the fee for the transfer prescribed as—

(i) a specified amount; or

(ii) an amount calculated in a specified manner.

5 Superseded entitlement to be cancelled

10 20AK. (1) Where an entitlement effecting a transfer of a water allocation otherwise than by amendment of an existing entitlement is issued to the holder of an existing entitlement, the existing entitlement ceases to have effect and shall be cancelled by the Ministerial Corporation.

(2) The water allocation for the entitlement of a transferor is abated to the extent of the transfer and the condition to which the entitlement is subject is modified accordingly.

Purchase of water allocations by the Ministerial Corporation

15 20AL. For any public purpose, the Ministerial Corporation may, as prescribed, acquire by purchase and surrender the whole or part of the water allocation for an entitlement without compliance with the requirements of this Division.

Applications not affected by section 20Y notice

20 20AM. A notice in force under section 20Y does not apply to an application for an entitlement made in order to effect a transfer of a water allocation under this Division.

SCHEDULE 10

(Sec. 3)

AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
SALE OF WATER ALLOCATIONS

5 (1) Part II, Division 4D—

Before Division 5, insert:

DIVISION 4D—*Sale by the Ministerial Corporation of Water
Allocations***Interpretation**

10 20AN. (1) In this Division—

“available water” means water that is, or but for a notice in
force under section 20Y would be, available for allocation—

(a) under a new scheme;

(b) because of the modification of an existing scheme;

15 (c) because an entitlement has lapsed or has been
surrendered or amended; or(d) because a water allocation purchased by the Ministerial
Corporation has become surplus to its requirements.20 (2) This Division shall be construed with, and as if it formed
part of, Division 4B.**Sale, etc., of water allocations of available water**20AO. (1) Even if a notice under section 20Y is in force in
relation to a water source, the Ministerial Corporation may, in
such manner as it thinks fit, give notice—25 (a) to any person holding an entitlement to take water from
the water source that an offer may be made to the
Ministerial Corporation to purchase for the entitlement an
additional water allocation of available water from the
water source; or

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SCHEDULE 10—*continued*AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
SALE OF WATER ALLOCATIONS—*continued*

- 5 (b) to any person desiring to apply for an entitlement to take available water from the water source that an offer may be made to the Ministerial Corporation to purchase the water allocation that would be applicable to the entitlement if it were granted.
- 10 (2) A notice under subsection (1) may be given—
(a) to a person specified in the notice;
(b) to all persons within a class of persons specified in the notice; or
(c) to all persons other than those within a class of persons specified in the notice.
- 15 (3) A notice under subsection (1)—
(a) shall specify whether an offer is to be the subject of negotiation or is to be made by way of a tender or at auction;
(b) may, in the case of an offer by way of a tender or at auction, specify the conditions of sale; and
(c) may be general or subject to specified exceptions or limitations.
- 20 (4) The Ministerial Corporation may—
(a) accept an offer made under this section, whether or not subject to conditions; or
(b) refuse to accept such an offer.

SCHEDULE 10—*continued*AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
SALE OF WATER ALLOCATIONS—*continued*

(5) Where an offer under this section is made by way of a tender, the Ministerial Corporation—

5 (a) may require the provision of further information and evidence in relation to the tender, the use of the water allocation to which it relates or the entitlement required to be applied for under section 20AP;

(b) is not obliged to accept the highest or any tender; and

(c) may reject a tender for any reason, whether or not it is related to the price.

10 (6) The Ministerial Corporation may, in such circumstances as may be prescribed, invite and consider an application for an entitlement to take available water without requiring the purchase of the water allocation for the entitlement.

Application for entitlement

15 20AP. (1) If the purchaser of a water allocation is already the holder of an entitlement authorising the taking of water from the same water source, acceptance of the offer to purchase is conditional upon—

20 (a) the purchaser applying, within a time specified by the Ministerial Corporation, for an entitlement (or, if the holder of an authority or a group license so desires, an amended entitlement) carrying the water allocation for the existing entitlement together with the water allocation purchased; and

25 (b) the application being granted.

(2) If the purchaser of a water allocation is not already the holder of an entitlement authorising the taking of water from the same water source, acceptance of the offer to purchase is conditional upon—

30 (a) the purchaser applying, within a time specified by the Ministerial Corporation, for an entitlement carrying the water allocation purchased; and

SCHEDULE 10—*continued*AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
SALE OF WATER ALLOCATIONS—*continued*

(b) the application being granted.

5 (3) If an application for an entitlement made under this section is subject to the applicant becoming the occupier of particular land, the Ministerial Corporation may refuse to grant the application unless it is shown to the satisfaction of the Ministerial Corporation that the applicant has a reasonable prospect of occupying the land within a reasonable time.

Superseded entitlement to be cancelled

10 20AQ. If the holder of an existing entitlement is granted a new entitlement that includes a water allocation purchased under this Division, the existing entitlement ceases to have effect and shall be cancelled by the Ministerial Corporation.

Applications not affected by section 20Y notice

15 20AR. A notice in force under section 20Y does not apply to an application for an entitlement or an amended authority or an amended group license made in order to effect a purchase of a water allocation under this Division, or to an application for an entitlement made under section 20AO (6).

(2) Section 27 (**Regulations**)—

20 (a) Section 27 (1) (e2)—
Omit “and”.

(b) Section 27 (1) (e3)—

After section 27 (1) (e2), insert:

25 (e3) matters giving effect to the provisions of this Part relating to the purchase and sale of water allocations including, in

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SCHEDULE 10—*continued*

AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
SALE OF WATER ALLOCATIONS—*continued*

the case of purchases by tender, matters relating to the
submission, and the acceptance or rejection, of a tender;
and

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986

WATER (AMENDMENT) ACT 1986 No. 196

NEW SOUTH WALES



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WATER (AMENDMENT) ACT 1986 No. 196

NEW SOUTH WALES



Act No. 196, 1986

An Act to amend the Water Act 1912 as a consequence of the enactment of the Water Administration Act 1986; to make further provision under the Water Act 1912 with respect to volumetric water allocation schemes, rates and charges and other matters; to authorise the sale and transfer of water allocations; to validate certain matters; and for other purposes. [Assented to 18 December 1986]

Water (Amendment) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Water (Amendment) Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Schedules 9 and 10, and section 3 in its application to those Schedules, shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

(3) Except as provided by subsections (1) and (2), this Act shall commence on the commencement of the Water Administration Act 1986.

Amendment of Act No. 44, 1912

3. The Water Act 1912 is amended in the manner set forth in Schedules 1-10.

Saving and validation

4. (1) If anything done under the Water Act 1912 before the commencement of this Act by the Minister or a predecessor of the Water Administration Ministerial Corporation—

- (a) still had effect immediately before that commencement; and
- (b) could have been done by the Water Administration Ministerial Corporation if this Act and the Water Administration Act 1986 had been in force when it was done,

it is validated and it has effect on and after that commencement as if it had been done by the Water Administration Ministerial Corporation.

(2) Subsection (1) does not affect the proceedings (including proceedings on appeal) instituted in the Supreme Court as—

- (a) No. 630 of 1984—Coulton and Others v Holcombe and Others; and
- (b) No. 678 of 1985—Coulton v McRae and Others.

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(3) A regulation made under section 149, 164 or 185 of the Water Act 1912 by a predecessor of the Water Administration Ministerial Corporation and in force immediately before the commencement of this Act has effect after that commencement as if it had been made by the Governor under that section of that Act, as amended by this Act.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO PART I OF THE WATER ACT 1912

(1) Section 1—

Omit the section, insert instead:

Short title

1. This Act may be cited as the “Water Act 1912”.

(2) Section 4 (**Interpretation**)—

(a) Definition of “Commission”—

Omit the definition.

(b) Definition of “Ministerial Corporation”—

After the definition of “Land district”, insert:

“Ministerial Corporation” means the Water Administration Ministerial Corporation constituted by the Water Administration Act 1986.

(3) Section 4A (**Right to flow of water**)—

Omit the section.

(4) Section 4B (**Right to flow of sub-surface water**)—

Omit the section.

(5) Section 4C (**Offences**)—

Omit the section.

(6) Section 4D (**Power to enter and remove obstructions**)—

Omit the section.

Water (Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO PART I OF THE WATER ACT 1912—*continued*(7) Section 4E (**Apportionment of expenses**)—

Omit the section.

(8) Section 4F (**Definition**)—

Omit the section.

SCHEDULE 2

(Sec. 3)

AMENDMENTS TO PART II OF THE WATER ACT 1912

(1) Section 5 (**Interpretation**)—

(a) Section 5 (1), definition of “Occupier”—

Omit the definition, insert instead:

“Occupier”, in relation to land, means—

- (a) the holder of any tenure of the land or, if it is shown that some other person is in actual occupation of the land, that other person;
- (b) where the land is a public road under the Local Government Act 1919—the council under that Act of the area in which the land is situated; or
- (c) where the land is the site of a work to which this Part extends and the work is proposed to be, or is being, constructed on behalf of such a council or is under the care and management of such a council—that council.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(b) Section 5 (1), definition of “River”—

Omit the definition, insert instead:

“River” includes—

- (a) a stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream;
- (b) an affluent, confluent, branch or other stream of water into or from which a stream referred to in paragraph (a) flows; and
- (c) anything prescribed as being a river,

but does not include anything prescribed as not being a river and, unless the regulations otherwise provide, does not include those waters of a tidal river that at any time are not capable of being used for irrigation or for watering stock.

(c) Section 5 (1), definition of “Work to which this Part extends”—

Omit paragraph (a), insert instead:

- (a) which is connected with, or which affects the quantity or use of water in, a river or lake;
- (a1) which impounds water and is within an area declared by the Ministerial Corporation by order published in the Gazette to be an area within which a work impounding water is a work to which this Part extends, whether or not it is a work referred to in paragraphs (a), (b) and (c);

(2) Section 7 (**Rights of occupiers of riparian land**)—

(a) Section 7 (1) (a) (iii), (iv)—

Omit “use of a” wherever occurring, insert instead “use of not more than one”.

(b) Section 7 (1) (a) (iii)—

After “sold”, insert “, bartered or exchanged”.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(c) Section 7 (1) (a) (iii)—

After “sale”, insert “, barter or exchange”.

(d) Section 7 (1) (b), (c)—

Omit “construct and use” wherever occurring, insert instead “construct or use”.

(e) Section 7 (1) (b)—

After “second”, insert “or, if a lesser capacity is prescribed in relation to the river or lake, or to the part of it, from which the water is taken, that lesser capacity”.

(f) Section 7 (1) (c) (i)—

After “megalitres”, insert “or, if a lesser capacity is prescribed in relation to the river or lake, or to the part of it, in which the dam, excavation or work is constructed, that lesser capacity”.

(g) Section 7 (1) (c) (ii)—

Omit “the occupiers of land which adjoins or derives benefit from the river or lake”, insert instead “any person”.

(h) Section 7 (1A) (c)—

After “megalitres”, insert “or, if a lesser capacity is prescribed in relation to the river or lake, or to the part of it, in which the dam, excavation or work is constructed, that lesser capacity”.

(i) Section 7 (2)—

After “taken”, insert “or where the water is being taken or used in a manner prescribed as being wasteful”.

(3) Section 8 (**Rights of Crown in respect of works**)—

Omit “on behalf of the Crown”.

Water (Amendment) 1986

SCHEDULE 2—*continued*

AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(4) Section 14 (**Renewal**)—

(a) Section 14 (1)—

Omit “expiration of the period for which the license was granted or last renewed, as the case may be”, insert instead “license expires but the Ministerial Corporation may deal with an application even if it is lodged later”.

(b) Section 14 (1)—

Omit “Pending”, insert instead “(1A) Pending”.

(c) Section 14 (1)—

Omit “No renewal”, insert instead “(1B) No renewal”.

(d) Section 14 (1A)—

Omit “(1A)”, insert instead “(1C)”.

(e) Section 14 (1D)—

Before section 14 (2), insert:

(1D) Where the Ministerial Corporation deals with an application for renewal lodged after the license expires, subsection (1A) has effect as if the application had been under consideration since before the expiration of the license.

(5) Section 18J (**Renewal of permits**)—

- (a) Omit “An application for renewal of a permit shall be made before the expiration of the period for which it was granted or last renewed as the case may be.”.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(b) Section 18J (2), (3)—

At the end of section 18J, insert:

(2) An application for renewal of a permit shall be lodged before the permit expires but the Ministerial Corporation may deal with an application even if it is lodged later.

(3) Where the Ministerial Corporation deals with an application for renewal lodged after the permit expires, section 18K has effect as if the application had been under consideration since before the expiration of the permit.

(6) Section 20B (**Authority**)—

Section 20B (1)—

Omit “but the Commission shall not refuse the application unless the local land board or Magistrate, as the case may be, has recommended that the application be refused or the Minister has approved of the refusal of the application”.

(7) Section 20C (**Renewal of authority**)—

(a) Section 20C (1)—

Omit “expiration of the period for which the authority was granted or last renewed, as the case may be”, insert instead “authority expires but the Ministerial Corporation may deal with an application even if it is lodged later”.

(b) Section 20C (1)—

Omit “Pending”, insert instead “(1A) Pending”.

(c) Section 20C (1B)—

Before section 20C (2), insert:

(1B) Where the Ministerial Corporation deals with an application for renewal lodged after the authority expires, subsection (1A) has effect as if the application had been under consideration since before the expiration of the authority.

Water (Amendment) 1986

SCHEDULE 2—*continued*

AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(d) Section 20C (4)—

Omit the subsection.

(8) Section 20CB (**Renewal of authorities under section 20CA**)—

(a) Section 20CB (1) (b)—

Omit “expiration of the period for which the authority was granted or last renewed, as the case may be”, insert instead “authority expires but the Ministerial Corporation may deal with an application even if it is lodged later”.

(b) Section 20CB (1) (e)—

After section 20CB (1) (d), insert:

(e) Where the Ministerial Corporation deals with an application for renewal lodged after the authority expires, paragraph (d) has effect as if the application had been under consideration since before the expiration of the authority.

(9) Section 20E (**Amended authorities**)—

Section 20E (2) (d)—

Omit “but the Commission shall not refuse the application unless the local land board or stipendiary magistrate, as the case may be, has recommended that the application be refused or the Minister has approved of the refusal of the application”.

(10) Section 20L (**Issue of group license**)—

Section 20L (1)—

Omit “, but where the local land board or stipendiary magistrate, as the case may be, has recommended that the application be refused the Commission shall not grant the application unless the Minister so approves”.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*(11) Section 20o (**Renewal of group license**)—

(a) Section 20o (1)—

Omit “before the expiration of the period for which it was granted or last renewed”, insert instead “to the Ministerial Corporation before the group license expires but the Ministerial Corporation may deal with an application even if it is lodged later”.

(b) Section 20o (2)—

Omit the subsection.

(c) Section 20o (3)—

Omit “Commission’s decision”, insert instead “decision of the Ministerial Corporation”.

(d) Section 20o (7)—

After section 20o (6), insert:

(7) Where the Ministerial Corporation deals with an application for renewal lodged after the group license expires, subsection (6) has effect as if the application had been under consideration since before the expiration of the group license.

(12) Section 20v (**Interpretation**)—

(a) Section 20v (1), definition of “scheme”—

Omit “(as may be modified from time to time under this Division) prepared”, insert instead “in force”.

(b) Section 20v (1), definition of “water source”—

Omit the definition, insert instead:

“water source” means—

- (a) a river, lake or section of a river; or
- (b) a combination of 2 or more of them;

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(c) Section 20v (1), definition of “year”—

Omit the definition, insert instead:

“year”, in relation to a scheme, means—

- (a) a year commencing on 1 July; or
- (b) if the Ministerial Corporation by order published in the Gazette specifies a different year for the scheme—the specified year.

(d) Section 20v (1A)—

After section 20v (1), insert:

(1A) Where the year applicable to an existing scheme is changed, the order making the change may also make provision for the transitional arrangements leading to the change.

(13) Section 20w (**Power of Governor to declare water source to be subject to volumetric water allocations scheme**)—

After “20x”, insert “or may, by a like order, declare that a scheme already in force shall be subject to a modification so prepared”.

(14) Section 20x (**Determination of water allocations in respect of entitlements**)—

(a) Section 20x (1)—

After “scheme”, insert “, or a modification of such a scheme,”.

(b) Section 20x (2)—

After “preparing”, insert “or modifying”.

(c) Section 20x (2) (a)—

Omit the paragraph, insert instead:

- (a) shall assess the total quantity of water—
 - (i) that is likely to be available in each year for apportionment among the holders of entitlements; and

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

- (ii) that, in the opinion of the Ministerial Corporation, should be reserved for other uses or for future use; and

(d) Section 20x (2) (b)—

Omit “such”.

(15) Section 20xc—

After section 20xB, insert:

Corresponding increase and decrease of water allocation

20xc. (1) The Ministerial Corporation may at any time, or from time to time, during a year—

- (a) increase the basic water allocation for an entitlement for that year without exceeding any maximum quantity determined under section 20x (3) (c); and
- (b) decrease the basic water allocation for the entitlement for the next succeeding year,

without altering the total basic water allocation for the entitlement for those years.

(2) The condition of a water entitlement imposed under section 20x or 20AB to control the quantity of water that may be taken under the entitlement (with any modification effected under section 20XA, 20Z or 20AA) is modified to the extent necessary to permit any increase, and to require any decrease, effected under subsection (1).

(3) The Ministerial Corporation may waive a decrease that has been imposed under subsection (1) (b) and, where a decrease is waived, the modification of a condition effected by subsection (2) in relation to the decrease ceases to have effect.

SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(4) In this section—

“basic water allocation”, in relation to an entitlement for a year, means the water allocation applicable to the entitlement for that year under a condition imposed under section 20x or 20AB, with any modification effected under section 20xA, 20z or 20AA.

(16) Section 20Y (**Invalidation of applications for entitlements**)—

(a) Section 20Y (1)—

Omit “the water allocations of holders of existing entitlements, which authorise the taking of water from the water source, and the requirements of all other users lawfully authorised to take water from the water source”, insert instead “the requirements of the persons already authorised by law to take water from the water source and such other possible requirements for water from the water source as are determined by the Ministerial Corporation”.

(b) Section 20Y (1A)—

Omit the subsection, insert instead:

(1A) A declaration under subsection (1) may relate—

- (a) to a specified application for an entitlement;
- (b) to all applications for entitlements;
- (c) to a specified class of applications for entitlements; or
- (d) to all applications for entitlements other than a specified application for an entitlement or a specified class of applications for entitlements.

(c) Section 20Y (2)—

Omit “a license or authority” wherever occurring, insert instead “an entitlement”.

(d) Section 20Y (2)—

Omit “licenses or authorities” wherever occurring, insert instead “entitlements”.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(e) Section 20Y (2)—

Omit “license or authority” where thirdly and fourthly occurring, insert instead “entitlement”.

(f) Section 20Y (2A)—

After section 20Y (2), insert:

(2A) Notwithstanding the provisions of sections 11 (2C) (d), 20A (1D) (d) and 20K (2), a notice in force under subsection (1) does not apply to an amended application referred to in those provisions if the original application was made before the date on which the notice took effect, but any amendment made on or after that date has no effect, and shall be disregarded, if the Ministerial Corporation is of the opinion that the granting of the application with the amendment could result in a larger water allocation than would be the case if the application were to be granted without the amendment.

(g) Section 20Y (3)—

Omit the subsection, insert instead:

(3) If an application to which a notice under subsection (1) applies is made while the notice is in force, it is invalid and shall be rejected by the Ministerial Corporation.

(h) Section 20Y (4)—

Omit “a license or authority” wherever occurring, insert instead “an entitlement”.

(i) Section 20Y (4)—

Omit “that license or authority”, insert instead “an existing entitlement”.

(17) Section 20Z (**Power of Ministerial Corporation to reduce water allocations in time of shortage**)—

(a) Section 20Z (1)—

Omit “with respect to any year”, insert instead “at any time, or from time to time, during a year”.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(b) Section 20Z (1)—

Omit “the water allocations of holders of entitlements”, insert instead “the requirements during that year of the persons authorised by law to take water from that water source and such other possible requirements for water from that water source as are determined by the Ministerial Corporation”.

(c) Section 20Z (1)—

Omit “those allocations”, insert instead “the water allocations under the scheme”.

(d) Section 20Z (2)—

Omit “the year”, insert instead “any year”.

(18) Section 20AA—

Omit the section, insert instead:

Powers of Ministerial Corporation in years of surplus

20AA. (1) The Ministerial Corporation may, during a year or before its commencement, give a direction in such manner as it thinks fit as to the times at which, the manner in which, and the extent to which, water may, under an entitlement, be taken in excess of the water allocation for the entitlement from a water source subject to a scheme, and may vary or revoke such a direction.

(2) To the extent to which the taking of water in accordance with a direction relating to an entitlement is inconsistent with a condition to which the entitlement is subject, the condition shall be deemed to be suspended.

(3) Water taken under an entitlement in accordance with a direction under subsection (1) shall be disregarded in determining whether the water allocation for the entitlement has been exceeded.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(4) Without limiting subsection (1), if the Ministerial Corporation is satisfied that a water source subject to a scheme is likely to have more water available during a year than is required to meet—

- (a) the requirements during that year of the persons authorised by law to take water from that water source; and
- (b) such other possible requirements for water from that water source as it determines,

the Ministerial Corporation may, in such manner as it thinks fit, increase the water allocations under the scheme by a specified proportion.

(5) The condition of an entitlement for which the water allocation is increased under subsection (4) is modified to the extent necessary to give effect to the increase.

(19) Section 20AC (**Water meters**)—

Section 20AC (2) (b)—

After “permits”, insert “, suffers”.

(20) Section 20AD (**Provisions applicable in cases of subdivision of land**)—

- (a) Omit “a license or authority”, insert instead “an entitlement”.
- (b) Omit “licenses or authorities” wherever occurring, insert instead “entitlements”.
- (c) Omit “license or authority” where secondly occurring, insert instead “entitlement”.

(21) Section 20AE (**Power of entry**)—

- (a) Omit “The Commission may, by any of its officers, employees or agents”, insert instead “An officer under the Water Administration Act 1986, or an employee or agent of the Ministerial Corporation, may”.

Water (Amendment) 1986

SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(b) Section 20AE (2)—

At the end of section 20AE, insert:

(2) An officer under the Water Administration Act 1986 or an employee or agent of the Ministerial Corporation may enter on any land and dismantle for inspection a water meter or other measuring device that is on the land and is connected to a work referred to in subsection (1).

(22) Section 20AF—

After section 20AE, insert:

Ordering of supply of water

20AF. (1) The Ministerial Corporation may temporarily vary or waive a condition of an entitlement relating to the ordering of supplies under the water allocation of the holder of the entitlement.

(2) Where, in accordance with a condition to which an entitlement is subject, a supply of water is ordered before, but is taken after, the end of a year, the Ministerial Corporation may, at its discretion, debit the quantity of water taken under the order against either the water allocation for the year in which the supply was ordered or the water allocation for the year in which it is taken.

(3) Where, in accordance with a condition to which an entitlement is subject, a quantity of water is ordered, the Ministerial Corporation may, at its discretion, treat the water ordered as part of the water allocation for the entitlement even if it is not taken.

SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(23) Section 22BA—

After section 22B, insert:

Invalidation of applications for entitlements

22BA. (1) This section applies to a water source that is not the subject of a volumetric water allocations scheme under Division 4B if the Ministerial Corporation is satisfied that the water source is unlikely to have more water available than is sufficient to meet—

- (a) the requirements of the persons already authorised by law to take water from the water source; and
- (b) such other possible requirements for water from the water source as are determined by the Ministerial Corporation.

(2) The Ministerial Corporation may, by order published in the Gazette, declare that, until the order is revoked, an application for an entitlement to which the order applies may not be made after a specified date (being a date not earlier than the date of publication) if the entitlement would authorise the taking of water from a water source specified in the order that is a water source to which this section applies.

(3) An order may be made to apply—

- (a) to a specified application for an entitlement;
- (b) to all applications for entitlements;
- (c) to a specified class of applications for entitlements; or
- (d) to all applications for entitlements other than a specified application for an entitlement or a specified class of applications for entitlements.

(4) An order does not apply to an entitlement that would merely replace an existing entitlement and, for the purposes of this subsection, where land to which an entitlement relates is subdivided into parts, an application for an entitlement relating to one of the parts shall be deemed to be an application for an entitlement to replace an existing entitlement.

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(5) If an application for an entitlement to which an order applies is made while the order is in force, the application is invalid and shall be rejected by the Ministerial Corporation.

(6) In this section—

“entitlement” means a license, permit, authority or group license;

“water source” means—

(a) a river, lake or section of a river; or

(b) a combination of 2 or more of them.

(24) Section 22C (**Flow of water assured by a work of the Crown**)—

(a) Section 22C (4) (a1)—

Omit the paragraph, insert instead:

(a1) be paid—

(i) in respect of each complete year during which the license, group license, permit or authority is in force; and

(ii) if the license, group license, permit or authority is not in force for the whole of a year—in respect of the part of the year during which it is in force,

after the date of the proclamation referred to in subsection (2);

(b) Section 22C (4) (d), (e)—

Omit the paragraphs, insert instead:

(d) to the extent of a minimum annual amount fixed by the Ministerial Corporation in each case, be payable even if the license, group license, permit or authority is suspended or the work to which it relates is not used; and

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(e) be on the basis of a fixed charge and either—

(i) the quantity of water taken and used by means of the work during the relevant year, or part of a year, referred to in paragraph (a1); or

(ii) the area of land irrigated with water so taken and used,

even if the water is taken and used while the license, group license, permit or authority is suspended.

(c) Section 22C (4A)—

Omit “(being the immediately preceding 1st July or any subsequent 1st July)”.

(d) Section 22C (6A), (6B)—

After section 22C (6), insert:

(6A) Any amount due and unpaid under subsection (3)—

(a) bears interest on a daily basis at the prescribed rate until paid, even if judgment for the amount has been given by a court;

(b) is, together with any such interest, recoverable as a debt due and payable to the Ministerial Corporation by the holder, or jointly and severally by the holders, of the relevant license, group license, permit or authority; and

(c) is, together with any such interest, a charge on the land supplied with water under the license, group license, permit or authority.

(6B) A payment made in respect of a charge payable under subsection (3) shall be applied first in payment of any interest borne by the charge.

(e) Section 22C (10)—

Omit “Minister may, on the recommendation of the Commission,”; insert instead “Ministerial Corporation may”.

SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

(f) Section 22c (11), (12)—

After section 22c (10), insert:

(11) In this section, a reference to a year in relation to payment of a charge for the right to take and use water from a river, lake or section of a river, is a reference to—

- (a) a year commencing on 1 July; or
- (b) if the Ministerial Corporation by order published in the Gazette specifies a different year for the river, lake or section of a river—the specified year.

(12) Where a change of the year relating to payment of a charge affects an existing right to take and use water, the order making the change may also make provision for the transitional arrangements leading to the change.

(25) Section 27 (**Regulations**)—

(a) Section 27 (1) (c1)—

After section 27 (1) (c), insert:

- (c1) a scheme for transfers between holders of licences, authorities and group licenses of rights to take and use water from a water source that is not the subject of a volumetric water allocations scheme under Division 4B; and

(b) Section 27 (1A)—

After section 27 (1), insert:

(1A) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or

*Water (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO PART II OF THE WATER ACT 1912—*continued*

- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

SCHEDULE 3

(Sec. 3)

AMENDMENTS TO PART III OF THE WATER ACT 1912

- (1) Section 30 (**Constitution, power, etc., of Board**)—

Section 30 (2)—

Omit “Commission”, insert instead “Department of Water Resources”.

- (2) Section 54 (**Power of trustees to enter and inspect**)—

Section 54 (3) (f)—

Omit “and have been for a period of not less than six months”.

- (3) Section 55B (**Interest on overdue rates and charges**)—

- (a) Section 55B (2)—

Omit “at the expiration of three months”.

- (b) Section 55B (3)—

Omit “in respect only of as many complete months as have expired”, insert instead “on a daily basis”.

- (c) Section 55B (3)—

Omit “excluding any remaining portion of a month”.

*Water (Amendment) 1986***SCHEDULE 3—continued****AMENDMENTS TO PART III OF WATER ACT 1912—continued****(d) Section 55B (6)—**

After section 55B (5), insert:

(6) A payment made in respect of rates and charges payable to a trust shall be applied first in payment of any interest borne by the rates and charges.

(4) Section 73B (Reduction of liability)—

Omit “, on the recommendation of the Commission,”.

(5) Section 74 (Regulations)—

Section 74 (1A)—

After section 74 (1), insert:

(1A) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

SCHEDULE 4

(Sec. 3)

AMENDMENTS TO PART V OF THE WATER ACT 1912**(1) Section 105 (Interpretation)—**

Definition of “Sub-surface water”—

Omit “occurring naturally”.

*Water (Amendment) 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART V OF THE WATER ACT 1912—*continued*(2) Section 117B (**Charges**)—

(a) Section 117B (1), definition of “financial year”—

Omit the definition.

(b) Section 117B (1), definition of “year”—

After the definition of “sub-surface water basin”, insert:

“year”, in relation to a prescribed area, or part of a prescribed area, means—

(a) a year commencing on 1 July; or

(b) if the Ministerial Corporation by order published in the Gazette specifies a different year for the prescribed area or part of a prescribed area—the specified year.

(c) Section 117B (1A)—

After section 117B (1), insert:

(1A) Where the year relating to an existing prescribed area, or part of an existing prescribed area, is changed, the order making the change may also make provision for the transitional arrangements leading to the change.

(d) Section 117B (4)—

After “section”, insert “and even if the license is suspended”.

(e) Section 117B (5) (b), (9)—

Omit “financial” wherever occurring.

(f) Section 117B (5) (f)—

Omit the paragraph, insert instead:

(f) to the extent of a minimum annual amount fixed by the Ministerial Corporation, be payable even if the bore to which the license relates is not used or the license is suspended.

*Water (Amendment) 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART V OF THE WATER ACT 1912—*continued*

(g) Section 117B (7)—

Omit “(being the immediately preceding 1st July or any subsequent 1st July)”.

(h) Section 117B (8A), (8B)—

After section 117B (8), insert:

(8A) Any amount due and unpaid under subsection (4)—

(a) bears interest on a daily basis at the prescribed rate until paid, even if judgment for the amount has been given by a court; and

(b) is, together with any such interest, recoverable as a debt due and payable to the Ministerial Corporation by the lawful occupier of the land on which the bore is situated.

(8B) A payment made in respect of a charge payable under subsection (4) shall be applied first in payment of any interest borne by the charge.

(i) Section 117B (9)—

Omit “Minister may, on the recommendation of the Commission,” insert instead “Ministerial Corporation may”.

(3) Section 119 (**Charge on land**)—

Section 119 (2)—

At the end of section 119, insert:

(2) In subsection (1), a reference to charges includes a reference to interest on the charges.

(4) Sections 121A–121C—

After section 121, insert:

Unlawful obstruction of sub-surface water

121A. (1) A person shall not, except in accordance with this Act or the written permission of the Ministerial Corporation, interfere with sub-surface water or obstruct its flow.

SCHEDULE 4—*continued*AMENDMENTS TO PART V OF THE WATER ACT 1912—*continued*

(2) A person shall not fail to comply to the satisfaction of the Ministerial Corporation with a direction by the Ministerial Corporation—

- (a) to remove wholly or in part from land owned or occupied by the person an unlawful artificial obstruction that is on or under the surface of the land and obstructs the flow of sub-surface water;
- (b) to carry out such work as the Ministerial Corporation considers to be necessary to permit the flow of sub-surface water through or past an unlawful artificial obstruction that is on or under the surface of land owned or occupied by the person; or
- (c) to render ineffective an unlicensed bore.

Penalty: (a) in the case of an offence by a corporation—\$20,000 and \$2,000 for each day during which the offence continues; or

(b) in any other case—\$10,000 and \$1,000 for each day during which the offence continues.

Removal of obstructions

121B. The Ministerial Corporation may remove or render ineffective an unlawful artificial obstruction to the flow of sub-surface water or render ineffective an unlicensed bore and may recover the costs and expenses of so doing as a debt due to it from the occupier of the land on which the obstruction or bore was situated.

Apportionment of expenses

121C. An owner of land is liable to pay to an occupier of the land such proportion of—

- (a) any costs and expenses incurred by the occupier in complying with a direction of the Ministerial Corporation under section 121A; or

Water (Amendment) 1986

SCHEDULE 4—*continued*AMENDMENTS TO PART V OF THE WATER ACT 1912—*continued*

- (b) any costs and expenses recovered under section 121B by the Ministerial Corporation,

as is, on the application of the occupier, determined by the local land board for the district in which the land or any part of it is situated.

(5) Section 129 (**Regulations**)—

Section 129 (1A)—

After section 129 (1), insert:

(1A) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

SCHEDULE 5

(Sec. 3)

AMENDMENTS TO PART VI OF THE WATER ACT 1912

(1) Section 133 (**Constitution of districts**)—

Section 133 (3)—

Omit “such of them as the Commission may recommend”, insert instead “part of them”.

*Water (Amendment) 1986*SCHEDULE 5—*continued*AMENDMENTS TO PART VI OF THE WATER ACT 1912—*continued*(2) Section 134 (**Alteration of boundaries of districts**)—

Section 134 (4)—

Omit “as the Commission may recommend”.

(3) Section 136 (**Lands within trust districts**)—

Section 136 (6)—

Omit “Minister of the Crown for the time being charged with the administration of this Part”, insert instead “Ministerial Corporation”.

(4) Section 139 (**Assessment of rates and charges**)—

(a) Section 139 (1)—

Omit “during or as soon as practicable and in any case within 2 months after the end of that year”.

(b) Section 139 (2) (a)—

After “139A”, insert “, maintenance charges referred to in section 143 (1)”.

(c) Section 139 (2) (b)—

Omit “at the expiration of three months”.

(d) Section 139 (2) (c)—

Omit “in respect only of as many complete months as have expired”, insert instead “on a daily basis”.

(e) Section 139 (2) (c)—

Omit “excluding any remaining portion of a month”.

(f) Section 139 (2) (f)—

After section 139 (2) (e), insert:

(f) A payment made in respect of rates and charges assessed under this Part shall be applied first in payment of any interest borne by the rates and charges.

*Water (Amendment) 1986*SCHEDULE 5—*continued*AMENDMENTS TO PART VI OF THE WATER ACT 1912—*continued*(5) Section 142 (**Charges for additional water**)—

Section 142 (1), (2)—

Omit “on or before the thirty-first day of July next following or within one month after the date of notification of assessment, whichever is the later” wherever occurring, insert instead “at the prescribed times and in the prescribed manner”.

(6) Section 143 (**Liability for rates and charges for water**)—

Section 143 (2)—

After “additional water”, insert “, maintenance charges arising in relation to the supply of water and any accrued interest”.

(7) Section 147 (**Supply of water**)—

(a) Section 147 (2A)—

Omit “and have been for a period of not less than six months”.

(b) Section 147 (7)—

Omit “and on the recommendation of the Commission”.

(c) Section 147 (7), (9B)—

Omit “, on the recommendation of the Commission,” wherever occurring.

(d) Section 147 (8)—

Omit “on the recommendation of the Commission and”.

(e) Section 147 (8A)—

Omit “on the recommendation of the Commission, and”.

(f) Section 147 (9)—

Omit “on the recommendation of the Commission” wherever occurring.

SCHEDULE 5—*continued*AMENDMENTS TO PART VI OF THE WATER ACT 1912—*continued*(8) Section 147A (**Amalgamation of holdings**)—

(a) Section 147A (1)—

Omit “the Commission may, if it thinks fit, recommend to the Governor that such holdings be amalgamated into one holding and thereupon”.

(b) Section 147A (1)—

Omit “be one”, insert instead “be amalgamated as one”.

(9) Section 148B (**Exclusion from claims for damage, etc.**)—

(a) Omit “, the Chief Commissioner or a commissioner” wherever occurring.

(b) Omit “a Minister,” where secondly occurring, insert instead “a Minister or”.

(10) Section 149 (**Regulations**)—

(a) Section 149 (1)—

Omit “Commission may, with the approval of the Governor,”, insert instead “Governor may”.

(b) Section 149 (2A)—

After section 149 (2), insert:

(2A) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

SCHEDULE 6

(Sec. 3)

AMENDMENTS TO PART VII OF THE WATER ACT 1912

(1) Section 150 (**Interpretation**)—

Definition of “River”—

Omit the definition, insert instead:

“River” includes—

- (a) a stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream;
- (b) an affluent, confluent, branch or other stream of water into or from which a stream referred to in paragraph (a) flows; and
- (c) anything prescribed as being a river,

but does not include anything prescribed as not being a river.

(2) Section 153 (**Constitution of provisional districts**)—

(a) Section 153 (1)—

Omit “such amendments (if any) of the proposal as the Commission may recommend”, insert instead “or without amendment”.

(b) Section 153 (4), (5)—

After section 153 (3), insert:

(4) The Governor may, by proclamation in the Gazette, revoke a proclamation referred to in subsection (1).

(5) Upon the revocation of a proclamation referred to in subsection (1), the lands to which the proclamation related cease to be constituted as a provisional flood control district or a provisional flood control and irrigation district.

SCHEDULE 6—*continued*AMENDMENTS TO PART VII OF THE WATER ACT 1912—*continued*(3) Section 154 (**Constitution of districts**)—

(a) Section 154 (3)—

Omit “such of them as the Commission may recommend”, insert instead “any of them”.

(b) Section 154 (4), (5)—

After section 154 (3), insert:

(4) The Governor may, by proclamation in the Gazette, revoke a proclamation referred to in subsection (3).

(5) Upon the revocation of a proclamation referred to in subsection (3), the lands to which the proclamation related cease to be constituted as a district.

(4) Section 155 (**Alteration of boundaries**)—

Section 155 (4)—

Omit “, as the Commission may recommend”.

(5) Section 157 (**Lands within trust districts**)—

(a) Section 157 (6)—

Omit “Minister for the time being charged with the administration of this Part”, insert instead “Ministerial Corporation”.

(b) Section 157 (6)—

Omit “said Minister”, insert instead “Ministerial Corporation”.

(6) Section 159 (**Rates**)—

(a) Section 159 (1) (b)—

Omit “the first day of July next following”, insert instead “a date determined by the Ministerial Corporation that is not earlier than”.

(b) Section 159 (2) (b)—

Omit “at the expiration of three months”.

SCHEDULE 6—*continued*AMENDMENTS TO PART VII OF THE WATER ACT 1912—*continued*

(c) Section 159 (2) (c)—

Omit “in respect only of as many complete months as have expired”, insert instead “on a daily basis”.

(d) Section 159 (2) (c)—

Omit “excluding any remaining portion of a month”.

(e) Section 159 (2) (f)—

After section 159 (2) (e), insert:

(f) A payment made in respect of rates assessed and levied under this Part shall be applied first in payment of any interest borne by the rates.

(7) Section 164 (**Regulations**)—

(a) Section 164 (1)—

Omit “Commission may, with the approval of the Governor,”, insert instead “Governor may”.

(b) Section 164 (3A)—

After section 164 (3), insert:

(3A) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

SCHEDULE 7

(Sec. 3)

AMENDMENTS TO PART VIII OF THE WATER ACT 1912

(1) Section 165 (**Interpretation**)—

Section 165 (1), definition of “river”—

Omit the definition, insert instead:

“river” includes—

- (a) a stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream;
- (b) an affluent, confluent, branch or other stream of water into or from which a stream referred to in paragraph (a) flows; and
- (c) anything prescribed as being a river,

but does not include anything prescribed as not being a river;

(2) Section 185 (**Regulations**)—

Section 185 (1)—

Omit “Commission may, with the approval of the Governor,”,
insert instead “Governor may”.

SCHEDULE 8

(Sec. 3)

AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
DURATION OF ENTITLEMENTS(1) Section 12 (**License**)—

Section 12 (3)—

Omit “exceeding ten”, insert instead “that, except in such circumstances as may be prescribed, exceeds 10”.

SCHEDULE 8—*continued*AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
DURATION OF ENTITLEMENTS—*continued*(2) Section 14 (**Renewal**)—

Section 14 (1)—

Omit “longer period than ten years”, insert instead “period that, except in such circumstances as may be prescribed, exceeds 10 years”.

(3) Section 20B (**Authority**)—

Section 20B (2)—

Omit “not exceeding ten”, insert instead “that, except in such circumstances as may be prescribed, exceeds 10”.

(4) Section 20C (**Renewal of authority**)—

Section 20C (1)—

Omit “longer period than ten years”, insert instead “period that, except in such circumstances as may be prescribed, exceeds 10 years at any one time”.

(5) Section 20CA (**Application for authority by persons who do not occupy land on which works are to be constructed**)—

Section 20CA (6) (b)—

Omit “exceeding ten years”, insert instead “that, except in such circumstances as may be prescribed, exceeds 10 years”.

(6) Section 20CB (**Renewal of authorities under section 20CA**)—

Section 20CB (1) (c)—

Omit “longer period than ten years”, insert instead “period that, except in such circumstances as may be prescribed, exceeds 10 years at any one time”.

(7) Section 20L (**Issue of group license**)—

Section 20L (4)—

Omit “exceeding ten years”, insert instead “that, except in such circumstances as may be prescribed, exceeds 10 years”.

*Water (Amendment) 1986*SCHEDULE 8—*continued*AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
DURATION OF ENTITLEMENTS—*continued*(8) Section 20o (**Renewal of group license**)—

Section 20o (5)—

Omit “exceeding”, insert instead “that, except in such circumstances as may be prescribed, exceeds”.

SCHEDULE 9

(Sec. 3)

AMENDMENT TO THE WATER ACT 1912 RELATING TO THE
TRANSFER OF WATER ALLOCATIONS

Part II, Division 4c—

After Division 4B, insert:

DIVISION 4c—*Transfer of Water Allocations***Interpretation**

20AG. This Division shall be construed with, and as if it formed part of, Division 4B.

Water allocation may be transferred

20AH. (1) The holder of an entitlement (in this Division referred to as the “transferor”) may, with the approval of the Ministerial Corporation, transfer the whole, or part, of the water allocation for the entitlement to the holder of another entitlement (in this Division referred to as the “transferee”).

(2) A transfer may be a temporary transfer for a limited period before the transferred water allocation reverts to the transferor or may be a transfer without limitation as to duration.

(3) A transfer may be effected between different schemes only if the Ministerial Corporation is satisfied—

(a) that the transfer would not result in the transferee’s scheme being subjected to an unacceptable commitment; and

SCHEDULE 9—*continued*AMENDMENT TO THE WATER ACT 1912 RELATING TO THE
TRANSFER OF WATER ALLOCATIONS—*continued*

- (b) that such other conditions as may be prescribed have been complied with.

Application for transfer

20A1. (1) Except where an application may be made under subsection (2), application for a transfer shall be made by the transferee applying for a new entitlement (or, if the holder so desires in the case of an authority or a group license, for an amended entitlement) and a water allocation for the entitlement that—

- (a) if the transferee is not already the holder of an entitlement—comprises or includes the water allocation proposed to be transferred; or
- (b) if the transferee is already the holder of an entitlement—comprises the water allocation for the existing entitlement together with the water allocation proposed to be transferred.

(2) If the Ministerial Corporation agrees and subsection (3) is complied with, the Ministerial Corporation may accept and consider an application by a transferor or transferee for the transfer of a water allocation by way of an appropriate modification under section 20xA of the conditions to which the entitlements of the transferor and transferee are subject.

(3) This subsection is complied with in relation to an application referred to in subsection (2) if—

- (a) the application is for a temporary transfer for a period of not more than 3 years or, if some other period is prescribed for the purposes of this paragraph, the period so prescribed;
- (b) the transfer will be to the holder of an existing entitlement;

SCHEDULE 9—*continued*AMENDMENT TO THE WATER ACT 1912 RELATING TO THE
TRANSFER OF WATER ALLOCATIONS—*continued*

- (c) the period for which the transfer is to be effected does not, when aggregated with the period or periods for which any other transfer or transfers obtained by the transferee under subsection (2), exceed 3 years or any other period prescribed for the purposes of paragraph (a); and
 - (d) the application is made in a form approved by the Ministerial Corporation.
- (4) The Ministerial Corporation may, in relation to an application for a transfer—
- (a) require the transferor to provide such information and consents; and
 - (b) require the transferee to provide such information and evidence,
- as are specified by the Ministerial Corporation.

(5) A requirement under subsection (4) may be complied with in any manner acceptable to the Ministerial Corporation but the Ministerial Corporation may decline to proceed with consideration of the application until the requirement is complied with.

(6) In determining whether or not to approve a transfer, the Ministerial Corporation may take into consideration such matters as it thinks fit including (without limiting the matters that may be considered) its opinion as to the social and economic effect that the transfer would have if approved.

Form of transfer to be lodged and fee paid

20AJ. An approved application for a transfer shall not be given effect by the issue of an entitlement, or by the modification of a condition of an entitlement, before—

- (a) there has been lodged with the Ministerial Corporation a written record of the particulars of the transfer that is in a form approved by the Ministerial Corporation and is executed by the transferor and the transferee; and

SCHEDULE 9—*continued*AMENDMENT TO THE WATER ACT 1912 RELATING TO THE
TRANSFER OF WATER ALLOCATIONS—*continued*

(b) the Ministerial Corporation has received payment of the fee for the transfer prescribed as—

(i) a specified amount; or

(ii) an amount calculated in a specified manner.

Superseded entitlement to be cancelled

20AK. (1) Where an entitlement effecting a transfer of a water allocation otherwise than by amendment of an existing entitlement is issued to the holder of an existing entitlement, the existing entitlement ceases to have effect and shall be cancelled by the Ministerial Corporation.

(2) The water allocation for the entitlement of a transferor is abated to the extent of the transfer and the condition to which the entitlement is subject is modified accordingly.

Purchase of water allocations by the Ministerial Corporation

20AL. For any public purpose, the Ministerial Corporation may, as prescribed, acquire by purchase and surrender the whole or part of the water allocation for an entitlement without compliance with the requirements of this Division.

Applications not affected by section 20Y notice

20AM. A notice in force under section 20Y does not apply to an application for an entitlement made in order to effect a transfer of a water allocation under this Division.

SCHEDULE 10

(Sec. 3)

AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
SALE OF WATER ALLOCATIONS

(1) Part II, Division 4D—

Before Division 5, insert:

DIVISION 4D—*Sale by the Ministerial Corporation of Water
Allocations***Interpretation**

20AN. (1) In this Division—

“available water” means water that is, or but for a notice in
force under section 20Y would be, available for allocation—

- (a) under a new scheme;
- (b) because of the modification of an existing scheme;
- (c) because an entitlement has lapsed or has been
surrendered or amended; or
- (d) because a water allocation purchased by the Ministerial
Corporation has become surplus to its requirements.

(2) This Division shall be construed with, and as if it formed
part of, Division 4B.**Sale, etc., of water allocations of available water**20AO. (1) Even if a notice under section 20Y is in force in
relation to a water source, the Ministerial Corporation may, in
such manner as it thinks fit, give notice—

- (a) to any person holding an entitlement to take water from
the water source that an offer may be made to the
Ministerial Corporation to purchase for the entitlement an
additional water allocation of available water from the
water source; or

SCHEDULE 10—*continued*AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
SALE OF WATER ALLOCATIONS—*continued*

- (b) to any person desiring to apply for an entitlement to take available water from the water source that an offer may be made to the Ministerial Corporation to purchase the water allocation that would be applicable to the entitlement if it were granted.

(2) A notice under subsection (1) may be given—

- (a) to a person specified in the notice;
- (b) to all persons within a class of persons specified in the notice; or
- (c) to all persons other than those within a class of persons specified in the notice.

(3) A notice under subsection (1)—

- (a) shall specify whether an offer is to be the subject of negotiation or is to be made by way of a tender or at auction;
- (b) may, in the case of an offer by way of a tender or at auction, specify the conditions of sale; and
- (c) may be general or subject to specified exceptions or limitations.

(4) The Ministerial Corporation may—

- (a) accept an offer made under this section, whether or not subject to conditions; or
- (b) refuse to accept such an offer.

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(5) Where an offer under this section is made by way of a tender, the Ministerial Corporation—

- (a) may require the provision of further information and evidence in relation to the tender, the use of the water allocation to which it relates or the entitlement required to be applied for under section 20AP;
- (b) is not obliged to accept the highest or any tender; and
- (c) may reject a tender for any reason, whether or not it is related to the price.

(6) The Ministerial Corporation may, in such circumstances as may be prescribed, invite and consider an application for an entitlement to take available water without requiring the purchase of the water allocation for the entitlement.

Application for entitlement

20AP. (1) If the purchaser of a water allocation is already the holder of an entitlement authorising the taking of water from the same water source, acceptance of the offer to purchase is conditional upon—

- (a) the purchaser applying, within a time specified by the Ministerial Corporation, for an entitlement (or, if the holder of an authority or a group license so desires, an amended entitlement) carrying the water allocation for the existing entitlement together with the water allocation purchased; and
- (b) the application being granted.

(2) If the purchaser of a water allocation is not already the holder of an entitlement authorising the taking of water from the same water source, acceptance of the offer to purchase is conditional upon—

- (a) the purchaser applying, within a time specified by the Ministerial Corporation, for an entitlement carrying the water allocation purchased; and

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(b) the application being granted.

(3) If an application for an entitlement made under this section is subject to the applicant becoming the occupier of particular land, the Ministerial Corporation may refuse to grant the application unless it is shown to the satisfaction of the Ministerial Corporation that the applicant has a reasonable prospect of occupying the land within a reasonable time.

Superseded entitlement to be cancelled

20AQ. If the holder of an existing entitlement is granted a new entitlement that includes a water allocation purchased under this Division, the existing entitlement ceases to have effect and shall be cancelled by the Ministerial Corporation.

Applications not affected by section 20Y notice

20AR. A notice in force under section 20Y does not apply to an application for an entitlement or an amended authority or an amended group license made in order to effect a purchase of a water allocation under this Division, or to an application for an entitlement made under section 20AO (6).

(2) Section 27 (**Regulations**)—

(a) Section 27 (1) (e2)—

Omit “and”.

(b) Section 27 (1) (e3)—

After section 27 (1) (e2), insert:

(e3) matters giving effect to the provisions of this Part relating to the purchase and sale of water allocations including, in

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SCHEDULE 10—*continued*

AMENDMENTS TO THE WATER ACT 1912 RELATING TO THE
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the case of purchases by tender, matters relating to the
submission, and the acceptance or rejection, of a tender;
and

