

FIRST PRINT

WATER ADMINISTRATION BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

Water (Amendment) Bill 1986;

Wentworth Irrigation (Amendment) Bill 1986;

Hay Irrigation (Amendment) Bill 1986;

Irrigation (Amendment) Bill 1986;

Broken Hill Water and Sewerage (Amendment) Bill 1986;

Drainage (Amendment) Bill 1986;

Rivers and Foreshores Improvement (Amendment) Bill 1986;

Cobar Water Supply (Amendment) Bill 1986;

Water Administration (Transfer of Functions) Bill 1986;

Miscellaneous Acts (Water Administration) Amendment Bill 1986.

The object of this Bill is to abolish the Water Resources Commission and bring the management of the water resources of the State under the control of the Water Administration Ministerial Corporation ("the Ministerial Corporation") constituted by the proposed Act.

The functions of the Ministerial Corporation will be exercised by the Minister who will be supported by a Department of Water Resources established by the proposed Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 defines certain expressions used in the proposed Act.

Clause 4 specifies the objects of the proposed Act.

Clause 5 provides that the proposed Act will bind the Crown in all its capacities.

Clause 6 establishes the Department of Water Resources and requires the Department and the Ministerial Corporation to achieve a unified administration of the Acts that confer or impose a function on the Ministerial Corporation.

Clause 7 constitutes a corporation with the corporate name "Water Administration Ministerial Corporation" with the usual attributes of a corporation.

Clause 8 provides for judicial notice to be taken of the seal of the Ministerial Corporation and of the signature of the Minister when exercising a function of the Ministerial Corporation.

Clause 9 authorises the appointment under the Public Service Act 1979 of a Director, Department of Water Resources, and the staff of the Department. It enables the Director to arrange for the use of the staff or facilities of another public authority or a local authority and permits the Ministerial Corporation to engage consultants.

Clause 10 provides for the engagement of employees of the Ministerial Corporation.

Clause 11, in addition to conferring and imposing a number of particular functions on the Ministerial Corporation, confers an over-riding power on the Ministerial Corporation to exercise a function conferred or imposed on any other person by certain Acts specified in Schedule 1. The Acts concerned are water-related Acts and include the Acts under which water, sewerage and drainage services are supplied to Sydney, the Hunter District, Broken Hill and Cobar.

Clause 12 confers on the Ministerial Corporation (subject to clause 13) the right to the use and flow, and to the control, of the water in rivers and lakes, conserved water, naturally occurring surface water, and sub-surface water.

Clause 13 preserves, despite clause 12, certain rights to use water that are specified in Schedule 2. These include the rights exercisable under the 3 "Water Board" Acts (Metropolitan, Hunter and Broken Hill) and certain other Acts including the Fire Brigades Act 1909.

Clause 14 enables the Ministerial Corporation to delegate functions.

Clause 15 confers certain powers of entry on employees and agents of the Ministerial Corporation and on officers of the Department of Water Resources.

Clause 16 requires persons exercising functions under other Acts to do so in a manner that promotes the objects of the proposed Act. The provision enables the Premier to give directions related to the operation of the clause and enables the Minister to constitute a standing committee to advise the Premier and the Minister on the operation of the clause.

Clause 17 enables the Minister to establish special committees to advise the Ministerial Corporation or to exercise delegated functions of the Ministerial Corporation.

Clause 18 enables the Governor to resume or appropriate land under the Public Works Act 1912 which applies subject to certain specified modifications.

Clause 19 exonerates the Ministerial Corporation from liability for loss or damage caused by the exercise of a function of the Ministerial Corporation unless such a liability is expressly imposed by an Act conferring or imposing functions on the Ministerial Corporation.

Clause 20 provides an action for debt for the recovery of money due to the Ministerial Corporation.

Clause 21 enables the annual report of the Ministerial Corporation to be included in the annual report of the Department of Water Resources.

Clause 22 provides for offences against the Act or regulations to be prosecuted before a Magistrate.

Clause 23 repeals the Water Resources Commission Act 1976 and related Acts.

Clause 24 gives effect to Schedule 4 which sets out the savings and transitional provisions required as a consequence of the enactment of the proposed Act and the repeals effected by it.

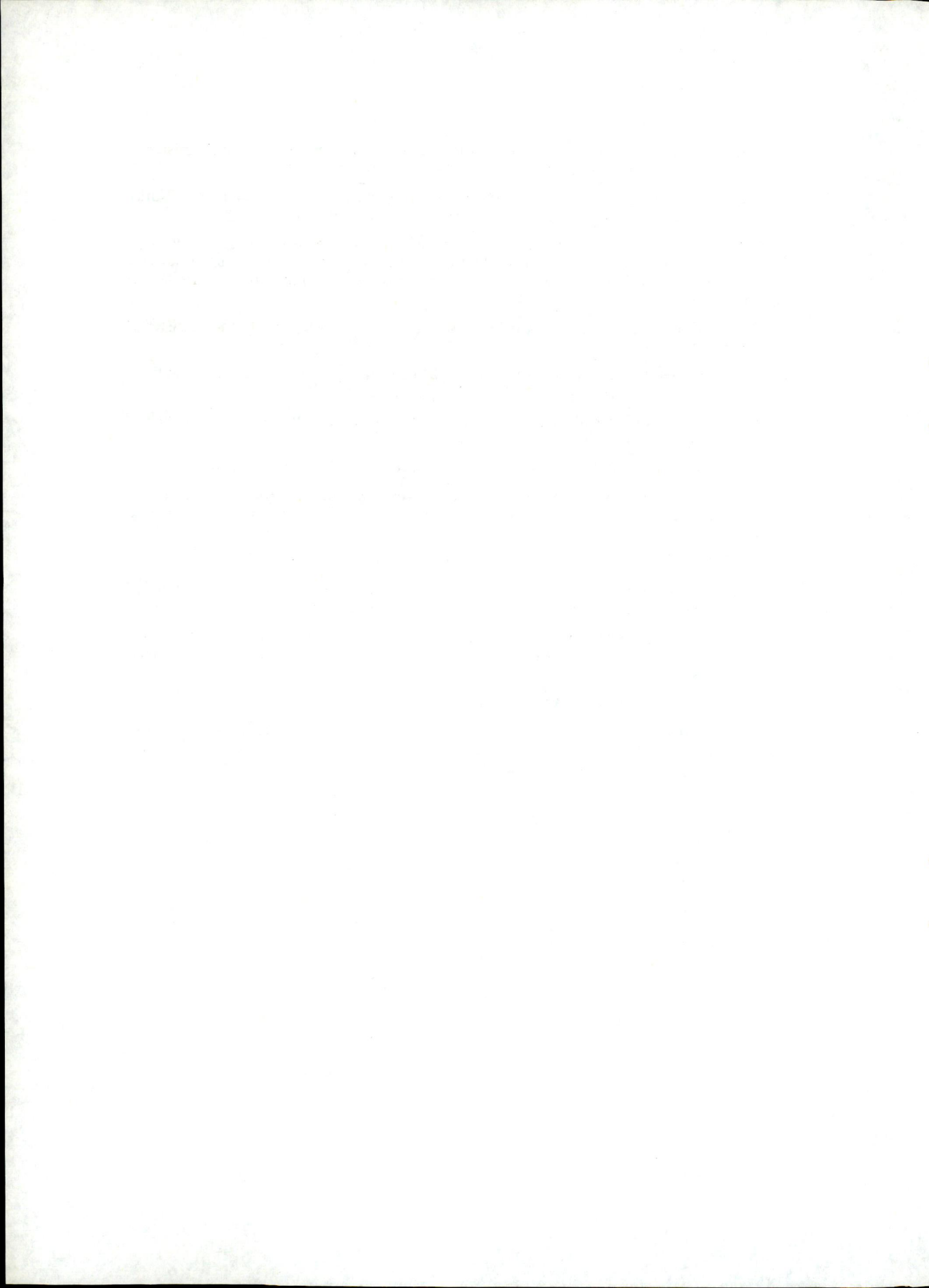
Clause 25 authorises the making of regulations by the Governor-in-Council.

Schedule 1 specifies the Acts under which the Ministerial Corporation is authorised by the proposed Act to exercise the functions conferred on other persons.

Schedule 2 specifies the rights that are exercisable under other Acts even though clause 13 of the Bill vests in the Ministerial Corporation the right to the use and flow of waters in the State.

Schedule 3 is a list of the Acts to be repealed.

Schedule 4 provides for savings and transitional provisions including those relating to persons whose offices will be abolished and those relating to the rights of salaried and other employees of the Water Resources Commission.



WATER ADMINISTRATION BILL 1986

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WATER ADMINISTRATION BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to establish the Department of Water Resources; to constitute the Water Administration Ministerial Corporation and define its functions; and for other purposes.

See also: Water (Amendment) Bill 1986; Wentworth Irrigation (Amendment) Bill 1986; Hay Irrigation (Amendment) Bill 1986; Irrigation (Amendment) Bill 1986; Broken Hill Water and Sewerage (Amendment) Bill 1986; Drainage (Amendment) Bill 1986; Rivers and Foreshores Improvement (Amendment) Bill 1986; Cobar Water Supply (Amendment) Bill 1986; Water Administration (Transfer of Functions) Bill 1986; Miscellaneous Acts (Water Administration) Amendment Bill 1986.

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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 Administration Act 1986".

Commencement

2. (1) Sections 1, 2, 3 and 24, and Schedule 4, shall commence on the date of assent to this Act.
- 10 (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter
15 otherwise indicates or requires—

"Department" means Department of Water Resources;

"Director" means the Director, Department of Water Resources;

"lake" includes a lagoon, swamp or any other permanent or temporary collection of still water that is not impounded by works;

- 20 "Ministerial Corporation" means the Water Administration Ministerial Corporation constituted by section 7;

"officer" means—

- (a) the Director or any other person appointed or employed under
section 9; or
- 25 (b) a member of the staff of a government department, administrative office or local authority whose services are used under section 9;

"regulation" means a regulation made under this Act;

"river" includes—

- 30 (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;

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(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 a river,

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

5 “sub-surface water” means water under the surface of the ground whatever may be the geological structure in which it is standing or moving;

“this Act” includes regulations;

10 “works” means works connected with or affecting water in respect of which the Ministerial Corporation has a function.

(2) In this Act—

(a) a reference to a function includes a reference to a right, power, authority and duty; and

15 (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Objects

4. The objects of this Act are—

20 (a) to ensure that the water and related resources of the State are allocated and used in ways which are consistent with environmental requirements and provide the maximum long-term benefit for the State and for Australia; and

(b) to provide water and related resources to meet the needs of water users in a commercial manner consistent with the overall water management policies of the Government.

25 Act binds the Crown

5. This Act binds the Crown, not only in right of the State but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Establishment of the Department

30 6. (1) There is established by this Act a Department of the Government with the name “Department of Water Resources”.

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(2) The Department shall be deemed to have been established under section 49 of the Constitution Act 1902 and nothing in this section affects the power conferred by that section to abolish, or change the name of, the Department.

- 5 (3) The Department and the Ministerial Corporation shall, to the maximum extent possible, so act in a complementary manner as to achieve a unified administration of the Acts conferring or imposing a function on the Ministerial Corporation.

Constitution of the Ministerial Corporation

10 7. (1) There is constituted by this Act a corporation with the corporate name "Water Administration Ministerial Corporation".

(2) The Ministerial Corporation—

- (a) has perpetual succession;
- (b) shall have a corporate seal;
- 15 (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) may do and suffer all other things that a corporation may, by law, do and suffer and that are necessary for or incidental to, the purposes for which it is constituted; and
- 20 (e) is, for the purposes of any Act, a statutory body representing the Crown.

(3) The regulations may make provision for or with respect to the custody and use of the seal of the Ministerial Corporation.

Judicial notice

25 8. (1) All courts and persons acting judicially shall take judicial notice of the signature of the Minister made on any instrument or document in the exercise of a function of the Ministerial Corporation, whether or not the instrument or document is sealed or purports to have been signed by the Minister on behalf of the Ministerial Corporation.

30 (2) All courts and persons acting judicially—

- (a) shall take judicial notice of the seal of the Ministerial Corporation that has been affixed to any instrument or document; and

(b) shall, unless the contrary is proved, presume that the seal was properly affixed.

Director and staff

5 **9. (1)** A Director, Department of Water Resources, and such other staff as may be necessary to enable the Ministerial Corporation to exercise its functions shall be employed under the Public Service Act 1979.

(2) The Director may—

(a) with the approval of the Minister; and

10 (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

15 **(3)** The Director may, with the approval of the Minister and of a public or local authority constituted by or under an Act, arrange for the use of the services of any staff or facilities of the public or local authority.

(4) The Ministerial Corporation may engage persons having suitable qualifications and experience as consultants to the Ministerial Corporation, or the Department, or both.

Employees of the Ministerial Corporation

20 **10. (1)** The Ministerial Corporation may employ persons for the purpose of exercising its functions.

(2) Unless the conditions of employment provide otherwise, an employee of the Ministerial Corporation continues in the service of the Ministerial Corporation only at the will of the Ministerial Corporation.

25 **(3)** If the wages of an employee are not fixed by law, they may be fixed by the Ministerial Corporation.

30 **(4)** Regulations may be made for or with respect to the conditions of employment of persons under this section but those conditions have effect only to the extent that they are not fixed by an award or industrial agreement by which the Ministerial Corporation is bound.

Functions of the Ministerial Corporation

11. (1) The Ministerial Corporation has, and may exercise—

- (a) the functions specified in subsection (4); and
- (b) any other functions conferred or imposed on it by or under this or any other Act.

(2) A function conferred or imposed on a public authority by or under an Act that is administered by the Minister and is specified in Schedule 1 may be exercised by the Ministerial Corporation instead of by the public authority.

10 **(3)** The Governor may, by order published in the Gazette, amend Schedule 1.

(4) Without affecting the generality of section 7 (Constitution of the Ministerial Corporation) the Ministerial Corporation may—

- (a) construct or maintain works or buildings;
- 15 (b) enter into contracts;
- (c) maintain insurances;
- (d) purchase, exchange, take on hire or lease, hold, dispose of, manage, use or otherwise deal with real or personal property;
- (e) undertake and support research;
- 20 (f) collect, record and assess information relating to water resources and publish any of it;
- (g) evaluate present and future requirements for water in the State;
- (h) plan and carry out the development of water resources;
- (i) co-ordinate the activities of persons having functions with respect to water resources;
- 25 (j) integrate the management of water resources with the management of other natural resources;
- (k) review, and monitor the efficiency of, proposals and projects relating to the development or use of water resources;
- 30 (l) co-ordinate the implementation of water policies with authorities of the Commonwealth and other States;
- (m) with the approval of the Governor, enter into joint ventures;

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- (n) provide assistance to mitigate the effects of flood, drought, bush fire or other emergency including assistance with funds, personnel or equipment, or by the operation of works;
- 5 (o) develop and manage water catchment areas as sources of water supplies and co-ordinate—
- (i) development schemes for water catchment areas; and
 - (ii) the management of water catchment areas; and
- 10 (p) carry out surveys, investigations, boring, drilling and excavations, whether or not for the purpose of assisting in the exercise of any other function.
- (5) A function of the Ministerial Corporation may be exercised—
- 15 (a) by the Minister, whether or not in the name, or under the seal, of the Ministerial Corporation;
 - (b) in accordance with a delegation by the Ministerial Corporation, or the Director, under section 14;
 - (c) by the Director, on behalf of the Minister, in accordance with directions given from time to time by the Minister; or
 - (d) by an officer with the authority of, and on behalf of, the Director.
- 20 (6) The Ministerial Corporation may exercise any of its functions, and may otherwise act, in the name of the Department.
- (7) The Ministerial Corporation may arrange with a Minister of the Crown administering an Act, or with an authority constituted by or under an Act, for the exercise by that Minister or the authority, or a delegate of that Minister or the authority, as agent of the Ministerial Corporation of
- 25 any function conferred or imposed on the Ministerial Corporation.
- (8) The Ministerial Corporation may, itself or by its delegate, act as agent of a Minister of the Crown administering an Act, or as agent of an authority constituted by or under an Act, in the exercise of a function of that Minister or the authority.
- 30 (9) A document executed—
- (a) by an agent of the Ministerial Corporation; or
 - (b) by the Ministerial Corporation or its delegate as agent,

has effect as if it had been executed by the principal.

Control of use and flow of water

12. (1) The right to the use and flow, and to the control, of—

- (a) the water in rivers and lakes;
- 5 (b) the water conserved by any works;
- (c) water occurring naturally on the surface of the ground; and
- (d) sub-surface water,

is vested in the Ministerial Corporation except to the extent that is otherwise provided by this Act or to the extent that the right is divested by the exercise
10 of a function of the Ministerial Corporation.

(2) The right conferred by subsection (1) prevails over any authority conferred by or under another Act, including a later Act than this Act.

(3) In the exercise of the right conferred by subsection (1) or of any other function, the Ministerial Corporation may take such measures as the
15 Ministerial Corporation thinks fit for—

- (a) the conservation, replenishment and supply of water;
- (b) the equitable distribution of water;
- (c) the beneficial use of water;
- 20 (d) the protection of water from pollution and the improvement of its quality;
- (e) preventing any unauthorised interference with the flow or availability of water;
- (f) preventing any unauthorised obstruction of a river or any change of its course;
- 25 (g) preventing the unauthorised erection or use of works;
- (h) flood control and mitigation; or
- (i) environmental protection.

(4) The Ministerial Corporation may, for any reason, release water impounded by any works under its control.

Qualification of rights of the Ministerial Corporation

13. (1) The right conferred by section 12 may not be exercised in contravention of a right specified in Schedule 2.

(2) The Governor may, by order published in the Gazette, amend
5 Schedule 2.

Delegation of certain functions

14. (1) The Ministerial Corporation may delegate to a person the exercise of any of its functions other than this power of delegation.

(2) The Director may delegate to a person the exercise of any of the
10 functions delegated to the Director by the Ministerial Corporation, unless the Ministerial Corporation otherwise provides in its instrument of delegation to the Director.

(3) A delegation under this section—

(a) shall be in writing;

15 (b) may be general or limited; and

(c) may be revoked, wholly or partly, by the Ministerial Corporation or the Director, as the case requires.

(4) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of
20 delegation.

(5) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Ministerial Corporation.

(6) A delegation under this section does not prevent the exercise of a
25 function by the Ministerial Corporation or the Director.

(7) A function purporting to have been exercised by a delegate under this section shall, unless the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

Powers of entry

5 **15. (1)** The Ministerial Corporation may, by its employees or agents, or by officers, enter land (not being a dwelling house) for the purpose of exercising its functions or for any incidental purpose and may do so despite a lack of an easement or other right authorising entry on the land.

(2) Without affecting the generality of subsection (1), a person who enters land in accordance with that subsection may—

10 (a) make such inspections, surveys, tests, investigations and experiments, and carry out such operations by way of boring, drilling or exploration, as are necessary to enable the Ministerial Corporation to exercise its functions;

 (b) construct, maintain, operate or alter any works or structures that the Ministerial Corporation is authorised by this or any other Act to construct or operate; or

15 (c) implement any proposals or plans formulated in the exercise of the functions of the Ministerial Corporation.

(3) The Ministerial Corporation must ensure that as little damage as possible is caused by the exercise of powers under this section and must pay compensation for any such damage.

20 **(4)** The power conferred by this section is in addition to any other power of entry.

(5) A person shall not—

 (a) wilfully delay or obstruct a person exercising powers under this section; or

25 (b) threaten or abuse a person exercising powers under this section.

Penalty—subsection (5): \$1,000.

Co-operation by other authorities

30 **16. (1)** Subject to any direction given by the Premier, where a function is conferred or imposed on a person by or under an Act, the person shall co-operate with the Ministerial Corporation by exercising the function in a manner that, in the opinion of the Ministerial Corporation, promotes the objects of this Act and the purposes for which the Ministerial Corporation is constituted.

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(2) The Minister may establish a standing committee to advise the Minister and the Premier on matters arising under subsection (1).

(3) A standing committee established under this section—

(a) shall consist of such persons; and

5 (b) shall follow such procedures,

as are from time to time directed by the Minister with the concurrence of the Premier.

Special committees

10 17. (1) The Minister may, by an order published in the Gazette in each case, establish committees for the purpose of—

(a) assisting or advising the Ministerial Corporation in the exercise of its functions; or

(b) exercising delegated functions of the Ministerial Corporation, or for both purposes.

15 (2) A member of a committee established under this section is entitled to be paid such remuneration (including travelling and subsistence allowances) for attending meetings of the committee as the Minister may from time to time determine in relation to the member.

20 (3) A committee may, by arrangement with the Ministerial Corporation, make use of employees of the Ministerial Corporation in exercising its functions.

Acquisition of land and carrying out of works

25 18. (1) On the recommendation of the Minister, the Governor may, under the Public Works Act 1912, resume or appropriate land for the purpose of enabling the Ministerial Corporation to exercise its functions.

(2) For the purposes of the Public Works Act 1912—

(a) a work proposed to be carried out by the Ministerial Corporation shall be deemed to be an authorised work for which the Ministerial Corporation is the Constructing Authority;

30 (b) sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in relation to a work proposed to be carried out by the Ministerial Corporation; and

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- (c) section 38 of the Public Works Act 1912 applies to contracts related to a work proposed to be carried out by the Ministerial Corporation in the same way as it applies to other contracts.

Exclusion of liability

- 5 **19. (1)** Except to the extent that an Act conferring or imposing functions on the Ministerial Corporation otherwise provides, an action does not lie against the Ministerial Corporation with respect to loss or damage suffered as a consequence of the exercise of a function of the Ministerial Corporation, including the exercise of a power—
- 10 (a) to use works to impound or control water; or
 (b) to release water from any such works.

(2) Subsection (1) does not limit any other exclusion of liability to which the Ministerial Corporation is entitled.

Recovery of charges, etc., by the Ministerial Corporation

- 15 **20.** A charge, fee or money due to the Ministerial Corporation may be recovered in a court of competent jurisdiction as a debt due to the Ministerial Corporation.

Annual report

- 20 **21.** A report under the Annual Reports (Departments) Act 1985 in respect of the Department may include any report required to be made annually in respect of the Ministerial Corporation under the Annual Reports (Statutory Bodies) Act 1984.

Proceedings for offences

- 25 **22.** Proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Repeals

- 23.** Each Act specified in Schedule 3 is, to the extent indicated therein, repealed.

Savings and transitional provisions

- 30 **24.** Schedule 4 has effect.

Regulations

25. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be
5 prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding \$4,000.

(3) 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
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

15

SCHEDULE 1

(Sec. 11)

**ACTS UNDER WHICH MINISTERIAL CORPORATION MAY EXERCISE
FUNCTIONS**

Broken Hill Water and Sewerage Act 1938

20 Cobar Water Supply Act 1963

Drainage Act 1939

Glennies Creek Dam Act 1979

Hunter District Water, Sewerage and Drainage Act 1938

Hunter Valley Conservation Trust Act 1950

25 Hunter Valley Flood Mitigation Act 1936

Metropolitan Water, Sewerage, and Drainage Act 1924

Private Irrigation Districts Act 1973

Rivers and Foreshores Improvement Act 1948

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SCHEDULE 2

(Sec. 13)

ABSOLUTE RIGHTS

1. A right exercisable by The Metropolitan Water Sewerage and Drainage Board, or
5 by any other person, under the authority of the Metropolitan Water, Sewerage, and
Drainage Act 1924.
 2. A right exercisable by The Hunter District Water Board, or by any other person,
under the authority of the Hunter District Water, Sewerage and Drainage Act 1938 or
the Glennies Creek Dam Act 1979.
 - 10 3. A right exercisable by The Broken Hill Water Board, or by any other person, under
the authority of the Broken Hill Water and Sewerage Act 1938.
 4. A right exercisable by any person under the Fire Brigades Act 1909.
 5. A right exercisable at the commencement of the Water (Amendment) Act 1930
by—
 - 15 (a) the council of a city, municipality or shire;
 - (b) a county council;
 - (c) a board or joint committee in respect of works of water supply affecting more
than one council jointly that are referred to in paragraphs (a) and (b); or
 - (d) any other person under the authority of an Act,
 - 20 in so far as the right relates to the use and maintenance of works in existence or in the
course of construction at that commencement or to the taking and use of water conserved
or obtained by those works.
 6. A right exercisable under section 7 of the Water Act 1912.
 7. A right exercisable under the Hunter Valley Flood Mitigation Act 1956, the Rivers
25 and Foreshores Improvement Act 1948 or the Coastal Protection Act 1979 by the
Minister for Public Works.
 8. A right exercisable under the Snowy Mountains Hydro-Electric Agreements Act
1958 or the Glennies Creek Dam Act 1979 by the Electricity Commission of New South
Wales.
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SCHEDULE 3

(Sec. 23)

REPEALS

- Water Resources Commission Act 1976 No. 34—the whole Act
- 5 Notice of Action and Other Privileges Abolition Act 1977 No. 19—so much of Schedule 1 as amends Act No. 34, 1976
- Irrigation (Amendment) Act 1979 No. 160—so much of Schedule 1 as amends Act No. 34, 1976
- 10 Government and Related Employees Appeal Tribunal Act 1980 No. 39—so much of Schedule 4 as relates to the Water Resources Commission
- Miscellaneous Acts (Retirement of Statutory Officers) Amendment Act 1980 No. 187—so much of Schedule 1 as amends Act No. 34, 1976
- River Murray Waters Act 1983 No. 86—so much of Schedule 3 as relates to Act No. 34, 1976
- 15 Miscellaneous Acts (Public Finance and Audit) Repeal and Amendment Act 1983 No. 153—so much of Schedule 1 as relates to Act No. 34, 1976
- Statute Law (Miscellaneous Amendments) Act 1984 No. 153—so much of Schedule 16 as amends Act No. 34, 1976
- 20 Farm Water Storages and Bores Subsidies (Amendment and Repeal) Act 1984 No. 154—so much of Schedule 1 as relates to Act No. 34, 1976

SCHEDULE 4

(Sec. 24)

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

- 25 1. In this Schedule—
- “appointed day” means the day appointed and notified under section 2 (2);
- “Commission” means the Water Resources Commission constituted under the Water Resources Commission Act 1976;
- 30 “superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act;
- “transferee” means a person transferred under this Schedule to a position in the Public Service or to employment with the Ministerial Corporation.

*Water Administration 1986*SCHEDULE 4—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Abolition of certain offices**

2. (1) A person who, immediately before the appointed day, holds office under the Water Resources Commission Act 1976 as Chief Commissioner, or as a full-time or part-time commissioner, ceases to hold the office on that day.

5 (2) The repeals effected by this Act do not deprive clause 5 of Schedule 1 to the Water Resources Commission Act 1976 of effect in relation to a person who ceases to hold office because of subclause (1) of this clause.

(3) A person who, because of subclause (1), ceases to hold an office is not entitled to any remuneration or compensation because of the loss of the office.

10 Transfer of officers and employees of the Commission

3. (1) A person who, immediately before the appointed day, is employed under section 9 of the Water Resources Commission Act 1976 and is in receipt of an annual salary shall be deemed to have been appointed on that day under section 61 of the Public Service Act 1979 to a position in the Public Service.

15 (2) A person who, immediately before the appointed day, is employed under section 9 of the Water Resources Commission Act 1976 and is not in receipt of an annual salary shall be deemed on that day to be employed by the Ministerial Corporation under section 10 of this Act.

(3) The Public Service Board may, with the concurrence of the Ministerial Corporation and the Minister administering the Public Works Act 1912, transfer a person referred to in subclause (2) from employment with the Ministerial Corporation to employment with the Public Works Department as—

(a) an employee of the Minister administering the Public Works Act 1912;

(b) a temporary employee under section 80 of the Public Service Act 1979; or

25 (c) an officer of the General Division of the Public Service.

Remuneration and conditions of employment of transferee

4. (1) A transferee is entitled on and after the appointed day to remuneration at a rate not lower than the rate of remuneration payable by the Commission that was last applicable to the transferee immediately before that day subject, in the case of such of the remuneration as is salary or wages, to any adjustment necessary to give effect to any fluctuation in the applicable basic wage in force under Part V of the Industrial Arbitration Act 1940 until the salary is, or the wages are, lawfully varied.

(2) A condition of employment applicable immediately before the appointed day to a transferee continues to be applicable to the transferee on and after that day until it is lawfully altered or revoked unless, in the case of a transferee to a position in the Public Service, it cannot have effect under the Public Service Act 1979.

*Water Administration 1986*SCHEDULE 4—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Superannuation**

5. On and after the appointed day, a transferee who, immediately before that day, is a contributor to a superannuation scheme—

- (a) retains any rights accrued or accruing to the transferee as such a contributor; and
- 5 (b) may continue to contribute to the superannuation scheme subject to the provisions of the Act by or under which it is established.

Leave

6. (1) For the purposes of sick leave, long service leave or leave in the nature of long service leave, service of a transferee with the Commission shall, on and after the
10 appointed day, be deemed to be service with the Government.

(2) For the purpose of calculating the entitlement of a transferee to long service leave or leave in the nature of long service leave at any time, there shall be deducted from the amount of long service leave or leave in the nature of long service leave to which, but for this subclause, the transferee would be entitled—

- 15 (a) any long service leave or leave in the nature of long service leave; and
- (b) the equivalent, in long service leave or leave in the nature of long service leave, of any benefit instead of long service leave or leave in the nature of long service leave,

taken or received by the transferee before that time.

20 (3) A transferee shall retain any right to annual leave accrued to the transferee in respect of his or her service with the Commission.

(4) In this clause, a reference to service of a transferee with the Commission includes a reference to service with The Water Conservation and Irrigation Commission.

Applications for employment with Department

25 7. An employee of the Ministerial Corporation is entitled to apply for and, if suitably qualified, may be appointed to fill, a vacancy in a position in the Department.

Appeals—saving

8. Where an appeal by a transferee to the Government and Related Employees Appeal Tribunal is pending, or may be made, immediately before the appointed day,
30 the appeal may be continued or made, and be heard and determined, as nearly as practicable as if this Act had not been enacted.

Effect of certain other Acts

9. (1) A transferee is not entitled to claim, both under this Act and any other Act, benefits in respect of the same period of service.

35 (2) Except as provided by this Schedule, nothing in this Schedule affects the operation of the Industrial Arbitration Act 1940.

*Water Administration 1986*SCHEDULE 4—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Continuation of corporation**

10. The Ministerial Corporation is a continuation of, and the same legal entity as, the corporation that was constituted by section 4 of the Water Resources Commission Act 1976.

5 References to Water Resources Commission

11. Except in so far as the context or subject-matter otherwise indicates or requires and subject to any prescribed exceptions, on and from the appointed day a reference in another Act (however expressed and whether it is an Act assented to before, or on or after, the appointed day) or in a regulation, by-law, rule or other statutory instrument
10 or in any other document (whether of the same or a different kind)—

(a) to The Water Conservation and Irrigation Commission or the Water Resources Commission—shall be construed as a reference to the Water Administration Ministerial Corporation; or

15 (b) to “the Commission”, where it is a reference to The Water Conservation and Irrigation Commission or the Water Resources Commission—shall be construed as a reference to the Ministerial Corporation.

Transfer to the Ministerial Corporation of functions of a Minister

12. If—

20 (a) anything done before the appointed day by a Minister of the Crown in the exercise of a function conferred or imposed by an Act still had effect immediately before that day; and

(b) the function becomes, on that day, a function of the Ministerial Corporation, the exercise of the function continues to have effect on and after that day as if it had always been an exercise of a function of the Ministerial Corporation.

25 Repeals do not affect certain amendments

13. The amendments made before the appointed day—

(a) by Schedules 5 and 6 to the Water Resources Commission Act 1976 and sections 18 and 19 of that Act in their application to those Schedules; and

(b) to that Act by the Statute Law (Miscellaneous Amendments) Act 1984,
30 continue to have effect on and after that day as if this Act had not been enacted.

Regulations

14. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

35 (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the appointed day or a later day.

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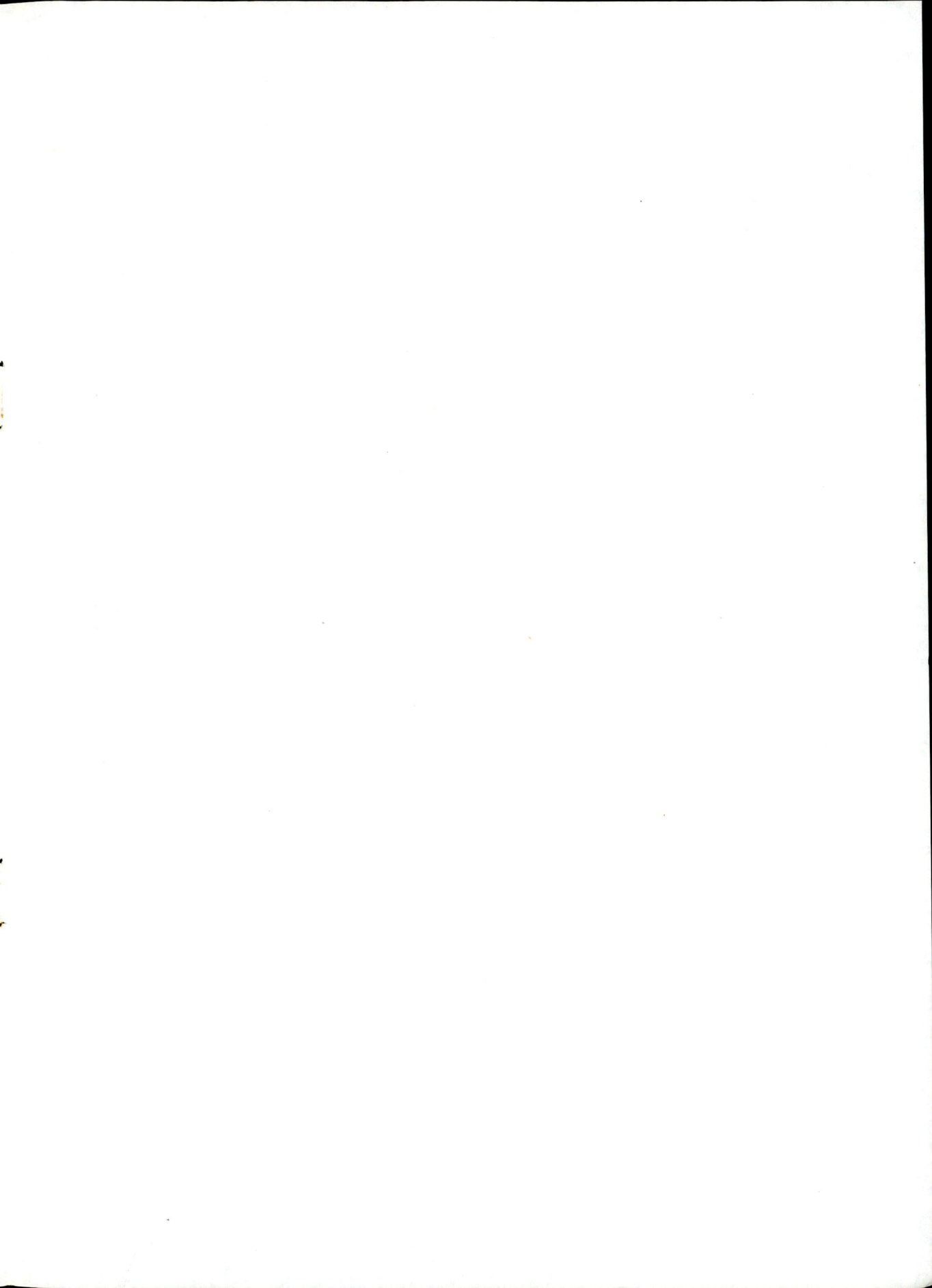
SCHEDULE 4—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

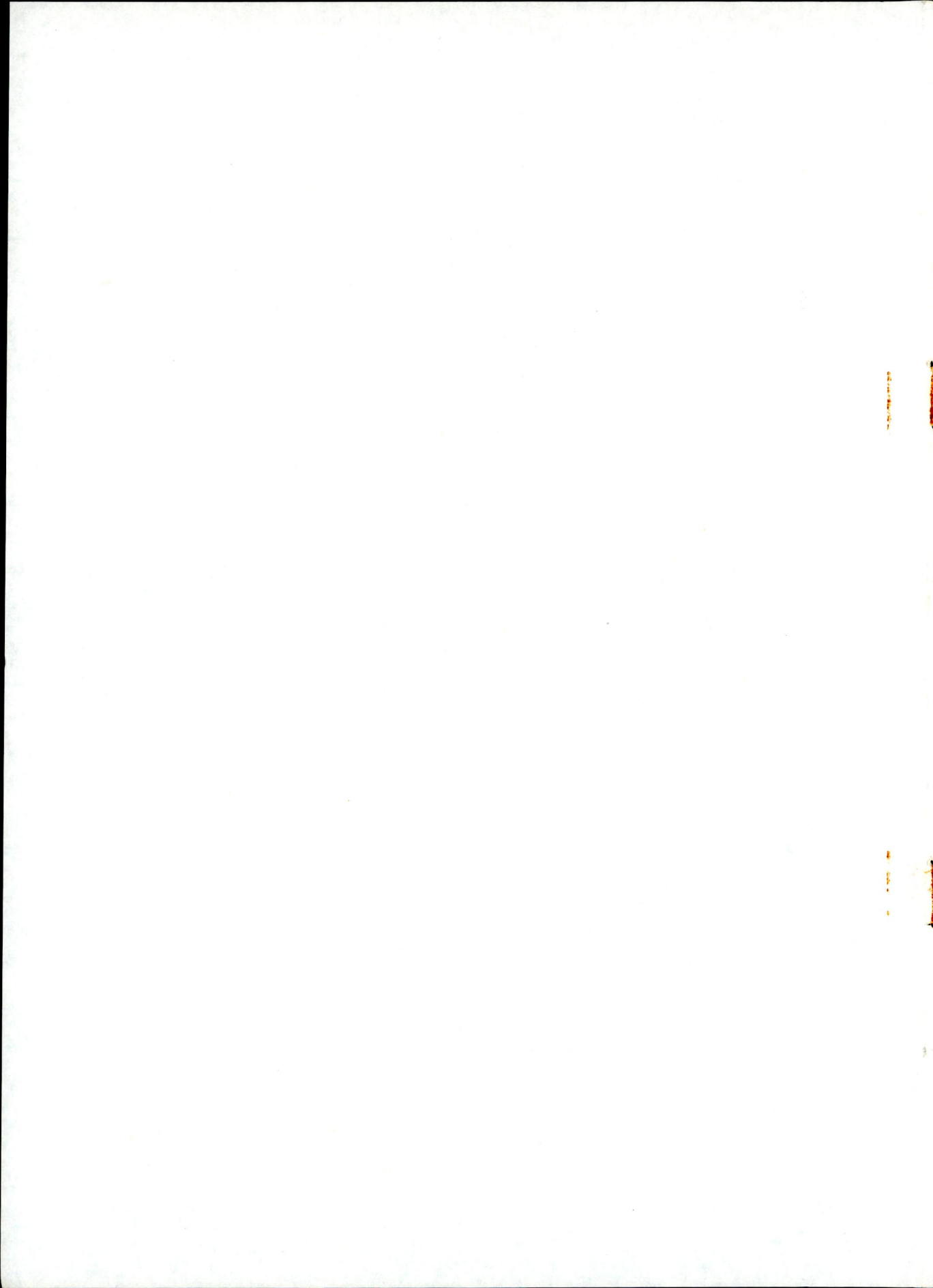
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- 5 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.
- 10 (4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule, clause 2 excepted.

BY AUTHORITY

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







WATER ADMINISTRATION ACT 1986 No. 195

NEW SOUTH WALES



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SCHEDULE 1—ACTS UNDER WHICH MINISTERIAL CORPORATION MAY EXERCISE FUNCTIONS

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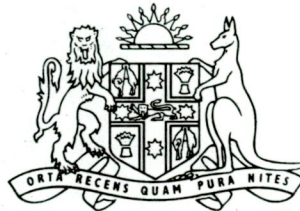
SCHEDULE 2—ABSOLUTE RIGHTS

SCHEDULE 3—REPEALS

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

WATER ADMINISTRATION ACT 1986 No. 195

NEW SOUTH WALES



Act No. 195, 1986

An Act to establish the Department of Water Resources; to constitute the Water Administration Ministerial Corporation and define its functions; and for other purposes. [Assented to 18 December 1986]

See also: Water (Amendment) Act 1986; Wentworth Irrigation (Amendment) Act 1986; Hay Irrigation (Amendment) Act 1986; Irrigation (Amendment) Act 1986; Broken Hill Water and Sewerage (Amendment) Act 1986; Drainage (Amendment) Act 1986; Rivers and Foreshores Improvement (Amendment) Act 1986; Cobar Water Supply (Amendment) Act 1986; Water Administration (Transfer of Functions) Act 1986; Miscellaneous Acts (Water Administration) Amendment Act 1986.

Water Administration 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 Administration Act 1986".

Commencement

2. (1) Sections 1, 2, 3 and 24, and Schedule 4, shall commence on the date of assent to this Act.

- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Department" means Department of Water Resources;

"Director" means the Director, Department of Water Resources;

"lake" includes a lagoon, swamp or any other permanent or temporary collection of still water that is not impounded by works;

"Ministerial Corporation" means the Water Administration Ministerial Corporation constituted by section 7;

"officer" means—

- (a) the Director or any other person appointed or employed under section 9; or
- (b) a member of the staff of a government department, administrative office or local authority whose services are used under section 9;

"regulation" means a regulation made under this Act;

"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;

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- (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 a river,

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

“sub-surface water” means water under the surface of the ground whatever may be the geological structure in which it is standing or moving;

“this Act” includes regulations;

“works” means works connected with or affecting water in respect of which the Ministerial Corporation has a function.

(2) In this Act—

- (a) a reference to a function includes a reference to a right, power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Objects

4. The objects of this Act are—

- (a) to ensure that the water and related resources of the State are allocated and used in ways which are consistent with environmental requirements and provide the maximum long-term benefit for the State and for Australia; and
- (b) to provide water and related resources to meet the needs of water users in a commercial manner consistent with the overall water management policies of the Government.

Act binds the Crown

5. This Act binds the Crown, not only in right of the State but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Establishment of the Department

6. (1) There is established by this Act a Department of the Government with the name “Department of Water Resources”.

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(2) The Department shall be deemed to have been established under section 49 of the Constitution Act 1902 and nothing in this section affects the power conferred by that section to abolish, or change the name of, the Department.

(3) The Department and the Ministerial Corporation shall, to the maximum extent possible, so act in a complementary manner as to achieve a unified administration of the Acts conferring or imposing a function on the Ministerial Corporation.

Constitution of the Ministerial Corporation

7. (1) There is constituted by this Act a corporation with the corporate name "Water Administration Ministerial Corporation".

(2) The Ministerial Corporation—

- (a) has perpetual succession;
- (b) shall have a corporate seal;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) may do and suffer all other things that a corporation may, by law, do and suffer and that are necessary for or incidental to, the purposes for which it is constituted; and
- (e) is, for the purposes of any Act, a statutory body representing the Crown.

(3) The regulations may make provision for or with respect to the custody and use of the seal of the Ministerial Corporation.

Judicial notice

8. (1) All courts and persons acting judicially shall take judicial notice of the signature of the Minister made on any instrument or document in the exercise of a function of the Ministerial Corporation, whether or not the instrument or document is sealed or purports to have been signed by the Minister on behalf of the Ministerial Corporation.

(2) All courts and persons acting judicially—

- (a) shall take judicial notice of the seal of the Ministerial Corporation that has been affixed to any instrument or document; and

- (b) shall, unless the contrary is proved, presume that the seal was properly affixed.

Director and staff

9. (1) A Director, Department of Water Resources, and such other staff as may be necessary to enable the Ministerial Corporation to exercise its functions shall be employed under the Public Service Act 1979.

(2) The Director may—

- (a) with the approval of the Minister; and
(b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

(3) The Director may, with the approval of the Minister and of a public or local authority constituted by or under an Act, arrange for the use of the services of any staff or facilities of the public or local authority.

(4) The Ministerial Corporation may engage persons having suitable qualifications and experience as consultants to the Ministerial Corporation, or the Department, or both.

Employees of the Ministerial Corporation

10. (1) The Ministerial Corporation may employ persons for the purpose of exercising its functions.

(2) Unless the conditions of employment provide otherwise, an employee of the Ministerial Corporation continues in the service of the Ministerial Corporation only at the will of the Ministerial Corporation.

(3) If the wages of an employee are not fixed by law, they may be fixed by the Ministerial Corporation.

(4) Regulations may be made for or with respect to the conditions of employment of persons under this section but those conditions have effect only to the extent that they are not fixed by an award or industrial agreement by which the Ministerial Corporation is bound.

Functions of the Ministerial Corporation

11. (1) The Ministerial Corporation has, and may exercise—

- (a) the functions specified in subsection (4); and
- (b) any other functions conferred or imposed on it by or under this or any other Act.

(2) A function conferred or imposed on a public authority by or under an Act that is administered by the Minister and is specified in Schedule 1 may be exercised by the Ministerial Corporation instead of by the public authority.

(3) The Governor may, by order published in the Gazette, amend Schedule 1.

(4) Without affecting the generality of section 7 (Constitution of the Ministerial Corporation) the Ministerial Corporation may—

- (a) construct or maintain works or buildings;
- (b) enter into contracts;
- (c) maintain insurances;
- (d) purchase, exchange, take on hire or lease, hold, dispose of, manage, use or otherwise deal with real or personal property;
- (e) undertake and support research;
- (f) collect, record and assess information relating to water resources and publish any of it;
- (g) evaluate present and future requirements for water in the State;
- (h) plan and carry out the development of water resources;
- (i) co-ordinate the activities of persons having functions with respect to water resources;
- (j) integrate the management of water resources with the management of other natural resources;
- (k) review, and monitor the efficiency of, proposals and projects relating to the development or use of water resources;
- (l) co-ordinate the implementation of water policies with authorities of the Commonwealth and other States;
- (m) with the approval of the Governor, enter into joint ventures;

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- (n) provide assistance to mitigate the effects of flood, drought, bush fire or other emergency including assistance with funds, personnel or equipment, or by the operation of works;
 - (o) develop and manage water catchment areas as sources of water supplies and co-ordinate—
 - (i) development schemes for water catchment areas; and
 - (ii) the management of water catchment areas; and
 - (p) carry out surveys, investigations, boring, drilling and excavations, whether or not for the purpose of assisting in the exercise of any other function.
- (5) A function of the Ministerial Corporation may be exercised—
- (a) by the Minister, whether or not in the name, or under the seal, of the Ministerial Corporation;
 - (b) in accordance with a delegation by the Ministerial Corporation, or the Director, under section 14;
 - (c) by the Director, on behalf of the Minister, in accordance with directions given from time to time by the Minister; or
 - (d) by an officer with the authority of, and on behalf of, the Director.
- (6) The Ministerial Corporation may exercise any of its functions, and may otherwise act, in the name of the Department.
- (7) The Ministerial Corporation may arrange with a Minister of the Crown administering an Act, or with an authority constituted by or under an Act, for the exercise by that Minister or the authority, or a delegate of that Minister or the authority, as agent of the Ministerial Corporation of any function conferred or imposed on the Ministerial Corporation.
- (8) The Ministerial Corporation may, itself or by its delegate, act as agent of a Minister of the Crown administering an Act, or as agent of an authority constituted by or under an Act, in the exercise of a function of that Minister or the authority.
- (9) A document executed—
- (a) by an agent of the Ministerial Corporation; or
 - (b) by the Ministerial Corporation or its delegate as agent,

has effect as if it had been executed by the principal.

Control of use and flow of water

12. (1) The right to the use and flow, and to the control, of—

- (a) the water in rivers and lakes;
- (b) the water conserved by any works;
- (c) water occurring naturally on the surface of the ground; and
- (d) sub-surface water,

is vested in the Ministerial Corporation except to the extent that is otherwise provided by this Act or to the extent that the right is divested by the exercise of a function of the Ministerial Corporation.

(2) The right conferred by subsection (1) prevails over any authority conferred by or under another Act, including a later Act than this Act.

(3) In the exercise of the right conferred by subsection (1) or of any other function, the Ministerial Corporation may take such measures as the Ministerial Corporation thinks fit for—

- (a) the conservation, replenishment and supply of water;
- (b) the equitable distribution of water;
- (c) the beneficial use of water;
- (d) the protection of water from pollution and the improvement of its quality;
- (e) preventing any unauthorised interference with the flow or availability of water;
- (f) preventing any unauthorised obstruction of a river or any change of its course;
- (g) preventing the unauthorised erection or use of works;
- (h) flood control and mitigation; or
- (i) environmental protection.

(4) The Ministerial Corporation may, for any reason, release water impounded by any works under its control.

Qualification of rights of the Ministerial Corporation

13. (1) The right conferred by section 12 may not be exercised in contravention of a right specified in Schedule 2.

(2) The Governor may, by order published in the Gazette, amend Schedule 2.

Delegation of certain functions

14. (1) The Ministerial Corporation may delegate to a person the exercise of any of its functions other than this power of delegation.

(2) The Director may delegate to a person the exercise of any of the functions delegated to the Director by the Ministerial Corporation, unless the Ministerial Corporation otherwise provides in its instrument of delegation to the Director.

(3) A delegation under this section—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the Ministerial Corporation or the Director, as the case requires.

(4) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(5) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Ministerial Corporation.

(6) A delegation under this section does not prevent the exercise of a function by the Ministerial Corporation or the Director.

(7) A function purporting to have been exercised by a delegate under this section shall, unless the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

Powers of entry

15. (1) The Ministerial Corporation may, by its employees or agents, or by officers, enter land (not being a dwelling house) for the purpose of exercising its functions or for any incidental purpose and may do so despite a lack of an easement or other right authorising entry on the land.

(2) Without affecting the generality of subsection (1), a person who enters land in accordance with that subsection may—

- (a) make such inspections, surveys, tests, investigations and experiments, and carry out such operations by way of boring, drilling or exploration, as are necessary to enable the Ministerial Corporation to exercise its functions;
- (b) construct, maintain, operate or alter any works or structures that the Ministerial Corporation is authorised by this or any other Act to construct or operate; or
- (c) implement any proposals or plans formulated in the exercise of the functions of the Ministerial Corporation.

(3) The Ministerial Corporation must ensure that as little damage as possible is caused by the exercise of powers under this section and must pay compensation for any such damage.

(4) The power conferred by this section is in addition to any other power of entry.

(5) A person shall not—

- (a) wilfully delay or obstruct a person exercising powers under this section; or
- (b) threaten or abuse a person exercising powers under this section.

Penalty—subsection (5): \$1,000.

Co-operation by other authorities

16. (1) Subject to any direction given by the Premier, where a function is conferred or imposed on a person by or under an Act, the person shall co-operate with the Ministerial Corporation by exercising the function in a manner that, in the opinion of the Ministerial Corporation, promotes the objects of this Act and the purposes for which the Ministerial Corporation is constituted.

(2) The Minister may establish a standing committee to advise the Minister and the Premier on matters arising under subsection (1).

(3) A standing committee established under this section—

(a) shall consist of such persons; and

(b) shall follow such procedures,

as are from time to time directed by the Minister with the concurrence of the Premier.

Special committees

17. (1) The Minister may, by an order published in the Gazette in each case, establish committees for the purpose of—

(a) assisting or advising the Ministerial Corporation in the exercise of its functions; or

(b) exercising delegated functions of the Ministerial Corporation, or for both purposes.

(2) A member of a committee established under this section is entitled to be paid such remuneration (including travelling and subsistence allowances) for attending meetings of the committee as the Minister may from time to time determine in relation to the member.

(3) A committee may, by arrangement with the Ministerial Corporation, make use of employees of the Ministerial Corporation in exercising its functions.

Acquisition of land and carrying out of works

18. (1) On the recommendation of the Minister, the Governor may, under the Public Works Act 1912, resume or appropriate land for the purpose of enabling the Ministerial Corporation to exercise its functions.

(2) For the purposes of the Public Works Act 1912—

(a) a work proposed to be carried out by the Ministerial Corporation shall be deemed to be an authorised work for which the Ministerial Corporation is the Constructing Authority;

(b) sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in relation to a work proposed to be carried out by the Ministerial Corporation; and

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- (c) section 38 of the Public Works Act 1912 applies to contracts related to a work proposed to be carried out by the Ministerial Corporation in the same way as it applies to other contracts.

Exclusion of liability

19. (1) Except to the extent that an Act conferring or imposing functions on the Ministerial Corporation otherwise provides, an action does not lie against the Ministerial Corporation with respect to loss or damage suffered as a consequence of the exercise of a function of the Ministerial Corporation, including the exercise of a power—

- (a) to use works to impound or control water; or
- (b) to release water from any such works.

(2) Subsection (1) does not limit any other exclusion of liability to which the Ministerial Corporation is entitled.

Recovery of charges, etc., by the Ministerial Corporation

20. A charge, fee or money due to the Ministerial Corporation may be recovered in a court of competent jurisdiction as a debt due to the Ministerial Corporation.

Annual report

21. A report under the Annual Reports (Departments) Act 1985 in respect of the Department may include any report required to be made annually in respect of the Ministerial Corporation under the Annual Reports (Statutory Bodies) Act 1984.

Proceedings for offences

22. Proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Repeals

23. Each Act specified in Schedule 3 is, to the extent indicated therein, repealed.

Savings and transitional provisions

24. Schedule 4 has effect.

Regulations

25. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding \$4,000.

(3) 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 any specified person or body,

or may do any combination of those things.

SCHEDULE 1

(Sec. 11)

**ACTS UNDER WHICH MINISTERIAL CORPORATION MAY EXERCISE
FUNCTIONS**

Broken Hill Water and Sewerage Act 1938

Cobar Water Supply Act 1963

Drainage Act 1939

Glennies Creek Dam Act 1979

Hunter District Water, Sewerage and Drainage Act 1938

Hunter Valley Conservation Trust Act 1950

Hunter Valley Flood Mitigation Act 1936

Metropolitan Water, Sewerage, and Drainage Act 1924

Private Irrigation Districts Act 1973

Rivers and Foreshores Improvement Act 1948

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SCHEDULE 2

(Sec. 13)

ABSOLUTE RIGHTS

1. A right exercisable by The Metropolitan Water Sewerage and Drainage Board, or by any other person, under the authority of the Metropolitan Water, Sewerage, and Drainage Act 1924.

2. A right exercisable by The Hunter District Water Board, or by any other person, under the authority of the Hunter District Water, Sewerage and Drainage Act 1938 or the Glennies Creek Dam Act 1979.

3. A right exercisable by The Broken Hill Water Board, or by any other person, under the authority of the Broken Hill Water and Sewerage Act 1938.

4. A right exercisable by any person under the Fire Brigades Act 1909.

5. A right exercisable at the commencement of the Water (Amendment) Act 1930 by—

(a) the council of a city, municipality or shire;

(b) a county council;

(c) a board or joint committee in respect of works of water supply affecting more than one council jointly that are referred to in paragraphs (a) and (b); or

(d) any other person under the authority of an Act,

in so far as the right relates to the use and maintenance of works in existence or in the course of construction at that commencement or to the taking and use of water conserved or obtained by those works.

6. A right exercisable under section 7 of the Water Act 1912.

7. A right exercisable under the Hunter Valley Flood Mitigation Act 1956, the Rivers and Foreshores Improvement Act 1948 or the Coastal Protection Act 1979 by the Minister for Public Works.

8. A right exercisable under the Snowy Mountains Hydro-Electric Agreements Act 1958 or the Glennies Creek Dam Act 1979 by the Electricity Commission of New South Wales.

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SCHEDULE 3

(Sec. 23)

REPEALS

- Water Resources Commission Act 1976 No. 34—the whole Act
- Notice of Action and Other Privileges Abolition Act 1977 No. 19—so much of Schedule 1 as amends Act No. 34, 1976
- Irrigation (Amendment) Act 1979 No. 160—so much of Schedule 1 as amends Act No. 34, 1976
- Government and Related Employees Appeal Tribunal Act 1980 No. 39—so much of Schedule 4 as relates to the Water Resources Commission
- Miscellaneous Acts (Retirement of Statutory Officers) Amendment Act 1980 No. 187—so much of Schedule 1 as amends Act No. 34, 1976
- River Murray Waters Act 1983 No. 86—so much of Schedule 3 as relates to Act No. 34, 1976
- Miscellaneous Acts (Public Finance and Audit) Repeal and Amendment Act 1983 No. 153—so much of Schedule 1 as relates to Act No. 34, 1976
- Statute Law (Miscellaneous Amendments) Act 1984 No. 153—so much of Schedule 16 as amends Act No. 34, 1976
- Farm Water Storages and Bores Subsidies (Amendment and Repeal) Act 1984 No. 154—so much of Schedule 1 as relates to Act No. 34, 1976

SCHEDULE 4

(Sec. 24)

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

“Commission” means the Water Resources Commission constituted under the Water Resources Commission Act 1976;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act;

“transferee” means a person transferred under this Schedule to a position in the Public Service or to employment with the Ministerial Corporation.

*Water Administration 1986*SCHEDULE 4—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Abolition of certain offices**

2. (1) A person who, immediately before the appointed day, holds office under the Water Resources Commission Act 1976 as Chief Commissioner, or as a full-time or part-time commissioner, ceases to hold the office on that day.

(2) The repeals effected by this Act do not deprive clause 5 of Schedule 1 to the Water Resources Commission Act 1976 of effect in relation to a person who ceases to hold office because of subclause (1) of this clause.

(3) A person who, because of subclause (1), ceases to hold an office is not entitled to any remuneration or compensation because of the loss of the office.

Transfer of officers and employees of the Commission

3. (1) A person who, immediately before the appointed day, is employed under section 9 of the Water Resources Commission Act 1976 and is in receipt of an annual salary shall be deemed to have been appointed on that day under section 61 of the Public Service Act 1979 to a position in the Public Service.

(2) A person who, immediately before the appointed day, is employed under section 9 of the Water Resources Commission Act 1976 and is not in receipt of an annual salary shall be deemed on that day to be employed by the Ministerial Corporation under section 10 of this Act.

(3) The Public Service Board may, with the concurrence of the Ministerial Corporation and the Minister administering the Public Works Act 1912, transfer a person referred to in subclause (2) from employment with the Ministerial Corporation to employment with the Public Works Department as—

- (a) an employee of the Minister administering the Public Works Act 1912;
- (b) a temporary employee under section 80 of the Public Service Act 1979; or
- (c) an officer of the General Division of the Public Service.

Remuneration and conditions of employment of transferee

4. (1) A transferee is entitled on and after the appointed day to remuneration at a rate not lower than the rate of remuneration payable by the Commission that was last applicable to the transferee immediately before that day subject, in the case of such of the remuneration as is salary or wages, to any adjustment necessary to give effect to any fluctuation in the applicable basic wage in force under Part V of the Industrial Arbitration Act 1940 until the salary is, or the wages are, lawfully varied.

(2) A condition of employment applicable immediately before the appointed day to a transferee continues to be applicable to the transferee on and after that day until it is lawfully altered or revoked unless, in the case of a transferee to a position in the Public Service, it cannot have effect under the Public Service Act 1979.

*Water Administration 1986*SCHEDULE 4—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Superannuation**

5. On and after the appointed day, a transferee who, immediately before that day, is a contributor to a superannuation scheme—

- (a) retains any rights accrued or accruing to the transferee as such a contributor; and
- (b) may continue to contribute to the superannuation scheme subject to the provisions of the Act by or under which it is established.

Leave

6. (1) For the purposes of sick leave, long service leave or leave in the nature of long service leave, service of a transferee with the Commission shall, on and after the appointed day, be deemed to be service with the Government.

(2) For the purpose of calculating the entitlement of a transferee to long service leave or leave in the nature of long service leave at any time, there shall be deducted from the amount of long service leave or leave in the nature of long service leave to which, but for this subclause, the transferee would be entitled—

- (a) any long service leave or leave in the nature of long service leave; and
- (b) the equivalent, in long service leave or leave in the nature of long service leave, of any benefit instead of long service leave or leave in the nature of long service leave,

taken or received by the transferee before that time.

(3) A transferee shall retain any right to annual leave accrued to the transferee in respect of his or her service with the Commission.

(4) In this clause, a reference to service of a transferee with the Commission includes a reference to service with The Water Conservation and Irrigation Commission.

Applications for employment with Department

7. An employee of the Ministerial Corporation is entitled to apply for and, if suitably qualified, may be appointed to fill, a vacancy in a position in the Department.

Appeals—saving

8. Where an appeal by a transferee to the Government and Related Employees Appeal Tribunal is pending, or may be made, immediately before the appointed day, the appeal may be continued or made, and be heard and determined, as nearly as practicable as if this Act had not been enacted.

Effect of certain other Acts

9. (1) A transferee is not entitled to claim, both under this Act and any other Act, benefits in respect of the same period of service.

(2) Except as provided by this Schedule, nothing in this Schedule affects the operation of the Industrial Arbitration Act 1940.

*Water Administration 1986*SCHEDULE 4—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Continuation of corporation**

10. The Ministerial Corporation is a continuation of, and the same legal entity as, the corporation that was constituted by section 4 of the Water Resources Commission Act 1976.

References to Water Resources Commission

11. Except in so far as the context or subject-matter otherwise indicates or requires and subject to any prescribed exceptions, on and from the appointed day a reference in another Act (however expressed and whether it is an Act assented to before, or on or after, the appointed day) or in a regulation, by-law, rule or other statutory instrument or in any other document (whether of the same or a different kind)—

- (a) to The Water Conservation and Irrigation Commission or the Water Resources Commission—shall be construed as a reference to the Water Administration Ministerial Corporation; or
- (b) to “the Commission”, where it is a reference to The Water Conservation and Irrigation Commission or the Water Resources Commission—shall be construed as a reference to the Ministerial Corporation.

Transfer to the Ministerial Corporation of functions of a Minister

12. If—

- (a) anything done before the appointed day by a Minister of the Crown in the exercise of a function conferred or imposed by an Act still had effect immediately before that day; and
- (b) the function becomes, on that day, a function of the Ministerial Corporation,

the exercise of the function continues to have effect on and after that day as if it had always been an exercise of a function of the Ministerial Corporation.

Repeals do not affect certain amendments

13. The amendments made before the appointed day—

- (a) by Schedules 5 and 6 to the Water Resources Commission Act 1976 and sections 18 and 19 of that Act in their application to those Schedules; and
- (b) to that Act by the Statute Law (Miscellaneous Amendments) Act 1984,

continue to have effect on and after that day as if this Act had not been enacted.

Regulations

14. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the appointed day or a later day.

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SCHEDULE 4—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.
- (4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule, clause 2 excepted.

