

FIRST PRINT

## HUNTER WATER BOARD (CORPORATISATION) BILL 1991

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to establish a State owned corporation, within the context of the State Owned Corporations Act 1989, in relation to the supply of water, the provision of sewerage and drainage services and the disposal of waste water in the Hunter region.

The Bill provides for the establishment of Hunter Water Corporation Limited ("Hunter Water Corporation") as a SOC.

The Bill also provides for the transfer of certain assets, rights and liabilities of the Hunter Water Board to Hunter Water Corporation, and for the dissolution of the Hunter Water Board.

The Bill contains other provisions that are described below.

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#### PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a proclaimed day or days.

Clause 3 contains definitions used in the proposed Act, and also provides that words and expressions used in the proposed Act have the same meanings as they have in the State Owned Corporations Act 1989.

#### PART 2—ESTABLISHMENT OF STATE OWNED CORPORATION

Clause 4 provides for the insertion of the name of Hunter Water Corporation in Schedule 1 to the State Owned Corporations Act 1989. This action is contemplated by the State Owned Corporations Act, and has the effect of making Hunter Water Corporation a SOC.

#### PART 3—TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

Clause 5 empowers the Minister to direct the transfer of the business undertaking of the Hunter Water Board to Hunter Water Corporation. On the direction taking effect, the

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assets of the Hunter Water Board vest in Hunter Water Corporation and the rights and liabilities of the Hunter Water Board become those of Hunter Water Corporation.

Clause 6 empowers the Minister to direct that assets, rights and liabilities be excluded from the business undertaking transferred to Hunter Water Corporation. These are to be transferred instead to the Hunter Water Ministerial Corporation established by clause 63 or another person nominated by the Minister on behalf of the Crown.

Clause 7 empowers the Minister to direct the transfer of other assets, rights and liabilities belonging to the State and used by the Hunter Water Board. Such a transfer is to be made to Hunter Water Corporation or a subsidiary of Hunter Water Corporation.

#### **PART 4—DISSOLUTION OF HUNTER WATER BOARD**

Clause 8 repeals the Hunter Water Board Act 1988 and all regulations and by-laws in force under that Act.

Clause 9 provides for the dissolution of the Hunter Water Board.

Clause 10 provides that members of the Hunter Water Board cease to hold office on its dissolution. Compensation is payable under Part 8 of the Public Sector Management Act 1988 to a person so affected, unless the person is appointed to the service of Hunter Water Corporation or a subsidiary of Hunter Water Corporation.

Clause 11 states that, on dissolution of the Hunter Water Board, Hunter Water Corporation is taken for all purposes including rules of international law to be a continuation of and the same legal entity as the Hunter Water Board. This provision does not affect a transfer of assets, rights and liabilities under the proposed Act.

#### **PART 5—PROVISIONS APPLYING TO THE CORPORATION**

##### **Division 1—Operating licence**

Clause 12 states that the Governor may grant an operating licence to Hunter Water Corporation to enable the Corporation, in its area of operations, to provide and maintain systems and services for:

- supplying water; and
- providing sewerage and drainage services; and
- disposing of waste water.

For these purposes and the purpose of transporting water in, and supplying water from, certain bulk supply lines, the operating licence authorises Hunter Water Corporation, on behalf of the Water Administration Ministerial Corporation and despite any provision in the Water Administration Act 1986, to exercise the right of the Water Administration Ministerial Corporation to the use and flow, and to the control, of water.

Clause 13 provides that the operating licence is subject to terms and conditions determined by the Governor. However, the operating licence must include terms or conditions requiring the Hunter Water Corporation:

- to operate and maintain efficient, co-ordinated and commercially viable systems and services for supplying water, providing sewerage services and disposing of waste water; and

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- to operate and maintain a drainage service within the capacity of the drainage service included in the business undertaking transferred to it; and
- to ensure that the systems and services meet quality and performance standards specified in the operating licence in relation to water quality, service interruptions, price levels and other matters determined by the Governor.

The operating licence must also make provision for Hunter Water Corporation to maintain procedures requiring the Corporation to consult regularly with its customers in relation to the provision of the systems and services.

Clause 14 provides that the operating licence may only be amended in the manner specified in the operating licence.

Clause 15 states that the initial term of an operating licence expires on 30 June 1995. The Governor may renew the licence for a maximum of 3 years at a time.

Clause 16 states that the operating licence applies to the area of operations described in the operating licence. This area comprises the area of operations of the Hunter Water Board immediately before the repeal of the Hunter Water Board Act 1988 together with any parts of the Shire of Dungog specified in the operating licence, land in or on which works of Hunter Water Corporation are installed or that are connected with a water or sewer main owned by the Corporation at the commencement of the operating licence and any other land specified by the Governor by an order published in the Gazette. An order expanding the area of operations into the area within which a council, public authority or Water Supply Authority provides the same services as Hunter Water Corporation may not be made unless consultations have taken place between Hunter Water Corporation and the council, public authority or Water Supply Authority concerning the proposed expansion and its implications.

Clause 17 provides that, if the Minister is of the opinion that Hunter Water Corporation has contravened the operating licence, the Governor may direct that the Corporation be served with a letter of reprimand or pay a penalty (not exceeding \$150,000) or that the operating licence be cancelled. The making of a direction on one occasion does not prevent the making of another direction by the Governor under the section if the contravention continues or a fresh contravention occurs.

Clause 18 deals with cancellation of the operating licence. The licence may be cancelled by the Governor only if:

- there is an unauthorised cessation in the provision of services, or any of them, by Hunter Water Corporation; or
- Hunter Water Corporation is in material default in compliance with the operating licence; or
- Hunter Water Corporation is insolvent or has been convicted of a criminal offence punishable by a fine of at least \$1,000 or, if the Corporation were a natural person, penal servitude or imprisonment for 12 months or more.

If the operating licence is cancelled, the Governor may, by order, vest in the Crown or other person those assets and rights of Hunter Water Corporation that will enable the Crown or other person to immediately provide the services covered by the operating licence, or any of them, for the benefit of the Corporation's customers. The order may require the Crown or other person to assume liabilities of the Corporation or the Crown to pay the whole or any part of Hunter Water Corporation's liabilities.

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**Division 2—Provisions relating to works**

Clause 19 provides that Hunter Water Corporation owns all works that it installs in or on land and all works in or on land that are vested in or transferred to it (whether or not it owns the land). The Corporation is empowered to maintain and manage its works in a manner that will ensure that the works operate efficiently. The Corporation may sell or otherwise deal with its works.

Clause 20 provides that authorised persons may enter land on Hunter Water Corporation's behalf for any of the purposes specified in the clause.

Clause 21 states the conditions on and manner in which a power to enter land may be exercised. The Minister may impose conditions or restrictions in relation to authorities to enter land.

Clause 22 provides that compensation for damage is to be provided and may be made by reinstatement, repair, construction of works or payment. If Hunter Water Corporation installs a sewer on land, compensation is payable only in specified circumstances.

Clause 23 confers power on Hunter Water Corporation to open the surface of a public road or public reserve subject to conditions such as restoration and removal of rubbish.

Clause 24 specifies the procedure to be adopted by Hunter Water Corporation if it wishes to alter the position of anything in or under a public road that does not belong to the Corporation and is used as a conduit for a substance, energy or signals.

Clause 25 provides that the owner of land in or on which a work of Hunter Water Corporation is installed is taken to have entered into an agreement in the nature of a covenant under which the owner must ensure that the work and its operation are not interfered with. Persons must not place structures in a manner that interferes with the operation of the Corporation's works and are liable to compensate the Corporation for loss or damage that results.

Clause 26 specifies other circumstances in which persons involved in causing damage to Hunter Water Corporation's works are liable to compensate the Corporation.

Clause 27 deals with the procedure to be followed if interference to works is caused by trees.

Clause 28 provides that section 171 of the Local Government Act 1919 (which requires payment of an annual charge to a local council in respect of pipes, tunnels or other structures suspended, constructed or placed on, under or over any public place) does not apply to Hunter Water Corporation.

**Division 3—Compulsory acquisition of land**

Clause 29 provides that the Minister, at the request of Hunter Water Corporation, may acquire land by compulsory process under the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the proposed Act and transfer it to the Corporation. The Corporation may sell or otherwise deal with land acquired by compulsory process that is vested in the Corporation in any manner that the Corporation considers appropriate.

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**Division 4—Offences**

Clause 30 creates offences relating to the illegal use or diversion of water.

Clause 31 prohibits discharge of any substance into a work owned by Hunter Water Corporation without its written agreement or not in accordance with a customer or other contract.

Clause 32 provides that prosecution or conviction for an offence against the proposed Act does not limit other rights of Hunter Water Corporation in relation to such matters as damages and expenses incurred because of the offence.

Clause 33 provides for certain persons involved in an offence against the proposed Act to be as guilty of the offence as the principal offender.

Clause 34 provides for proceedings for an offence to be taken before a Local Court or the Supreme Court in its summary jurisdiction.

**Division 5—Customer contracts**

Clause 35 requires the initial terms and conditions of a customer contract to be set out in the operating licence. The terms and conditions on which Hunter Water Corporation will provide water supply and sewerage services to customers under customer contracts must be published in a daily newspaper circulating in the Corporation's area of operations. The terms and conditions must include particulars of the contract charges or of the manner of calculation of the contract charges that the Corporation proposes to impose. The terms and conditions must be in a form specified by or authorised under the operating licence.

Clause 36 provides that an owner of land connected to a water or sewer main owned by Hunter Water Corporation is taken to have entered into a customer contract with the Corporation for the provision of services on the terms and conditions published under clause 35, as varied from time to time in accordance with clause 38. A customer contract is not to be considered to be unconscionable, harsh or oppressive for the purposes of any law.

Clause 37 provides that Division 5 does not apply to a contract the terms and conditions of which have been specifically agreed to by the Corporation and a customer.

Clause 38 states that Hunter Water Corporation may, with the Governor's approval, vary the terms and conditions of a customer contract by notice published in a daily newspaper circulating in the Corporation's area of operations at least 6 months, or a shorter period agreed to by the Minister, before the variation is to take effect. A copy of the notice is to be given to customers with the next account for contract charges issued after the publication date.

**Division 6—Contract charges, availability charges, environmental levies and rates**

Clause 39 states that the operating licence may require Hunter Water Corporation to fix charges, levies and rates on a basis that is consistent with that employed by the Hunter Water Board before the transfer of the business undertaking or on some other basis stipulated in the operating licence. Unless the operating licence otherwise

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provides, Hunter Water Corporation has power to fix contract and availability charges, environmental levies and drainage rates and to impose fees or charges for services or things provided by it.

Clause 40 provides that a new owner of land is liable for contract charges unpaid by the predecessor in title as if the new owner had been a party to a customer contract with Hunter Water Corporation for provision of the services to which the charges relate.

Clause 41 permits an occupier of land to pay outstanding contract charges, availability charges, environmental levies or rates on behalf of an owner and to recover the amount paid from the owner or to deduct it from the rent or licence or other occupation fee payable to the owner.

Clause 42 provides that, after the transfer of the business undertaking to Hunter Water Corporation, contract charges for water supply and sewerage services are not to be levied as rates or charged on land.

Clause 43 provides that, despite clause 42, an availability charge relating to land to which a water or sewer main is available but is not connected is a charge on the land. This clause has effect until 30 June 1995 (the date of expiry of the initial term of the operating licence).

Clause 44 is a transitional provision covering the status of certain amounts levied by the Hunter Water Board but unpaid before the transfer of the business undertaking to Hunter Water Corporation.

Clause 45 states that Hunter Water Corporation may, with Ministerial consent, and, if so required by the operating licence must, impose an environmental levy on land not connected to a water or sewer main (including land to which a main is not presently available) but to which the Corporation proposes to make a sewer main available. An environmental levy is charged on the land to which it relates.

Clause 46 provides that Hunter Water Corporation may and, if so required by the operating licence must, levy rates on the owners of land within declared drainage areas. These rates are charged on the land.

Clause 47 requires Hunter Water Corporation, on application, to certify whether contract charges or other amounts levied in relation to particular land have been paid and, if not, the amount owing and whether or not it is charged on the land.

**Division 7—New developments**

Clause 48 contains definitions used in the Division.

Clause 49 enables a developer who has an approval to carry out certain development under the Local Government Act 1919 or the Environmental Planning and Assessment Act 1979 to apply to Hunter Water Corporation for a certificate that the proposed development complies with clause 50.

Clause 50 provides for the conditions on which a developer who has an approval referred to in clause 49 may obtain from Hunter Water Corporation a certificate as to compliance with the requirements of the clause in relation to the approval. Under the clause, Hunter Water Corporation may, before issuing a compliance certificate, require a developer to enter into an agreement to pay an amount to the Corporation for the amplification of certain works made necessary by the proposed development, to

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construct certain works, to transfer works to the Corporation or to do any one or more of these things. The Corporation may require that security for due performance of the agreement be provided.

Clause 51 requires consent authorities to notify Hunter Water Corporation of development or building applications relating to the area of operations or a special area that may significantly damage or interfere with the Corporation's works or operations or with the quality of water from which it draws its supply in a special area. The consent authority must have regard to any submissions made by the Corporation in deciding whether to consent to an application or to attach conditions to it.

#### **Division 8—Catchment areas and other special areas**

Clause 52 provides that the Director of the Department of Water Resources ("the Director") has the control of special areas for the purposes of Division 8.

Clause 53 enables the Governor, on the Minister's recommendation, to declare an area of land (for example, a catchment area) to be a special area.

Clause 54 enables the Director to supervise any action proposed to be taken under the Crown Lands Act 1989 in relation to a special area. It also gives the Director, in relation to a special area, the same powers as a manager of a reserve trust under that Act.

Clause 55 requires notice to be given to the Director and Hunter Water Corporation, and enables the Director to make representations, if powers are to be exercised by the Governor, a Minister or a statutory body in a special area.

Clause 56 requires the Director to inform Hunter Water Corporation if the Director is informed of a proposal under clause 54 or proposed exercise of functions under clause 55. The Director is required to have regard to any submissions made by the Corporation in formulating the approach to be taken concerning the proposal or proposed exercise of functions.

Clause 57 provides for the making of regulations in relation to special areas.

Clause 58 provides for the continuation of certain regulations dealing with special areas and of certain permits issued by the Hunter Water Board under those regulations in relation to the abstraction of water from certain subterranean sources.

Clause 59 requires the Director to pay amounts collected under the permits referred to in clause 58 to Hunter Water Corporation while the operating licence is current.

Clause 60 provides that the Director may authorise Hunter Water Corporation to exercise functions of the Director under a regulation made under the proposed Act.

#### **Division 9—Other matters**

Clause 61 authorises Hunter Water Corporation, subject to compliance with the Environmental Planning and Assessment Act 1979 and the obtaining of necessary statutory approvals, to deposit and leave waste products from its sewerage treatment plants in disused underground mine workings even though the mine workings pass beneath land that the Corporation does not own. The Minister may declare underground mine workings to be disused for the purposes of this clause. No action for trespass to land, nuisance or other legal proceedings are sustainable against the Corporation in

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relation to the deposit and leaving of waste products in disused underground mine workings pursuant to this clause.

Clause 62 states that Hunter Water Corporation is in the same position, so far as its functions and liabilities in relation to the provision of drainage services are concerned, as a public authority whose function is to operate, manage and maintain a drainage service. The Corporation has no duty to upgrade or improve the drainage system transferred to it.

PART 6—MISCELLANEOUS

Clause 63 establishes a Hunter Water Ministerial Corporation for the purpose of being a repository of assets, rights and liabilities of the Hunter Water Board that are not transferred to Hunter Water Corporation or a subsidiary of Hunter Water Corporation or to another person nominated under clause 6.

Clause 64 deals with any changes of names that might occur for Hunter Water Corporation.

Clause 65 declares that Hunter Water Board is an authority to which Schedule 4 to the State Owned Corporations Act 1989 applies so as to provide protection of superannuation and other entitlements of eligible employees. This declaration is contemplated by clause 1 of the Schedule.

Clause 66 modifies the required articles of association for a subsidiary of Hunter Water Corporation, so that the prior approval of the voting shareholders for the appointment of directors is needed only for directors appointed by or on behalf of Hunter Water Corporation, and for the transfer of shares is needed only for shares held by Ministers or held by or on behalf of the Corporation.

Clause 67 provides that the regulations may, for the purposes of the Trade Practices Act 1974 of the Commonwealth, authorise the transfer of the business undertaking of the Hunter Water Board to Hunter Water Corporation, the performance of contracts included in the business undertaking and the making and performance by Hunter Water Corporation, after the transfer, of certain contracts related to the supply of water, the provision of sewerage and drainage services and the disposal of waste water. The regulations may also exempt Hunter Water Corporation from the operation of the Monopolies Act 1923.

Clause 68 provides that the proposed Act binds the Crown.

Clause 69 empowers the Governor-in-Council to make regulations for the purposes of the proposed Act, including regulations of a savings or transitional nature.

Clause 70 is a formal provision giving effect to the amendments set out in Schedule 1.

Clause 71 is a formal provision dealing with the commencement of amendments of certain Acts.

Clause 72 provides that section 6 of the Clean Waters Act 1970 (dealing with the membership of the Clean Waters Advisory Committee) does not apply to Hunter Water Corporation. The Part of the Clean Waters Act 1970 that contains section 6 is to be repealed by the proposed Protection of the Environment Administration Act 1991.



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SCHEDULE 1—AMENDMENT OF ACTS

References to the Hunter Water Board or its predecessors and to relevant enabling Acts are removed from the Attachment of Wages Limitation Act 1957, the Capital Debt Charges Act 1957, the Electricity Commission Act 1950, the Evidence Act 1898, the Government and Related Employees Appeal Tribunal Act 1980, the Industrial Arbitration Act 1940, the Justices Act 1902, the Land Tax Management Act 1956, the Public Authorities (Financial Arrangements) Act 1987, the Public Finance and Audit Act 1983, the Public Sector Management Act 1988, the Traffic Safety (Lights and Hoardings) Act 1951 and the Water Administration Act 1986. (Section 36 of the State Owned Corporations Act 1989 deals with the operation of the Government and Related Employees Appeal Tribunal Act 1980 and the Public Finance and Audit Act 1983 in relation to SOCs. The Public Authorities (Financial Arrangements) Act 1987 includes SOCs within the definition of "authority".)

References to the Hunter Water Board and its predecessors are removed from certain Acts dealing with superannuation. (The rights of existing contributors are preserved by Schedule 4 of the State Owned Corporations Act 1989.)

References to the proposed Act are substituted for references to the Hunter District Water, Sewerage and Drainage Act 1938 in the Aboriginal Land Rights Act 1983 with the effect that land vested in an Aboriginal Land Council will be exempt from payment of rates levied under the proposed Act and that such land may not be sold for unpaid rates or an Aboriginal Land Council wound up on that account.

A reference to the proposed Act is substituted for a reference to the Hunter Water Board Act 1988 in the Building Services Corporation Act 1989 with the effect that an information for certain offences against or under the proposed Act may be laid in the name of the Building Services Corporation.

A reference to the Hunter District Water Board is omitted from the definition of "statutory authority" in the Clean Waters Act 1970.

The Coal Mining Act 1973 is amended by substituting references to a catchment area under the Hunter District Water, Sewerage and Drainage Act 1938 and the Hunter District Water Board with references to the proposed Act and the Director of the Department of Water Resources in a provision that prevents the grant of an authorisation to drill bore holes or carry out investigative work without consent.

The Conveyancing Act 1919 is amended to enable Hunter Water Corporation to stand in the same position as the Crown or public or local authorities in relation to enforcement of easements and restrictions of user of land and the creation of easements in gross and restrictions appurtenant to easements.

A reference to a nominee of Hunter Water Corporation is substituted for a reference to the Hunter District Water Board in the provision of the Dams Safety Act 1978 dealing with the membership of the Dams Safety Committee.

A reference in the Drainage Act 1939 to that Act not affecting the Hunter District Water, Sewerage and Drainage Act 1938 is replaced with a reference to the proposed Act.

An amendment of the proposed Electricity Commission (Corporatisation) Act 1991 is proposed by omitting the amendments made by that proposed Act to the Interpretation Act 1987 and the State Owned Corporations Act 1989. (Certain of these amendments are the same as amendments included by the proposed Act. As provided by clause 71 (1)

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of the proposed Act, this amendment will only operate if the relevant provisions of the proposed Act commence before the commencement of relevant provisions of the proposed Electricity Commission (Corporatisation) Act 1991.)

A reference to the Hunter Water Board is omitted from the Fluoridation of Public Water Supplies Act 1957 so that regulations may be made concerning the qualifications of persons employed by Hunter Water Corporation who add fluorine to any public water supply.

References to Hunter Water Corporation and the proposed Act are inserted in the definition of "rating or taxing authority" and "valuing law" in the Heritage Act 1977 in place of references to the Hunter District Water Board and the Hunter District Water, Sewerage and Drainage Act 1938 so that those definitions apply to the Corporation and the proposed Act.

The Interpretation Act 1987 is amended by insertion of a definition of "State owned corporation". (This amendment is the same amendment as is included in the proposed Electricity Commission (Corporatisation) Act 1991 and will only be commenced, in accordance with clause 71 (1) of the proposed Act, if the relevant provisions of the proposed Electricity Commission (Corporatisation) Act 1991 have not then commenced.)

A reference to the Hunter District Water Supply and Sewerage Board is omitted from the definition of "statutory body" or "statutory body representing the Crown" in section 4 of the Local Government Act 1919. The Local Government Act 1919 is also amended to provide, by substituting a reference to the proposed Act in section 10 for a reference to the Hunter Water Board Act 1988, that, unless expressly provided, nothing in the Local Government Act 1919 affects any provision of the proposed Act.

A reference to the Hunter District Water Supply and Sewerage Act of 1892 is replaced with a reference to the proposed Act in section 247 of the Local Government Act 1919. This section applies to pipes owned by specified water supply authorities and authorises a council, when it lays conduits across roads, to require these authorities to use the conduits for their services and to pay one half of the cost of laying the conduits to the council.

Section 283 of the Local Government Act 1919 is amended, by omitting references to the Hunter District Water Supply and Sewerage Act of 1892 and the Hunter District Water Supply and Sewerage Board, to remove requirements for Hunter Water Corporation to provide a depot for disposal of nightsoil for a council and to permit the emptying of nightsoil pans into the Corporation's sewers.

Section 327 of the Local Government Act 1919 is amended, by inserting references to Hunter Water Corporation's area of operations and its power to issue compliance certificates for superseded references to the Hunter Water Board Act 1988, in a provision dealing with the opening of new roads and subdivisions. Similar amendments are made to section 331A which relates to subdivisions.

Section 368 of the Local Government Act 1919 is amended by providing that the requirement for a council to provide water supply or sewerage services under Part 14 of the Local Government Act does not apply to areas supplied with those services by Hunter Water Corporation (in substitution for the Hunter Water Board). A council's powers with respect to stormwater drains under section 405 of the Local Government Act 1919 is made subject to the provisions of the proposed Act (in substitution for a reference to the Hunter District Water, Sewerage and Drainage Act 1938).

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Section 493 of the Local Government Act 1919 is amended to facilitate the making of arrangements between a council and Hunter Water Corporation (in substitution for the Hunter Water Board) for the provision of water supply and sewerage works.

Section 654 of the Local Government Act 1919 is amended to omit a reference to the Hunter Water Board from the definition of "Department of the Government" in a provision dealing with the resolution of disputes between councils and the Crown or statutory bodies representing the Crown.

The National Parks and Wildlife Act 1974 is amended to substitute references to special areas under the proposed Act for catchment areas and to Hunter Water Corporation and the Director of the Department of Water Resources for references to the Hunter Water Board in provisions dealing with the protection of catchment areas.

The Pipelines Act 1967 is amended by replacing a reference to the Hunter District Water Board with a reference to Hunter Water Corporation in the definition of "statutory body representing the Crown" for the purposes of that Act.

The State Owned Corporations Act 1989 is amended:

- (a) to require that the transfer of assets, rights or liabilities from an authority to a subsidiary of a SOC is subject to Ministerial direction; and
- (b) to provide that the Environmental Planning and Assessment Act 1979 applies to development by a SOC. However, if the Minister for Planning certifies that the development is of State or regional significance, Part 5 of the Environmental Planning and Assessment Act 1979 applies to the development as if it were an activity under that Part. The Minister administering the Act which inserts the name of the SOC in Schedule 1 of the State Owned Corporations Act 1989 is the determining authority for and has the function of determining whether the development should be approved. The development must not include any act, matter or thing prohibited by an environmental planning instrument.

(These amendments are the same amendments as are included in the proposed Electricity Commission (Corporatisation) Act 1991 and will only be commenced, in accordance with section 71 (1) of the proposed Act, if the relevant provisions of the proposed Electricity Commission (Corporatisation) Act 1991 have not then commenced.)

The State Owned Corporations Act 1989 is also amended to establish a Ministerial Holding Corporation for the purpose of being a repository for the holding, transfer and disposal of assets, rights and liabilities transferred to it under any Act.

The Strata Titles Act 1973 and the Strata Titles (Leasehold) Act 1986 are amended by substituting references to the Hunter Water Board and the Hunter Water Board Act 1988 in the definitions of "appropriate valuing Act" and "valuing authority" with references to Hunter Water Corporation and the proposed Act.

The Valuation of Land Act 1916 is amended to omit references to the Hunter Water Board from provisions dealing with the furnishing of valuation lists and the assessed annual value of land and strata determined under the Valuation of Land Act 1916 for the purposes of other Acts.

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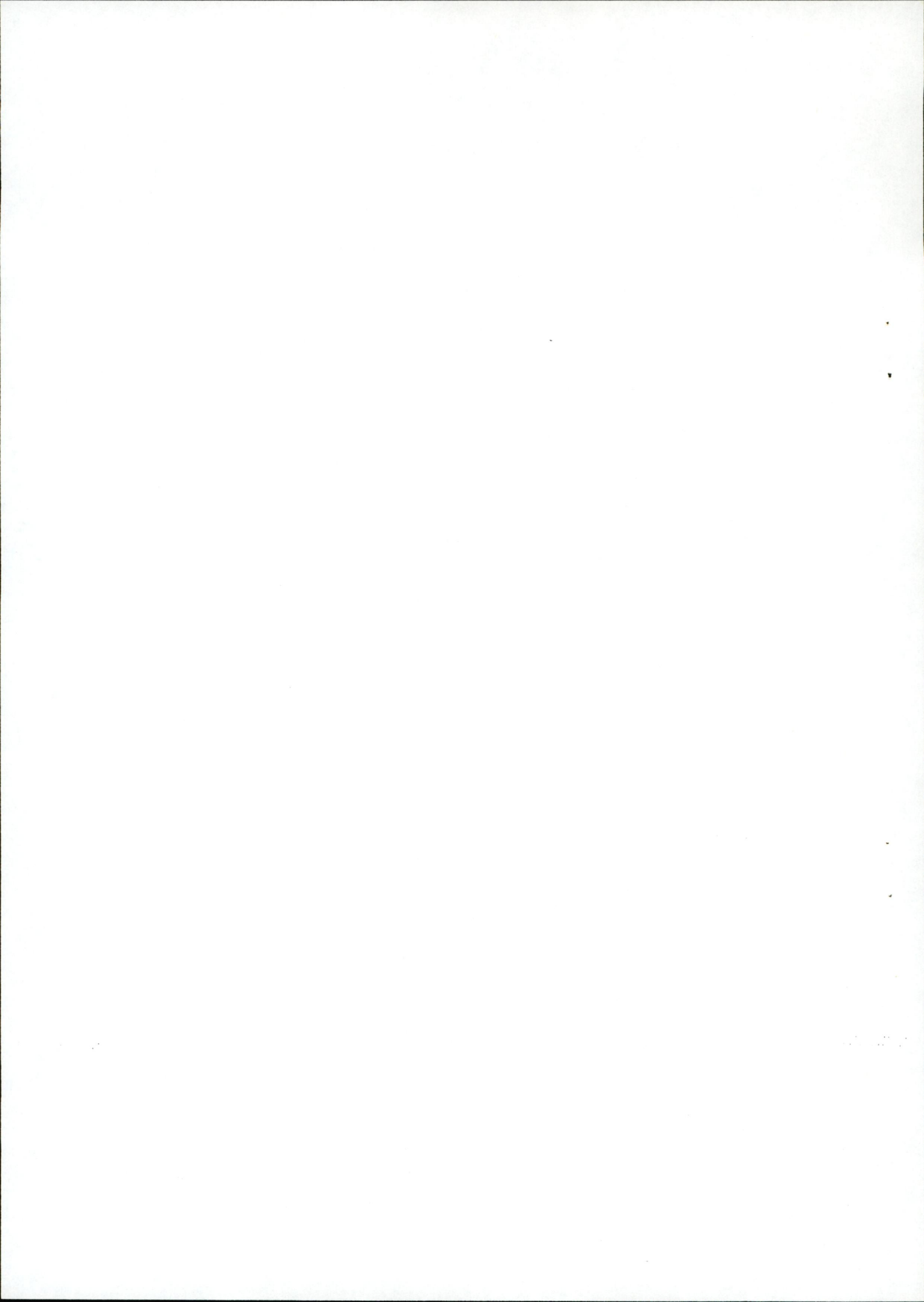
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SCHEDULE 1—AMENDMENT OF ACTS

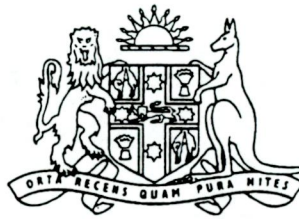
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# HUNTER WATER BOARD (CORPORATISATION) BILL 1991

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No. , 1991

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## A BILL FOR

An Act to establish a State owned corporation in relation to the supply of water, the provision of sewerage and drainage services and the disposal of waste water in the Hunter region and certain other matters; to provide for the transfer of assets, rights and liabilities of the Hunter Water Board; to amend the State Owned Corporations Act 1989 and certain other Acts; to repeal the Hunter Water Board Act 1988; and for other purposes.

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Hunter Water Board (Corporatisation) Act 1991.

**Commencement**

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

**Definitions**

3. (1) Words and expressions used in this Act have the same meanings as they have in the State Owned Corporations Act 1989.

(2) In this Act:

“**area of operations**” means the area of operations referred to in section 16;

“**authorised person**” means an officer or other person acting on behalf of the Corporation to whom a certificate of authority has been issued under section 21 (2);

“**availability charge**” means a charge of a kind referred to in section 43;

“**business undertaking**” means all assets, rights and liabilities of the Hunter Water Board, but does not include any excluded undertaking;

“**contract charge**” means any charge or fee payable under a customer contract, or other contract made between the Corporation and a customer, for the provision of water supply or sewerage services;

“**Corporation**” means Hunter Water Corporation Limited;

“**customer**”, in relation to the Corporation, means a person who is taken to have entered into a customer contract or a person who has made a contract with the Corporation of a kind referred to in section 37;

“**customer contract**” means a contract of a kind referred to in section 36 (1);

“**drainage channel**” means any artificial channel by which surface water is carried off;

“**environmental levy**” means an amount imposed under section 45;

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**“excluded undertaking”** means any assets, rights or liabilities of the Hunter Water Board that the Minister has directed to be excluded under section 6;

**“headworks”** means dam walls, pumps and other works used for or with respect to the extraction of water in rivers and lakes, water occurring naturally on the surface of the ground or sub-surface waters and the storage of that water;

**“Hunter Water Board”** means the Hunter Water Board constituted under the Hunter Water Board Act 1988;

**“instrument”** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

**“lease”** includes a licence or permit;

**“meter”** includes any measuring device;

**“Ministerial Corporation”** means the Hunter Water Ministerial Corporation constituted by section 63;

**“operating licence”** means an operating licence granted under section 12 or any renewal of it;

**“owner”**, in relation to land, includes every person who jointly or severally at law or in equity:

- (a) is entitled to the land for an estate of freehold in possession; or
- (b) is a person to whom the Crown has contracted to sell the land under the Crown Lands Act 1989 or any other Act relating to alienation of land of the Crown; or
- (c) is entitled to receive, or receives, or if the land were let to a tenant would receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise,

and, in relation to land of the Crown, means the Crown but does not include a person who, or a class of persons that, is specified by a regulation not to be an owner for the purposes of this definition, either generally or in a particular case or class of cases;

**“public road”** means a road the public are entitled to use, whether or not it is:

- (a) dedicated as a highway by the Crown or any person; or
- (b) notified, proclaimed or dedicated as a road or highway under an Act;

**“rate”** means a rate made and levied on land within a declared drainage area under section 46;

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“**special area**” means an area of land declared by an order in force under section 53 to be a special area;

“**statutory body**” means a corporation that:

- (a) is not a company within the meaning of the Corporations Law; and
- (b) is not a society within the meaning of the Co-operation Act 1923; and
- (c) is not a body prescribed by the regulations as not being a statutory body for the purposes of this definition,

and is incorporated by or under an Act (other than this Act or the Associations Incorporation Act 1984);

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

“**works**” means water mains, sewer mains, drainage channels and any works ancillary to those works.

(3) In this Act:

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

## PART 2—ESTABLISHMENT OF STATE OWNED CORPORATION

### Establishment of Corporation as SOC

4. The State Owned Corporations Act 1989 is amended by inserting in Schedule 1, in alphabetical order, the words “Hunter Water Corporation Limited”.

## PART 3—TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

### Direction to transfer business undertaking

5. (1) The Minister may, by order in writing, direct that the business undertaking of the Hunter Water Board be transferred to the Corporation, on the date and for the consideration specified in the order.

(2) The transfer of assets, rights and liabilities under this section is to take place at a value or values specified in the order.

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(3) On the commencement of the order, the following provisions have effect (subject to the order):

- (a) the assets of the Hunter Water Board comprised in its business undertaking vest in the Corporation by virtue of this section and without the need for any conveyance, transfer, assignment or assurance;
- (b) the rights and liabilities of the Hunter Water Board comprised in its business undertaking become by virtue of this section the rights and liabilities of the Corporation;
- (c) all proceedings relating to the business undertaking commenced before the transfer by or against the Hunter Water Board or a predecessor of the Hunter Water Board and pending immediately before the transfer are taken to be proceedings pending by or against the Corporation;
- (d) any act, matter or thing done or omitted to be done in relation to the business undertaking before the transfer by, to or in respect of the Hunter Water Board is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Corporation;
- (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the Hunter Water Board or a predecessor of the Hunter Water Board is, subject to regulations under section 69 (2), to be read as, or as including, a reference to the Corporation.

(4) The operation of this section is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(5) The operation of this section is not to be regarded as an event of default under any contract or other instrument.

(6) No attornment to the Corporation by a lessee from the Hunter Water Board is required.

(7) Assets, rights or liabilities may not be transferred under this section to the Corporation unless the Corporation is a State owned corporation.

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**Excluded undertakings**

6. (1) The Minister may direct, by order in writing, that such assets, rights or liabilities of the Hunter Water Board as are specified or referred to in the order be excluded from the Hunter Water Board's business undertaking.

(2) On the date specified in the order, the excluded undertaking concerned is transferred to the Ministerial Corporation or such other person on behalf of the Crown as is so specified.

(3) Section 5 applies to that transfer in the same way as it applies to the transfer of the Hunter Water Board's business undertaking to the Corporation.

(4) Different parts of any excluded undertaking may be so transferred to different persons.

(5) The Ministerial Corporation or other person is authorised to dispose of any excluded undertaking so transferred or to retain it and conduct any business to which it relates.

**Transfer of other assets, rights or liabilities**

7. (1) The Minister may direct, by order in writing, and on such terms and conditions as are set out or referred to in the order, that such other assets, rights or liabilities used by or attaching to the Hunter Water Board for the supply of water, the provision of sewerage and drainage services, the disposal of waste water and associated purposes, and belonging to the State or an authority of the State, as are specified in the order be transferred to the Corporation or to a subsidiary of the Corporation.

(2) Section 5 applies to that transfer in the same way as it applies to the transfer of the Hunter Water Board's business undertaking to the Corporation.

**PART 4—DISSOLUTION OF HUNTER WATER BOARD**

**Repeal of Hunter Water Board Act 1988 No. 119**

8. The Hunter Water Board Act 1988 and all regulations and by-laws under that Act are repealed.

**Dissolution of Hunter Water Board**

9. (1) The Hunter Water Board is dissolved.

(2) The assets, rights and liabilities (if any) of the Hunter Water Board immediately before its dissolution are transferred to the Ministerial Corporation.

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(3) Section 5 applies to that transfer in the same way as it applies to the transfer of the Hunter Water Board's business undertaking to the Corporation.

**Members of Hunter Water Board to vacate office**

10. (1) A person who, immediately before the dissolution of the Hunter Water Board, held office as a member of the Hunter Water Board:

- (a) ceases to hold office as such; and
- (b) except as provided by subsection (2), is not entitled to any remuneration or compensation because of the loss of that office.

(2) Part 8 of the Public Sector Management Act 1988 applies to a person who so ceases to hold office as a member of the Hunter Water Board, without immediately being appointed to the service of the Corporation or a subsidiary of the Corporation, in the same way as it applies to a person removed from office under that Part.

**Corporation to be same legal entity as Hunter Water Board**

11. (1) On the dissolution of the Hunter Water Board, the Corporation is taken for all purposes including the rules of private international law to be a continuation of and the same legal entity as the Hunter Water Board.

(2) This section does not affect any transfer of assets, rights and liabilities under section 6 or 9.

**PART 5—PROVISIONS APPLYING TO THE CORPORATION**

**Division 1—Operating licence**

**Grant of operating licence**

12. (1) The Governor may grant an operating licence to the Corporation to enable the Corporation in accordance with this Act, in the area of operations specified in the licence, to provide, construct, operate, manage and maintain systems and services for:

- (a) supplying water; and
- (b) providing sewerage and drainage services; and
- (c) disposing of waste water.

(2) The operating licence authorises the Corporation to exercise in the area of operations, on behalf of the Water Administration Ministerial Corporation, the right to the use and flow, and to the control, of water conferred on the Water Administration Ministerial Corporation by section 12 of the Water Administration Act 1986 for:

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- (a) the purposes referred to in subsection (1);
  - (b) the purpose of transporting water in bulk supply lines from headworks to the area of operations and for supplying water to the owners or occupiers of land adjoining the bulk supply lines.
- (3) This section has effect despite anything in the Water Administration Act 1986.

**Terms and conditions of operating licence**

13. (1) The operating licence is subject to the terms and conditions determined by the Governor but must include terms or conditions under which the Corporation is required:

- (a) to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services for supplying water, providing sewerage services and disposing of waste water; and
- (b) to provide, operate, manage and maintain a drainage service within the capacity of the drainage service included in the business undertaking transferred under Part 3 by the Hunter Water Board to the Corporation as at the date of the transfer of the business undertaking; and
- (c) to ensure that the systems and services meet the quality and performance standards specified in the operating licence in relation to water quality, service interruptions, price levels and other matters determined by the Governor and set out in the operating licence.

(2) The operating licence must also include terms or conditions that require the Corporation to maintain procedures under which the Corporation is to consult with its customers at regular intervals in relation to the provision of the systems and services referred to in this section.

**Amendment of operating licence**

14. The operating licence may only be amended in the manner specified in the operating licence.

**Term of operating licence**

15. (1) The initial term of the operating licence is to expire on 30 June 1995.

(2) After the initial term, the Governor may renew the operating licence for a maximum of 3 years at a time.

(3) The operating licence may be renewed even if its term has expired.



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**Area covered by operating licence**

16. (1) The operating licence applies to the area of operations specified in the operating licence, being the area of operations of the Hunter Water Board immediately before the commencement of section 8 together with:

- (a) any parts of the Shire of Dungog specified in the operating licence at the date of the commencement of the operating licence; and
- (b) any other land specified in the operating licence, not included in the above, in or on which works owned by the Corporation are installed or that is connected with a water main or sewer main owned by the Corporation at the date of the commencement of the operating licence; and
- (c) any other land specified by the Governor by order for the purpose published in the Gazette.

(2) Despite subsection (1) (c), the area of operations must not be expanded to include the whole or part of the area within which:

- (a) a council of a city, municipality or shire; or
- (b) a public authority referred to in section 11 (2) of the Water Administration Act 1986; or
- (c) a Water Supply Authority within the meaning of the Water Supply Authorities Act 1987,

provides services that are the same services the Corporation is authorised to provide under the operating licence unless consultations, regarding the proposed expansion and its implications, have taken place between the Corporation and the council, public authority or Water Supply Authority before the order expanding the area of operations is made.

**Contravention of operating licence**

17. (1) If, in the opinion of the Minister, the Corporation contravenes the operating licence, the Governor may direct that one of the following is to apply:

- (a) a letter of reprimand by the Minister is to be served on the Corporation;
- (b) the Corporation is to pay a monetary penalty (not exceeding \$150,000) in an amount to be determined by the Governor;
- (c) the operating licence is to be cancelled by the Governor in accordance with section 18.

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(2) The fact that the Governor has directed that action be taken under this section does not prevent the Governor directing that the same or other action under the section be taken if the contravention continues or a fresh contravention occurs.

(3) The operating licence may make provision for advice to be furnished to the Minister in connection with the exercise of the Minister's functions under this section.

(4) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Crown.

**Cancellation of operating licence**

18. (1) The operating licence may be cancelled by the Governor, but only if:

- (a) the Corporation ceases, other than as authorised by the operating licence, to do the things referred to in section 13 (1) or any of them in the area of operations for any reason; or
- (b) the Corporation is, in the opinion of the Minister, in material default in compliance with the operating licence, viewed in terms of the operation of the operating licence as a whole; or
- (c) the Corporation is insolvent within the meaning of section 460 of the Corporations Law or has been convicted of a criminal offence that is punishable by a fine of at least \$1,000 or, if the Corporation were a natural person, penal servitude or imprisonment for 12 months or more.

(2) If the operating licence is cancelled under this section, the Governor may, by order published in the Gazette, vest in the Crown or in another person specified in the order, from the date specified in the order, the assets and rights of the Corporation that are specified in the order and that, in the opinion of the Minister, are necessary to enable the Crown or other person to do immediately the things referred to in section 13 (1), or any of them, for the benefit of existing customers of the Corporation.

(3) An order under this section may provide for:

- (a) the Crown or other person specified in the order to assume those liabilities of the Corporation that the Governor considers appropriate and specifies in the order; or
- (b) the Crown to pay the whole or any part of the liabilities of the Corporation.

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**Division 2—Provisions relating to works**

**Ownership of works**

19. (1) The Corporation is the owner of all works installed in or on land by the Corporation and of all works in or on land vested in or transferred to the Corporation (whether or not the land is owned by the Corporation).

(2) The Corporation may, subject to this Act, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that are necessary or appropriate to any of its works to ensure that, in the opinion of the Corporation, the works are used in an efficient manner for the purposes for which they were installed.

(3) The Corporation may sell or otherwise deal with works that it owns.

**Entry on to land**

20. The Corporation may, by authorised persons, enter land in accordance with this Division for any one or more of the following purposes:

- (a) to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that the Corporation considers are necessary or appropriate to any of its works or to construct new works and, for these purposes, to carry out any work on, below or above the surface of the land;
- (b) to read a meter that measures water supplied by the Corporation or water discharged into the Corporation's sewers;
- (c) to find the source of pollution of water supplied by the Corporation;
- (d) to ascertain whether a customer contract or other contract for the provision of services by the Corporation is being breached in relation to the connection to or use of works;
- (e) to rectify defective or improper work that has not been rectified by a customer in accordance with a notice served by the Corporation on the customer under a customer contract or other contract;
- (f) to ascertain the character and condition of the land or a building to enable the Corporation to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect or improve the systems and services referred to in section 13 (1) or to construct new works for the purposes of that subsection or section 12 (1);
- (g) to ascertain the condition and location of any pipe, sewer, drain, channel or fitting or other work used in connection with the land or a building to enable the Corporation to operate, repair, replace,

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maintain, remove, extend, expand, connect, disconnect or improve the systems and services referred to in section 13 (1) or to construct new works for the purposes of that subsection or section 12 (1).

**Exercise of powers of entry**

**21. (1)** Before an authorised person enters any land or building under a power conferred by this Division, the Corporation or an authorised person must serve on the owner or occupier of the land or building notice in writing of the intention to enter the land or building on a day specified in the notice unless:

- (a) entry to any land or building is made with the consent of the owner or occupier of the land or building; or
- (b) entry is required urgently and the case is one in which the board of the Corporation has authorised in writing (either generally or in the particular case) entry without notice; or
- (c) entry is made solely for the purpose of reading a meter that measures water supplied by the Corporation or water discharged into the Corporation's sewers if the meter is not in a dwelling-house or building; or
- (d) the giving of notice would defeat the purpose for which the power is to be exercised.

**(2)** A power conferred by this Division to enter any land or building may not be exercised unless the person proposing to exercise the power:

- (a) is in possession of a certificate of authority issued by an officer of the Corporation who has been authorised by the board of the Corporation to issue such certificates; and
- (b) exercises the power at a reasonable time during daylight, unless this would defeat the purpose for which the power is to be exercised or the power is exercised in an emergency; and
- (c) produces the certificate of authority if required to do so by the occupier of the land; and
- (d) uses no more force than is reasonably necessary to effect the entry.

**(3)** Nothing in this section authorises the use of force to enter a dwelling-house or any enclosed part of a building occupied as a dwelling or authorises the entry of such premises at night without the consent of the owner or occupier of the premises.

**(4)** A certificate of authority must:

- (a) state that it is issued under the Hunter Water Board (Corporatisation) Act 1991; and
- (b) give the name of the person to whom it is issued; and

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- (c) describe the nature of the powers conferred and the source of the powers; and
- (d) state the date (if any) on which it expires; and
- (e) if issued to an officer of the Corporation, describe the general area or the land to which the power extends or, if issued to an authorised person who is not an employee of the Corporation, describe the land to which the power extends; and
- (f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

(5) The Minister may, if the Minister thinks fit, by order published in the Gazette, attach conditions or restrictions to certificates of authority issued under this Act, either generally or in particular cases, including restrictions on the purposes for which and the circumstances in which a power of entry may be exercised.

#### **Compensation**

22. (1) The Corporation, in exercising its functions under this Division, is to do as little damage as practicable and is, subject to this Division, to compensate all persons who suffer damage by the exercise of the functions.

(2) Compensation may be made by reinstatement, repair, construction of works or payment.

(3) If the Corporation installs a sewer on land in exercise of powers under this Division, the Corporation is required to pay compensation only if the sewer damages, or interferes with, a building or other structure on the land or if a manhole or main ventilator is constructed on the land.

#### **Power to open roads**

23. (1) The Corporation may, for the purpose of complying with the operating licence and after giving reasonable notice to persons likely to be affected, open and break up:

- (a) the soil and pavement of a public road or public reserve; and
- (b) any sewer, drain or tunnel in or under or any ground under a public road or public reserve.

(2) The person having the control and management of a public road or public reserve may, as prescribed by the regulations, require the Corporation to comply with conditions in exercising its powers under this section, including conditions for restoration of the surface and removal of rubbish.

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(3) If a public road or public reserve is damaged by a leakage from, or a bursting of, a main of the Corporation, the person having the control and management of the public road or public reserve may require the Corporation to make good the damage without delay.

(4) If the Corporation fails to comply with a condition in force under subsection (2) or a requirement under subsection (3), the person affected by the failure may remedy it and recover the cost of doing so as a debt owed to the person by the Corporation.

**Altering position of conduit**

24. (1) The Corporation may serve a written notice on a person if:

- (a) the Corporation, in order to comply with the operating licence, needs an alteration to be made in the position of a conduit owned by the person; and
- (b) the alteration would not permanently damage the conduit or adversely affect its operation.

(2) The notice must:

- (a) specify the alteration needed; and
- (b) require the alteration to be made within a reasonable time stated in the notice; and
- (c) include an undertaking by the Corporation to pay the reasonable cost of the alteration.

(3) If the alteration is not made as required by the notice, the Corporation may make the alteration in a manner that does not damage the conduit permanently or adversely affect its operation on completion of the alteration.

(4) In this section, "**conduit**" means anything that is in or under a public road and is used for the conveyance of a substance, energy or signals.

**Interference with works**

25. (1) Land in or on which a work of the Corporation is installed is taken to be the subject of an agreement in the nature of a covenant in favour of the Corporation pursuant to which the owner from time to time of land in or on which the work is installed must ensure that:

- (a) the work or any structure owned by, or under the control or management of, the Corporation is not wilfully or negligently destroyed, damaged or interfered with; and

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- (b) the Corporation and authorised persons are not delayed or obstructed in and about the taking, in relation to the work, of any of the steps referred to in section 19 (2); and
- (c) no structure is placed in, on or near the work in a manner that interferes with the operation of the work; and
- (d) ground is not opened to expose any pipe or other work of the Corporation without reasonable excuse, or the consent of the Corporation, and without giving the Corporation at least 2 days' written notice of intention to open the ground unless that requirement is waived by the Corporation.

(2) A lease, including a residential tenancy agreement within the meaning of the Residential Tenancies Act 1987, is taken to include a term requiring the lessee of land referred to in subsection (1) or any part of it to comply with the same obligations, in relation to land, as are imposed by that subsection on the owner who has leased the land to the lessee.

(3) An agreement to which subsection (1) relates is enforceable as if it were a covenant.

(4) It is a defence to proceedings by the Corporation under this section that the owner or, in a case to which subsection (2) applies, the lessee, did not know of, or could not reasonably have prevented, action taken by any person that would, if known to or capable of prevention by the owner or lessee, have resulted in a breach of this section by the owner or lessee.

(5) A person who, on land in, on or near which any work owned by the Corporation is installed, places a structure in, on or near the work in a manner that interferes with the operation of the work, must, on receiving a written notice from the Corporation requiring the removal of the structure within a period specified in the notice, remove the structure and compensate the Corporation for all loss or damage suffered by the Corporation as a result of the placement of the structure in, on or near the work.

(6) If a person fails to comply with a notice under subsection (5) within the period specified in the notice or within any extension of that period allowed by the Corporation in writing, the Corporation may remove the structure and recover from the person the cost of the removal together with compensation for all loss or damage referred to in that subsection.

#### **Compensation to Corporation for damage**

26. (1) Without limiting section 25, a person who, without the consent of the Corporation, carries out any activity that causes destruction of, damage to or interference with any work owned by the Corporation in circumstances in which the person should have known that the

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destruction, damage or interference would result from the carrying out of the activity, is liable to compensate the Corporation for all loss or damage suffered by the Corporation as a result.

(2) The Corporation is not entitled to compensation both under this section and another provision of this Act for the same destruction, damage or interference.

(3) In this section, "person" extends to any person:

- (a) who caused the carrying out of the activity; or
- (b) by whose order or direction the activity was carried out; or
- (c) who aided, assisted, counselled or procured the carrying out of the activity.

(4) The Corporation may proceed against a person for recovery of its loss or compensation for its damage under this section whether or not the Corporation has proceeded against the person principally responsible for the loss or damage or any other person involved in the carrying out of the activity that caused the loss or damage.

**Interference with works by trees etc.**

27. (1) If the Corporation has reasonable cause to believe that a tree is destroying, damaging or interfering with a work of the Corporation, the Corporation may, by written notice, require the owner of the land on which the tree is situated within a reasonable period specified in the notice to remove the tree, including all roots of the tree that are or may be destroying, damaging or interfering with the work.

(2) The Corporation must reimburse the owner for the reasonable expenses of any action taken by the owner under this section unless the Corporation establishes that:

- (a) after the work was first laid or installed, an owner or occupier planted the tree, or caused or permitted the tree to be planted, in, on or near the work in circumstances in which the owner or occupier should have known that destruction of, damage to or interference with the work would result; or
- (b) the work of the Corporation is located, within the land on which the tree has been planted, in land that is the subject of an easement in favour of the Corporation or an easement for water supply, sewerage or drainage purposes.

(3) An owner given notice under this section may, with the consent of the Corporation and without destroying, damaging or interfering with the Corporation's works, take steps, other than removal of the tree, to eliminate the cause of the destruction of, damage to or interference with



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the Corporation's works and any reasonable expectation of the destruction, damage or interference occurring in the future.

(4) No compensation is payable by the Corporation to a person for the expenses of taking steps under subsection (3).

(5) If, in circumstances other than those referred to in subsection (3), an owner fails to comply with a notice under this section within the period specified in the notice or within any extension of that period allowed by the Corporation in writing, the Corporation may remove the tree at its own expense.

(6) This section applies despite the existence of a tree preservation order or environmental planning instrument but does not apply to any tree that is the subject of or is within an area that is the subject of:

- (a) an interim conservation order or a permanent conservation order under the Heritage Act 1977; or
- (b) an interim protection order under the National Parks and Wildlife Act 1974; or
- (c) a protection conferred by any similar law.

(7) Nothing done by an owner of land in compliance with a notice under this section or by the Corporation under subsection (5) constitutes an offence against any law under which a tree preservation order or environmental planning instrument relating to the land is made.

(8) In this section, "tree" includes shrub or other plant.

**Corporation not liable to pay annual charge on pipes etc.**

28. Section 171 of the Local Government Act 1919 does not apply to the Corporation.

**Division 3—Compulsory acquisition of land**

**Minister may compulsorily acquire land for Corporation**

29. (1) The Minister may, at the request of the Corporation, acquire land by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of this Act.

(2) The Minister may do so only if the Corporation:

- (a) has, in the opinion of the Minister, taken all reasonable steps to acquire the land by agreement from its owner; and
- (b) makes provision to the satisfaction of the Minister for the payment of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).

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(3) The Minister may transfer land acquired under this section to the Corporation.

(4) The Corporation may sell or otherwise deal with land that is vested in the Corporation and that was acquired by compulsory process in any manner that the Corporation considers appropriate.

#### **Division 4—Offences**

##### **Illegal diversion of water**

**30.** (1) A person must not:

- (a) wrongfully take, use or divert any water from which the Corporation draws its supply or that is available for supply by the Corporation or that is in any pipe or work used for supply by the Corporation; or
- (b) wrongfully alter the index of a meter or prevent a meter from duly registering the quantity of water supplied by the Corporation.

Maximum penalty: 100 penalty units (or 200 penalty units in the case of a corporation).

(2) It is to be presumed, unless the contrary is proved, that any wrongful taking or diversion of water to, or any wrongful use of water on, any land was at the direction, or with the connivance, of the owner or, if the land is occupied by a person other than the owner, of the occupier of the land.

(3) If, in connection with the pipes or other apparatus of the Corporation used to supply water to any land, there exists any artificial means for:

- (a) taking, using or diverting the water; or
- (b) altering the index of a meter or preventing it from duly registering the quantity of water supplied,

it is to be presumed, unless the contrary is proved, that the taking, use, diversion, alteration or prevention was wrongfully effected or caused by the owner or, if the land is occupied by a person other than the owner, by the occupier of the land.

##### **Offence to discharge into works**

**31.** (1) A person must not discharge any substance into a work owned by the Corporation except with the written agreement of the Corporation.

Maximum penalty: 100 penalty units (or 200 penalty units in the case of a corporation).

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(2) This section does not apply to the use of a work by a person in accordance with a customer contract or other contract between the Corporation and a customer.

**Payment of penalty does not affect other proceedings**

32. (1) Prosecution or conviction of a person for an act or omission that is an offence against this Act does not affect any right of the Corporation to take civil proceedings or any other action to recover from the person:

- (a) an amount in respect of loss or damage caused by the act or omission; or
- (b) the expenses incurred by the Corporation in remedying the loss or damage; or
- (c) the value of water lost to the Corporation because of the act or omission.

(2) Payment of a penalty for an offence against this Act does not affect any right of the Corporation to institute any other action or proceeding.

**Persons causing offences**

33. (1) A person:

- (a) who causes the commission of an offence against this Act; or
- (b) by whose order or direction an offence against this Act is committed; or
- (c) who aids, abets, counsels or procures the commission of an offence against this Act,

is guilty of an offence against this Act and liable to a penalty in the same way as the principal offender.

(2) A person may be proceeded against for an offence under subsection (1) whether or not the principal offender has been prosecuted or convicted.

**Disposal of proceedings for offence**

34. (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before:

- (a) a Local Court constituted by a Magistrate sitting alone; or
- (b) the Supreme Court in its summary jurisdiction.

(2) The maximum penalty that may be imposed by a Local Court in proceedings for an offence against this Act is 50 penalty units or the maximum penalty for the offence, whichever is the lesser.

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(3) Proceedings in the Supreme Court in its summary jurisdiction or in a Local Court in relation to an offence against this Act may be commenced not later than 12 months after the commission of the offence.

**Division 5—Customer contracts**

**Publication of terms and conditions of customer contracts**

35. (1) The initial terms and conditions of a customer contract are to be set out in the operating licence.

(2) The Corporation must, before the commencement of section 36, publish, in a daily newspaper circulating in the area of operations, a notice setting out the terms and conditions on which the Corporation will provide water supply and sewerage services to customers pursuant to the operating licence.

(3) The terms and conditions set out in the notice must include particulars of the contract charges or of the manner in which the contract charges are to be calculated or determined in relation to the provision of water supply or sewerage services to customers by the Corporation.

(4) The terms and conditions set out in the notice must be in a form specified by or authorised under the operating licence.

**Owner of land taken to have entered into customer contract**

36. (1) An owner of land that is connected to a water main or sewer main owned by the Corporation is taken to have entered into a customer contract with the Corporation, on terms and conditions published under section 35 as varied from time to time in accordance with section 38, for the provision of water supply or sewerage services, or either of them, to the land.

(2) A customer contract is not unconscionable, harsh or oppressive for the purposes of any law.

**Division not to apply to certain contracts**

37. This Division does not apply to the extent that the terms and conditions of a contract for the provision of water supply or sewerage services, or either of them, have been specifically agreed to by the Corporation and a customer.

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**Terms and conditions of customer contracts may be varied on 6 months' notice**

38. (1) The terms and conditions of a customer contract may, subject to the approval of the Governor, be varied by the Corporation publishing, in a daily newspaper circulating in the area of operations, a notice setting out the variation at least 6 months, or a shorter period to which the Minister agrees, before the variation becomes effective.

(2) A copy of the notice published under this section is to be given to the customer by the Corporation with the next account for service charges issued after the date of publication of the notice. Failure to comply with this requirement does not affect the validity of the variation or any contract charge made in accordance with the variation.

(3) A statement in a notice published under this section that the Governor has approved of the variation of the terms and conditions set out in the notice is prima facie evidence that the Governor has approved of the variation of the terms and conditions unless the contrary is proved.

**Division 6—Contract charges, availability charges, environmental levies and rates**

**Operating licence may specify basis for fixing contract charges, availability charges, environmental levies and rates**

39. (1) The operating licence may provide that the Corporation must in fixing:

- (a) contract charges under customer contracts; and
- (b) availability charges under section 43; and
- (c) environmental levies under section 45; and
- (d) rates under section 46,

do so on a basis that is consistent with the system employed by the Hunter Water Board for fixing service charges immediately before the transfer of the business undertaking or on some other basis stipulated in the operating licence.

(2) Unless the operating licence otherwise provides, nothing in this section affects the power of the Corporation to fix charges, levies and rates for the purposes referred to in subsection (1) or to impose fees or charges for any service or thing supplied or provided by the Corporation in furnishing the services referred to in section 12 (1).

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**Successor in title liable for unpaid contract charges**

40. On a change in the ownership of land situated in the area of operations, the new owner of the land is liable to the Corporation for the amount of any contract charges unpaid in relation to the land as if the new owner had entered into the customer contract with the Corporation for the supply of the service or services to which the unpaid contract charges relate.

**Occupier may pay, and recover, charges etc. in certain cases**

41. (1) In this section:

“lease” means a lease, licence, permit or other agreement under which an occupier is in possession of land;

“occupier” means a person who is in possession of land under a lease;

“owner” means a person who parts with possession of land to an occupier under a lease.

(2) If a lease of land in the area of operations provides, expressly or impliedly, that the owner of the land is to pay the contract charges, availability charges, environmental levies or rates payable in relation to the land, the occupier may pay to the Corporation any charges, levies or rates that are due but unpaid by the owner and may:

(a) recover the amount paid from the owner as a debt due to the occupier; or

(b) deduct the amount paid from any rent, licence fee or other occupation fee payable by the occupier to the owner.

**Certain contract and service charges of Corporation not charge on land**

42. (1) On and after the transfer under Part 3 of the business undertaking of the Hunter Water Board to the Corporation, no contract charges levied by the Corporation in relation to the provision of water supply or sewerage services to customers by the Corporation are to be levied as a statutory charge or rate or are to be a charge on the land to which the contract charges relate.

(2) No service charges or fees levied by the Hunter Water Board in relation to water supply or sewerage services after the end of the last charging period before the transfer of the business undertaking are a charge on the land to which the service charges or fees relate.

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(3) In this section, “**charging period**”, in relation to the Hunter Water Board, means a period declared by an order in force under section 28 (2) of the Hunter Water Board Act 1988 (as in force immediately before the commencement of section 8) to be a charging period for the Board.

**Availability charges charge on land to which main available for connection**

43. (1) The Corporation may and, if so required by the operating licence must, require the owner of land that is not connected to a water main or sewer main owned by the Corporation but to which a main is available for connection to pay an availability charge in relation to the land.

(2) An availability charge imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(3) Despite section 42, an availability charge imposed under this section is a charge on the land to which the availability charge relates.

(4) This section has effect until 30 June 1995.

**Transitional provisions: survival of unpaid amounts and amounts charged on land at transfer of business undertaking**

44. (1) Any amount that was due but unpaid to the Hunter Water Board immediately before the transfer of the business undertaking including any amount that was charged on the land to which the amount relates immediately before that transfer survives and is included in the transfer of the business undertaking to the Corporation.

(2) Subject to section 42, any amount that was due but unpaid to the Hunter Water Board immediately before the transfer of the business undertaking and was charged on the land to which the amount relates immediately before that transfer remains a charge on the land until the amount is paid.

**Environmental levy charge on unserviced land**

45. (1) The Corporation may, with the consent of the Minister, and, if so required by the operating licence must, require the owner of land that is not connected to a water main or sewer main (including land to which a main is not available for connection) but to which the Corporation proposes to make a sewer main available, to pay an environmental levy in relation to the land.

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(2) An environmental levy imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(3) Despite section 42, an environmental levy imposed under this section is a charge on the land to which the levy relates.

**Rates on land within declared drainage areas charge on land**

**46. (1)** In this section, “**drainage area**” means an area of land declared by an order of the Governor to be a drainage area for the purposes of this section.

(2) An order in force under section 28 (3) of the Hunter Water Board Act 1988 (as in force immediately before the commencement of section 8) declaring an area of land to be a drainage area is taken to be an order for the purposes of this section.

(3) The Corporation may and, if so required by the operating licence must, make and levy rates on the owners of land within a drainage area located in the area of operations.

(4) A rate levied under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(5) Despite section 42, a rate levied under this section is a charge on the land to which the rate relates.

**Certificate as to amounts due**

**47. (1)** The Corporation must, on written application being made to it, and on payment of the fee determined by the Corporation, issue to the applicant a certificate:

(a) containing particulars of any amounts payable to the Corporation in respect of a parcel of separately assessed land with those particulars distinguishing between any amounts charged on the land and any amounts that are not so charged; or

(b) to the effect that there are no such amounts.

(2) Regulations may be made for or with respect to:

(a) authorising the Corporation to make arrangements with another person for access by the other person to the information on which the Corporation would base a certificate under subsection (1); and

(b) the preparation, authentication and issue by or on behalf of the person of such a certificate; and

(c) the fees to be paid by the person to the Corporation.



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(3) A certificate authenticated and issued in accordance with regulations is taken to be a certificate applied for under subsection (1) and issued by the Corporation.

(4) An application for a certificate must:

- (a) specify the name and address of the applicant; and
- (b) identify the land to which the application relates.

(5) A certificate is conclusive proof, in favour of a purchaser in good faith and for value of the land to which the certificate relates, that, at the date of its issue, no amounts were payable to the Corporation in respect of that land other than the amounts specified in the certificate.

### Division 7—New developments

#### Definitions

48. (1) For the purposes of this Division:

“**approval**” means:

- (a) an approval under Part 11 of the Local Government Act 1919 for the erection of a building; or
- (b) an approval under Part 12 of the Local Government Act 1919 for the subdivision of land; or
- (c) a development consent under Part 4 of the Environmental Planning and Assessment Act 1979;

“**compliance certificate**” means a certificate referred to in this Division;

“**developer**” means a person to whom an approval has been given;

“**development**”, in relation to land, means:

- (a) the erection of a building on the land; or
- (b) the carrying out of work in, on, over or under the land; or
- (c) the use of the land or of a building or work on the land; or
- (d) the subdivision of the land.

(2) A reference in this Act to:

- (a) the erection of a building includes a reference to the rebuilding of, the making of structural alterations to, or the enlargement or extension of, a building or the placing or relocating of a building on land; and
- (b) the carrying out of a work includes a reference to the rebuilding of, the making of alterations to, or the enlargement or extension of, a work; and

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- (c) a work includes a reference to any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act but does not include a reference to any activity that is specified by a regulation not to be a work for the purposes of this Act; and
- (d) the subdivision of land is a reference to:
  - (i) (without limiting the following provisions of this paragraph) the subdivision of land within the meaning of the Local Government Act 1919; or
  - (ii) any other division of land into 2 or more parts which, after the division, would be obviously adapted for separate occupation, use or disposition; or
  - (iii) the redivision of land, by such a subdivision or by any other division, into different parts which, after the redivision, would be obviously adapted for separate occupation, use or disposition,
 and includes a reference to a subdivision effected under Division 1 of Part 2 of the Strata Titles Act 1973 or Division 1 of Part 2 of the Strata Titles (Leasehold) Act 1986; and
- (e) the carrying out of development includes a reference to the erection of a building, the carrying out of a work, the use of land or of a building or work, or the subdivision of land.

**Application for compliance certificate**

49. (1) If an approval has been given with respect to any land within the Corporation's area of operations, the developer may apply to the Corporation for a certificate to the effect that the development complies with the requirements of section 50.

(2) An application under this section must be accompanied by a copy of the approval.

**Issue of compliance certificate**

50. (1) If an application is made to the Corporation under section 49, the Corporation may:

- (a) grant the developer a compliance certificate in relation to the proposed development; or
- (b) serve a notice on the developer requiring the developer to enter into an agreement providing for any one or more of:
  - (i) the payment of an amount to the Corporation for amplification of the Corporation's works and the headworks in consequence of the proposed development;

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- (ii) the construction of the works specified in the notice;
- (iii) the transfer of the works to the Corporation,

and, if the Corporation considers necessary, requiring the developer to provide reasonable security, in a form approved by the Corporation, for due performance of that agreement.

(2) When the Corporation is satisfied that the requirements of a notice referred to in subsection (1) (b) have been complied with, the Corporation must grant the developer a compliance certificate with respect to the proposed development.

(3) If, within 60 days after the making of an application under section 49 or within a further period approved by the Minister in a particular case that is notified to the developer within the period of 60 days, no compliance certificate has been granted to, and no notice under subsection (1) has been served on, the developer, the Corporation must, at the developer's request, grant the developer a compliance certificate with respect to the proposed development.

**Consent authority to notify Corporation of certain applications etc.**

**51.** (1) In this section, "consent authority" has the meaning given in the Environmental Planning and Assessment Act 1979 and includes a council to which a building application under section 311 of the Local Government Act 1919 may be made.

(2) If a consent authority within the area of operations or a special area receives a development application or building application in relation to any matter that, in the opinion of the consent authority, may:

- (a) significantly damage or interfere with the Corporation's works; or
- (b) significantly adversely affect the Corporation's operations; or
- (c) significantly adversely affect the quality of the water from which the Corporation draws its supply of water in a special area,

the consent authority must, within 7 days of the receipt of the application, give the Corporation notice of the application.

(3) The consent authority must take into account any submissions made by the Corporation in relation to the development application or building application in determining whether to consent to the development application or building application or to attach conditions to any such consent.

(4) The consent authority may assume that the Corporation has no submissions to make in relation to a development application or building

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application of which notice has been given under this section if no such submissions are received by the consent authority within 21 days after the notice was given to the Corporation.

(5) If a consent authority has complied with this section in relation to a development application, the consent authority is not required to comply with this section in relation to a building application that deals with the same subject matter as the development application.

**Division 8—Catchment areas and other special areas**

**Director of Department of Water Resources to have control of special areas**

52. The Director of the Department of Water Resources (in this Division called “**the Director**”) has the control of special areas for the purposes of this Division.

**Special areas**

53. (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land described in the order to be a special area.

(2) The Minister may recommend an order only if of the opinion that the exercise of the powers conferred on the Water Administration Ministerial Corporation by section 12 of the Water Administration Act 1986 in relation to the use, flow and control of water could be adversely affected unless the order is made.

(3) An order under section 21 of the Hunter Water Board Act 1988 in force immediately before the commencement of this section, and any proclamation of a catchment area in force by virtue of section 21 of that Act immediately before the commencement of this section, is taken to be an order in force under this section declaring the area to be a special area.

**Crown land in special areas**

54. (1) Action may not be taken under the Crown Lands Act 1989 in relation to land within a special area unless the Director has given written approval and any conditions to which the approval is subject are complied with.

(2) The Director may, in a special area, exercise the functions of a person or body appointed to manage the affairs of a reserve trust under Part 5 of the Crown Lands Act 1989 without being appointed as such.

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**Exercise of functions by public bodies in special areas**

55. (1) A public agency may not, in relation to land within a special area, exercise functions other than functions under this Act unless notice is first given as prescribed by the regulations to the Director.

(2) On receiving a notice, the Director may make such representations to the public agency as the Director thinks fit.

(3) A public agency may not exercise functions contrary to any such representations unless, before the exercise of its functions, not less than 28 days' notice has been given to the Director and the Corporation of the functions intended to be exercised.

(4) In this section and section 56, "public agency" means the Governor, a Minister of the Crown or a statutory body.

**Director to notify Corporation of certain proposals etc.**

56. (1) If the Director receives notice of a proposal to take action under section 54 (1) or a notice under section 55 (1) in relation to any work that may damage or interfere with the Corporation's works or adversely affect the Corporation's operations, the Director is, within 14 days, to give the Corporation notice of the proposal or notice.

(2) The Director is to take into account any submissions made by the Corporation in relation to a matter referred to in subsection (1) in determining whether to approve of the action, to attach conditions to an approval given or to make representations to the public agency.

(3) The Director may assume that the Corporation has no submissions to make in relation to a matter referred to in subsection (1) of which notice has been given under this section if no such submissions are received by the Director within 28 days after the notice was given to the Corporation.

**Regulations concerning special areas**

57. (1) The regulations may make provision for or with respect to special areas, including charges or payments for the abstraction of water and the regulation or prohibition of abstracting, using, polluting or contaminating waters within special areas.

(2) A regulation made under this section prevails to the extent of any inconsistency with a statutory instrument made under another Act, including an environmental planning instrument within the meaning of the Environmental Planning and Assessment Act 1979.

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**Continuation of previous regulation concerning special areas**

**58.** (1) Despite section 8, the Hunter Water Board (Special Areas) Regulation 1989 continues in force and is taken to be made under this Act.

(2) Without limiting subsection (1), a permit issued under Part 4 of that Regulation is taken to have been issued under the authority of a regulation made under this Act.

(3) In that Regulation, a reference to the Board immediately before the commencement of section 8 is taken to be a reference to the Director or any person exercising the functions of the Director in accordance with this Division.

**Director to pay charges etc. collected for abstraction of certain water to Corporation**

**59.** All charges paid or other payments made to the Director by the holder of a permit issued under Part 4 of the Hunter Water Board (Special Areas) Regulation 1989 for the benefit of the permit are, while the operating licence is current, to be paid by the Director to the Corporation.

**Corporation etc. may exercise Director's powers**

**60.** (1) The Director may, with the consent and on the application of the Corporation, authorise the Corporation or a director or officer of the Corporation to exercise all or any of the Director's functions under a regulation or provision of a regulation made under this Act.

(2) The authorisation is to be in writing and may be subject to conditions.

(3) The Director may at any time revoke an authorisation or revoke or amend a condition of an authorisation.

(4) Without limiting subsection (3), the Director may revoke an authorisation if the Corporation fails to comply with any condition of the authorisation or exercises any functions conferred by it in a manner that, in the Director's opinion, is not in the public interest.

**Division 9—Other matters**

**Disposal of waste products**

**61.** (1) The Minister may, by order published in the Gazette, declare an underground mine working to be a disused underground mine working for the purposes of this section.

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(2) Subject to compliance with the requirements of the Environmental Planning and Assessment Act 1979 and the obtaining of any necessary statutory approvals, the Corporation may deposit and leave waste products from its sewerage treatment plants in a disused underground mine working despite the fact that the waste products within the mine working may pass beneath land that is not owned by the Corporation.

(3) No action for trespass to land, nuisance or other proceedings lie or are to be allowed by or in favour of any person against the Corporation or any director or officer of the Corporation, or other person, acting under the direction of the Corporation in relation to the deposit and leaving of waste products into disused underground mine workings under this section.

**Corporation in position of public authority in relation to drainage service**

62. (1) In performing its obligations under the operating licence to provide, operate, manage and maintain a drainage service, the Corporation has only those functions and liabilities of a public authority whose function is to operate, manage and maintain a drainage service.

(2) The Corporation has no duty to upgrade or improve the drainage system included in the business undertaking.

**PART 6—MISCELLANEOUS**

**Ministerial Corporation**

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

(2) The affairs of the Ministerial Corporation are to be managed by the Minister.

(3) Any act, matter or thing done in the name of, or on behalf of, the Ministerial Corporation by the Minister, or with the authority of the Minister, is taken to have been done by the Ministerial Corporation.

(4) The Ministerial Corporation has the functions conferred or imposed on it by or under this or any other Act.

(5) The functions of the Ministerial Corporation are to hold and dispose of assets, rights and liabilities transferred to it under this Act and to carry on any activities or business that relate to the assets, rights and liabilities transferred to it or that are incidental or ancillary to the assets, rights and liabilities transferred to it, including demanding, collecting and receiving charges, levies, rates and fees.

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**Alteration of names**

64. References in this Act to a company by a specified name include references to the company under any altered name.

**Provisions relating to certain staff**

65. Pursuant to clause 1 of Schedule 4 to the State Owned Corporations Act 1989, it is declared that the Hunter Water Board is an authority to which that Schedule applies.

**Provisions relating to subsidiaries**

66. Part 2 of Schedule 3 to the State Owned Corporations Act 1989 is, as regards the Corporation, taken to be altered:

- (a) by inserting in clause 1 (5) after the word "director" the words "to be appointed by or on behalf of the Corporation";
- (b) by omitting clause 1 (9) and by inserting instead the following subclause:

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

**Regulations may authorise or exempt for purposes of Trade Practices Act 1974 (Cth) or Monopolies Act 1923 (NSW)**

67. (1) In this section:

"authorise" includes approve;

"the Commonwealth Act" means the Trade Practices Act 1974 of the Commonwealth.

(2) The regulations may make provision for or with respect to:

- (a) specifically authorising certain acts and things, or acts and things of certain kinds, for the purposes of section 51 of the Commonwealth Act; and
- (b) exempting the Corporation from specified provisions of, or from, the Monopolies Act 1923.

(3) In particular, the regulations may contain provisions specifically authorising, for the purposes of section 51 of the Commonwealth Act:

- (a) the transfer under Part 3 of the business undertaking of the Hunter Water Board to the Corporation; and
- (b) all conduct relating to the performance of any or all contracts, agreements or understandings concerning the supply of water, the



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provision of sewerage and drainage services and associated purposes that are comprised in the business undertaking of the Hunter Water Board by the Corporation and all parties to any such contracts, agreements or understandings; and

- (c) the making by the Corporation of a contract, agreement or understanding relating to the supply of water, the provision of sewerage and drainage services and associated purposes:

(i) that is, or is of a kind that is, specified in the regulations for the purposes of this section; or

(ii) that is approved by the Minister,

and all conduct of the Corporation and all parties to the contract, agreement or understanding that relates to the proposed making of, negotiating for, making, and performance of any such contract, agreement or understanding.

(4) If regulations made under this section authorise the Corporation to do any of the things referred to in subsection (3) (b) or (c), the Corporation, in exercising that authority, is authorised to do or omit to do any act or thing that is, or is of a kind that would be, but for the authorisation, a contravention of a provision of Part IV of the Commonwealth Act.

(5) If authorisation is conferred by regulations made under this section, the contract, agreement or understanding so authorised is lawful and the Corporation and all parties to the contract, agreement or understanding are authorised by force of this Act to enter into it, and to engage in the conduct referred to in subsection (3).

(6) Nothing in this section authorises the Corporation to do or omit to do any act or thing that it would not be empowered to do or omit to do apart from this section and the Commonwealth Act.

(7) An approval under subsection (3) (c) (ii) may be given subject to conditions determined by the Minister.

#### **Act binds Crown**

68. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

#### **Regulations**

69. (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.

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(2) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act (including the interpretation of references to the Hunter Water Board or any member or employee of the Hunter Water Board or to the Hunter Water Board Act 1988 or any provision of that Act).

(3) Any such savings or transitional provision may, if the regulations so provide, take effect on the commencement of this section or a later date.

(4) To the extent to which any such savings or transitional provision takes effect on 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, the Corporation, the Hunter Water Board or any authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State, the Corporation, the Hunter Water Board or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(5) Without limiting any of the provisions of this section, the regulations may make provision for or with respect to:

- (a) the renewal of, and the arrangements to apply pending the renewal of, the operating licence; and
- (b) the supply of water, the provision of sewerage or drainage services or the disposal of waste water in any extension of the area of operations following any variation in the area of operations after the commencement of the operating licence; and
- (c) the classification or valuation of land or other basis or bases for the making of, and the procedure for the making and imposing or levying of availability charges, environmental levies and rates; and
- (d) relating to charges on land and the recovery of amounts charged on land including applying the provisions (with or without modifications) of sections 602–613 of the Local Government Act 1919 in respect of charges on land; and
- (e) the supervision of and standards for plumbing and drainage work and the grant of permission for the performance of that work.

(6) A regulation may create an offence punishable by a penalty for a breach of the regulation not exceeding:

- (a) 200 penalty units in the case of an offence by a corporation; or
- (b) 100 penalty units in any other case.

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- (7) Regulations may be made for or with respect to:
- (a) authorising the Corporation to make arrangements with another person to collect availability charges, environmental levies or rates on behalf of the Corporation; and
  - (b) the fees to be paid by the person to the Corporation.

**Amendment of Acts**

70. The Acts specified in Schedule 1 are amended as set out in that Schedule.

**Transitional: commencement of amendments of certain Acts**

71. (1) If the day or days on which the provisions of the proposed Electricity Commission (Corporatisation) Act 1991 that amend the Interpretation Act 1987 and the State Owned Corporations Act 1989 commence is earlier than the day or days on which the provisions of this Act that amend those provisions commence, the amendments proposed to be made by this Act to those provisions and to the proposed Electricity Commission (Corporatisation) Act 1991 have no effect.

(2) If the day on which the section of the proposed Electricity Commission (Corporatisation) Act 1991 that repeals the Electricity Commission Act 1950 commences is earlier than the day on which the provisions of this Act that amend the Electricity Commission Act 1950 commence, the amendment proposed to be made by this Act to that Act has no effect.

(3) A reference in this Act to the Land Acquisition (Just Terms Compensation) Act 1991 is, pending the commencement of that Act, to be read as a reference to the Public Works Act 1912.

**Provision disapplied**

72. Section 6 of the Clean Waters Act 1970 does not apply to the Corporation.

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*Hunter Water Board (Corporatisation) 1991*

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SCHEDULE 1—AMENDMENT OF ACTS

(Sec. 70)

**Aboriginal Land Rights Act 1983 No. 42**

- (1) Section 43 (Exemption of Aboriginal lands from the payment of rates):  
 From section 43 (1) (c), omit "Hunter District Water, Sewerage and Drainage Act 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".
- (2) Section 44 (Execution etc. against Aboriginal lands barred in certain cases):  
 From section 44 (c), omit "Hunter District Water, Sewerage and Drainage Act 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".

**Attachment of Wages Limitation Act 1957 No. 28**

Schedule:

Omit "Hunter District Water Board."

**Building Services Corporation Act 1989 No. 147**

- Section 135 (Proceedings for certain offences under other Acts):  
 Omit section 135 (d), insert instead:  
 (d) the Hunter Water Board (Corporatisation) Act 1991; or

**Capital Debt Charges Act 1957 No. 1**

Schedule:

Omit the matter relating to The Hunter District Water Board.

**Clean Waters Act 1970 No. 78**

- Section 5 (Definitions):  
 From the definition of "statutory authority", omit "the Hunter District Water Board,".

**Coal Mining Act 1973 No. 81**

- Section 21A (Grant of authorisation to drill bore hole etc.):  
 Omit section 21A (3) (f), insert instead:  
 (f) land within a special area within the meaning of the Hunter Water Board (Corporatisation) Act 1991, without the consent of the Director of the Department of Water Resources.

*Hunter Water Board (Corporatisation) 1991*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Conveyancing Act 1919 No. 6**

- (1) Section 88 (Limitation of enforceability of easements and restrictions of user of land):

In section 88 (4), before “nor”, insert “or by or for Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991,”.

- (2) Section 88A (Easements in gross and easements and restrictions appurtenant to easements):

At the end of the section, insert:

(5) For the purposes of this section, the Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991 is taken to be a public authority constituted by Act of Parliament.

**Dams Safety Act 1978 No. 96**

**Section 8 (Members):**

From section 8 (2) (d), omit “Hunter District Water Board constituted under the Hunter District Water, Sewerage and Drainage Act 1938”, insert instead “Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991”.

**Drainage Act 1939 No. 29**

**Section 5 (Certain Acts not affected):**

Omit “the Hunter District Water, Sewerage and Drainage Act 1938”, insert instead “the Hunter Water Board (Corporatisation) Act 1991”.

**Electricity Commission Act 1950 No. 22**

**Section 3 (Definitions):**

From the definition of “Statutory body” or “Statutory body representing the Crown”, omit “the Hunter District Water Board,”.

**Electricity Commission (Corporatisation) Act 1991**

**Schedule 1 (Amendment of Acts):**

Omit the amendments to the Interpretation Act 1987 and the State Owned Corporations Act 1989.

*Hunter Water Board (Corporatisation) 1991*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Evidence Act 1898 No. 11**

Section 43C (Conditions under which print from photographic film admissible in evidence):

From the definition of “statutory body representing the Crown” in section 43C (5), omit “the Hunter District Water Board.”.

**Fluoridation of Public Water Supplies Act 1957 No. 58**

Section 11 (Regulations):

From section 11 (1) (b), omit “or the Hunter Water Board”.

**Government and Related Employees Appeal Tribunal Act 1980 No. 39**

Schedule 4 (Employing authorities):

Omit “The Hunter District Water Board.”.

**Heritage Act 1977 No. 136**

(1) Section 123 (Definitions):

(a) From paragraph (d) of the definition of “rating or taxing authority”, omit “Hunter District Water Board”, insert instead “Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991”.

(b) From the definition of “valuing law”, omit “Hunter District Water, Sewerage and Drainage Act 1938”, insert instead “Hunter Water Board (Corporatisation) Act 1991”.

(2) Section 126 (Application of valuing laws to heritage valuations):

Omit section 126 (e).

**Industrial Arbitration Act 1940 No. 2**

Schedule 2:

Omit “The Hunter District Water Board.”.

**Interpretation Act 1987 No. 15**

Section 21 (Meaning of commonly used words and expressions):

In section 21 (1), insert, in alphabetical order:

“State owned corporation” means a State owned corporation within the meaning of the State Owned Corporations Act 1989;

*Hunter Water Board (Corporatisation) 1991*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Justices Act 1902 No. 27**

Section 100I (Definitions):

From paragraph (a) of the definition of "penalty notice" in section 100I (1), omit "Hunter Water Board Act 1988, section 51;"

**Land Tax Management Act 1956 No. 26**

Section 3 (Definitions):

From the definition of "Public authority" in section 3 (1), omit "the Hunter District Water Board,"

**Local Government Act 1919 No. 41**

(1) Section 4 (Definitions):

From the definition of "Statutory body," or "statutory body representing the Crown," omit ", the Hunter District Water Supply and Sewerage Board".

(2) Section 10 (Certain Acts not affected):

Omit "the Hunter Water Board Act 1988;" insert instead "the Hunter Water Board (Corporatisation) Act 1991;"

(3) Section 247 (Power to lay pipes and charge cost):

From section 247 (5), omit "Hunter District Water Supply and Sewerage Act of 1892", insert instead "Hunter Water Board (Corporatisation) Act 1991".

(4) Section 283 (Depots, destructors, and plant):

(a) From section 283 (3A), omit ", or the Hunter District Water Supply and Sewerage Act of 1892".

(b) From section 283 (3A), omit ", or the Hunter District Water Supply and Sewerage Board, as the case may be,".

(5) Section 327 (Conditions to be observed before opening new roads or subdivisions):

(a) Omit section 327 (1) (d) (A1), insert instead:

(A1) the area of operations within the meaning of Part 5 of the Hunter Water Board (Corporatisation) Act 1991; or

(b) From section 327 (1) (d), omit "section 27 of the Hunter Water Board Act 1988", insert instead "section 50 of the Hunter Water Board (Corporatisation) Act 1991".

(6) Section 331A (Subdivision of land within the area of operations of a Water Board or Water Supply Authority):

(a) Omit section 331A (1) (a) (ia), insert instead:

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

- (ia) the area of operations within the meaning of the Hunter Water Board (Corporatisation) Act 1991; or
  - (b) From section 331A (1), omit "Hunter Water Board", insert instead "Hunter Water Corporation Limited".
  - (c) From section 331A (2) and (3), omit "section 27 of the Hunter Water Board Act 1988" wherever occurring, insert instead "section 50 of the Hunter Water Board (Corporatisation) Act 1991".
  - (d) Omit section 331A (3) (ai), insert instead:
    - (ai) the area of operations within the meaning of the Hunter Water Board (Corporatisation) Act 1991; or
- (7) Section 368 (Application):
- (a) From section 368 (2), omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited".
  - (b) From section 368 (2), omit "Hunter District Water, Sewerage and Drainage Act, 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".
- (8) Section 405 (Stormwater drains):
- From section 405 (1), omit "Hunter District Water, Sewerage and Drainage Act, 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".
- (9) Section 493 (Guarantees):
- (a) From section 493 (2), omit "Hunter District Water Supply and Sewerage Board", insert instead "Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991".
  - (b) In section 493 (2), after "board" wherever occurring, insert "or Corporation".
  - (c) In section 493 (2A) (a) and (b), after "Board" wherever occurring, insert "or Corporation".
  - (d) In the definitions of "Collectable income of the Board" and "Net collectable income of the Board" in section 493 (2A) (c), after "Board" wherever occurring, insert "or Corporation".
  - (e) In subparagraph (ii) in the definition of "Board" in section 493 (2A) (c), omit "any water district or sewerage district as respectively defined in the Hunter District Water and Sewerage Act, 1892–1928—the Hunter District Water Supply and Sewerage Board", insert instead "the area of operations within the meaning of Part 5 of the Hunter Water Board (Corporatisation) Act 1991—the Hunter Water Corporation Limited".
  - (f) From section 493 (3) (b), omit "either of the said boards", insert instead "the Board or the Corporation".
  - (g) From section 493 (3) (b), omit "board concerned", insert instead "Water Board or subject to the imposition of service charges by the Corporation".



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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

- (h) From section 493 (3A), omit "Board", insert instead "Water Board or subject to the imposition of service charges by the Corporation".

- (10) Section 654 (Disputes between councils, etc.):  
Omit section 654 (5) (e).

**National Parks and Wildlife Act 1974 No. 80**

- (1) Section 74 (Catchment areas):
- (a) After "catchment area" where firstly occurring, insert "or special area".
  - (b) Omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991".
  - (c) After "catchment area" where secondly, thirdly and fourthly occurring, insert ", special area".
  - (d) After "Boards", insert "or that Corporation".
  - (e) In section 74 (a) and (b), after "structure" wherever occurring, insert "or, if applicable, the Corporation".
  - (f) After "information" in paragraph (a), insert "and, if referred to the Corporation, shall also refer it to the Director of the Department of Water Resources".
  - (g) After "structure" in paragraph (b), insert "and, in a case involving the Corporation, by the Director of the Department of Water Resources".
- (2) Section 185 (Catchment areas):
- (a) Omit "Hunter District Water, Sewerage and Drainage Act 1938" wherever occurring, insert instead "Hunter Water Board (Corporatisation) Act 1991".
  - (b) In section 185 (2), after "areas", insert "or special areas".
  - (c) After "catchment area" wherever occurring, insert "or special area".
  - (d) From section 185 (4) (b), omit "The Hunter District Water Board", insert instead "the Hunter Water Corporation Limited and the Director of the Department of Water Resources".
  - (e) From section 185 (5), omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited nor the Director of the Department of Water Resources".

**New South Wales Retirement Benefits Act 1972 No. 70**

Schedule 2:

Omit the matter relating to the Hunter District Water Board.

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Pipelines Act 1967 No. 90**

Section 3 (Definitions):

From the definition of "statutory body representing the Crown" in section 3 (1), omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991".

**Public Authorities (Financial Arrangements) Act 1987 No. 33**

Schedule 1 (Authorities):

Omit "The Hunter District Water Board."

**Public Authorities Superannuation Act 1985 No. 41**

Schedule 3 (Employers):

From Part 2, omit "The Hunter District Water Board."

**Public Finance and Audit Act 1983 No. 152**

Schedule 2 (Statutory bodies):

Omit "Hunter District Water Board."

**Public Sector Management Act 1988 No. 33**

(1) Schedule 3 (Declared authorities):

Omit "Hunter District Water Board."

(2) Schedule 3A (Chief executive positions):

From Part 3, omit "Managing Director of the Hunter Water Board".

(3) Schedule 3B (Senior executive positions):

Omit heading "Hunter Water Board" and all matter under that heading.

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

Schedule 1 (Employers):

From Part 1, omit "The Hunter District Water Board".

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

Schedule 1 (Employers):

From Part 1, omit "The Hunter District Water Board".

*Hunter Water Board (Corporatisation) 1991*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**State Owned Corporations Act 1989 No. 134**

(1) Section 7A (Ministerial direction):

- (a) After "corporation", insert ", a subsidiary of a State owned corporation or any other person".
- (b) Omit "its name", insert instead "the name of the State owned corporation".

(2) Section 37A:

After section 37, insert:

**Modification of Environmental Planning and Assessment Act 1979 in its application to certain proposals**

37A. (1) In this section:

"development" means development within the meaning of Part 4 of the Planning Act;

"the Planning Act" means the Environmental Planning and Assessment Act 1979.

(2) The Planning Act applies to development by a State owned corporation, except as provided by this section.

(3) Part 5 of the Planning Act applies to development proposed to be carried out by a State owned corporation that is development, or of a class or description of development, that the Minister administering the Planning Act certifies in writing is of State or regional significance. That Part so applies to the development as if it were an activity within the meaning of that Part whether or not development consent under Part 4 of the Planning Act would otherwise be required or has been obtained in relation to the development. Part 4 of the Planning Act accordingly does not apply.

(4) The Minister administering the Act by which the name of the State owned corporation proposing the development is inserted in Schedule 1 to this Act is the determining authority (or, if more than one approval within the meaning of the Planning Act is required, the nominated determining authority) for the purposes of Part 5 of the Planning Act in relation to the proposal.

(5) A State owned corporation must not carry out development to which subsection (3) applies unless the State owned corporation has obtained the approval of the determining authority referred to in subsection (4).

(6) Development to which subsection (3) applies must not include any act, matter or thing that is prohibited by an environmental planning instrument made under the Planning Act.

*Hunter Water Board (Corporatisation) 1991*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(3) Section 37B:

After section 37A, insert:

**Establishment of Ministerial Holding Corporation**

37B. (1) There is constituted by this Act a corporation with the corporate name of the Ministerial Holding Corporation.

(2) The affairs of the Corporation are to be managed by the Minister who may authorise another Minister to exercise functions in relation to particular assets, rights and liabilities.

(3) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Minister or a Minister authorised by the Minister, or with the authority of any such Minister, is taken to have been done by the Corporation.

(4) The Corporation has the functions conferred or imposed on it by or under this or any other Act.

(5) The functions of the Corporation are:

- (a) to hold on behalf of the Crown, retain, transfer and dispose of assets, rights and liabilities transferred to it under this Act; and
- (b) to acquire, exchange, lease, dispose of and otherwise deal with property; and
- (c) to develop and manage land transferred to it under this Act or otherwise acquired by it; and
- (d) to carry on any activities or business that relate to any of the above or are incidental or ancillary to any of the above, including demanding, collecting and receiving charges, levies, rates and fees.

(6) Without limiting the generality of subsection (5), the Corporation may transfer and dispose of any such assets, rights and liabilities to the Crown or to any person on behalf of the Crown.

**State Public Service Superannuation Act 1985 No. 45**

Schedule 3 (Employers):

Omit "The Hunter District Water Board."

**Strata Titles Act 1973 No. 68**

Section 89 (Definitions):

- (a) Omit paragraph (d) of the definition of "appropriate valuing Act", insert instead:
  - (d) where the Hunter Water Corporation Limited is the valuing authority in respect of the parcel—the Hunter Water Board (Corporatisation) Act 1991;

*Hunter Water Board (Corporatisation) 1991*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

- (b) From paragraph (c) of the definition of “valuing authority”, omit “Hunter Water Board”, insert instead “Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991”.

**Strata Titles (Leasehold) Act 1986 No. 219**

Section 121 (Definitions (1973 Act, Division 6)):

- (a) Omit paragraph (c) of the definition of “appropriate valuing Act”, insert instead:
- (c) where the Hunter Water Corporation Limited is the valuing authority in respect of the parcel—the Hunter Water Board (Corporatisation) Act 1991;
- (b) From paragraph (a) of the definition of “valuing authority”, omit “Hunter Water Board”, insert instead “Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991”.

**Superannuation Act 1916 No. 28**

Schedule 3 (List of employers):

From Part 1, omit “The Hunter District Water Board”.

**Traffic Safety (Lights and Hoardings) Act 1951 No. 7**

Section 2 (Definition):

From the definition of “Public authority”, omit “the Hunter District Water Board,”.

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

- (1) Section 47 (Rating or taxing authorities):  
Omit “The Hunter District Water Board.”.
- (2) Section 60 (Assessed annual value for purposes of other Acts):  
Omit “, the Hunter District Water, Sewerage and Drainage Act 1938”.

**Water Administration Act 1986 No. 195**

Schedule 1 (Acts under which Ministerial Corporation may exercise functions):

Omit “Hunter Water Board Act 1988”.

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SECOND PRINT

## HUNTER WATER BOARD (CORPORATISATION) BILL 1991

NEW SOUTH WALES



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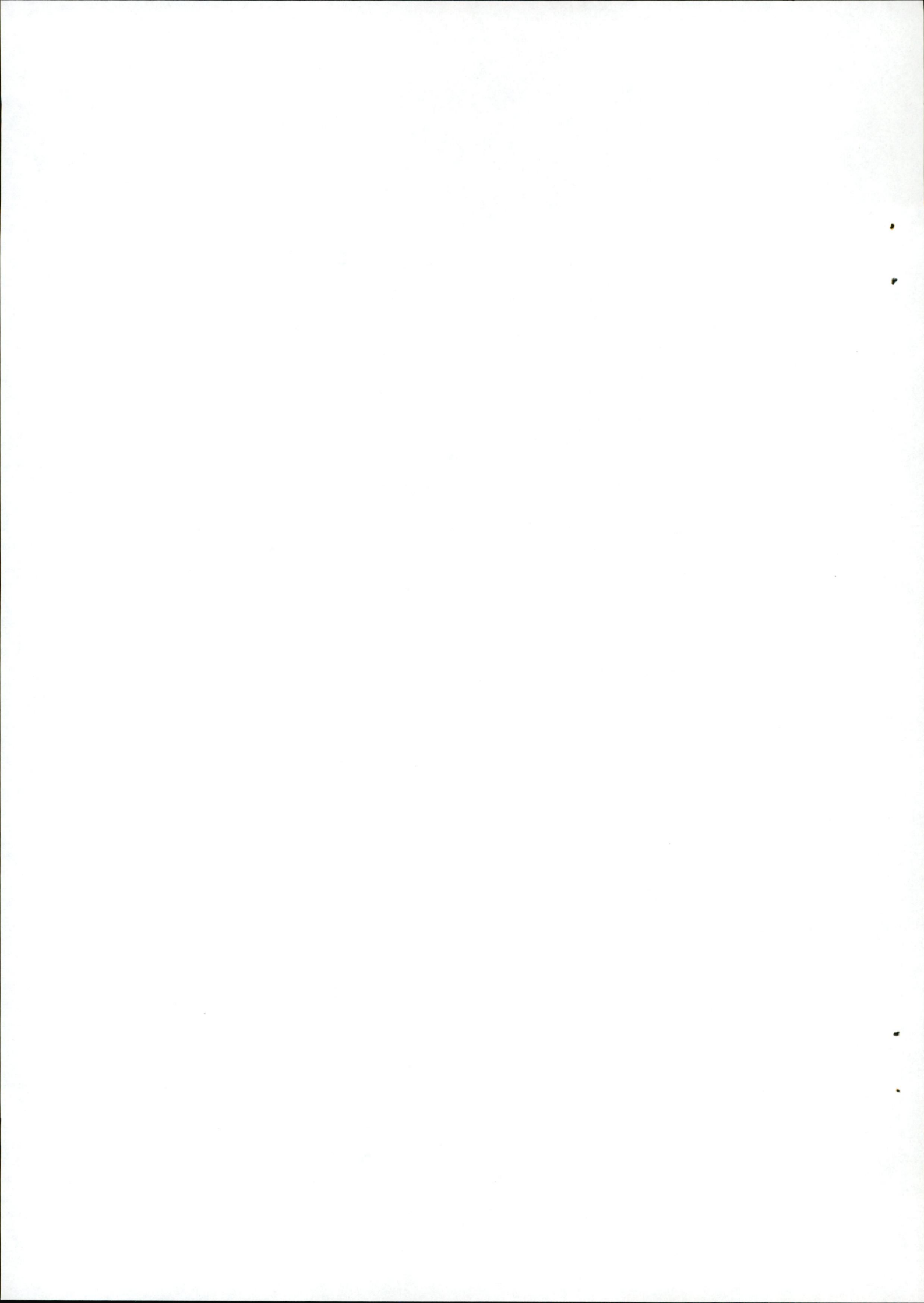
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SCHEDULE 1—AMENDMENT OF ACTS

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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly*

*Clerk of the Legislative Assembly.*

NEW SOUTH WALES



Act No.           , 1991

An Act to establish a State owned corporation in relation to the supply of water, the provision of sewerage and drainage services and the disposal of waste water in the Hunter region and certain other matters; to provide for the transfer of assets, rights and liabilities of the Hunter Water Board; to amend the State Owned Corporations Act 1989 and certain other Acts; to repeal the Hunter Water Board Act 1988; and for other purposes.

*Hunter Water Board (Corporatisation) 1991*

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Hunter Water Board (Corporatisation) Act 1991.

**Commencement**

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

**Definitions**

3. (1) Words and expressions used in this Act have the same meanings as they have in the State Owned Corporations Act 1989.

(2) In this Act:

“**area of operations**” means the area of operations referred to in section 16;

“**authorised person**” means an officer or other person acting on behalf of the Corporation to whom a certificate of authority has been issued under section 21 (2);

“**availability charge**” means a charge of a kind referred to in section 43;

“**business undertaking**” means all assets, rights and liabilities of the Hunter Water Board, but does not include any excluded undertaking;

“**contract charge**” means any charge or fee payable under a customer contract, or other contract made between the Corporation and a customer, for the provision of water supply or sewerage services;

“**Corporation**” means Hunter Water Corporation Limited;

“**customer**”, in relation to the Corporation, means a person who is taken to have entered into a customer contract or a person who has made a contract with the Corporation of a kind referred to in section 37;

“**customer contract**” means a contract of a kind referred to in section 36 (1);

“**drainage channel**” means any artificial channel by which surface water is carried off;

“**environmental levy**” means an amount imposed under section 45;

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**“excluded undertaking”** means any assets, rights or liabilities of the Hunter Water Board that the Minister has directed to be excluded under section 6;

**“headworks”** means dam walls, pumps and other works used for or with respect to the extraction of water in rivers and lakes, water occurring naturally on the surface of the ground or sub-surface waters and the storage of that water;

**“Hunter Water Board”** means the Hunter Water Board constituted under the Hunter Water Board Act 1988;

**“instrument”** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

**“lease”** includes a licence or permit;

**“meter”** includes any measuring device;

**“Ministerial Corporation”** means the Hunter Water Ministerial Corporation constituted by section 63;

**“operating licence”** means an operating licence granted under section 12 or any renewal of it;

**“owner”**, in relation to land, includes every person who jointly or severally at law or in equity:

- (a) is entitled to the land for an estate of freehold in possession; or
- (b) is a person to whom the Crown has contracted to sell the land under the Crown Lands Act 1989 or any other Act relating to alienation of land of the Crown; or
- (c) is entitled to receive, or receives, or if the land were let to a tenant would receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise,

and, in relation to land of the Crown, means the Crown but does not include a person who, or a class of persons that, is specified by a regulation not to be an owner for the purposes of this definition, either generally or in a particular case or class of cases;

**“public road”** means a road the public are entitled to use, whether or not it is:

- (a) dedicated as a highway by the Crown or any person; or
- (b) notified, proclaimed or dedicated as a road or highway under an Act;

**“rate”** means a rate made and levied on land within a declared drainage area under section 46;

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**“special area”** means an area of land declared by an order in force under section 53 to be a special area;

**“statutory body”** means a corporation that:

- (a) is not a company within the meaning of the Corporations Law; and
- (b) is not a society within the meaning of the Co-operation Act 1923; and
- (c) is not a body prescribed by the regulations as not being a statutory body for the purposes of this definition,

and is incorporated by or under an Act (other than this Act or the Associations Incorporation Act 1984);

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

**“works”** means water mains, sewer mains, drainage channels and any works ancillary to those works.

(3) In this Act:

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

## PART 2—ESTABLISHMENT OF STATE OWNED CORPORATION

### Establishment of Corporation as SOC

4. The State Owned Corporations Act 1989 is amended by inserting in Schedule 1, in alphabetical order, the words “Hunter Water Corporation Limited”.

## PART 3—TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

### Direction to transfer business undertaking

5. (1) The Minister may, by order in writing, direct that the business undertaking of the Hunter Water Board be transferred to the Corporation, on the date and for the consideration specified in the order.

(2) The transfer of assets, rights and liabilities under this section is to take place at a value or values specified in the order.

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(3) On the commencement of the order, the following provisions have effect (subject to the order):

- (a) the assets of the Hunter Water Board comprised in its business undertaking vest in the Corporation by virtue of this section and without the need for any conveyance, transfer, assignment or assurance;
- (b) the rights and liabilities of the Hunter Water Board comprised in its business undertaking become by virtue of this section the rights and liabilities of the Corporation;
- (c) all proceedings relating to the business undertaking commenced before the transfer by or against the Hunter Water Board or a predecessor of the Hunter Water Board and pending immediately before the transfer are taken to be proceedings pending by or against the Corporation;
- (d) any act, matter or thing done or omitted to be done in relation to the business undertaking before the transfer by, to or in respect of the Hunter Water Board is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Corporation;
- (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the Hunter Water Board or a predecessor of the Hunter Water Board is, subject to regulations under section 70 (2), to be read as, or as including, a reference to the Corporation.

(4) The operation of this section is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong;  
or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities;  
or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(5) The operation of this section is not to be regarded as an event of default under any contract or other instrument.

(6) No attornment to the Corporation by a lessee from the Hunter Water Board is required.

(7) Assets, rights or liabilities may not be transferred under this section to the Corporation unless the Corporation is a State owned corporation.

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**Excluded undertakings**

6. (1) The Minister may direct, by order in writing, that such assets, rights or liabilities of the Hunter Water Board as are specified or referred to in the order be excluded from the Hunter Water Board's business undertaking.

(2) On the date specified in the order, the excluded undertaking concerned is transferred to the Ministerial Corporation or such other person on behalf of the Crown as is so specified.

(3) Section 5 applies to that transfer in the same way as it applies to the transfer of the Hunter Water Board's business undertaking to the Corporation.

(4) Different parts of any excluded undertaking may be so transferred to different persons.

(5) The Ministerial Corporation or other person is authorised to dispose of any excluded undertaking so transferred or to retain it and conduct any business to which it relates.

**Transfer of other assets, rights or liabilities**

7. (1) The Minister may direct, by order in writing, and on such terms and conditions as are set out or referred to in the order, that such other assets, rights or liabilities used by or attaching to the Hunter Water Board for the supply of water, the provision of sewerage and drainage services, the disposal of waste water and associated purposes, and belonging to the State or an authority of the State, as are specified in the order be transferred to the Corporation or to a subsidiary of the Corporation.

(2) Section 5 applies to that transfer in the same way as it applies to the transfer of the Hunter Water Board's business undertaking to the Corporation.

**PART 4—DISSOLUTION OF HUNTER WATER BOARD**

**Repeal of Hunter Water Board Act 1988 No. 119**

8. The Hunter Water Board Act 1988 and all regulations and by-laws under that Act are repealed.

**Dissolution of Hunter Water Board**

9. (1) The Hunter Water Board is dissolved.

(2) The assets, rights and liabilities (if any) of the Hunter Water Board immediately before its dissolution are transferred to the Ministerial Corporation.



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(3) Section 5 applies to that transfer in the same way as it applies to the transfer of the Hunter Water Board's business undertaking to the Corporation.

**Members of Hunter Water Board to vacate office**

10. (1) A person who, immediately before the dissolution of the Hunter Water Board, held office as a member of the Hunter Water Board:

- (a) ceases to hold office as such; and
- (b) except as provided by subsection (2), is not entitled to any remuneration or compensation because of the loss of that office.

(2) Part 8 of the Public Sector Management Act 1988 applies to a person who so ceases to hold office as a member of the Hunter Water Board, without immediately being appointed to the service of the Corporation or a subsidiary of the Corporation, in the same way as it applies to a person removed from office under that Part.

**Corporation to be same legal entity as Hunter Water Board**

11. (1) On the dissolution of the Hunter Water Board, the Corporation is taken for all purposes including the rules of private international law to be a continuation of and the same legal entity as the Hunter Water Board.

(2) This section does not affect any transfer of assets, rights and liabilities under section 6 or 9.

**PART 5—PROVISIONS APPLYING TO THE CORPORATION**

**Division 1—Operating licence**

**Grant of operating licence**

12. (1) The Governor may grant an operating licence to the Corporation to enable the Corporation in accordance with this Act, in the area of operations specified in the licence, to provide, construct, operate, manage and maintain systems and services for:

- (a) supplying water; and
- (b) providing sewerage and drainage services; and
- (c) disposing of waste water.

(2) The operating licence authorises the Corporation to exercise in the area of operations, on behalf of the Water Administration Ministerial Corporation, the right to the use and flow, and to the control, of water conferred on the Water Administration Ministerial Corporation by section 12 of the Water Administration Act 1986 for:

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- (a) the purposes referred to in subsection (1);
- (b) the purpose of transporting water in bulk supply lines from headworks to the area of operations and for supplying water to the owners or occupiers of land adjoining the bulk supply lines.

(3) This section has effect despite anything in the Water Administration Act 1986.

**Terms and conditions of operating licence**

13. (1) The operating licence is subject to the terms and conditions determined by the Governor but must include terms or conditions under which the Corporation is required:

- (a) to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services for supplying water, providing sewerage services and disposing of waste water; and
- (b) to provide, operate, manage and maintain a drainage service within the capacity of the drainage service included in the business undertaking transferred under Part 3 by the Hunter Water Board to the Corporation as at the date of the transfer of the business undertaking; and
- (c) to ensure that the systems and services meet the quality and performance standards specified in the operating licence in relation to water quality, service interruptions, price levels and other matters determined by the Governor and set out in the operating licence.

(2) The operating licence must also include terms or conditions that require the Corporation to maintain procedures under which the Corporation is to consult with its customers at regular intervals in relation to the provision of the systems and services referred to in this section.

**Amendment of operating licence**

14. The operating licence may only be amended in the manner specified in the operating licence.

**Term of operating licence**

15. (1) The initial term of the operating licence is to expire on 30 June 1995.

(2) After the initial term, the Governor may renew the operating licence for a maximum of 3 years at a time.

(3) The operating licence may be renewed even if its term has expired.

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**Area covered by operating licence**

16. (1) The operating licence applies to the area of operations specified in the operating licence, being the area of operations of the Hunter Water Board immediately before the commencement of section 8 together with:

- (a) any parts of the Shire of Dungog specified in the operating licence at the date of the commencement of the operating licence; and
- (b) any other land specified in the operating licence, not included in the above, in or on which works owned by the Corporation are installed or that is connected with a water main or sewer main owned by the Corporation at the date of the commencement of the operating licence; and
- (c) any other land specified by the Governor by order for the purpose published in the Gazette.

(2) Despite subsection (1) (c), the area of operations must not be expanded to include the whole or part of the area within which:

- (a) a council of a city, municipality or shire; or
- (b) a public authority referred to in section 11 (2) of the Water Administration Act 1986; or
- (c) a Water Supply Authority within the meaning of the Water Supply Authorities Act 1987,

provides services that are the same services the Corporation is authorised to provide under the operating licence unless consultations, regarding the proposed expansion and its implications, have taken place between the Corporation and the council, public authority or Water Supply Authority before the order expanding the area of operations is made.

**Contravention of operating licence**

17. (1) If, in the opinion of the Minister, the Corporation contravenes the operating licence, the Governor may direct that one of the following is to apply:

- (a) a letter of reprimand by the Minister is to be served on the Corporation;
- (b) the Corporation is to pay a monetary penalty (not exceeding \$150,000) in an amount to be determined by the Governor;
- (c) the operating licence is to be cancelled by the Governor in accordance with section 18.

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(2) The fact that the Governor has directed that action be taken under this section does not prevent the Governor directing that the same or other action under the section be taken if the contravention continues or a fresh contravention occurs.

(3) The operating licence may make provision for advice to be furnished to the Minister in connection with the exercise of the Minister's functions under this section.

(4) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Crown.

**Cancellation of operating licence**

**18.** (1) The operating licence may be cancelled by the Governor, but only if:

- (a) the Corporation ceases, other than as authorised by the operating licence, to do the things referred to in section 13 (1) or any of them in the area of operations for any reason; or
- (b) the Corporation is, in the opinion of the Minister, in material default in compliance with the operating licence, viewed in terms of the operation of the operating licence as a whole; or
- (c) the Corporation is insolvent within the meaning of section 460 of the Corporations Law or has been convicted of a criminal offence that is punishable by a fine of at least \$1,000 or, if the Corporation were a natural person, penal servitude or imprisonment for 12 months or more.

(2) If the operating licence is cancelled under this section, the Governor may, by order published in the Gazette, vest in the Crown or in another person specified in the order, from the date specified in the order, the assets and rights of the Corporation that are specified in the order and that, in the opinion of the Minister, are necessary to enable the Crown or other person to do immediately the things referred to in section 13 (1), or any of them, for the benefit of existing customers of the Corporation.

(3) An order under this section may provide for:

- (a) the Crown or other person specified in the order to assume those liabilities of the Corporation that the Governor considers appropriate and specifies in the order; or
- (b) the Crown to pay the whole or any part of the liabilities of the Corporation.

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**Division 2—Provisions relating to works****Ownership of works**

19. (1) The Corporation is the owner of all works installed in or on land by the Corporation and of all works in or on land vested in or transferred to the Corporation (whether or not the land is owned by the Corporation).

(2) The Corporation may, subject to this Act, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that are necessary or appropriate to any of its works to ensure that, in the opinion of the Corporation, the works are used in an efficient manner for the purposes for which they were installed.

(3) The Corporation may sell or otherwise deal with works that it owns.

**Entry on to land**

20. The Corporation may, by authorised persons, enter land in accordance with this Division for any one or more of the following purposes:

- (a) to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that the Corporation considers are necessary or appropriate to any of its works or to construct new works and, for these purposes, to carry out any work on, below or above the surface of the land;
- (b) to read a meter that measures water supplied by the Corporation or water discharged into the Corporation's sewers;
- (c) to find the source of pollution of water supplied by the Corporation;
- (d) to ascertain whether a customer contract or other contract for the provision of services by the Corporation is being breached in relation to the connection to or use of works;
- (e) to rectify defective or improper work that has not been rectified by a customer in accordance with a notice served by the Corporation on the customer under a customer contract or other contract;
- (f) to ascertain the character and condition of the land or a building to enable the Corporation to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect or improve the systems and services referred to in section 13 (1) or to construct new works for the purposes of that subsection or section 12 (1);
- (g) to ascertain the condition and location of any pipe, sewer, drain, channel or fitting or other work used in connection with the land or a building to enable the Corporation to operate, repair, replace,

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maintain, remove, extend, expand, connect, disconnect or improve the systems and services referred to in section 13 (1) or to construct new works for the purposes of that subsection or section 12 (1).

**Exercise of powers of entry**

**21. (1)** Before an authorised person enters any land or building under a power conferred by this Division, the Corporation or an authorised person must serve on the owner or occupier of the land or building notice in writing of the intention to enter the land or building on a day specified in the notice unless:

- (a) entry to any land or building is made with the consent of the owner or occupier of the land or building; or
- (b) entry is required urgently and the case is one in which the board of the Corporation has authorised in writing (either generally or in the particular case) entry without notice; or
- (c) entry is made solely for the purpose of reading a meter that measures water supplied by the Corporation or water discharged into the Corporation's sewers if the meter is not in a dwelling-house or building; or
- (d) the giving of notice would defeat the purpose for which the power is to be exercised.

**(2)** A power conferred by this Division to enter any land or building may not be exercised unless the person proposing to exercise the power:

- (a) is in possession of a certificate of authority issued by an officer of the Corporation who has been authorised by the board of the Corporation to issue such certificates; and
- (b) exercises the power at a reasonable time during daylight, unless this would defeat the purpose for which the power is to be exercised or the power is exercised in an emergency; and
- (c) produces the certificate of authority if required to do so by the occupier of the land; and
- (d) uses no more force than is reasonably necessary to effect the entry.

**(3)** Nothing in this section authorises the use of force to enter a dwelling-house or any enclosed part of a building occupied as a dwelling or authorises the entry of such premises at night without the consent of the owner or occupier of the premises.

**(4)** A certificate of authority must:

- (a) state that it is issued under the Hunter Water Board (Corporatisation) Act 1991; and
- (b) give the name of the person to whom it is issued; and

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- (c) describe the nature of the powers conferred and the source of the powers; and
  - (d) state the date (if any) on which it expires; and
  - (e) if issued to an officer of the Corporation, describe the general area or the land to which the power extends or, if issued to an authorised person who is not an employee of the Corporation, describe the land to which the power extends; and
  - (f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.
- (5) The Minister may, if the Minister thinks fit, by order published in the Gazette, attach conditions or restrictions to certificates of authority issued under this Act, either generally or in particular cases, including restrictions on the purposes for which and the circumstances in which a power of entry may be exercised.

#### **Compensation**

22. (1) The Corporation, in exercising its functions under this Division, is to do as little damage as practicable and is, subject to this Division, to compensate all persons who suffer damage by the exercise of the functions.

(2) Compensation may be made by reinstatement, repair, construction of works or payment.

(3) If the Corporation installs a sewer on land in exercise of powers under this Division, the Corporation is required to pay compensation only if the sewer damages, or interferes with, a building or other structure on the land or if a manhole or main ventilator is constructed on the land.

#### **Power to open roads**

23. (1) The Corporation may, for the purpose of complying with the operating licence and after giving reasonable notice to persons likely to be affected, open and break up:

- (a) the soil and pavement of a public road or public reserve; and
- (b) any sewer, drain or tunnel in or under or any ground under a public road or public reserve.

(2) The person having the control and management of a public road or public reserve may, as prescribed by the regulations, require the Corporation to comply with conditions in exercising its powers under this section, including conditions for restoration of the surface and removal of rubbish.

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(3) If a public road or public reserve is damaged by a leakage from, or a bursting of, a main of the Corporation, the person having the control and management of the public road or public reserve may require the Corporation to make good the damage without delay.

(4) If the Corporation fails to comply with a condition in force under subsection (2) or a requirement under subsection (3), the person affected by the failure may remedy it and recover the cost of doing so as a debt owed to the person by the Corporation.

**Altering position of conduit**

24. (1) The Corporation may serve a written notice on a person if:

- (a) the Corporation, in order to comply with the operating licence, needs an alteration to be made in the position of a conduit owned by the person; and
- (b) the alteration would not permanently damage the conduit or adversely affect its operation.

(2) The notice must:

- (a) specify the alteration needed; and
- (b) require the alteration to be made within a reasonable time stated in the notice; and
- (c) include an undertaking by the Corporation to pay the reasonable cost of the alteration.

(3) If the alteration is not made as required by the notice, the Corporation may make the alteration in a manner that does not damage the conduit permanently or adversely affect its operation on completion of the alteration.

(4) In this section, "conduit" means anything that is in or under a public road and is used for the conveyance of a substance, energy or signals.

**Interference with works**

25. (1) Land in or on which a work of the Corporation is installed is taken to be the subject of an agreement in the nature of a covenant in favour of the Corporation pursuant to which the owner from time to time of land in or on which the work is installed must ensure that:

- (a) the work or any structure owned by, or under the control or management of, the Corporation is not wilfully or negligently destroyed, damaged or interfered with; and



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- (b) the Corporation and authorised persons are not delayed or obstructed in and about the taking, in relation to the work, of any of the steps referred to in section 19 (2); and
- (c) no structure is placed in, on or near the work in a manner that interferes with the operation of the work; and
- (d) ground is not opened to expose any pipe or other work of the Corporation without reasonable excuse, or the consent of the Corporation, and without giving the Corporation at least 2 days' written notice of intention to open the ground unless that requirement is waived by the Corporation.

(2) A lease, including a residential tenancy agreement within the meaning of the Residential Tenancies Act 1987, is taken to include a term requiring the lessee of land referred to in subsection (1) or any part of it to comply with the same obligations, in relation to land, as are imposed by that subsection on the owner who has leased the land to the lessee.

(3) An agreement to which subsection (1) relates is enforceable as if it were a covenant.

(4) It is a defence to proceedings by the Corporation under this section that the owner or, in a case to which subsection (2) applies, the lessee, did not know of, or could not reasonably have prevented, action taken by any person that would, if known to or capable of prevention by the owner or lessee, have resulted in a breach of this section by the owner or lessee.

(5) A person who, on land in, on or near which any work owned by the Corporation is installed, places a structure in, on or near the work in a manner that interferes with the operation of the work, must, on receiving a written notice from the Corporation requiring the removal of the structure within a period specified in the notice, remove the structure and compensate the Corporation for all loss or damage suffered by the Corporation as a result of the placement of the structure in, on or near the work.

(6) If a person fails to comply with a notice under subsection (5) within the period specified in the notice or within any extension of that period allowed by the Corporation in writing, the Corporation may remove the structure and recover from the person the cost of the removal together with compensation for all loss or damage referred to in that subsection.

#### **Compensation to Corporation for damage**

26. (1) Without limiting section 25, a person who, without the consent of the Corporation, carries out any activity that causes destruction of, damage to or interference with any work owned by the Corporation in circumstances in which the person should have known that the

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destruction, damage or interference would result from the carrying out of the activity, is liable to compensate the Corporation for all loss or damage suffered by the Corporation as a result.

(2) The Corporation is not entitled to compensation both under this section and another provision of this Act for the same destruction, damage or interference.

(3) In this section, "person" extends to any person:

- (a) who caused the carrying out of the activity; or
- (b) by whose order or direction the activity was carried out; or
- (c) who aided, assisted, counselled or procured the carrying out of the activity.

(4) The Corporation may proceed against a person for recovery of its loss or compensation for its damage under this section whether or not the Corporation has proceeded against the person principally responsible for the loss or damage or any other person involved in the carrying out of the activity that caused the loss or damage.

**Interference with works by trees etc.**

27. (1) If the Corporation has reasonable cause to believe that a tree is destroying, damaging or interfering with a work of the Corporation, the Corporation may, by written notice, require the owner of the land on which the tree is situated within a reasonable period specified in the notice to remove the tree, including all roots of the tree that are or may be destroying, damaging or interfering with the work.

(2) The Corporation must reimburse the owner for the reasonable expenses of any action taken by the owner under this section unless the Corporation establishes that:

- (a) after the work was first laid or installed, an owner or occupier planted the tree, or caused or permitted the tree to be planted, in, on or near the work in circumstances in which the owner or occupier should have known that destruction of, damage to or interference with the work would result; or
- (b) the work of the Corporation is located, within the land on which the tree has been planted, in land that is the subject of an easement in favour of the Corporation or an easement for water supply, sewerage or drainage purposes.

(3) An owner given notice under this section may, with the consent of the Corporation and without destroying, damaging or interfering with the Corporation's works, take steps, other than removal of the tree, to eliminate the cause of the destruction of, damage to or interference with

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the Corporation's works and any reasonable expectation of the destruction, damage or interference occurring in the future.

(4) No compensation is payable by the Corporation to a person for the expenses of taking steps under subsection (3).

(5) If, in circumstances other than those referred to in subsection (3), an owner fails to comply with a notice under this section within the period specified in the notice or within any extension of that period allowed by the Corporation in writing, the Corporation may remove the tree at its own expense.

(6) This section applies despite the existence of a tree preservation order or environmental planning instrument but does not apply to any tree that is the subject of or is within an area that is the subject of:

- (a) an interim conservation order or a permanent conservation order under the Heritage Act 1977; or
- (b) an interim protection order under the National Parks and Wildlife Act 1974; or
- (c) a protection conferred by any similar law.

(7) Nothing done by an owner of land in compliance with a notice under this section or by the Corporation under subsection (5) constitutes an offence against any law under which a tree preservation order or environmental planning instrument relating to the land is made.

(8) In this section, "tree" includes shrub or other plant.

**Corporation not liable to pay annual charge on pipes etc.**

28. Section 171 of the Local Government Act 1919 does not apply to the Corporation.

**Division 3—Compulsory acquisition of land**

**Minister may compulsorily acquire land for Corporation**

29. (1) The Minister may, at the request of the Corporation, acquire land by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of this Act.

- (2) The Minister may do so only if the Corporation:
  - (a) has, in the opinion of the Minister, taken all reasonable steps to acquire the land by agreement from its owner; and
  - (b) makes provision to the satisfaction of the Minister for the payment of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).

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(3) The Minister may transfer land acquired under this section to the Corporation.

(4) The Corporation may sell or otherwise deal with land that is vested in the Corporation and that was acquired by compulsory process in any manner that the Corporation considers appropriate.

**Division 4—Offences**

**Illegal diversion of water**

30. (1) A person must not:

- (a) wrongfully take, use or divert any water from which the Corporation draws its supply or that is available for supply by the Corporation or that is in any pipe or work used for supply by the Corporation; or
- (b) wrongfully alter the index of a meter or prevent a meter from duly registering the quantity of water supplied by the Corporation.

Maximum penalty: 100 penalty units (or 200 penalty units in the case of a corporation).

(2) It is to be presumed, unless the contrary is proved, that any wrongful taking or diversion of water to, or any wrongful use of water on, any land was at the direction, or with the connivance, of the owner or, if the land is occupied by a person other than the owner, of the occupier of the land.

(3) If, in connection with the pipes or other apparatus of the Corporation used to supply water to any land, there exists any artificial means for:

- (a) taking, using or diverting the water; or
- (b) altering the index of a meter or preventing it from duly registering the quantity of water supplied,

it is to be presumed, unless the contrary is proved, that the taking, use, diversion, alteration or prevention was wrongfully effected or caused by the owner or, if the land is occupied by a person other than the owner, by the occupier of the land.

**Offence to discharge into works**

31. (1) A person must not discharge any substance into a work owned by the Corporation except with the written agreement of the Corporation.

Maximum penalty: 100 penalty units (or 200 penalty units in the case of a corporation).

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(2) This section does not apply to the use of a work by a person in accordance with a customer contract or other contract between the Corporation and a customer.

**Payment of penalty does not affect other proceedings**

32. (1) Prosecution or conviction of a person for an act or omission that is an offence against this Act does not affect any right of the Corporation to take civil proceedings or any other action to recover from the person:

- (a) an amount in respect of loss or damage caused by the act or omission; or
- (b) the expenses incurred by the Corporation in remedying the loss or damage; or
- (c) the value of water lost to the Corporation because of the act or omission.

(2) Payment of a penalty for an offence against this Act does not affect any right of the Corporation to institute any other action or proceeding.

**Persons causing offences**

33. (1) A person:

- (a) who causes the commission of an offence against this Act; or
- (b) by whose order or direction an offence against this Act is committed; or
- (c) who aids, abets, counsels or procures the commission of an offence against this Act,

is guilty of an offence against this Act and liable to a penalty in the same way as the principal offender.

(2) A person may be proceeded against for an offence under subsection (1) whether or not the principal offender has been prosecuted or convicted.

**Disposal of proceedings for offence**

34. (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before:

- (a) a Local Court constituted by a Magistrate sitting alone; or
- (b) the Supreme Court in its summary jurisdiction.

(2) The maximum penalty that may be imposed by a Local Court in proceedings for an offence against this Act is 50 penalty units or the maximum penalty for the offence, whichever is the lesser.

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(3) Proceedings in the Supreme Court in its summary jurisdiction or in a Local Court in relation to an offence against this Act may be commenced not later than 12 months after the commission of the offence.

**Division 5—Customer contracts**

**Publication of terms and conditions of customer contracts**

35. (1) The initial terms and conditions of a customer contract are to be set out in the operating licence.

(2) The Corporation must, before the commencement of section 36, publish, in a daily newspaper circulating in the area of operations, a notice setting out the terms and conditions on which the Corporation will provide water supply and sewerage services to customers pursuant to the operating licence.

(3) The terms and conditions set out in the notice must include particulars of the contract charges or of the manner in which the contract charges are to be calculated or determined in relation to the provision of water supply or sewerage services to customers by the Corporation.

(4) The terms and conditions set out in the notice must be in a form specified by or authorised under the operating licence.

**Owner of land taken to have entered into customer contract**

36. (1) An owner of land that is connected to a water main or sewer main owned by the Corporation is taken to have entered into a customer contract with the Corporation, on terms and conditions published under section 35 as varied from time to time in accordance with section 38, for the provision of water supply or sewerage services, or either of them, to the land.

(2) A customer contract is not unconscionable, harsh or oppressive for the purposes of any law.

**Division not to apply to certain contracts**

37. This Division does not apply to the extent that the terms and conditions of a contract for the provision of water supply or sewerage services, or either of them, have been specifically agreed to by the Corporation and a customer.

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**Terms and conditions of customer contracts may be varied on 6 months' notice**

38. (1) The terms and conditions of a customer contract may, subject to the approval of the Governor, be varied by the Corporation publishing, in a daily newspaper circulating in the area of operations, a notice setting out the variation at least 6 months, or a shorter period to which the Minister agrees, before the variation becomes effective.

(2) A copy of the notice published under this section is to be given to the customer by the Corporation with the next account for service charges issued after the date of publication of the notice. Failure to comply with this requirement does not affect the validity of the variation or any contract charge made in accordance with the variation.

(3) A statement in a notice published under this section that the Governor has approved of the variation of the terms and conditions set out in the notice is prima facie evidence that the Governor has approved of the variation of the terms and conditions unless the contrary is proved.

**Division 6—Contract charges, availability charges, environmental levies and rates**

**Operating licence may specify basis for fixing contract charges, availability charges, environmental levies and rates**

39. (1) The operating licence may provide that the Corporation must in fixing:

- (a) contract charges under customer contracts; and
- (b) availability charges under section 43; and
- (c) environmental levies under section 45; and
- (d) rates under section 46,

do so on a basis that is consistent with the system employed by the Hunter Water Board for fixing service charges immediately before the transfer of the business undertaking or on some other basis stipulated in the operating licence.

(2) Unless the operating licence otherwise provides, nothing in this section affects the power of the Corporation to fix charges, levies and rates for the purposes referred to in subsection (1) or to impose fees or charges for any service or thing supplied or provided by the Corporation in furnishing the services referred to in section 12 (1).

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**Successor in title liable for unpaid contract charges**

40. On a change in the ownership of land situated in the area of operations, the new owner of the land is liable to the Corporation for the amount of any contract charges unpaid in relation to the land as if the new owner had entered into the customer contract with the Corporation for the supply of the service or services to which the unpaid contract charges relate.

**Occupier may pay, and recover, charges etc. in certain cases**

41. (1) In this section:

“lease” means a lease, licence, permit or other agreement under which an occupier is in possession of land;

“occupier” means a person who is in possession of land under a lease;

“owner” means a person who parts with possession of land to an occupier under a lease.

(2) If a lease of land in the area of operations provides, expressly or impliedly, that the owner of the land is to pay the contract charges, availability charges, environmental levies or rates payable in relation to the land, the occupier may pay to the Corporation any charges, levies or rates that are due but unpaid by the owner and may:

(a) recover the amount paid from the owner as a debt due to the occupier; or

(b) deduct the amount paid from any rent, licence fee or other occupation fee payable by the occupier to the owner.

**Certain contract and service charges of Corporation not charge on land**

42. (1) On and after the transfer under Part 3 of the business undertaking of the Hunter Water Board to the Corporation, no contract charges levied by the Corporation in relation to the provision of water supply or sewerage services to customers by the Corporation are to be levied as a statutory charge or rate or are to be a charge on the land to which the contract charges relate.

(2) No service charges or fees levied by the Hunter Water Board in relation to water supply or sewerage services after the end of the last charging period before the transfer of the business undertaking are a charge on the land to which the service charges or fees relate.



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(3) In this section, “**charging period**”, in relation to the Hunter Water Board, means a period declared by an order in force under section 28 (2) of the Hunter Water Board Act 1988 (as in force immediately before the commencement of section 8) to be a charging period for the Board.

**Availability charges charge on land to which main available for connection**

43. (1) The Corporation may and, if so required by the operating licence must, require the owner of land that is not connected to a water main or sewer main owned by the Corporation but to which a main is available for connection to pay an availability charge in relation to the land.

(2) An availability charge imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(3) Despite section 42, an availability charge imposed under this section is a charge on the land to which the availability charge relates.

(4) This section has effect until 30 June 1995.

**Transitional provisions: survival of unpaid amounts and amounts charged on land at transfer of business undertaking**

44. (1) Any amount that was due but unpaid to the Hunter Water Board immediately before the transfer of the business undertaking including any amount that was charged on the land to which the amount relates immediately before that transfer survives and is included in the transfer of the business undertaking to the Corporation.

(2) Subject to section 42, any amount that was due but unpaid to the Hunter Water Board immediately before the transfer of the business undertaking and was charged on the land to which the amount relates immediately before that transfer remains a charge on the land until the amount is paid.

**Environmental levy charge on unserviced land**

45. (1) The Corporation may, with the consent of the Minister, and, if so required by the operating licence must, require the owner of land that is not connected to a water main or sewer main (including land to which a main is not available for connection) but to which the Corporation proposes to make a sewer main available, to pay an environmental levy in relation to the land.

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(2) An environmental levy imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(3) Despite section 42, an environmental levy imposed under this section is a charge on the land to which the levy relates.

**Rates on land within declared drainage areas charge on land**

**46.** (1) In this section, “**drainage area**” means an area of land declared by an order of the Governor to be a drainage area for the purposes of this section.

(2) An order in force under section 28 (3) of the Hunter Water Board Act 1988 (as in force immediately before the commencement of section 8) declaring an area of land to be a drainage area is taken to be an order for the purposes of this section.

(3) The Corporation may and, if so required by the operating licence must, make and levy rates on the owners of land within a drainage area located in the area of operations.

(4) A rate levied under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(5) Despite section 42, a rate levied under this section is a charge on the land to which the rate relates.

**Certificate as to amounts due**

**47.** (1) The Corporation must, on written application being made to it, and on payment of the fee determined by the Corporation, issue to the applicant a certificate:

- (a) containing particulars of any amounts payable to the Corporation in respect of a parcel of separately assessed land with those particulars distinguishing between any amounts charged on the land and any amounts that are not so charged; or
- (b) to the effect that there are no such amounts.

(2) Regulations may be made for or with respect to:

- (a) authorising the Corporation to make arrangements with another person for access by the other person to the information on which the Corporation would base a certificate under subsection (1); and
- (b) the preparation, authentication and issue by or on behalf of the person of such a certificate; and
- (c) the fees to be paid by the person to the Corporation.

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(3) A certificate authenticated and issued in accordance with regulations is taken to be a certificate applied for under subsection (1) and issued by the Corporation.

(4) An application for a certificate must:

- (a) specify the name and address of the applicant; and
- (b) identify the land to which the application relates.

(5) A certificate is conclusive proof, in favour of a purchaser in good faith and for value of the land to which the certificate relates, that, at the date of its issue, no amounts were payable to the Corporation in respect of that land other than the amounts specified in the certificate.

**Division 7—New developments**

**Definitions**

48. (1) For the purposes of this Division:

“**approval**” means:

- (a) an approval under Part 11 of the Local Government Act 1919 for the erection of a building; or
- (b) an approval under Part 12 of the Local Government Act 1919 for the subdivision of land; or
- (c) a development consent under Part 4 of the Environmental Planning and Assessment Act 1979;

“**compliance certificate**” means a certificate referred to in this Division;

“**developer**” means a person to whom an approval has been given;

“**development**”, in relation to land, means:

- (a) the erection of a building on the land; or
- (b) the carrying out of work in, on, over or under the land; or
- (c) the use of the land or of a building or work on the land; or
- (d) the subdivision of the land.

(2) A reference in this Act to:

- (a) the erection of a building includes a reference to the rebuilding of, the making of structural alterations to, or the enlargement or extension of, a building or the placing or relocating of a building on land; and
- (b) the carrying out of a work includes a reference to the rebuilding of, the making of alterations to, or the enlargement or extension of, a work; and

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- (c) a work includes a reference to any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act but does not include a reference to any activity that is specified by a regulation not to be a work for the purposes of this Act; and
- (d) the subdivision of land is a reference to:
  - (i) (without limiting the following provisions of this paragraph) the subdivision of land within the meaning of the Local Government Act 1919; or
  - (ii) any other division of land into 2 or more parts which, after the division, would be obviously adapted for separate occupation, use or disposition; or
  - (iii) the redivision of land, by such a subdivision or by any other division, into different parts which, after the redivision, would be obviously adapted for separate occupation, use or disposition,
 and includes a reference to a subdivision effected under Division 1 of Part 2 of the Strata Titles Act 1973 or Division 1 of Part 2 of the Strata Titles (Leasehold) Act 1986; and
- (e) the carrying out of development includes a reference to the erection of a building, the carrying out of a work, the use of land or of a building or work, or the subdivision of land.

**Application for compliance certificate**

**49.** (1) If an approval has been given with respect to any land within the Corporation's area of operations, the developer may apply to the Corporation for a certificate to the effect that the development complies with the requirements of section 50.

(2) An application under this section must be accompanied by a copy of the approval.

**Issue of compliance certificate**

**50.** (1) If an application is made to the Corporation under section 49, the Corporation may:

- (a) grant the developer a compliance certificate in relation to the proposed development; or
- (b) serve a notice on the developer requiring the developer to enter into an agreement providing for any one or more of:
  - (i) the payment of an amount to the Corporation for amplification of the Corporation's works and the headworks in consequence of the proposed development;

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- (ii) the construction of the works specified in the notice;
  - (iii) the transfer of the works to the Corporation,
- and, if the Corporation considers necessary, requiring the developer to provide reasonable security, in a form approved by the Corporation, for due performance of that agreement.

(2) When the Corporation is satisfied that the requirements of a notice referred to in subsection (1) (b) have been complied with, the Corporation must grant the developer a compliance certificate with respect to the proposed development.

(3) If, within 60 days after the making of an application under section 49 or within a further period approved by the Minister in a particular case that is notified to the developer within the period of 60 days, no compliance certificate has been granted to, and no notice under subsection (1) has been served on, the developer, the Corporation must, at the developer's request, grant the developer a compliance certificate with respect to the proposed development.

**Consent authority to notify Corporation of certain applications etc.**

**51. (1)** In this section, "consent authority" has the meaning given in the Environmental Planning and Assessment Act 1979 and includes a council to which a building application under section 311 of the Local Government Act 1919 may be made.

(2) If a consent authority within the area of operations or a special area receives a development application or building application in relation to any matter that, in the opinion of the consent authority, may:

- (a) significantly damage or interfere with the Corporation's works; or
- (b) significantly adversely affect the Corporation's operations; or
- (c) significantly adversely affect the quality of the water from which the Corporation draws its supply of water in a special area,

the consent authority must, within 7 days of the receipt of the application, give the Corporation notice of the application.

(3) The consent authority must take into account any submissions made by the Corporation in relation to the development application or building application in determining whether to consent to the development application or building application or to attach conditions to any such consent.

(4) The consent authority may assume that the Corporation has no submissions to make in relation to a development application or building

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application of which notice has been given under this section if no such submissions are received by the consent authority within 21 days after the notice was given to the Corporation.

(5) If a consent authority has complied with this section in relation to a development application, the consent authority is not required to comply with this section in relation to a building application that deals with the same subject matter as the development application.

**Division 8—Catchment areas and other special areas**

**Director of Department of Water Resources to have control of special areas**

52. The Director of the Department of Water Resources (in this Division called “**the Director**”) has the control of special areas for the purposes of this Division.

**Special areas**

53. (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land described in the order to be a special area.

(2) The Minister may recommend an order only if of the opinion that the exercise of the powers conferred on the Water Administration Ministerial Corporation by section 12 of the Water Administration Act 1986 in relation to the use, flow and control of water could be adversely affected unless the order is made.

(3) An order under section 21 of the Hunter Water Board Act 1988 in force immediately before the commencement of this section, and any proclamation of a catchment area in force by virtue of section 21 of that Act immediately before the commencement of this section, is taken to be an order in force under this section declaring the area to be a special area.

**Crown land in special areas**

54. (1) Action may not be taken under the Crown Lands Act 1989 in relation to land within a special area unless the Director has given written approval and any conditions to which the approval is subject are complied with.

(2) The Director may, in a special area, exercise the functions of a person or body appointed to manage the affairs of a reserve trust under Part 5 of the Crown Lands Act 1989 without being appointed as such.

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**Exercise of functions by public bodies in special areas**

55. (1) A public agency may not, in relation to land within a special area, exercise functions other than functions under this Act unless notice is first given as prescribed by the regulations to the Director.

(2) On receiving a notice, the Director may make such representations to the public agency as the Director thinks fit.

(3) A public agency may not exercise functions contrary to any such representations unless, before the exercise of its functions, not less than 28 days' notice has been given to the Director and the Corporation of the functions intended to be exercised.

(4) In this section and section 56, "public agency" means the Governor, a Minister of the Crown or a statutory body.

**Director to notify Corporation of certain proposals etc.**

56. (1) If the Director receives notice of a proposal to take action under section 54 (1) or a notice under section 55 (1) in relation to any work that may damage or interfere with the Corporation's works or adversely affect the Corporation's operations, the Director is, within 14 days, to give the Corporation notice of the proposal or notice.

(2) The Director is to take into account any submissions made by the Corporation in relation to a matter referred to in subsection (1) in determining whether to approve of the action, to attach conditions to an approval given or to make representations to the public agency.

(3) The Director may assume that the Corporation has no submissions to make in relation to a matter referred to in subsection (1) of which notice has been given under this section if no such submissions are received by the Director within 28 days after the notice was given to the Corporation.

**Regulations concerning special areas**

57. (1) The regulations may make provision for or with respect to special areas, including charges or payments for the abstraction of water and the regulation or prohibition of abstracting, using, polluting or contaminating waters within special areas.

(2) A regulation made under this section prevails to the extent of any inconsistency with a statutory instrument made under another Act, including an environmental planning instrument within the meaning of the Environmental Planning and Assessment Act 1979.

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**Continuation of previous regulation concerning special areas**

**58.** (1) Despite section 8, the Hunter Water Board (Special Areas) Regulation 1989 continues in force and is taken to be made under this Act.

(2) Without limiting subsection (1), a permit issued under Part 4 of that Regulation is taken to have been issued under the authority of a regulation made under this Act.

(3) In that Regulation, a reference to the Board immediately before the commencement of section 8 is taken to be a reference to the Director or any person exercising the functions of the Director in accordance with this Division.

**Director to pay charges etc. collected for abstraction of certain water to Corporation**

**59.** All charges paid or other payments made to the Director by the holder of a permit issued under Part 4 of the Hunter Water Board (Special Areas) Regulation 1989 for the benefit of the permit are, while the operating licence is current, to be paid by the Director to the Corporation.

**Corporation etc. may exercise Director's powers**

**60.** (1) The Director may, with the consent and on the application of the Corporation, authorise the Corporation or a director or officer of the Corporation to exercise all or any of the Director's functions under a regulation or provision of a regulation made under this Act.

(2) The authorisation is to be in writing and may be subject to conditions.

(3) The Director may at any time revoke an authorisation or revoke or amend a condition of an authorisation.

(4) Without limiting subsection (3), the Director may revoke an authorisation if the Corporation fails to comply with any condition of the authorisation or exercises any functions conferred by it in a manner that, in the Director's opinion, is not in the public interest.

**Division 9—Other matters**

**Disposal of waste products**

**61.** (1) The Minister may, by order published in the Gazette, declare an underground mine working to be a disused underground mine working for the purposes of this section.



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(2) Subject to compliance with the requirements of the Environmental Planning and Assessment Act 1979 and the obtaining of any necessary statutory approvals, the Corporation may deposit and leave waste products from its sewerage treatment plants in a disused underground mine working despite the fact that the waste products within the mine working may pass beneath land that is not owned by the Corporation.

(3) No action for trespass to land, nuisance or other proceedings lie or are to be allowed by or in favour of any person against the Corporation or any director or officer of the Corporation, or other person, acting under the direction of the Corporation in relation to the deposit and leaving of waste products into disused underground mine workings under this section.

**Corporation in position of public authority in relation to drainage service**

62. (1) In performing its obligations under the operating licence to provide, operate, manage and maintain a drainage service, the Corporation has only those functions and liabilities of a public authority whose function is to operate, manage and maintain a drainage service.

(2) The Corporation has no duty to upgrade or improve the drainage system included in the business undertaking.

**PART 6—MISCELLANEOUS**

**Ministerial Corporation**

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

(2) The affairs of the Ministerial Corporation are to be managed by the Minister.

(3) Any act, matter or thing done in the name of, or on behalf of, the Ministerial Corporation by the Minister, or with the authority of the Minister, is taken to have been done by the Ministerial Corporation.

(4) The Ministerial Corporation has the functions conferred or imposed on it by or under this or any other Act.

(5) The functions of the Ministerial Corporation are to hold and dispose of assets, rights and liabilities transferred to it under this Act and to carry on any activities or business that relate to the assets, rights and liabilities transferred to it or that are incidental or ancillary to the assets, rights and liabilities transferred to it, including demanding, collecting and receiving charges, levies, rates and fees.

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**Alteration of names**

64. References in this Act to a company by a specified name include references to the company under any altered name.

**Provisions relating to certain staff**

65. Pursuant to clause 1 of Schedule 4 to the State Owned Corporations Act 1989, it is declared that the Hunter Water Board is an authority to which that Schedule applies.

**Provisions relating to subsidiaries**

66. Part 2 of Schedule 3 to the State Owned Corporations Act 1989 is, as regards the Corporation, taken to be altered:

- (a) by inserting in clause 1 (5) after the word "director" the words "to be appointed by or on behalf of the Corporation";
- (b) by omitting clause 1 (9) and by inserting instead the following subclause:

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

**Regulations may authorise or exempt for purposes of Trade Practices Act 1974 (Cth) or Monopolies Act 1923 (NSW)**

67. (1) In this section:

"authorise" includes approve;

"the Commonwealth Act" means the Trade Practices Act 1974 of the Commonwealth.

(2) The regulations may make provision for or with respect to:

- (a) specifically authorising certain acts and things, or acts and things of certain kinds, for the purposes of section 51 of the Commonwealth Act; and
- (b) exempting the Corporation from specified provisions of, or from, the Monopolies Act 1923.

(3) In particular, the regulations may contain provisions specifically authorising, for the purposes of section 51 of the Commonwealth Act:

- (a) the transfer under Part 3 of the business undertaking of the Hunter Water Board to the Corporation; and
- (b) all conduct relating to the performance of any or all contracts, agreements or understandings concerning the supply of water, the

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provision of sewerage and drainage services and associated purposes that are comprised in the business undertaking of the Hunter Water Board by the Corporation and all parties to any such contracts, agreements or understandings; and

(c) the making by the Corporation of a contract, agreement or understanding relating to the supply of water, the provision of sewerage and drainage services and associated purposes:

(i) that is, or is of a kind that is, specified in the regulations for the purposes of this section; or

(ii) that is approved by the Minister,

and all conduct of the Corporation and all parties to the contract, agreement or understanding that relates to the proposed making of, negotiating for, making, and performance of any such contract, agreement or understanding.

(4) If regulations made under this section authorise the Corporation to do any of the things referred to in subsection (3) (b) or (c), the Corporation, in exercising that authority, is authorised to do or omit to do any act or thing that is, or is of a kind that would be, but for the authorisation, a contravention of a provision of Part IV of the Commonwealth Act.

(5) If authorisation is conferred by regulations made under this section, the contract, agreement or understanding so authorised is lawful and the Corporation and all parties to the contract, agreement or understanding are authorised by force of this Act to enter into it, and to engage in the conduct referred to in subsection (3).

(6) Nothing in this section authorises the Corporation to do or omit to do any act or thing that it would not be empowered to do or omit to do apart from this section and the Commonwealth Act.

(7) An approval under subsection (3) (c) (ii) may be given subject to conditions determined by the Minister.

**Act binds Crown**

68. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**Work for water supply, sewerage or drainage**

69. (1) A person must not do any kind of work of water supply, sewerage or drainage intended for direct or indirect connection with the pipes, sewers or drains of the Corporation unless the person:

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- (a) holds an endorsed licence or a supervisor certificate in force under the Building Services Corporation Act 1989 authorising the holder to do that kind of work; or
- (b) does the work under the immediate supervision of the holder of such a licence or certificate; or
- (c) holds a certificate of registration in force under the Building Services Corporation Act 1989 authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).

Maximum penalty: 100 penalty units.

(2) The regulations may make provision for or with respect to any such work, including the standards for and supervision of any such work and the grant of permission by the Corporation or its officers for the performance of any such work.

(3) Despite section 8, Parts 1 and 2 of the Hunter Water Board (Water, Sewerage and Drainage Systems) Regulation 1989 continue in force and are taken to be made under this Act.

(4) Without limiting subsection (3), a permit issued under Part 2 of that Regulation before the commencement of this section is taken to have been issued under the authority of a regulation made under this Act.

(5) In that Regulation, a reference to the Managing Director of the Board includes a reference to the chief executive of the Corporation.

### **Regulations**

70. (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) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act (including the interpretation of references to the Hunter Water Board or any member or employee of the Hunter Water Board or to the Hunter Water Board Act 1988 or any provision of that Act).

(3) Any such savings or transitional provision may, if the regulations so provide, take effect on the commencement of this section or a later date.

(4) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

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- (a) to affect, in a manner prejudicial to any person (other than the State, the Corporation, the Hunter Water Board or any authority of the State), the rights of that person existing before the date of its publication; or
  - (b) to impose liabilities on any person (other than the State, the Corporation, the Hunter Water Board or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (5) Without limiting any of the provisions of this section, the regulations may make provision for or with respect to:
- (a) the renewal of, and the arrangements to apply pending the renewal of, the operating licence; and
  - (b) the supply of water, the provision of sewerage or drainage services or the disposal of waste water in any extension of the area of operations following any variation in the area of operations after the commencement of the operating licence; and
  - (c) the classification or valuation of land or other basis or bases for the making of, and the procedure for the making and imposing or levying of availability charges, environmental levies and rates; and
  - (d) relating to charges on land and the recovery of amounts charged on land including applying the provisions (with or without modifications) of sections 602–613 of the Local Government Act 1919 in respect of charges on land.
- (6) A regulation may create an offence punishable by a penalty for a breach of the regulation not exceeding:
- (a) 200 penalty units in the case of an offence by a corporation; or
  - (b) 100 penalty units in any other case.
- (7) Regulations may be made for or with respect to:
- (a) authorising the Corporation to make arrangements with another person to collect availability charges, environmental levies or rates on behalf of the Corporation; and
  - (b) the fees to be paid by the person to the Corporation.

**Amendment of Acts**

71. The Acts specified in Schedule 1 are amended as set out in that Schedule.

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**Transitional: commencement of amendments of certain Acts**

72. (1) If the day or days on which the provisions of the proposed Electricity Commission (Corporatisation) Act 1991 that amend the Interpretation Act 1987 and the State Owned Corporations Act 1989 commence is earlier than the day or days on which the provisions of this Act that amend those provisions commence, the amendments proposed to be made by this Act to those provisions and to the proposed Electricity Commission (Corporatisation) Act 1991 have no effect.

(2) If the day on which the section of the proposed Electricity Commission (Corporatisation) Act 1991 that repeals the Electricity Commission Act 1950 commences is earlier than the day on which the provisions of this Act that amend the Electricity Commission Act 1950 commence, the amendment proposed to be made by this Act to that Act has no effect.

(3) A reference in this Act to the Land Acquisition (Just Terms Compensation) Act 1991 is, pending the commencement of that Act, to be read as a reference to the Public Works Act 1912.

**Provision disapplied**

73. Section 6 of the Clean Waters Act 1970 does not apply to the Corporation.

**Application of Freedom of Information Act 1989 No. 5**

74. Despite Schedule 2 to the Freedom of Information Act 1989, that Act applies to and in respect of the Corporation and any subsidiaries of the Corporation as if they were each a public authority.

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**SCHEDULE 1—AMENDMENT OF ACTS**

(Sec. 71)

**Aboriginal Land Rights Act 1983 No. 42**

- (1) **Section 43 (Exemption of Aboriginal lands from the payment of rates):**  
From section 43 (1) (c), omit "Hunter District Water, Sewerage and Drainage Act 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".
- (2) **Section 44 (Execution etc. against Aboriginal lands barred in certain cases):**  
From section 44 (c), omit "Hunter District Water, Sewerage and Drainage Act 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".

**Attachment of Wages Limitation Act 1957 No. 28**

Schedule:

Omit "Hunter District Water Board."

**Building Services Corporation Act 1989 No. 147**

- Section 135 (Proceedings for certain offences under other Acts):**  
Omit section 135 (d), insert instead:  
(d) the Hunter Water Board (Corporatisation) Act 1991; or

**Capital Debt Charges Act 1957 No. 1**

Schedule:

Omit the matter relating to The Hunter District Water Board.

**Clean Waters Act 1970 No. 78**

- Section 5 (Definitions):**  
From the definition of "statutory authority", omit "the Hunter District Water Board,".

**Coal Mining Act 1973 No. 81**

- Section 21A (Grant of authorisation to drill bore hole etc.):**  
Omit section 21A (3) (f), insert instead:  
(f) land within a special area within the meaning of the Hunter Water Board (Corporatisation) Act 1991, without the consent of the Director of the Department of Water Resources.

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Conveyancing Act 1919 No. 6**

- (1) Section 88 (Limitation of enforceability of easements and restrictions of user of land):

In section 88 (4), before “nor”, insert “or by or for Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991,”.

- (2) Section 88A (Easements in gross and easements and restrictions appurtenant to easements):

At the end of the section, insert:

(5) For the purposes of this section, the Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991 is taken to be a public authority constituted by Act of Parliament.

**Dams Safety Act 1978 No. 96**

Section 8 (Members):

From section 8 (2) (d), omit “Hunter District Water Board constituted under the Hunter District Water, Sewerage and Drainage Act 1938”, insert instead “Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991”.

**Drainage Act 1939 No. 29**

Section 5 (Certain Acts not affected):

Omit “the Hunter District Water, Sewerage and Drainage Act 1938”, insert instead “the Hunter Water Board (Corporatisation) Act 1991”.

**Electricity Commission Act 1950 No. 22**

Section 3 (Definitions):

From the definition of “Statutory body” or “Statutory body representing the Crown”, omit “the Hunter District Water Board,”.

**Electricity Commission (Corporatisation) Act 1991**

Schedule 1 (Amendment of Acts):

Omit the amendments to the Interpretation Act 1987 and the State Owned Corporations Act 1989.



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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Evidence Act 1898 No. 11**

Section 43C (Conditions under which print from photographic film admissible in evidence):

From the definition of "statutory body representing the Crown" in section 43C (5), omit "the Hunter District Water Board,".

**Fluoridation of Public Water Supplies Act 1957 No. 58**

Section 11 (Regulations):

From section 11 (1) (b), omit "or the Hunter Water Board".

**Government and Related Employees Appeal Tribunal Act 1980 No. 39**

Schedule 4 (Employing authorities):

Omit "The Hunter District Water Board."

**Heritage Act 1977 No. 136**

(1) Section 123 (Definitions):

(a) From paragraph (d) of the definition of "rating or taxing authority", omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991".

(b) From the definition of "valuing law", omit "Hunter District Water, Sewerage and Drainage Act 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".

(2) Section 126 (Application of valuing laws to heritage valuations):

Omit section 126 (e).

**Industrial Arbitration Act 1940 No. 2**

Schedule 2:

Omit "The Hunter District Water Board."

**Interpretation Act 1987 No. 15**

Section 21 (Meaning of commonly used words and expressions):

In section 21 (1), insert, in alphabetical order:

"State owned corporation" means a State owned corporation within the meaning of the State Owned Corporations Act 1989;

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Justices Act 1902 No. 27**

Section 100I (Definitions):

From paragraph (a) of the definition of "penalty notice" in section 100I (1), omit "Hunter Water Board Act 1988, section 51;"

**Land Tax Management Act 1956 No. 26**

Section 3 (Definitions):

From the definition of "Public authority" in section 3 (1), omit "the Hunter District Water Board,"

**Local Government Act 1919 No. 41**

(1) Section 4 (Definitions):

From the definition of "Statutory body," or "statutory body representing the Crown," omit ", the Hunter District Water Supply and Sewerage Board".

(2) Section 10 (Certain Acts not affected):

Omit "the Hunter Water Board Act 1988;" insert instead "the Hunter Water Board (Corporatisation) Act 1991;"

(3) Section 247 (Power to lay pipes and charge cost):

From section 247 (5), omit "Hunter District Water Supply and Sewerage Act of 1892", insert instead "Hunter Water Board (Corporatisation) Act 1991".

(4) Section 283 (Depots, destructors, and plant):

- (a) From section 283 (3A), omit ", or the Hunter District Water Supply and Sewerage Act of 1892".
- (b) From section 283 (3A), omit ", or the Hunter District Water Supply and Sewerage Board, as the case may be,".

(5) Section 327 (Conditions to be observed before opening new roads or subdivisions):

- (a) Omit section 327 (1) (d) (A1), insert instead:

(A1) the area of operations within the meaning of Part 5 of the Hunter Water Board (Corporatisation) Act 1991; or

- (b) From section 327 (1) (d), omit "section 27 of the Hunter Water Board Act 1988", insert instead "section 50 of the Hunter Water Board (Corporatisation) Act 1991".

(6) Section 331A (Subdivision of land within the area of operations of a Water Board or Water Supply Authority):

- (a) Omit section 331A (1) (a) (ia), insert instead:

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

- (ia) the area of operations within the meaning of the Hunter Water Board (Corporatisation) Act 1991; or
  - (b) From section 331A (1), omit "Hunter Water Board", insert instead "Hunter Water Corporation Limited".
  - (c) From section 331A (2) and (3), omit "section 27 of the Hunter Water Board Act 1988" wherever occurring, insert instead "section 50 of the Hunter Water Board (Corporatisation) Act 1991".
  - (d) Omit section 331A (3) (ai), insert instead:
    - (ai) the area of operations within the meaning of the Hunter Water Board (Corporatisation) Act 1991; or
- (7) Section 368 (Application):
- (a) From section 368 (2), omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited".
  - (b) From section 368 (2), omit "Hunter District Water, Sewerage and Drainage Act, 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".
- (8) Section 405 (Stormwater drains):
- From section 405 (1), omit "Hunter District Water, Sewerage and Drainage Act, 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".
- (9) Section 493 (Guarantees):
- (a) From section 493 (2), omit "Hunter District Water Supply and Sewerage Board", insert instead "Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991".
  - (b) In section 493 (2), after "board" wherever occurring, insert "or Corporation".
  - (c) In section 493 (2A) (a) and (b), after "Board" wherever occurring, insert "or Corporation".
  - (d) In the definitions of "Collectable income of the Board" and "Net collectable income of the Board" in section 493 (2A) (c), after "Board" wherever occurring, insert "or Corporation".
  - (e) In subparagraph (ii) in the definition of "Board" in section 493 (2A) (c), omit "any water district or sewerage district as respectively defined in the Hunter District Water and Sewerage Act, 1892–1928—the Hunter District Water Supply and Sewerage Board", insert instead "the area of operations within the meaning of Part 5 of the Hunter Water Board (Corporatisation) Act 1991—the Hunter Water Corporation Limited".
  - (f) From section 493 (3) (b), omit "either of the said boards", insert instead "the Board or the Corporation".
  - (g) From section 493 (3) (b), omit "board concerned", insert instead "Water Board or subject to the imposition of service charges by the Corporation".

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(h) From section 493 (3A), omit "Board", insert instead "Water Board or subject to the imposition of service charges by the Corporation".

(10) Section 654 (Disputes between councils, etc.):

Omit section 654 (5) (e).

**National Parks and Wildlife Act 1974 No. 80**

(1) Section 74 (Catchment areas):

- (a) After "catchment area" where firstly occurring, insert "or special area".
- (b) Omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991".
- (c) After "catchment area" where secondly, thirdly and fourthly occurring, insert ", special area".
- (d) After "Boards", insert "or that Corporation".
- (e) In section 74 (a) and (b), after "structure" wherever occurring, insert "or, if applicable, the Corporation".
- (f) After "information" in paragraph (a), insert "and, if referred to the Corporation, shall also refer it to the Director of the Department of Water Resources".
- (g) After "structure" in paragraph (b), insert instead "and, in a case involving the Corporation, by the Director of the Department of Water Resources".

(2) Section 185 (Catchment areas):

- (a) Omit "Hunter District Water, Sewerage and Drainage Act 1938" wherever occurring, insert instead "Hunter Water Board (Corporatisation) Act 1991".
- (b) In section 185 (2), after "areas", insert "or special areas".
- (c) After "catchment area" wherever occurring, insert "or special area".
- (d) From section 185 (4) (b), omit "The Hunter District Water Board", insert instead "the Hunter Water Corporation Limited and the Director of the Department of Water Resources".
- (e) From section 185 (5), omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited nor the Director of the Department of Water Resources".

**New South Wales Retirement Benefits Act 1972 No. 70**

Schedule 2:

Omit the matter relating to the Hunter District Water Board.

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Pipelines Act 1967 No. 90**

Section 3 (Definitions):

From the definition of "statutory body representing the Crown" in section 3 (1), omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991".

**Public Authorities (Financial Arrangements) Act 1987 No. 33**

Schedule 1 (Authorities):

Omit "The Hunter District Water Board."

**Public Authorities Superannuation Act 1985 No. 41**

Schedule 3 (Employers):

From Part 2, omit "The Hunter District Water Board."

**Public Finance and Audit Act 1983 No. 152**

Schedule 2 (Statutory bodies):

Omit "Hunter District Water Board."

**Public Sector Management Act 1988 No. 33**

(1) Schedule 3 (Declared authorities):

Omit "Hunter District Water Board."

(2) Schedule 3A (Chief executive positions):

From Part 3, omit "Managing Director of the Hunter Water Board".

(3) Schedule 3B (Senior executive positions):

Omit heading "Hunter Water Board" and all matter under that heading.

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

Schedule 1 (Employers):

From Part 1, omit "The Hunter District Water Board".

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

Schedule 1 (Employers):

From Part 1, omit "The Hunter District Water Board".

*Hunter Water Board (Corporatisation) 1991*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**State Owned Corporations Act 1989 No. 134**

(1) Section 7A (Ministerial direction):

- (a) After “corporation”, insert “, a subsidiary of a State owned corporation or any other person”.
- (b) Omit “its name”, insert instead “the name of the State owned corporation”.

(2) Section 37A:

After section 37, insert:

**Modification of Environmental Planning and Assessment Act 1979 in its application to certain proposals**

37A. (1) In this section:

“development” means development within the meaning of Part 4 of the Planning Act;

“the Planning Act” means the Environmental Planning and Assessment Act 1979.

(2) The Planning Act applies to development by a State owned corporation, except as provided by this section.

(3) Part 5 of the Planning Act applies to development proposed to be carried out by a State owned corporation that is development, or of a class or description of development, that the Minister administering the Planning Act certifies in writing is of State or regional significance. That Part so applies to the development as if it were an activity within the meaning of that Part whether or not development consent under Part 4 of the Planning Act would otherwise be required or has been obtained in relation to the development. Part 4 of the Planning Act accordingly does not apply.

(4) The Minister administering the Act by which the name of the State owned corporation proposing the development is inserted in Schedule 1 to this Act is the determining authority (or, if more than one approval within the meaning of the Planning Act is required, the nominated determining authority) for the purposes of Part 5 of the Planning Act in relation to the proposal.

(5) A State owned corporation must not carry out development to which subsection (3) applies unless the State owned corporation has obtained the approval of the determining authority referred to in subsection (4).

(6) Development to which subsection (3) applies must not include any act, matter or thing that is prohibited by an environmental planning instrument made under the Planning Act.

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(3) Section 37B:

After section 37A, insert:

**Establishment of Ministerial Holding Corporation**

37B. (1) There is constituted by this Act a corporation with the corporate name of the Ministerial Holding Corporation.

(2) The affairs of the Corporation are to be managed by the Minister who may authorise another Minister to exercise functions in relation to particular assets, rights and liabilities.

(3) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Minister or a Minister authorised by the Minister, or with the authority of any such Minister, is taken to have been done by the Corporation.

(4) The Corporation has the functions conferred or imposed on it by or under this or any other Act.

(5) The functions of the Corporation are:

- (a) to hold on behalf of the Crown, retain, transfer and dispose of assets, rights and liabilities transferred to it under this Act; and
- (b) to acquire, exchange, lease, dispose of and otherwise deal with property; and
- (c) to develop and manage land transferred to it under this Act or otherwise acquired by it; and
- (d) to carry on any activities or business that relate to any of the above or are incidental or ancillary to any of the above, including demanding, collecting and receiving charges, levies, rates and fees.

(6) Without limiting the generality of subsection (5), the Corporation may transfer and dispose of any such assets, rights and liabilities to the Crown or to any person on behalf of the Crown.

**State Public Service Superannuation Act 1985 No. 45**

Schedule 3 (Employers):

Omit "The Hunter District Water Board."

**Strata Titles Act 1973 No. 68**

Section 89 (Definitions):

(a) Omit paragraph (d) of the definition of "appropriate valuing Act", insert instead:

- (d) where the Hunter Water Corporation Limited is the valuing authority in respect of the parcel—the Hunter Water Board (Corporatisation) Act 1991;

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

- (b) From paragraph (c) of the definition of “valuing authority”, omit “Hunter Water Board”, insert instead “Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991”.

**Strata Titles (Leasehold) Act 1986 No. 219**

Section 121 (Definitions (1973 Act, Division 6)):

- (a) Omit paragraph (c) of the definition of “appropriate valuing Act”, insert instead:
- (c) where the Hunter Water Corporation Limited is the valuing authority in respect of the parcel—the Hunter Water Board (Corporatisation) Act 1991;
- (b) From paragraph (a) of the definition of “valuing authority”, omit “Hunter Water Board”, insert instead “Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991”.

**Superannuation Act 1916 No. 28**

Schedule 3 (List of employers):

From Part 1, omit “The Hunter District Water Board”.

**Traffic Safety (Lights and Hoardings) Act 1951 No. 7**

Section 2 (Definition):

From the definition of “Public authority”, omit “the Hunter District Water Board.”.

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

- (1) Section 47 (Rating or taxing authorities):  
Omit “The Hunter District Water Board.”.
- (2) Section 60 (Assessed annual value for purposes of other Acts):  
Omit “, the Hunter District Water, Sewerage and Drainage Act 1938”.

**Water Administration Act 1986 No. 195**

Schedule 1 (Acts under which Ministerial Corporation may exercise functions):

Omit “Hunter Water Board Act 1988”.

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**HUNTER WATER BOARD (CORPORATISATION) ACT 1991**  
**No. 53**

NEW SOUTH WALES



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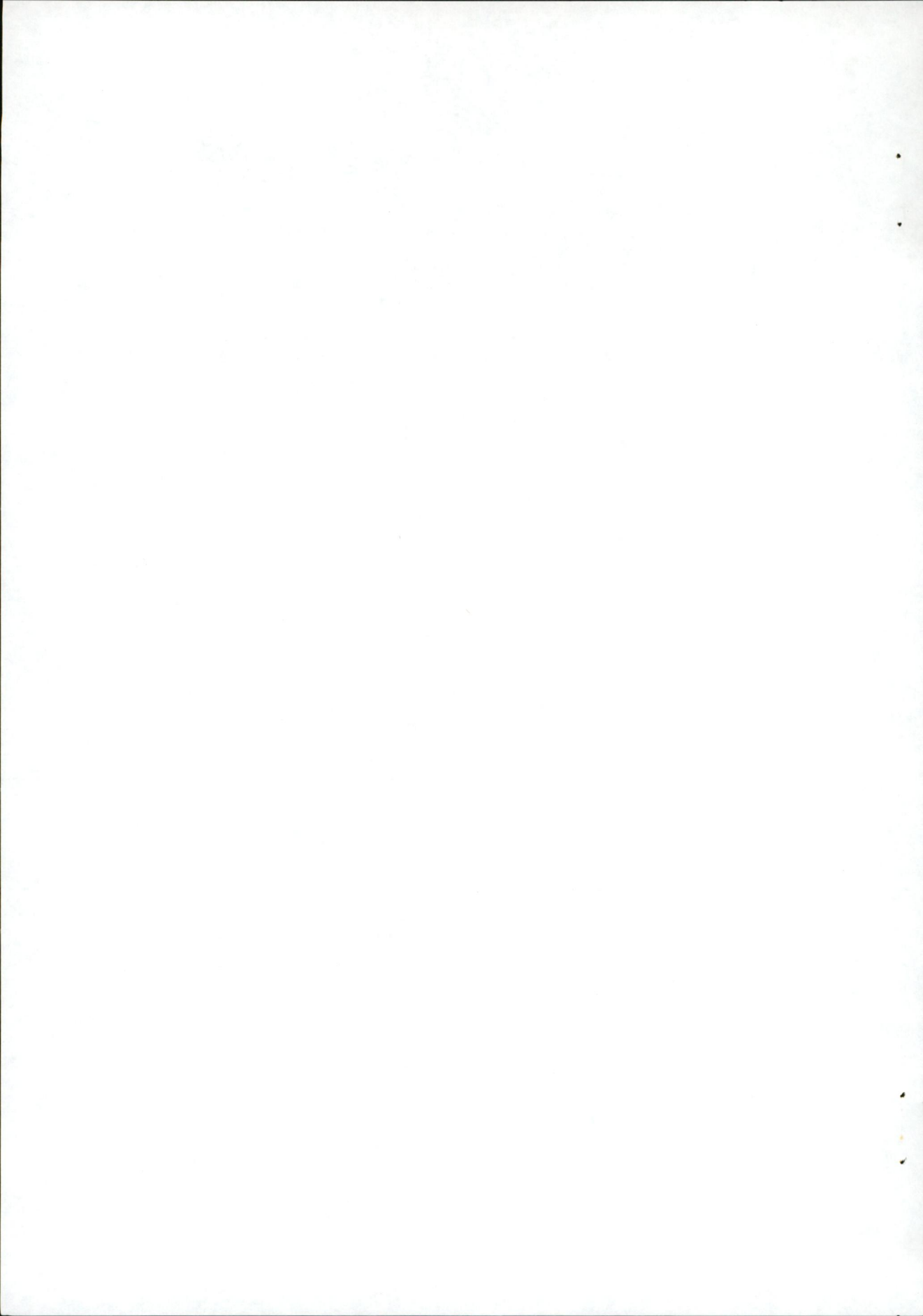
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SCHEDULE 1—AMENDMENT OF ACTS

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**HUNTER WATER BOARD (CORPORATISATION) ACT 1991**  
**No. 53**

NEW SOUTH WALES



**Act No. 53, 1991**

An Act to establish a State owned corporation in relation to the supply of water, the provision of sewerage and drainage services and the disposal of waste water in the Hunter region and certain other matters; to provide for the transfer of assets, rights and liabilities of the Hunter Water Board; to amend the State Owned Corporations Act 1989 and certain other Acts; to repeal the Hunter Water Board Act 1988; and for other purposes.  
[Assented to 11 December 1991]

The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Hunter Water Board (Corporatisation) Act 1991.

**Commencement**

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

**Definitions**

3. (1) Words and expressions used in this Act have the same meanings as they have in the State Owned Corporations Act 1989.

(2) In this Act:

“**area of operations**” means the area of operations referred to in section 16;

“**authorised person**” means an officer or other person acting on behalf of the Corporation to whom a certificate of authority has been issued under section 21 (2);

“**availability charge**” means a charge of a kind referred to in section 43;

“**business undertaking**” means all assets, rights and liabilities of the Hunter Water Board, but does not include any excluded undertaking;

“**contract charge**” means any charge or fee payable under a customer contract, or other contract made between the Corporation and a customer, for the provision of water supply or sewerage services;

“**Corporation**” means Hunter Water Corporation Limited;

“**customer**”, in relation to the Corporation, means a person who is taken to have entered into a customer contract or a person who has made a contract with the Corporation of a kind referred to in section 37;

“**customer contract**” means a contract of a kind referred to in section 36 (1);

“**drainage channel**” means any artificial channel by which surface water is carried off;

“**environmental levy**” means an amount imposed under section 45;

*Hunter Water Board (Corporatisation) 1991*

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**“excluded undertaking”** means any assets, rights or liabilities of the Hunter Water Board that the Minister has directed to be excluded under section 6;

**“headworks”** means dam walls, pumps and other works used for or with respect to the extraction of water in rivers and lakes, water occurring naturally on the surface of the ground or sub-surface waters and the storage of that water;

**“Hunter Water Board”** means the Hunter Water Board constituted under the Hunter Water Board Act 1988;

**“instrument”** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

**“lease”** includes a licence or permit;

**“meter”** includes any measuring device;

**“Ministerial Corporation”** means the Hunter Water Ministerial Corporation constituted by section 63;

**“operating licence”** means an operating licence granted under section 12 or any renewal of it;

**“owner”**, in relation to land, includes every person who jointly or severally at law or in equity:

- (a) is entitled to the land for an estate of freehold in possession; or
- (b) is a person to whom the Crown has contracted to sell the land under the Crown Lands Act 1989 or any other Act relating to alienation of land of the Crown; or
- (c) is entitled to receive, or receives, or if the land were let to a tenant would receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise,

and, in relation to land of the Crown, means the Crown but does not include a person who, or a class of persons that, is specified by a regulation not to be an owner for the purposes of this definition, either generally or in a particular case or class of cases;

**“public road”** means a road the public are entitled to use, whether or not it is:

- (a) dedicated as a highway by the Crown or any person; or
- (b) notified, proclaimed or dedicated as a road or highway under an Act;

**“rate”** means a rate made and levied on land within a declared drainage area under section 46;

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**“special area”** means an area of land declared by an order in force under section 53 to be a special area;

**“statutory body”** means a corporation that:

- (a) is not a company within the meaning of the Corporations Law; and
- (b) is not a society within the meaning of the Co-operation Act 1923; and
- (c) is not a body prescribed by the regulations as not being a statutory body for the purposes of this definition,

and is incorporated by or under an Act (other than this Act or the Associations Incorporation Act 1984);

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

**“works”** means water mains, sewer mains, drainage channels and any works ancillary to those works.

(3) In this Act:

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

## PART 2—ESTABLISHMENT OF STATE OWNED CORPORATION

### Establishment of Corporation as SOC

4. The State Owned Corporations Act 1989 is amended by inserting in Schedule 1, in alphabetical order, the words “Hunter Water Corporation Limited”.

## PART 3—TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

### Direction to transfer business undertaking

5. (1) The Minister may, by order in writing, direct that the business undertaking of the Hunter Water Board be transferred to the Corporation, on the date and for the consideration specified in the order.

(2) The transfer of assets, rights and liabilities under this section is to take place at a value or values specified in the order.



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- (3) On the commencement of the order, the following provisions have effect (subject to the order):
- (a) the assets of the Hunter Water Board comprised in its business undertaking vest in the Corporation by virtue of this section and without the need for any conveyance, transfer, assignment or assurance;
  - (b) the rights and liabilities of the Hunter Water Board comprised in its business undertaking become by virtue of this section the rights and liabilities of the Corporation;
  - (c) all proceedings relating to the business undertaking commenced before the transfer by or against the Hunter Water Board or a predecessor of the Hunter Water Board and pending immediately before the transfer are taken to be proceedings pending by or against the Corporation;
  - (d) any act, matter or thing done or omitted to be done in relation to the business undertaking before the transfer by, to or in respect of the Hunter Water Board is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Corporation;
  - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the Hunter Water Board or a predecessor of the Hunter Water Board is, subject to regulations under section 70 (2), to be read as, or as including, a reference to the Corporation.
- (4) The operation of this section is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (5) The operation of this section is not to be regarded as an event of default under any contract or other instrument.
- (6) No attornment to the Corporation by a lessee from the Hunter Water Board is required.
- (7) Assets, rights or liabilities may not be transferred under this section to the Corporation unless the Corporation is a State owned corporation.

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**Excluded undertakings**

6. (1) The Minister may direct, by order in writing, that such assets, rights or liabilities of the Hunter Water Board as are specified or referred to in the order be excluded from the Hunter Water Board's business undertaking.

(2) On the date specified in the order, the excluded undertaking concerned is transferred to the Ministerial Corporation or such other person on behalf of the Crown as is so specified.

(3) Section 5 applies to that transfer in the same way as it applies to the transfer of the Hunter Water Board's business undertaking to the Corporation.

(4) Different parts of any excluded undertaking may be so transferred to different persons.

(5) The Ministerial Corporation or other person is authorised to dispose of any excluded undertaking so transferred or to retain it and conduct any business to which it relates.

**Transfer of other assets, rights or liabilities**

7. (1) The Minister may direct, by order in writing, and on such terms and conditions as are set out or referred to in the order, that such other assets, rights or liabilities used by or attaching to the Hunter Water Board for the supply of water, the provision of sewerage and drainage services, the disposal of waste water and associated purposes, and belonging to the State or an authority of the State, as are specified in the order be transferred to the Corporation or to a subsidiary of the Corporation.

(2) Section 5 applies to that transfer in the same way as it applies to the transfer of the Hunter Water Board's business undertaking to the Corporation.

**PART 4—DISSOLUTION OF HUNTER WATER BOARD**

**Repeal of Hunter Water Board Act 1988 No. 119**

8. The Hunter Water Board Act 1988 and all regulations and by-laws under that Act are repealed.

**Dissolution of Hunter Water Board**

9. (1) The Hunter Water Board is dissolved.

(2) The assets, rights and liabilities (if any) of the Hunter Water Board immediately before its dissolution are transferred to the Ministerial Corporation.

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(3) Section 5 applies to that transfer in the same way as it applies to the transfer of the Hunter Water Board's business undertaking to the Corporation.

**Members of Hunter Water Board to vacate office**

10. (1) A person who, immediately before the dissolution of the Hunter Water Board, held office as a member of the Hunter Water Board:

- (a) ceases to hold office as such; and
- (b) except as provided by subsection (2), is not entitled to any remuneration or compensation because of the loss of that office.

(2) Part 8 of the Public Sector Management Act 1988 applies to a person who so ceases to hold office as a member of the Hunter Water Board, without immediately being appointed to the service of the Corporation or a subsidiary of the Corporation, in the same way as it applies to a person removed from office under that Part.

**Corporation to be same legal entity as Hunter Water Board**

11. (1) On the dissolution of the Hunter Water Board, the Corporation is taken for all purposes including the rules of private international law to be a continuation of and the same legal entity as the Hunter Water Board.

(2) This section does not affect any transfer of assets, rights and liabilities under section 6 or 9.

**PART 5—PROVISIONS APPLYING TO THE CORPORATION**

**Division 1—Operating licence**

**Grant of operating licence**

12. (1) The Governor may grant an operating licence to the Corporation to enable the Corporation in accordance with this Act, in the area of operations specified in the licence, to provide, construct, operate, manage and maintain systems and services for:

- (a) supplying water; and
- (b) providing sewerage and drainage services; and
- (c) disposing of waste water.

(2) The operating licence authorises the Corporation to exercise in the area of operations, on behalf of the Water Administration Ministerial Corporation, the right to the use and flow, and to the control, of water conferred on the Water Administration Ministerial Corporation by section 12 of the Water Administration Act 1986 for:

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- (a) the purposes referred to in subsection (1);
  - (b) the purpose of transporting water in bulk supply lines from headworks to the area of operations and for supplying water to the owners or occupiers of land adjoining the bulk supply lines.
- (3) This section has effect despite anything in the Water Administration Act 1986.

**Terms and conditions of operating licence**

13. (1) The operating licence is subject to the terms and conditions determined by the Governor but must include terms or conditions under which the Corporation is required:

- (a) to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services for supplying water, providing sewerage services and disposing of waste water; and
- (b) to provide, operate, manage and maintain a drainage service within the capacity of the drainage service included in the business undertaking transferred under Part 3 by the Hunter Water Board to the Corporation as at the date of the transfer of the business undertaking; and
- (c) to ensure that the systems and services meet the quality and performance standards specified in the operating licence in relation to water quality, service interruptions, price levels and other matters determined by the Governor and set out in the operating licence.

(2) The operating licence must also include terms or conditions that require the Corporation to maintain procedures under which the Corporation is to consult with its customers at regular intervals in relation to the provision of the systems and services referred to in this section.

**Amendment of operating licence**

14. The operating licence may only be amended in the manner specified in the operating licence.

**Term of operating licence**

15. (1) The initial term of the operating licence is to expire on 30 June 1995.

(2) After the initial term, the Governor may renew the operating licence for a maximum of 3 years at a time.

(3) The operating licence may be renewed even if its term has expired.

**Area covered by operating licence**

**16. (1)** The operating licence applies to the area of operations specified in the operating licence, being the area of operations of the Hunter Water Board immediately before the commencement of section 8 together with:

- (a) any parts of the Shire of Dungog specified in the operating licence at the date of the commencement of the operating licence; and
- (b) any other land specified in the operating licence, not included in the above, in or on which works owned by the Corporation are installed or that is connected with a water main or sewer main owned by the Corporation at the date of the commencement of the operating licence; and
- (c) any other land specified by the Governor by order for the purpose published in the Gazette.

**(2)** Despite subsection (1) (c), the area of operations must not be expanded to include the whole or part of the area within which:

- (a) a council of a city, municipality or shire; or
- (b) a public authority referred to in section 11 (2) of the Water Administration Act 1986; or
- (c) a Water Supply Authority within the meaning of the Water Supply Authorities Act 1987,

provides services that are the same services the Corporation is authorised to provide under the operating licence unless consultations, regarding the proposed expansion and its implications, have taken place between the Corporation and the council, public authority or Water Supply Authority before the order expanding the area of operations is made.

**Contravention of operating licence**

**17. (1)** If, in the opinion of the Minister, the Corporation contravenes the operating licence, the Governor may direct that one of the following is to apply:

- (a) a letter of reprimand by the Minister is to be served on the Corporation;
- (b) the Corporation is to pay a monetary penalty (not exceeding \$150,000) in an amount to be determined by the Governor;
- (c) the operating licence is to be cancelled by the Governor in accordance with section 18.

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(2) The fact that the Governor has directed that action be taken under this section does not prevent the Governor directing that the same or other action under the section be taken if the contravention continues or a fresh contravention occurs.

(3) The operating licence may make provision for advice to be furnished to the Minister in connection with the exercise of the Minister's functions under this section.

(4) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Crown.

**Cancellation of operating licence**

18. (1) The operating licence may be cancelled by the Governor, but only if:

- (a) the Corporation ceases, other than as authorised by the operating licence, to do the things referred to in section 13 (1) or any of them in the area of operations for any reason; or
- (b) the Corporation is, in the opinion of the Minister, in material default in compliance with the operating licence, viewed in terms of the operation of the operating licence as a whole; or
- (c) the Corporation is insolvent within the meaning of section 460 of the Corporations Law or has been convicted of a criminal offence that is punishable by a fine of at least \$1,000 or, if the Corporation were a natural person, penal servitude or imprisonment for 12 months or more.

(2) If the operating licence is cancelled under this section, the Governor may, by order published in the Gazette, vest in the Crown or in another person specified in the order, from the date specified in the order, the assets and rights of the Corporation that are specified in the order and that, in the opinion of the Minister, are necessary to enable the Crown or other person to do immediately the things referred to in section 13 (1), or any of them, for the benefit of existing customers of the Corporation.

(3) An order under this section may provide for:

- (a) the Crown or other person specified in the order to assume those liabilities of the Corporation that the Governor considers appropriate and specifies in the order; or
- (b) the Crown to pay the whole or any part of the liabilities of the Corporation.

**Division 2—Provisions relating to works****Ownership of works**

19. (1) The Corporation is the owner of all works installed in or on land by the Corporation and of all works in or on land vested in or transferred to the Corporation (whether or not the land is owned by the Corporation).

(2) The Corporation may, subject to this Act, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that are necessary or appropriate to any of its works to ensure that, in the opinion of the Corporation, the works are used in an efficient manner for the purposes for which they were installed.

(3) The Corporation may sell or otherwise deal with works that it owns.

**Entry on to land**

20. The Corporation may, by authorised persons, enter land in accordance with this Division for any one or more of the following purposes:

- (a) to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that the Corporation considers are necessary or appropriate to any of its works or to construct new works and, for these purposes, to carry out any work on, below or above the surface of the land;
- (b) to read a meter that measures water supplied by the Corporation or water discharged into the Corporation's sewers;
- (c) to find the source of pollution of water supplied by the Corporation;
- (d) to ascertain whether a customer contract or other contract for the provision of services by the Corporation is being breached in relation to the connection to or use of works;
- (e) to rectify defective or improper work that has not been rectified by a customer in accordance with a notice served by the Corporation on the customer under a customer contract or other contract;
- (f) to ascertain the character and condition of the land or a building to enable the Corporation to operate, repair, replace, maintain, remove, extend, expand, connect, disconnect or improve the systems and services referred to in section 13 (1) or to construct new works for the purposes of that subsection or section 12 (1);
- (g) to ascertain the condition and location of any pipe, sewer, drain, channel or fitting or other work used in connection with the land or a building to enable the Corporation to operate, repair, replace,

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maintain, remove, extend, expand, connect, disconnect or improve the systems and services referred to in section 13 (1) or to construct new works for the purposes of that subsection or section 12 (1).

**Exercise of powers of entry**

**21. (1)** Before an authorised person enters any land or building under a power conferred by this Division, the Corporation or an authorised person must serve on the owner or occupier of the land or building notice in writing of the intention to enter the land or building on a day specified in the notice unless:

- (a) entry to any land or building is made with the consent of the owner or occupier of the land or building; or
- (b) entry is required urgently and the case is one in which the board of the Corporation has authorised in writing (either generally or in the particular case) entry without notice; or
- (c) entry is made solely for the purpose of reading a meter that measures water supplied by the Corporation or water discharged into the Corporation's sewers if the meter is not in a dwelling-house or building; or
- (d) the giving of notice would defeat the purpose for which the power is to be exercised.

**(2)** A power conferred by this Division to enter any land or building may not be exercised unless the person proposing to exercise the power:

- (a) is in possession of a certificate of authority issued by an officer of the Corporation who has been authorised by the board of the Corporation to issue such certificates; and
- (b) exercises the power at a reasonable time during daylight, unless this would defeat the purpose for which the power is to be exercised or the power is exercised in an emergency; and
- (c) produces the certificate of authority if required to do so by the occupier of the land; and
- (d) uses no more force than is reasonably necessary to effect the entry.

**(3)** Nothing in this section authorises the use of force to enter a dwelling-house or any enclosed part of a building occupied as a dwelling or authorises the entry of such premises at night without the consent of the owner or occupier of the premises.

**(4)** A certificate of authority must:

- (a) state that it is issued under the Hunter Water Board (Corporatisation) Act 1991; and
- (b) give the name of the person to whom it is issued; and



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- (c) describe the nature of the powers conferred and the source of the powers; and
  - (d) state the date (if any) on which it expires; and
  - (e) if issued to an officer of the Corporation, describe the general area or the land to which the power extends or, if issued to an authorised person who is not an employee of the Corporation, describe the land to which the power extends; and
  - (f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.
- (5) The Minister may, if the Minister thinks fit, by order published in the Gazette, attach conditions or restrictions to certificates of authority issued under this Act, either generally or in particular cases, including restrictions on the purposes for which and the circumstances in which a power of entry may be exercised.

#### **Compensation**

22. (1) The Corporation, in exercising its functions under this Division, is to do as little damage as practicable and is, subject to this Division, to compensate all persons who suffer damage by the exercise of the functions.

(2) Compensation may be made by reinstatement, repair, construction of works or payment.

(3) If the Corporation installs a sewer on land in exercise of powers under this Division, the Corporation is required to pay compensation only if the sewer damages, or interferes with, a building or other structure on the land or if a manhole or main ventilator is constructed on the land.

#### **Power to open roads**

23. (1) The Corporation may, for the purpose of complying with the operating licence and after giving reasonable notice to persons likely to be affected, open and break up:

- (a) the soil and pavement of a public road or public reserve; and
- (b) any sewer, drain or tunnel in or under or any ground under a public road or public reserve.

(2) The person having the control and management of a public road or public reserve may, as prescribed by the regulations, require the Corporation to comply with conditions in exercising its powers under this section, including conditions for restoration of the surface and removal of rubbish.

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(3) If a public road or public reserve is damaged by a leakage from, or a bursting of, a main of the Corporation, the person having the control and management of the public road or public reserve may require the Corporation to make good the damage without delay.

(4) If the Corporation fails to comply with a condition in force under subsection (2) or a requirement under subsection (3), the person affected by the failure may remedy it and recover the cost of doing so as a debt owed to the person by the Corporation.

**Altering position of conduit**

24. (1) The Corporation may serve a written notice on a person if:

- (a) the Corporation, in order to comply with the operating licence, needs an alteration to be made in the position of a conduit owned by the person; and
- (b) the alteration would not permanently damage the conduit or adversely affect its operation.

(2) The notice must:

- (a) specify the alteration needed; and
- (b) require the alteration to be made within a reasonable time stated in the notice; and
- (c) include an undertaking by the Corporation to pay the reasonable cost of the alteration.

(3) If the alteration is not made as required by the notice, the Corporation may make the alteration in a manner that does not damage the conduit permanently or adversely affect its operation on completion of the alteration.

(4) In this section, “conduit” means anything that is in or under a public road and is used for the conveyance of a substance, energy or signals.

**Interference with works**

25. (1) Land in or on which a work of the Corporation is installed is taken to be the subject of an agreement in the nature of a covenant in favour of the Corporation pursuant to which the owner from time to time of land in or on which the work is installed must ensure that:

- (a) the work or any structure owned by, or under the control or management of, the Corporation is not wilfully or negligently destroyed, damaged or interfered with; and

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- (b) the Corporation and authorised persons are not delayed or obstructed in and about the taking, in relation to the work, of any of the steps referred to in section 19 (2); and
- (c) no structure is placed in, on or near the work in a manner that interferes with the operation of the work; and
- (d) ground is not opened to expose any pipe or other work of the Corporation without reasonable excuse, or the consent of the Corporation, and without giving the Corporation at least 2 days' written notice of intention to open the ground unless that requirement is waived by the Corporation.

(2) A lease, including a residential tenancy agreement within the meaning of the Residential Tenancies Act 1987, is taken to include a term requiring the lessee of land referred to in subsection (1) or any part of it to comply with the same obligations, in relation to land, as are imposed by that subsection on the owner who has leased the land to the lessee.

(3) An agreement to which subsection (1) relates is enforceable as if it were a covenant.

(4) It is a defence to proceedings by the Corporation under this section that the owner or, in a case to which subsection (2) applies, the lessee, did not know of, or could not reasonably have prevented, action taken by any person that would, if known to or capable of prevention by the owner or lessee, have resulted in a breach of this section by the owner or lessee.

(5) A person who, on land in, on or near which any work owned by the Corporation is installed, places a structure in, on or near the work in a manner that interferes with the operation of the work, must, on receiving a written notice from the Corporation requiring the removal of the structure within a period specified in the notice, remove the structure and compensate the Corporation for all loss or damage suffered by the Corporation as a result of the placement of the structure in, on or near the work.

(6) If a person fails to comply with a notice under subsection (5) within the period specified in the notice or within any extension of that period allowed by the Corporation in writing, the Corporation may remove the structure and recover from the person the cost of the removal together with compensation for all loss or damage referred to in that subsection.

### **Compensation to Corporation for damage**

26. (1) Without limiting section 25, a person who, without the consent of the Corporation, carries out any activity that causes destruction of, damage to or interference with any work owned by the Corporation in circumstances in which the person should have known that the

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destruction, damage or interference would result from the carrying out of the activity, is liable to compensate the Corporation for all loss or damage suffered by the Corporation as a result.

(2) The Corporation is not entitled to compensation both under this section and another provision of this Act for the same destruction, damage or interference.

(3) In this section, "person" extends to any person:

- (a) who caused the carrying out of the activity; or
- (b) by whose order or direction the activity was carried out; or
- (c) who aided, assisted, counselled or procured the carrying out of the activity.

(4) The Corporation may proceed against a person for recovery of its loss or compensation for its damage under this section whether or not the Corporation has proceeded against the person principally responsible for the loss or damage or any other person involved in the carrying out of the activity that caused the loss or damage.

**Interference with works by trees etc.**

27. (1) If the Corporation has reasonable cause to believe that a tree is destroying, damaging or interfering with a work of the Corporation, the Corporation may, by written notice, require the owner of the land on which the tree is situated within a reasonable period specified in the notice to remove the tree, including all roots of the tree that are or may be destroying, damaging or interfering with the work.

(2) The Corporation must reimburse the owner for the reasonable expenses of any action taken by the owner under this section unless the Corporation establishes that:

- (a) after the work was first laid or installed, an owner or occupier planted the tree, or caused or permitted the tree to be planted, in, on or near the work in circumstances in which the owner or occupier should have known that destruction of, damage to or interference with the work would result; or
- (b) the work of the Corporation is located, within the land on which the tree has been planted, in land that is the subject of an easement in favour of the Corporation or an easement for water supply, sewerage or drainage purposes.

(3) An owner given notice under this section may, with the consent of the Corporation and without destroying, damaging or interfering with the Corporation's works, take steps, other than removal of the tree, to eliminate the cause of the destruction of, damage to or interference with

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the Corporation's works and any reasonable expectation of the destruction, damage or interference occurring in the future.

(4) No compensation is payable by the Corporation to a person for the expenses of taking steps under subsection (3).

(5) If, in circumstances other than those referred to in subsection (3), an owner fails to comply with a notice under this section within the period specified in the notice or within any extension of that period allowed by the Corporation in writing, the Corporation may remove the tree at its own expense.

(6) This section applies despite the existence of a tree preservation order or environmental planning instrument but does not apply to any tree that is the subject of or is within an area that is the subject of:

- (a) an interim conservation order or a permanent conservation order under the Heritage Act 1977; or
- (b) an interim protection order under the National Parks and Wildlife Act 1974; or
- (c) a protection conferred by any similar law.

(7) Nothing done by an owner of land in compliance with a notice under this section or by the Corporation under subsection (5) constitutes an offence against any law under which a tree preservation order or environmental planning instrument relating to the land is made.

(8) In this section, "tree" includes shrub or other plant.

**Corporation not liable to pay annual charge on pipes etc.**

28. Section 171 of the Local Government Act 1919 does not apply to the Corporation.

### Division 3—Compulsory acquisition of land

#### **Minister may compulsorily acquire land for Corporation**

29. (1) The Minister may, at the request of the Corporation, acquire land by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of this Act.

(2) The Minister may do so only if the Corporation:

- (a) has, in the opinion of the Minister, taken all reasonable steps to acquire the land by agreement from its owner; and
- (b) makes provision to the satisfaction of the Minister for the payment of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).

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(3) The Minister may transfer land acquired under this section to the Corporation.

(4) The Corporation may sell or otherwise deal with land that is vested in the Corporation and that was acquired by compulsory process in any manner that the Corporation considers appropriate.

#### Division 4—Offences

##### Illegal diversion of water

30. (1) A person must not:

- (a) wrongfully take, use or divert any water from which the Corporation draws its supply or that is available for supply by the Corporation or that is in any pipe or work used for supply by the Corporation; or
- (b) wrongfully alter the index of a meter or prevent a meter from duly registering the quantity of water supplied by the Corporation.

Maximum penalty: 100 penalty units (or 200 penalty units in the case of a corporation).

(2) It is to be presumed, unless the contrary is proved, that any wrongful taking or diversion of water to, or any wrongful use of water on, any land was at the direction, or with the connivance, of the owner or, if the land is occupied by a person other than the owner, of the occupier of the land.

(3) If, in connection with the pipes or other apparatus of the Corporation used to supply water to any land, there exists any artificial means for:

- (a) taking, using or diverting the water; or
- (b) altering the index of a meter or preventing it from duly registering the quantity of water supplied,

it is to be presumed, unless the contrary is proved, that the taking, use, diversion, alteration or prevention was wrongfully effected or caused by the owner or, if the land is occupied by a person other than the owner, by the occupier of the land.

##### Offence to discharge into works

31. (1) A person must not discharge any substance into a work owned by the Corporation except with the written agreement of the Corporation.

Maximum penalty: 100 penalty units (or 200 penalty units in the case of a corporation).

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(2) This section does not apply to the use of a work by a person in accordance with a customer contract or other contract between the Corporation and a customer.

**Payment of penalty does not affect other proceedings**

32. (1) Prosecution or conviction of a person for an act or omission that is an offence against this Act does not affect any right of the Corporation to take civil proceedings or any other action to recover from the person:

- (a) an amount in respect of loss or damage caused by the act or omission; or
- (b) the expenses incurred by the Corporation in remedying the loss or damage; or
- (c) the value of water lost to the Corporation because of the act or omission.

(2) Payment of a penalty for an offence against this Act does not affect any right of the Corporation to institute any other action or proceeding.

**Persons causing offences**

33. (1) A person:

- (a) who causes the commission of an offence against this Act; or
- (b) by whose order or direction an offence against this Act is committed; or
- (c) who aids, abets, counsels or procures the commission of an offence against this Act,

is guilty of an offence against this Act and liable to a penalty in the same way as the principal offender.

(2) A person may be proceeded against for an offence under subsection (1) whether or not the principal offender has been prosecuted or convicted.

**Disposal of proceedings for offence**

34. (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before:

- (a) a Local Court constituted by a Magistrate sitting alone; or
- (b) the Supreme Court in its summary jurisdiction.

(2) The maximum penalty that may be imposed by a Local Court in proceedings for an offence against this Act is 50 penalty units or the maximum penalty for the offence, whichever is the lesser.

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(3) Proceedings in the Supreme Court in its summary jurisdiction or in a Local Court in relation to an offence against this Act may be commenced not later than 12 months after the commission of the offence.

**Division 5—Customer contracts**

**Publication of terms and conditions of customer contracts**

35. (1) The initial terms and conditions of a customer contract are to be set out in the operating licence.

(2) The Corporation must, before the commencement of section 36, publish, in a daily newspaper circulating in the area of operations, a notice setting out the terms and conditions on which the Corporation will provide water supply and sewerage services to customers pursuant to the operating licence.

(3) The terms and conditions set out in the notice must include particulars of the contract charges or of the manner in which the contract charges are to be calculated or determined in relation to the provision of water supply or sewerage services to customers by the Corporation.

(4) The terms and conditions set out in the notice must be in a form specified by or authorised under the operating licence.

**Owner of land taken to have entered into customer contract**

36. (1) An owner of land that is connected to a water main or sewer main owned by the Corporation is taken to have entered into a customer contract with the Corporation, on terms and conditions published under section 35 as varied from time to time in accordance with section 38, for the provision of water supply or sewerage services, or either of them, to the land.

(2) A customer contract is not unconscionable, harsh or oppressive for the purposes of any law.

**Division not to apply to certain contracts**

37. This Division does not apply to the extent that the terms and conditions of a contract for the provision of water supply or sewerage services, or either of them, have been specifically agreed to by the Corporation and a customer.



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**Terms and conditions of customer contracts may be varied on 6 months' notice**

38. (1) The terms and conditions of a customer contract may, subject to the approval of the Governor, be varied by the Corporation publishing, in a daily newspaper circulating in the area of operations, a notice setting out the variation at least 6 months, or a shorter period to which the Minister agrees, before the variation becomes effective.

(2) A copy of the notice published under this section is to be given to the customer by the Corporation with the next account for service charges issued after the date of publication of the notice. Failure to comply with this requirement does not affect the validity of the variation or any contract charge made in accordance with the variation.

(3) A statement in a notice published under this section that the Governor has approved of the variation of the terms and conditions set out in the notice is prima facie evidence that the Governor has approved of the variation of the terms and conditions unless the contrary is proved.

**Division 6—Contract charges, availability charges, environmental levies and rates**

**Operating licence may specify basis for fixing contract charges, availability charges, environmental levies and rates**

39. (1) The operating licence may provide that the Corporation must in fixing:

- (a) contract charges under customer contracts; and
- (b) availability charges under section 43; and
- (c) environmental levies under section 45; and
- (d) rates under section 46,

do so on a basis that is consistent with the system employed by the Hunter Water Board for fixing service charges immediately before the transfer of the business undertaking or on some other basis stipulated in the operating licence.

(2) Unless the operating licence otherwise provides, nothing in this section affects the power of the Corporation to fix charges, levies and rates for the purposes referred to in subsection (1) or to impose fees or charges for any service or thing supplied or provided by the Corporation in furnishing the services referred to in section 12 (1).

**Successor in title liable for unpaid contract charges**

40. On a change in the ownership of land situated in the area of operations, the new owner of the land is liable to the Corporation for the amount of any contract charges unpaid in relation to the land as if the new owner had entered into the customer contract with the Corporation for the supply of the service or services to which the unpaid contract charges relate.

**Occupier may pay, and recover, charges etc. in certain cases**

41. (1) In this section:

“lease” means a lease, licence, permit or other agreement under which an occupier is in possession of land;

“occupier” means a person who is in possession of land under a lease;

“owner” means a person who parts with possession of land to an occupier under a lease.

(2) If a lease of land in the area of operations provides, expressly or impliedly, that the owner of the land is to pay the contract charges, availability charges, environmental levies or rates payable in relation to the land, the occupier may pay to the Corporation any charges, levies or rates that are due but unpaid by the owner and may:

- (a) recover the amount paid from the owner as a debt due to the occupier; or
- (b) deduct the amount paid from any rent, licence fee or other occupation fee payable by the occupier to the owner.

**Certain contract and service charges of Corporation not charge on land**

42. (1) On and after the transfer under Part 3 of the business undertaking of the Hunter Water Board to the Corporation, no contract charges levied by the Corporation in relation to the provision of water supply or sewerage services to customers by the Corporation are to be levied as a statutory charge or rate or are to be a charge on the land to which the contract charges relate.

(2) No service charges or fees levied by the Hunter Water Board in relation to water supply or sewerage services after the end of the last charging period before the transfer of the business undertaking are a charge on the land to which the service charges or fees relate.

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(3) In this section, “**charging period**”, in relation to the Hunter Water Board, means a period declared by an order in force under section 28 (2) of the Hunter Water Board Act 1988 (as in force immediately before the commencement of section 8) to be a charging period for the Board.

**Availability charges charge on land to which main available for connection**

43. (1) The Corporation may and, if so required by the operating licence must, require the owner of land that is not connected to a water main or sewer main owned by the Corporation but to which a main is available for connection to pay an availability charge in relation to the land.

(2) An availability charge imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(3) Despite section 42, an availability charge imposed under this section is a charge on the land to which the availability charge relates.

(4) This section has effect until 30 June 1995.

**Transitional provisions: survival of unpaid amounts and amounts charged on land at transfer of business undertaking**

44. (1) Any amount that was due but unpaid to the Hunter Water Board immediately before the transfer of the business undertaking including any amount that was charged on the land to which the amount relates immediately before that transfer survives and is included in the transfer of the business undertaking to the Corporation.

(2) Subject to section 42, any amount that was due but unpaid to the Hunter Water Board immediately before the transfer of the business undertaking and was charged on the land to which the amount relates immediately before that transfer remains a charge on the land until the amount is paid.

**Environmental levy charge on unserviced land**

45. (1) The Corporation may, with the consent of the Minister, and, if so required by the operating licence must, require the owner of land that is not connected to a water main or sewer main (including land to which a main is not available for connection) but to which the Corporation proposes to make a sewer main available, to pay an environmental levy in relation to the land.

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(2) An environmental levy imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(3) Despite section 42, an environmental levy imposed under this section is a charge on the land to which the levy relates.

**Rates on land within declared drainage areas charge on land**

46. (1) In this section, “**drainage area**” means an area of land declared by an order of the Governor to be a drainage area for the purposes of this section.

(2) An order in force under section 28 (3) of the Hunter Water Board Act 1988 (as in force immediately before the commencement of section 8) declaring an area of land to be a drainage area is taken to be an order for the purposes of this section.

(3) The Corporation may and, if so required by the operating licence must, make and levy rates on the owners of land within a drainage area located in the area of operations.

(4) A rate levied under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(5) Despite section 42, a rate levied under this section is a charge on the land to which the rate relates.

**Certificate as to amounts due**

47. (1) The Corporation must, on written application being made to it, and on payment of the fee determined by the Corporation, issue to the applicant a certificate:

(a) containing particulars of any amounts payable to the Corporation in respect of a parcel of separately assessed land with those particulars distinguishing between any amounts charged on the land and any amounts that are not so charged; or

(b) to the effect that there are no such amounts.

(2) Regulations may be made for or with respect to:

(a) authorising the Corporation to make arrangements with another person for access by the other person to the information on which the Corporation would base a certificate under subsection (1); and

(b) the preparation, authentication and issue by or on behalf of the person of such a certificate; and

(c) the fees to be paid by the person to the Corporation.

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(3) A certificate authenticated and issued in accordance with regulations is taken to be a certificate applied for under subsection (1) and issued by the Corporation.

(4) An application for a certificate must:

- (a) specify the name and address of the applicant; and
- (b) identify the land to which the application relates.

(5) A certificate is conclusive proof, in favour of a purchaser in good faith and for value of the land to which the certificate relates, that, at the date of its issue, no amounts were payable to the Corporation in respect of that land other than the amounts specified in the certificate.

### Division 7—New developments

#### Definitions

48. (1) For the purposes of this Division:

“approval” means:

- (a) an approval under Part 11 of the Local Government Act 1919 for the erection of a building; or
- (b) an approval under Part 12 of the Local Government Act 1919 for the subdivision of land; or
- (c) a development consent under Part 4 of the Environmental Planning and Assessment Act 1979;

“compliance certificate” means a certificate referred to in this Division;

“developer” means a person to whom an approval has been given;

“development”, in relation to land, means:

- (a) the erection of a building on the land; or
- (b) the carrying out of work in, on, over or under the land; or
- (c) the use of the land or of a building or work on the land; or
- (d) the subdivision of the land.

(2) A reference in this Act to:

- (a) the erection of a building includes a reference to the rebuilding of, the making of structural alterations to, or the enlargement or extension of, a building or the placing or relocating of a building on land; and
- (b) the carrying out of a work includes a reference to the rebuilding of, the making of alterations to, or the enlargement or extension of, a work; and

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- (c) a work includes a reference to any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act but does not include a reference to any activity that is specified by a regulation not to be a work for the purposes of this Act; and
- (d) the subdivision of land is a reference to:
  - (i) (without limiting the following provisions of this paragraph) the subdivision of land within the meaning of the Local Government Act 1919; or
  - (ii) any other division of land into 2 or more parts which, after the division, would be obviously adapted for separate occupation, use or disposition; or
  - (iii) the redivision of land, by such a subdivision or by any other division, into different parts which, after the redivision, would be obviously adapted for separate occupation, use or disposition,
 and includes a reference to a subdivision effected under Division 1 of Part 2 of the Strata Titles Act 1973 or Division 1 of Part 2 of the Strata Titles (Leasehold) Act 1986; and
- (e) the carrying out of development includes a reference to the erection of a building, the carrying out of a work, the use of land or of a building or work, or the subdivision of land.

**Application for compliance certificate**

49. (1) If an approval has been given with respect to any land within the Corporation's area of operations, the developer may apply to the Corporation for a certificate to the effect that the development complies with the requirements of section 50.

(2) An application under this section must be accompanied by a copy of the approval.

**Issue of compliance certificate**

50. (1) If an application is made to the Corporation under section 49, the Corporation may:

- (a) grant the developer a compliance certificate in relation to the proposed development; or
- (b) serve a notice on the developer requiring the developer to enter into an agreement providing for any one or more of:
  - (i) the payment of an amount to the Corporation for amplification of the Corporation's works and the headworks in consequence of the proposed development;

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- (ii) the construction of the works specified in the notice;
  - (iii) the transfer of the works to the Corporation,
- and, if the Corporation considers necessary, requiring the developer to provide reasonable security, in a form approved by the Corporation, for due performance of that agreement.

(2) When the Corporation is satisfied that the requirements of a notice referred to in subsection (1) (b) have been complied with, the Corporation must grant the developer a compliance certificate with respect to the proposed development.

(3) If, within 60 days after the making of an application under section 49 or within a further period approved by the Minister in a particular case that is notified to the developer within the period of 60 days, no compliance certificate has been granted to, and no notice under subsection (1) has been served on, the developer, the Corporation must, at the developer's request, grant the developer a compliance certificate with respect to the proposed development.

**Consent authority to notify Corporation of certain applications etc.**

**51.** (1) In this section, "consent authority" has the meaning given in the Environmental Planning and Assessment Act 1979 and includes a council to which a building application under section 311 of the Local Government Act 1919 may be made.

(2) If a consent authority within the area of operations or a special area receives a development application or building application in relation to any matter that, in the opinion of the consent authority, may:

- (a) significantly damage or interfere with the Corporation's works; or
- (b) significantly adversely affect the Corporation's operations; or
- (c) significantly adversely affect the quality of the water from which the Corporation draws its supply of water in a special area,

the consent authority must, within 7 days of the receipt of the application, give the Corporation notice of the application.

(3) The consent authority must take into account any submissions made by the Corporation in relation to the development application or building application in determining whether to consent to the development application or building application or to attach conditions to any such consent.

(4) The consent authority may assume that the Corporation has no submissions to make in relation to a development application or building

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application of which notice has been given under this section if no such submissions are received by the consent authority within 21 days after the notice was given to the Corporation.

(5) If a consent authority has complied with this section in relation to a development application, the consent authority is not required to comply with this section in relation to a building application that deals with the same subject matter as the development application.

**Division 8—Catchment areas and other special areas**

**Director of Department of Water Resources to have control of special areas**

52. The Director of the Department of Water Resources (in this Division called “**the Director**”) has the control of special areas for the purposes of this Division.

**Special areas**

53. (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land described in the order to be a special area.

(2) The Minister may recommend an order only if of the opinion that the exercise of the powers conferred on the Water Administration Ministerial Corporation by section 12 of the Water Administration Act 1986 in relation to the use, flow and control of water could be adversely affected unless the order is made.

(3) An order under section 21 of the Hunter Water Board Act 1988 in force immediately before the commencement of this section, and any proclamation of a catchment area in force by virtue of section 21 of that Act immediately before the commencement of this section, is taken to be an order in force under this section declaring the area to be a special area.

**Crown land in special areas**

54. (1) Action may not be taken under the Crown Lands Act 1989 in relation to land within a special area unless the Director has given written approval and any conditions to which the approval is subject are complied with.

(2) The Director may, in a special area, exercise the functions of a person or body appointed to manage the affairs of a reserve trust under Part 5 of the Crown Lands Act 1989 without being appointed as such.



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**Exercise of functions by public bodies in special areas**

55. (1) A public agency may not, in relation to land within a special area, exercise functions other than functions under this Act unless notice is first given as prescribed by the regulations to the Director.

(2) On receiving a notice, the Director may make such representations to the public agency as the Director thinks fit.

(3) A public agency may not exercise functions contrary to any such representations unless, before the exercise of its functions, not less than 28 days' notice has been given to the Director and the Corporation of the functions intended to be exercised.

(4) In this section and section 56, "public agency" means the Governor, a Minister of the Crown or a statutory body.

**Director to notify Corporation of certain proposals etc.**

56. (1) If the Director receives notice of a proposal to take action under section 54 (1) or a notice under section 55 (1) in relation to any work that may damage or interfere with the Corporation's works or adversely affect the Corporation's operations, the Director is, within 14 days, to give the Corporation notice of the proposal or notice.

(2) The Director is to take into account any submissions made by the Corporation in relation to a matter referred to in subsection (1) in determining whether to approve of the action, to attach conditions to an approval given or to make representations to the public agency.

(3) The Director may assume that the Corporation has no submissions to make in relation to a matter referred to in subsection (1) of which notice has been given under this section if no such submissions are received by the Director within 28 days after the notice was given to the Corporation.

**Regulations concerning special areas**

57. (1) The regulations may make provision for or with respect to special areas, including charges or payments for the abstraction of water and the regulation or prohibition of abstracting, using, polluting or contaminating waters within special areas.

(2) A regulation made under this section prevails to the extent of any inconsistency with a statutory instrument made under another Act, including an environmental planning instrument within the meaning of the Environmental Planning and Assessment Act 1979.

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**Continuation of previous regulation concerning special areas**

58. (1) Despite section 8, the Hunter Water Board (Special Areas) Regulation 1989 continues in force and is taken to be made under this Act.

(2) Without limiting subsection (1), a permit issued under Part 4 of that Regulation is taken to have been issued under the authority of a regulation made under this Act.

(3) In that Regulation, a reference to the Board immediately before the commencement of section 8 is taken to be a reference to the Director or any person exercising the functions of the Director in accordance with this Division.

**Director to pay charges etc. collected for abstraction of certain water to Corporation**

59. All charges paid or other payments made to the Director by the holder of a permit issued under Part 4 of the Hunter Water Board (Special Areas) Regulation 1989 for the benefit of the permit are, while the operating licence is current, to be paid by the Director to the Corporation.

**Corporation etc. may exercise Director's powers**

60. (1) The Director may, with the consent and on the application of the Corporation, authorise the Corporation or a director or officer of the Corporation to exercise all or any of the Director's functions under a regulation or provision of a regulation made under this Act.

(2) The authorisation is to be in writing and may be subject to conditions.

(3) The Director may at any time revoke an authorisation or revoke or amend a condition of an authorisation.

(4) Without limiting subsection (3), the Director may revoke an authorisation if the Corporation fails to comply with any condition of the authorisation or exercises any functions conferred by it in a manner that, in the Director's opinion, is not in the public interest.

**Division 9—Other matters**

**Disposal of waste products**

61. (1) The Minister may, by order published in the Gazette, declare an underground mine working to be a disused underground mine working for the purposes of this section.

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(2) Subject to compliance with the requirements of the Environmental Planning and Assessment Act 1979 and the obtaining of any necessary statutory approvals, the Corporation may deposit and leave waste products from its sewerage treatment plants in a disused underground mine working despite the fact that the waste products within the mine working may pass beneath land that is not owned by the Corporation.

(3) No action for trespass to land, nuisance or other proceedings lie or are to be allowed by or in favour of any person against the Corporation or any director or officer of the Corporation, or other person, acting under the direction of the Corporation in relation to the deposit and leaving of waste products into disused underground mine workings under this section.

**Corporation in position of public authority in relation to drainage service**

62. (1) In performing its obligations under the operating licence to provide, operate, manage and maintain a drainage service, the Corporation has only those functions and liabilities of a public authority whose function is to operate, manage and maintain a drainage service.

(2) The Corporation has no duty to upgrade or improve the drainage system included in the business undertaking.

**PART 6—MISCELLANEOUS**

**Ministerial Corporation**

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

(2) The affairs of the Ministerial Corporation are to be managed by the Minister.

(3) Any act, matter or thing done in the name of, or on behalf of, the Ministerial Corporation by the Minister, or with the authority of the Minister, is taken to have been done by the Ministerial Corporation.

(4) The Ministerial Corporation has the functions conferred or imposed on it by or under this or any other Act.

(5) The functions of the Ministerial Corporation are to hold and dispose of assets, rights and liabilities transferred to it under this Act and to carry on any activities or business that relate to the assets, rights and liabilities transferred to it or that are incidental or ancillary to the assets, rights and liabilities transferred to it, including demanding, collecting and receiving charges, levies, rates and fees.

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**Alteration of names**

64. References in this Act to a company by a specified name include references to the company under any altered name.

**Provisions relating to certain staff**

65. Pursuant to clause 1 of Schedule 4 to the State Owned Corporations Act 1989, it is declared that the Hunter Water Board is an authority to which that Schedule applies.

**Provisions relating to subsidiaries**

66. Part 2 of Schedule 3 to the State Owned Corporations Act 1989 is, as regards the Corporation, taken to be altered:

- (a) by inserting in clause 1 (5) after the word "director" the words "to be appointed by or on behalf of the Corporation";
- (b) by omitting clause 1 (9) and by inserting instead the following subclause:

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

**Regulations may authorise or exempt for purposes of Trade Practices Act 1974 (Cth) or Monopolies Act 1923 (NSW)**

67. (1) In this section:

"authorise" includes approve;

"the Commonwealth Act" means the Trade Practices Act 1974 of the Commonwealth.

(2) The regulations may make provision for or with respect to:

- (a) specifically authorising certain acts and things, or acts and things of certain kinds, for the purposes of section 51 of the Commonwealth Act; and
- (b) exempting the Corporation from specified provisions of, or from, the Monopolies Act 1923.

(3) In particular, the regulations may contain provisions specifically authorising, for the purposes of section 51 of the Commonwealth Act:

- (a) the transfer under Part 3 of the business undertaking of the Hunter Water Board to the Corporation; and
- (b) all conduct relating to the performance of any or all contracts, agreements or understandings concerning the supply of water, the

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provision of sewerage and drainage services and associated purposes that are comprised in the business undertaking of the Hunter Water Board by the Corporation and all parties to any such contracts, agreements or understandings; and

(c) the making by the Corporation of a contract, agreement or understanding relating to the supply of water, the provision of sewerage and drainage services and associated purposes:

(i) that is, or is of a kind that is, specified in the regulations for the purposes of this section; or

(ii) that is approved by the Minister,

and all conduct of the Corporation and all parties to the contract, agreement or understanding that relates to the proposed making of, negotiating for, making, and performance of any such contract, agreement or understanding.

(4) If regulations made under this section authorise the Corporation to do any of the things referred to in subsection (3) (b) or (c), the Corporation, in exercising that authority, is authorised to do or omit to do any act or thing that is, or is of a kind that would be, but for the authorisation, a contravention of a provision of Part IV of the Commonwealth Act.

(5) If authorisation is conferred by regulations made under this section, the contract, agreement or understanding so authorised is lawful and the Corporation and all parties to the contract, agreement or understanding are authorised by force of this Act to enter into it, and to engage in the conduct referred to in subsection (3).

(6) Nothing in this section authorises the Corporation to do or omit to do any act or thing that it would not be empowered to do or omit to do apart from this section and the Commonwealth Act.

(7) An approval under subsection (3) (c) (ii) may be given subject to conditions determined by the Minister.

**Act binds Crown**

68. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**Work for water supply, sewerage or drainage**

69. (1) A person must not do any kind of work of water supply, sewerage or drainage intended for direct or indirect connection with the pipes, sewers or drains of the Corporation unless the person:

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- (a) holds an endorsed licence or a supervisor certificate in force under the Building Services Corporation Act 1989 authorising the holder to do that kind of work; or
- (b) does the work under the immediate supervision of the holder of such a licence or certificate; or
- (c) holds a certificate of registration in force under the Building Services Corporation Act 1989 authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).

Maximum penalty: 100 penalty units.

(2) The regulations may make provision for or with respect to any such work, including the standards for and supervision of any such work and the grant of permission by the Corporation or its officers for the performance of any such work.

(3) Despite section 8, Parts 1 and 2 of the Hunter Water Board (Water, Sewerage and Drainage Systems) Regulation 1989 continue in force and are taken to be made under this Act.

(4) Without limiting subsection (3), a permit issued under Part 2 of that Regulation before the commencement of this section is taken to have been issued under the authority of a regulation made under this Act.

(5) In that Regulation, a reference to the Managing Director of the Board includes a reference to the chief executive of the Corporation.

### **Regulations**

70. (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) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act (including the interpretation of references to the Hunter Water Board or any member or employee of the Hunter Water Board or to the Hunter Water Board Act 1988 or any provision of that Act).

(3) Any such savings or transitional provision may, if the regulations so provide, take effect on the commencement of this section or a later date.

(4) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

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- (a) to affect, in a manner prejudicial to any person (other than the State, the Corporation, the Hunter Water Board or any authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State, the Corporation, the Hunter Water Board or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(5) Without limiting any of the provisions of this section, the regulations may make provision for or with respect to:

- (a) the renewal of, and the arrangements to apply pending the renewal of, the operating licence; and
- (b) the supply of water, the provision of sewerage or drainage services or the disposal of waste water in any extension of the area of operations following any variation in the area of operations after the commencement of the operating licence; and
- (c) the classification or valuation of land or other basis or bases for the making of, and the procedure for the making and imposing or levying of availability charges, environmental levies and rates; and
- (d) relating to charges on land and the recovery of amounts charged on land including applying the provisions (with or without modifications) of sections 602–613 of the Local Government Act 1919 in respect of charges on land.

(6) A regulation may create an offence punishable by a penalty for a breach of the regulation not exceeding:

- (a) 200 penalty units in the case of an offence by a corporation; or
- (b) 100 penalty units in any other case.

(7) Regulations may be made for or with respect to:

- (a) authorising the Corporation to make arrangements with another person to collect availability charges, environmental levies or rates on behalf of the Corporation; and
- (b) the fees to be paid by the person to the Corporation.

#### **Amendment of Acts**

71. The Acts specified in Schedule 1 are amended as set out in that Schedule.

**Transitional: commencement of amendments of certain Acts**

72. (1) If the day or days on which the provisions of the proposed Electricity Commission (Corporatisation) Act 1991 that amend the Interpretation Act 1987 and the State Owned Corporations Act 1989 commence is earlier than the day or days on which the provisions of this Act that amend those provisions commence, the amendments proposed to be made by this Act to those provisions and to the proposed Electricity Commission (Corporatisation) Act 1991 have no effect.

(2) If the day on which the section of the proposed Electricity Commission (Corporatisation) Act 1991 that repeals the Electricity Commission Act 1950 commences is earlier than the day on which the provisions of this Act that amend the Electricity Commission Act 1950 commence, the amendment proposed to be made by this Act to that Act has no effect.

(3) A reference in this Act to the Land Acquisition (Just Terms Compensation) Act 1991 is, pending the commencement of that Act, to be read as a reference to the Public Works Act 1912.

**Provision disapplied**

73. Section 6 of the Clean Waters Act 1970 does not apply to the Corporation.

**Application of Freedom of Information Act 1989 No. 5**

74. Despite Schedule 2 to the Freedom of Information Act 1989, that Act applies to and in respect of the Corporation and any subsidiaries of the Corporation as if they were each a public authority.

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**SCHEDULE 1—AMENDMENT OF ACTS**

(Sec. 71)

**Aboriginal Land Rights Act 1983 No. 42**

- (1) Section 43 (Exemption of Aboriginal lands from the payment of rates):  
 From section 43 (1) (c), omit "Hunter District Water, Sewerage and Drainage Act 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".
- (2) Section 44 (Execution etc. against Aboriginal lands barred in certain cases):  
 From section 44 (c), omit "Hunter District Water, Sewerage and Drainage Act 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".

**Attachment of Wages Limitation Act 1957 No. 28**

Schedule:

Omit "Hunter District Water Board."

**Building Services Corporation Act 1989 No. 147**

- Section 135 (Proceedings for certain offences under other Acts):  
 Omit section 135 (d), insert instead:  
 (d) the Hunter Water Board (Corporatisation) Act 1991; or

**Capital Debt Charges Act 1957 No. 1**

Schedule:

Omit the matter relating to The Hunter District Water Board.

**Clean Waters Act 1970 No. 78**

Section 5 (Definitions):

From the definition of "statutory authority", omit "the Hunter District Water Board,".

**Coal Mining Act 1973 No. 81**

Section 21A (Grant of authorisation to drill bore hole etc.):

Omit section 21A (3) (f), insert instead:

- (f) land within a special area within the meaning of the Hunter Water Board (Corporatisation) Act 1991, without the consent of the Director of the Department of Water Resources.

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Conveyancing Act 1919 No. 6**

- (1) Section 88 (Limitation of enforceability of easements and restrictions of user of land):

In section 88 (4), before “nor”, insert “or by or for Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991,”.

- (2) Section 88A (Easements in gross and easements and restrictions appurtenant to easements):

At the end of the section, insert:

(5) For the purposes of this section, the Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991 is taken to be a public authority constituted by Act of Parliament.

**Dams Safety Act 1978 No. 96**

**Section 8 (Members):**

From section 8 (2) (d), omit “Hunter District Water Board constituted under the Hunter District Water, Sewerage and Drainage Act 1938”, insert instead “Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991”.

**Drainage Act 1939 No. 29**

**Section 5 (Certain Acts not affected):**

Omit “the Hunter District Water, Sewerage and Drainage Act 1938”, insert instead “the Hunter Water Board (Corporatisation) Act 1991”.

**Electricity Commission Act 1950 No. 22**

**Section 3 (Definitions):**

From the definition of “Statutory body” or “Statutory body representing the Crown”, omit “the Hunter District Water Board,”.

**Electricity Commission (Corporatisation) Act 1991**

**Schedule 1 (Amendment of Acts):**

Omit the amendments to the Interpretation Act 1987 and the State Owned Corporations Act 1989.

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Evidence Act 1898 No. 11**

Section 43C (Conditions under which print from photographic film admissible in evidence):

From the definition of "statutory body representing the Crown" in section 43C (5), omit "the Hunter District Water Board."

**Fluoridation of Public Water Supplies Act 1957 No. 58**

Section 11 (Regulations):

From section 11 (1) (b), omit "or the Hunter Water Board".

**Government and Related Employees Appeal Tribunal Act 1980 No. 39**

Schedule 4 (Employing authorities):

Omit "The Hunter District Water Board."

**Heritage Act 1977 No. 136**

(1) Section 123 (Definitions):

(a) From paragraph (d) of the definition of "rating or taxing authority", omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991".

(b) From the definition of "valuing law", omit "Hunter District Water, Sewerage and Drainage Act 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".

(2) Section 126 (Application of valuing laws to heritage valuations):

Omit section 126 (e).

**Industrial Arbitration Act 1940 No. 2**

Schedule 2:

Omit "The Hunter District Water Board".

**Interpretation Act 1987 No. 15**

Section 21 (Meaning of commonly used words and expressions):

In section 21 (1), insert, in alphabetical order:

"State owned corporation" means a State owned corporation within the meaning of the State Owned Corporations Act 1989;

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Justices Act 1902 No. 27**

Section 100I (Definitions):

From paragraph (a) of the definition of "penalty notice" in section 100I (1), omit "Hunter Water Board Act 1988, section 51;".

**Land Tax Management Act 1956 No. 26**

Section 3 (Definitions):

From the definition of "Public authority" in section 3 (1), omit "the Hunter District Water Board,".

**Local Government Act 1919 No. 41**

(1) Section 4 (Definitions):

From the definition of "Statutory body," or "statutory body representing the Crown," omit "the Hunter District Water Supply and Sewerage Board".

(2) Section 10 (Certain Acts not affected):

Omit "the Hunter Water Board Act 1988;"; insert instead "the Hunter Water Board (Corporatisation) Act 1991;".

(3) Section 247 (Power to lay pipes and charge cost):

From section 247 (5), omit "Hunter District Water Supply and Sewerage Act of 1892"; insert instead "Hunter Water Board (Corporatisation) Act 1991".

(4) Section 283 (Depots, destructors, and plant):

- (a) From section 283 (3A), omit " or the Hunter District Water Supply and Sewerage Act of 1892".
- (b) From section 283 (3A), omit " or the Hunter District Water Supply and Sewerage Board, as the case may be,".

(5) Section 327 (Conditions to be observed before opening new roads or subdivisions):

- (a) Omit section 327 (1) (d) (A1), insert instead:
  - (A1) the area of operations within the meaning of Part 5 of the Hunter Water Board (Corporatisation) Act 1991; or
- (b) From section 327 (1) (d), omit "section 27 of the Hunter Water Board Act 1988"; insert instead "section 50 of the Hunter Water Board (Corporatisation) Act 1991".

(6) Section 331A (Subdivision of land within the area of operations of a Water Board or Water Supply Authority):

- (a) Omit section 331A (1) (a) (ia), insert instead:

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

- (ia) the area of operations within the meaning of the Hunter Water Board (Corporatisation) Act 1991; or
  - (b) From section 331A (1), omit "Hunter Water Board", insert instead "Hunter Water Corporation Limited".
  - (c) From section 331A (2) and (3), omit "section 27 of the Hunter Water Board Act 1988" wherever occurring, insert instead "section 50 of the Hunter Water Board (Corporatisation) Act 1991".
  - (d) Omit section 331A (3) (ai), insert instead:
    - (ai) the area of operations within the meaning of the Hunter Water Board (Corporatisation) Act 1991; or
- (7) Section 368 (Application):
- (a) From section 368 (2), omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited".
  - (b) From section 368 (2), omit "Hunter District Water, Sewerage and Drainage Act, 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".
- (8) Section 405 (Stormwater drains):
- From section 405 (1), omit "Hunter District Water, Sewerage and Drainage Act, 1938", insert instead "Hunter Water Board (Corporatisation) Act 1991".
- (9) Section 493 (Guarantees):
- (a) From section 493 (2), omit "Hunter District Water Supply and Sewerage Board", insert instead "Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991".
  - (b) In section 493 (2), after "board" wherever occurring, insert "or Corporation".
  - (c) In section 493 (2A) (a) and (b), after "Board" wherever occurring, insert "or Corporation".
  - (d) In the definitions of "Collectable income of the Board" and "Net collectable income of the Board" in section 493 (2A) (c), after "Board" wherever occurring, insert "or Corporation".
  - (e) In subparagraph (ii) in the definition of "Board" in section 493 (2A) (c), omit "any water district or sewerage district as respectively defined in the Hunter District Water and Sewerage Act, 1892–1928—the Hunter District Water Supply and Sewerage Board", insert instead "the area of operations within the meaning of Part 5 of the Hunter Water Board (Corporatisation) Act 1991—the Hunter Water Corporation Limited".
  - (f) From section 493 (3) (b), omit "either of the said boards", insert instead "the Board or the Corporation".
  - (g) From section 493 (3) (b), omit "board concerned", insert instead "Water Board or subject to the imposition of service charges by the Corporation".

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

- (h) From section 493 (3A), omit "Board", insert instead "Water Board or subject to the imposition of service charges by the Corporation".
- (10) Section 654 (Disputes between councils, etc.):  
Omit section 654 (5) (e).

**National Parks and Wildlife Act 1974 No. 80**

(1) Section 74 (Catchment areas):

- (a) After "catchment area" where firstly occurring, insert "or special area".
- (b) Omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991".
- (c) After "catchment area" where secondly, thirdly and fourthly occurring, insert ", special area".
- (d) After "Boards", insert "or that Corporation".
- (e) In section 74 (a) and (b), after "structure" wherever occurring, insert "or, if applicable, the Corporation".
- (f) After "information" in paragraph (a), insert "and, if referred to the Corporation, shall also refer it to the Director of the Department of Water Resources".
- (g) After "structure" in paragraph (b), insert instead "and, in a case involving the Corporation, by the Director of the Department of Water Resources".

(2) Section 185 (Catchment areas):

- (a) Omit "Hunter District Water, Sewerage and Drainage Act 1938" wherever occurring, insert instead "Hunter Water Board (Corporatisation) Act 1991".
- (b) In section 185 (2), after "areas", insert "or special areas".
- (c) After "catchment area" wherever occurring, insert "or special area".
- (d) From section 185 (4) (b), omit "The Hunter District Water Board", insert instead "the Hunter Water Corporation Limited and the Director of the Department of Water Resources".
- (e) From section 185 (5), omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited nor the Director of the Department of Water Resources".

**New South Wales Retirement Benefits Act 1972 No. 70**

Schedule 2:

- Omit the matter relating to the Hunter District Water Board.

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Pipelines Act 1967 No. 90**

**Section 3 (Definitions):**

From the definition of "statutory body representing the Crown" in section 3 (1), omit "Hunter District Water Board", insert instead "Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991".

**Public Authorities (Financial Arrangements) Act 1987 No. 33**

**Schedule 1 (Authorities):**

Omit "The Hunter District Water Board."

**Public Authorities Superannuation Act 1985 No. 41**

**Schedule 3 (Employers):**

From Part 2, omit "The Hunter District Water Board."

**Public Finance and Audit Act 1983 No. 152**

**Schedule 2 (Statutory bodies):**

Omit "Hunter District Water Board."

**Public Sector Management Act 1988 No. 33**

(1) **Schedule 3 (Declared authorities):**

Omit "Hunter District Water Board."

(2) **Schedule 3A (Chief executive positions):**

From Part 3, omit "Managing Director of the Hunter Water Board".

(3) **Schedule 3B (Senior executive positions):**

Omit heading "Hunter Water Board" and all matter under that heading.

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

**Schedule 1 (Employers):**

From Part 1, omit "The Hunter District Water Board".

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

**Schedule 1 (Employers):**

From Part 1, omit "The Hunter District Water Board".

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**State Owned Corporations Act 1989 No. 134**

(1) Section 7A (Ministerial direction):

- (a) After "corporation", insert ", a subsidiary of a State owned corporation or any other person".
- (b) Omit "its name", insert instead "the name of the State owned corporation".

(2) Section 37A:

After section 37, insert:

**Modification of Environmental Planning and Assessment Act 1979 in its application to certain proposals**

37A. (1) In this section:

"development" means development within the meaning of Part 4 of the Planning Act;

"the Planning Act" means the Environmental Planning and Assessment Act 1979.

(2) The Planning Act applies to development by a State owned corporation, except as provided by this section.

(3) Part 5 of the Planning Act applies to development proposed to be carried out by a State owned corporation that is development, or of a class or description of development, that the Minister administering the Planning Act certifies in writing is of State or regional significance. That Part so applies to the development as if it were an activity within the meaning of that Part whether or not development consent under Part 4 of the Planning Act would otherwise be required or has been obtained in relation to the development. Part 4 of the Planning Act accordingly does not apply.

(4) The Minister administering the Act by which the name of the State owned corporation proposing the development is inserted in Schedule 1 to this Act is the determining authority (or, if more than one approval within the meaning of the Planning Act is required, the nominated determining authority) for the purposes of Part 5 of the Planning Act in relation to the proposal.

(5) A State owned corporation must not carry out development to which subsection (3) applies unless the State owned corporation has obtained the approval of the determining authority referred to in subsection (4).

(6) Development to which subsection (3) applies must not include any act, matter or thing that is prohibited by an environmental planning instrument made under the Planning Act.



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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(3) Section 37B:

After section 37A, insert:

**Establishment of Ministerial Holding Corporation**

37B. (1) There is constituted by this Act a corporation with the corporate name of the Ministerial Holding Corporation.

(2) The affairs of the Corporation are to be managed by the Minister who may authorise another Minister to exercise functions in relation to particular assets, rights and liabilities.

(3) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Minister or a Minister authorised by the Minister, or with the authority of any such Minister, is taken to have been done by the Corporation.

(4) The Corporation has the functions conferred or imposed on it by or under this or any other Act.

(5) The functions of the Corporation are:

- (a) to hold on behalf of the Crown, retain, transfer and dispose of assets, rights and liabilities transferred to it under this Act; and
- (b) to acquire, exchange, lease, dispose of and otherwise deal with property; and
- (c) to develop and manage land transferred to it under this Act or otherwise acquired by it; and
- (d) to carry on any activities or business that relate to any of the above or are incidental or ancillary to any of the above, including demanding, collecting and receiving charges, levies, rates and fees.

(6) Without limiting the generality of subsection (5), the Corporation may transfer and dispose of any such assets, rights and liabilities to the Crown or to any person on behalf of the Crown.

**State Public Service Superannuation Act 1985 No. 45**

Schedule 3 (Employers):

Omit "The Hunter District Water Board."

**Strata Titles Act 1973 No. 68**

Section 89 (Definitions):

- (a) Omit paragraph (d) of the definition of "appropriate valuing Act", insert instead:
  - (d) where the Hunter Water Corporation Limited is the valuing authority in respect of the parcel—the Hunter Water Board (Corporatisation) Act 1991;

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

- (b) From paragraph (c) of the definition of “valuing authority”, omit “Hunter Water Board”, insert instead “Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991”.

**Strata Titles (Leasehold) Act 1986 No. 219**

**Section 121 (Definitions (1973 Act, Division 6)):**

- (a) Omit paragraph (c) of the definition of “appropriate valuing Act”, insert instead:
- (c) where the Hunter Water Corporation Limited is the valuing authority in respect of the parcel—the Hunter Water Board (Corporatisation) Act 1991;
- (b) From paragraph (a) of the definition of “valuing authority”, omit “Hunter Water Board”, insert instead “Hunter Water Corporation Limited referred to in the Hunter Water Board (Corporatisation) Act 1991”.

**Superannuation Act 1916 No. 28**

**Schedule 3 (List of employers):**

From Part 1, omit “The Hunter District Water Board”.

**Traffic Safety (Lights and Hoardings) Act 1951 No. 7**

**Section 2 (Definition):**

From the definition of “Public authority”, omit “the Hunter District Water Board.”.

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

- (1) **Section 47 (Rating or taxing authorities):**

Omit “The Hunter District Water Board.”.

- (2) **Section 60 (Assessed annual value for purposes of other Acts):**

Omit “, the Hunter District Water, Sewerage and Drainage Act 1938”.

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**Water Administration Act 1986 No. 195**

Schedule 1 (Acts under which Ministerial Corporation may exercise functions):

Omit "Hunter Water Board Act 1988".

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[*Minister's second reading speech made in—  
Legislative Assembly on 12 November 1991  
Legislative Council on 4 December 1991*]

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